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EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
Dallas, Texas

In the Matter of

Kaneka North America LLC,

Respondent

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Docket No. CAA-06-2023-3309

ADMINISTRATIVE ORDER ON CONSENT

Preliminary Statement

1. The U.S. Environmental Protection Agency, Region 6 (EPA), and Kaneka North America LLC (Respondent) have agreed to voluntarily enter into this Administrative Order on Consent (Order) for the purposes of carrying out the goals of Section 112(r) of the Clean Air Act (CAA), 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68.

Jurisdiction

2. This Order is entered into pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B). Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), provides that whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of Subchapter I of the CAA, which includes, among other things, the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder, the Administrator may issue an order requiring compliance with such requirement or prohibition.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. The Respondent is Kaneka North America LLC, a company formed and authorized to conduct business in the state of Texas.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The objective of Section 112(r) is to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

6. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), mandates that the Administrator establish a threshold quantity for any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The list of regulated substances and respective threshold quantities is codified at 40 C.F.R. § 68.130.

7. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for stationary sources with threshold quantities of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). On June 20, 1996, the EPA promulgated a final

rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

8. The regulations at 40 C.F.R. Part 68 require owners and operators to develop and implement a Risk Management Program at each stationary source with over a threshold quantity of regulated substances. The Risk Management Program must include, among other things, a hazard assessment, a prevention program, and an emergency response program. The Risk Management Program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

9. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source subject to 40 C.F.R. Part 68 no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. The regulations at 40 C.F.R. § 68.10 set forth how the chemical accident prevention provisions apply to each program level of covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the Occupational Safety and Health Administration (OSHA) process safety management standard, 29 C.F.R. 1910.119.

Definitions

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

12. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and the regulation at 40 C.F.R. § 68.3 defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C) and the regulation at 40 C.F.R. § 68.3 defines “stationary source,” in part, as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.

14. The regulation at 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

15. The regulation at 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. The regulation at 40 C.F.R. § 68.3 defines “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

17. The regulation at 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

EPA Findings of Fact and Conclusions of Law

18. The Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

19. The Respondent is the owner and operator of the facility located at: 6161 Underwood Road, Pasadena, TX, 77507 (the “Facility”).

20. On February 2, 2022, there was an incident at the Facility that resulted in an accidental release of 770lbs of 1, 3-Butadiene (“Incident 1”).

21. On May 7, 2022, there was another incident at the Facility that resulted in an accidental release of approximately 60lbs of 1, 3-Butadiene (“Incident 2”).

22. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, the EPA conducted a desktop investigation of the Facility beginning on or about April 2022, to determine the Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 (the “Investigation”).

23. Pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, on multiple occasions, the EPA requested, and the Respondent provided, further documentation and information concerning both Incident 1, Incident 2, and the Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

24. On May 18, 2022, the EPA sent the Respondent a Notice of Potential Violation and Opportunity to Confer letter.

25. On June 13, 2022, the EPA met with the Respondent as a result of the opportunity to confer and articulated the EPA’s position concerning the Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r) regarding Incident 1.

26. On July 18, 2022, the EPA met again with the Respondent to review the EPA’s

position concerning Incident 1, as well as articulated the EPA's position concerning the Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r) regarding Incident 2.

27. The Respondent agreed to the violations from Incident 1 on July 21, 2022, and agreed to the violations from Incident 2 on August 3, 2022.

28. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. 7412(r)(2)(C), and the regulation at 40 C.F.R. § 68.3.

29. The Respondent operates plastics material and resin manufacturing processes at the Facility that produces polymers used in various applications and products, meeting the definition of "process", as defined by 40 C.F.R. § 68.3.

30. As a result, the Respondent produces, processes, handles, and stores 1, 3-Butadiene, Chlorine, Propylene oxide, and Acrylonitrile at the Facility.

31. 1, 3-Butadiene, Chlorine, Propylene oxide, and Acrylonitrile are "regulated substances" pursuant to 40 C.F.R. § 68.3. The threshold quantity for 1, 3-Butadiene, and Propylene oxide as listed in 40 C.F.R. § 68.130 is 10,000 pounds. The threshold quantity for Chlorine as listed in 40 C.F.R. § 68.130 is 2,500 pounds. The threshold quantity for Acrylonitrile as listed in 40 C.F.R. § 68.130 is 20,000 pounds.

32. The Respondent has greater than a threshold quantity of 1, 3-Butadiene, Chlorine, Propylene oxide, and Acrylonitrile in a process at the Facility.

33. From the time the Respondent first had on-site greater than a threshold quantity of 1, 3-Butadiene, Chlorine, Propylene oxide, and Acrylonitrile in a process, the Respondent was subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 because it was the owner or operator of a stationary source that had more than a

threshold quantity of a regulated substance in a process.

34. From the time the Respondent first had on-site greater than a threshold quantity of 1, 3-Butadiene, Chlorine, Propylene oxide, and Acrylonitrile in a process, the Respondent was required to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 prevention requirements because, pursuant to 40 C.F.R. § 68.10(i), the covered process at the Facility did not meet the eligibility requirements of Program 1 and is in North American Industry Classification System code 325211 – Plastics Material and Resin Manufacturing.

EPA Findings of Violation

35. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

Process Hazard Analysis

36. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.67(e), the owner or operator shall establish a system to promptly address the process hazard analyses team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

37. At the time of the Investigation, the Respondent had not completed twenty-eight (28) items of its 2020 Process Hazard Analysis for MA 1/2 and MA 3 by the recommended due dates. MA 1/2 had two (2) overdue items and MA 3 had twenty-six (26) overdue items.

38. The Respondent's failure to assure that the recommendations of its Process Hazard Analysis are resolved in a timely manner pursuant to 40 C.F.R. § 68.67(e), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Operating Procedures

39. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.69(a)(1)(ii), the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements: (1) Steps for each operating phase: (ii) Normal operations.

40. At the time of the Investigation, the Respondent had not properly implemented its written normal operations - operating procedures regarding the manual closure of two valves during an HQ replacement.

41. The Respondent's failure to implement its written operating procedures pursuant to 40 C.F.R. § 68.69(a)(1)(ii), as required by 40 C.F.R. § 68.12(d)(3), along with the normal activation of the safety system is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Operating Procedures (process equipment)

42. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.69(d), the owner or operator shall develop and implement safe work practices to provide for the control of hazards during

operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees.

43. At the time of the Investigation, the Respondent had not followed the established Job Safety Analysis (“JSA”) procedure (N-0-SH-OP-06 Non-Routine Work Job Safety Analysis JSA) when performing non-routine work. The JSA procedure outlines a technique that focuses on job tasks to identify hazards before they occur. By directing that jet valve testing continue without a JSA, the Respondent did not fully understand the hazards of the job or know how to effectively mitigate them. Furthermore, the Respondent did not follow the operating procedure requiring minimization of activities in manual mode and the entry of manual mode activities into the Manual Intervention Logbook.

44. The Respondent’s failure to implement safe work practices to provide for the control of hazards during operations, pursuant to 40 C.F.R. § 68.69(d), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Management of Change

45. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Pursuant to 40 C.F.R. § 68.75(e), [i]f a change covered by this paragraph results in a change in the operating procedures or practices required by § 68.69, such procedures or practices shall be updated accordingly.

46. At the time of the Investigation, the Respondent had not completed a Management of Change addressing discontinuing the practice of using a Manual Intervention

Logbook for any activity involving manual intervention, although the use of manual mode and manual interventions continued.

47. The Respondent's failure to perform a Management of Change for the change in discontinuing the practice of using a Manual Intervention Logbook for any activity involving manual intervention, pursuant to 40 C.F.R. § 68.75(e), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Emergency Response Coordination

48. The regulation at 40 C.F.R. § 68.12(d)(5) requires the owner or operator of a stationary source with a process subject to Program 3 to develop and implement an emergency response program, and conduct exercises, as provided in 40 C.F.R. § 68.90 through 68.96. Pursuant to C.F.R. § 68.93(c), the owner or operator shall document coordination with local authorities, including: The names of individuals involved and their contact information (phone number, email address, and organizational affiliations); dates of coordination activities; and nature of coordination activities.

49. At the time of the Investigation, the Respondent had not adequately documented emergency coordination activities with local emergency responders.

50. The Respondent's failure to maintain emergency coordination records pursuant to 40 C.F.R. § 68.93(c), as required by 40 C.F.R. § 68.12(d)(5) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Emergency Response Program

51. The regulation at 40 C.F.R. § 68.12(d)(5) requires the owner or operator of a stationary source with a process subject to Program 3 to develop and implement an emergency response program, and conduct exercises, as provided in 40 C.F.R. § 68.90 through 68.96.

Pursuant to 40 C.F.R. § 68.95(a)(1), the owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements: (1) An emergency response plan, which shall be maintained at the stationary source and contain at least the following elements: (i) Procedures for informing the public and the appropriate Federal, state, and local emergency response agencies about accidental releases; (ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; (iii) Procedures and measures for emergency response after an accidental release of a regulated substance.

52. At the time of the Investigation, the Respondent had not implemented its emergency response program, pursuant to 40 C.F.R. § 68.95(a)(1)(i), when it did not utilize the Emerge system to inform the community of the toxic release that occurred May 7, 2022. Pursuant to 40 C.F.R. § 68.95(a)(1)(ii), the Respondent failed to develop its emergency response program by not covering specific hazards associated with chemicals present at the facility, including exposure to 1, 3-Butadiene, Chlorine, Propylene oxide, Acrylonitrile, or burn treatment in the event of a fire and explosion. Lastly, the Respondent failed to develop and implement its emergency response program, pursuant to 40 C.F.R. § 68.95(a)(1)(iii), by not including procedures for responding to an emergency while only wearing standard PPE, failing to trigger the plant alarm upon awareness of a hazardous chemical release, failing to provide medical attention following exposure to hazardous chemicals, and by facility employees failing to promptly inform safety personnel of the hazardous chemical release of 1, 3-Butadiene.

53. The Respondent's failure to develop and implement multiple components of its emergency response program pursuant to 40 C.F.R. § 68.95(a)(1), as required by 40 C.F.R. § 68.12(d)(5), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Emergency Response Program

54. The regulation at 40 C.F.R. § 68.12(d)(5) requires the owner or operator of a stationary source with a process subject to Program 3 to develop and implement an emergency response program, and conduct exercises, as provided in 40 C.F.R. § 68.90 through 68.96. Pursuant to 40 C.F.R. § 68.95(a)(2), the owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements: (2) Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.

55. At the time of the Investigation, the Respondent had not included procedures for the use, inspection, testing and maintenance of emergency response equipment kept on site.

56. The Respondent's failure to develop its emergency response program with the inclusion of procedures for the use, inspection, testing, and maintenance of emergency response equipment pursuant to 40 C.F.R. § 68.95(a)(2), as required by 40 C.F.R. § 68.12(d)(5), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

General Duty Clause (identify hazards)

57. The Clean Air Act Section 112(r)(1), 42 U.S.C. § 7412(r)(1), imposes a general duty on the owners and operators of stationary sources producing, processing, handling, or storing [a chemical in 40 C.F.R. Part 68 or any other extremely hazardous substance] to identify hazards which may result from such releases using appropriate hazard assessment techniques.

58. One of the hazards associated with opening process equipment is the potential for residual flammable substances to be present in the equipment. Thus, the Respondent has a duty to identify and control potential ignition sources to reduce or eliminate the risk of fire or exposure.

59. At the time of the Investigation, the Respondent had not met the general duty clause because the facility could not detect the 1, 3-Butadiene concentration that was present in the manway, absent an employee haphazardly smelling the chemical or already knowing about its presence. The Respondent did not have any detection equipment to adequately identify and control the potential ignition source that arose from the release of 1, 3-Butadiene.

60. The Respondent's failure to identify and control hazards, such as a potential ignition source, which may result from such releases using appropriate hazard assessment techniques is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1)

General Duty Clause (design and maintain)

61. The Clean Air Act Section 112(r)(1), 42 U.S.C. § 7412(r)(1), imposes a general duty on the owners and operators of stationary sources producing, processing, handling, or storing [a chemical in 40 C.F.R. Part 68 or any other extremely hazardous substance] to design and maintain a safe facility taking such steps as are necessary to prevent releases.

62. Pursuant to the National Fire Protection Association (NFPA) 17.8.3.2.1, when placing lower explosive level (LEL) detectors at a facility an evaluation is required to ensure that the placement is tailored to the specific facility and the chemical(s) used in its processes.

63. At the time of the Investigation, the Respondent had not met the general duty clause because it never completed an evaluation for the optimal placement of LEL detectors at its Pasadena facility. Furthermore, no LEL detectors were activated although significant quantities of 1, 3-Butadiene (770lbs and 60lbs) were released into the environment.

64. The Respondent's failure to design and maintain a safe facility taking such steps as are necessary to prevent releases, by failing to perform an evaluation of LEL detector placement and failing to design the facility to adequately detect the specific chemicals utilized in

processes is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

General Duty Clause (minimize consequences)

65. The Clean Air Act Section 112(r)(1), 42 U.S.C. § 7412(r)(1), imposes a general duty on the owners and operators of stationary sources producing, processing, handling, or storing [a chemical in 40 C.F.R. Part 68 or any other extremely hazardous substance] to minimize the consequences of accidental releases which do occur.

66. At the time of the Investigation, the Respondent had not met the general duty clause because the Respondent lacked adequate guidance for responding to accidental releases that could occur at the Pasadena facility including how to respond when an operator is not in the proper PPE, when and how to trigger the plant alarms, when and how to evacuate the area, and procedures for controlling the source of an accidental release if it did occur.

67. The Respondent's failure to minimize the consequences of accidental releases which do occur, by failing to provide clear direction to the Respondent's employees on how to respond to an accidental release of 1, 3-Butadiene (or any other hazardous chemical), resulted in additional exposure to employees and is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Order for Compliance

68. Based on the EPA Findings of Fact and Conclusions of Law and the EPA Findings of Violation set forth above, and pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended, the Respondent is hereby ORDERED and agrees to comply with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68.

69. The EPA and the Respondent agree that the Respondent shall, as expeditiously as

possible, but in no event later than three-hundred and sixty-five (365) days from the effective date of this Order, complete the following actions (Compliance Actions):

- a. In accordance with 40 C.F.R. § 68.67(e), the Respondent shall ensure the completion of all overdue action items resulting from Process Hazard Analysis and submit to the EPA a certification of completion, which shall include all supporting documentation related to said completion.
- b. In accordance with 40 C.F.R. § 68.69(d), the Respondent shall submit a certification of completion to the EPA regarding the switch from manual to automatic mode for board operations, which should include a certified statement, with supporting documentation showing that all changes made to its operating procedures comply with 40 C.F.R. Section 68 Subpart D.
- c. In accordance with 40 C.F.R. § 68.71, the Respondent shall perform a full training program audit to ensure employees have adequately received and understood all necessary training materials. The audit should, at a minimum, include an evaluation of all training documentation in compliance with 40 C.F.R. 68.71(c), and an evaluation of the frequency of refresher training to assure that the employee understands and adheres to the current operating procedures in compliance with 40 C.F.R. 68.71(b).
- d. In accordance with 40 C.F.R. § 68.93(c), the Respondent shall develop, implement, and submit to the EPA a plan to track and maintain records of Emergency Response coordination, including but not limited to participation in field and tabletop exercises. Upon completion of 2023 coordination activities, the Respondent shall submit records of said activities to the EPA.

- e. In accordance with 40 C.F.R. § 68.95(a), the Respondent shall perform a full Emergency Response Program audit and submit, to the EPA, the Respondent's updated Emergency Response Plan, which shall, at a minimum, address the violations contained within the Consent Agreement and Final Order, Docket No. CAA-06-2023-3308.
- f. In accordance with the Respondent's general duty under Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), as required by 40 C.F.R. § 68.75(e), and with direction under NFPA 17.8.3.2.1, the Respondent shall perform a LEL placement evaluation and submit to the EPA the evaluation report with an accompanying Management of Change and all supporting documentation.
- g. In accordance with 40 C.F.R. § 68.71, the Respondent shall submit to the EPA all records documenting the training of employees regarding all changes and updates to process equipment, operations, and the emergency response program as above mentioned in this Order.

Submissions

70. The Respondent must provide documentation of completion of the compliance actions described above to the EPA within three-hundred and sixty-five (365) days of the effective date of this Order. All documentation shall be submitted as set forth in this sub-section.

71. All submissions to the EPA required by this Order shall contain the following certification signed by an authorized representative of the Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

72. All submissions to the EPA required by this Order shall be sent by electronic mail to:

Elizabeth Rogers
Air Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101
rogers.elizabeth@epa.gov

73. All documents submitted by the Respondent to the EPA in the course of implementing this Order shall be available to the public unless identified and determined to be confidential business information pursuant 40 C.F.R. Part 2, Subpart B.

Stipulated Penalties

74. The Respondent shall be liable for stipulated penalties for failure to comply with the requirements of this Order. The following stipulated penalties shall accrue per violation per day for failure to comply with the Compliance Actions or Submissions requirements above:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$15,000	1st through 30th day
\$37,500	31st day and beyond

75. All penalties shall begin to accrue on the day after the complete performance is due, or on the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity required by this Order.

76. The payment of penalties shall not alter in any way the Respondent's obligation to comply with the provisions of this Order.

77. All penalties accruing under this section shall be due and payable to the United States within thirty (30) days of the Respondent's receipt from the EPA of a demand for payment

of stipulated penalties. Such payments shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri, 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

78. A copy of the check or other information confirming payment shall simultaneously be sent by electronic mail to:

Elizabeth Rogers
Air Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDAC)
Dallas, Texas 75270-2101
rogers.elizabeth@epa.gov

79. The Respondent understands that failure to timely pay any portion of the stipulated penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on the stipulated penalty from the date of delinquency until such stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Other Terms and Conditions

80. By entering into this Order, the Respondent: (a) consents to and agrees to not contest the EPA's authority or jurisdiction to issue or enforce this Order; and (b) agrees to undertake all actions required by this Order.

81. The Respondent neither admits nor denies the EPA Findings of Fact and Conclusions of Law and the EPA Findings of Violation.

82. The Respondent and the EPA agree to bear their respective costs and attorney's fees. The Respondent waives its right to seek reimbursement of their costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L. 104-121), and any regulations promulgated thereunder.

General Provisions

83. The Respondent waives any and all remedies, claims for relief and otherwise available rights to jurisdictional or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1), or under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

84. Any violation of this Order may result in an additional enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the Administrator to:

- a. issue an administrative penalty order under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), assessing a civil penalty not to exceed \$48,192 (or amount as

- adjusted by the Civil Monetary Penalty Adjustment Rule) per day of violation, pursuant to Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B);
- b. bring a civil judicial enforcement action for permanent or temporary injunction, or to assess and recover a civil penalty not to exceed \$101,439 (or amount as adjusted by the Civil Monetary Penalty Adjustment Rule) per day of violation, or both, pursuant to Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2); or
 - c. request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA, 42 U.S.C. § 7413(c).

85. This Order does not resolve any civil or criminal claims for violations alleged in this Order. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), issuance of this Order does not preclude the EPA from assessing penalties, obtaining injunctive relief, or taking any other action authorized under the CAA, or other applicable federal laws or regulation. This Order does not affect the obligation of the Respondent to comply with all federal, state, and local statutes, regulations, and permits.

86. Nothing herein shall be construed to limit the power of the EPA to undertake any action against the Respondent or any person in response to conditions that may present an imminent and substantial endangerment to public health, welfare, or the environment.

87. Nothing in this Order shall limit the EPA's right to obtain access to, and/or inspect the Facility, and/or to request additional information from the Respondent pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414.

88. By signing this Order, the undersigned representative of the Respondent certifies that he or she is authorized to enter into the terms and conditions of this Order, and to execute and legally bind the Respondent to this Order.

89. The provisions of this Order shall apply and be binding upon the Respondent and its agents, officers, directors, employees, trustees, authorized representatives, successors, and assigns. The Respondent shall ensure that any agents, officers, directors, employees, contractors, consultants, firms or other persons or entities acting under or for the Respondent with respect to matters included herein comply with the terms of this Order. From the effective date until termination of this Order, the Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion or interest in the Facility. Simultaneously with such notice, the Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of such transfer, assignment, or delegation, the Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

90. Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), this Consent Order shall be effective when fully executed, shall not exceed the earlier of one year or the date of a determination by the EPA that the Respondent has achieved compliance with all terms of this Order, and shall be nonrenewable.

91. The EPA and the Respondent may subsequently amend this Order, in writing, in accordance with the authority of the CAA. In the event of any amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order.

92. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date. The EPA and the Respondent agree to the use of electronic signatures for this matter. The EPA and the Respondent further agree to electronic service of this Order by electronic mail to the following:

*In the Matter of Kaneka North America LLC
Docket No. CAA-06-2023-3309*

To EPA:

*khalsa.dharma@epa.gov
pittman.lawrence@epa.gov*

To Respondent:

*dena.taylor@kaneka.com
jed@allawgp.com*

**RESPONDENT:
KANEKA NORTH AMERICA LLC**

Date: 11/28/2022 | 1:22 PM CST

DocuSigned by:

Steve Kahara

3300FF8E66D644A...

Signature

Steven Kahara

Name

President

Title

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Cheryl T. Seager

Digitally signed by CHERYL
SEAGER
Date: 2022.11.29 12:21:34 -06'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Order on Consent was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

khalsa.dharma@epa.gov
pittman.lawrence@epa.gov

Copy via Email to Respondent:

jed@allawgp.com
dena.taylor@kaneka.com

Dated this ____ day of _____, _____.

DHARMA
KHALSA

Digitally signed by DHARMA
KHALSA
Date: 2022.11.30 16:40:00 -06'00'

Signed
U.S. Environmental Protection Agency, Region 6

Kaneka North America LLC's Supplemental Environmental Project (SEP)	
Advanced Emissions Monitoring Project	
Comments	
Item #1	Portable Emission Monitors
Completion Timeline	7 months
Cost	\$60,000
Details	Phase One –Install portable VOC emissions monitors that are battery operated, for site wide perimeter monitoring. The data and trends will be contained in localized stations and indication of an emission detection will notify operations. While the site evaluation is being performed the portable monitors will be in place to assist with interim monitoring. Once the site evaluation has been completed with defined monitoring location, the portable monitors will continue to be used by the site as another layer of monitoring -
Comments	
Item #2	Fixed IR Perimeter Monitors
Completion Timeline	18 months
Estimated Cost & Value	\$240,000
Details	Phase Two –Installation of fixed perimeter monitors for the RMP covered areas at a minimum. The installation of these monitors will require infrastructure work to occur, thus requiring capital resources for the hard wiring and logic to alarm back to the unit DCS systems. There are several steps that must occur for this to be fully implemented (site evaluation, installation of (hard wire) infrastructure, data digitalization and instrumentation).
Item #3	Thermal Imaging Camera
Completion Timeline	4 months
Estimated Cost and Value	\$86,000
Details	Kaneka will also be purchasing a Thermal Imaging Camera with VOC quantification capabilities to assist with leak detection identification as well as mitigating accidental releases.
Comments	
Total	\$386,000

Compliance with EPA SEP Policy: The **Advanced Emissions Monitoring Project** is eligible for recognition by US EPA Region 6 as a SEP for the purpose of mitigating the civil penalty in this matter. The following demonstrates how the **Advance Emissions Monitor Project** satisfies the requirements of the **EPA SEP Policy**:

A. The **Advanced Emissions Monitoring Project** proposes to install and operate state-of-the-art emissions sensing equipment to monitor conditions in areas of the facility used to store and handle chemicals regulated under 40 CFR Part 68. Early detection and enhanced protection from releases of hazardous air pollutants from regulated sources is clearly “environmentally beneficial” to the residents of Pasadena and the surrounding areas. The **Advanced Emissions Monitoring Project** SEP will help enable Kaneka to continuously monitor its facility and to detect early and respond quickly if a detectable release occurs. This will enable personnel to know whether hazards are present in the area before entering and will enable the facility to quickly and effectively respond to any leaks or vapors to prevent both onsite and offsite exposures.

B. The SEP will be undertaken in connection with the settlement of an EPA enforcement action, Docket No. CAA-06-2023-3308.

C. Kaneka is not otherwise required to install and operate this emissions sensing equipment by any federal, state, or local law or regulation, nor pursuant to any agreement or grant, not as injunctive relief awarded in any other action in any forum.

D. The installation and operation of the emissions sensing equipment pursuant to this SEP is not a project Kaneka had planned or committed to perform prior to the initiation of the enforcement action by EPA, which will be resolved in the CAFO.

E. Kaneka has not received, and is not negotiating to receive, credit for the **Advanced Emissions Monitoring Project** SEP in any other enforcement action.

F. Kaneka will not receive any reimbursement for any portion of the eligible SEP.

G. Emissions monitoring and sensing technologies will continue to advance and change, and as they advance and change, Kaneka will be allowed, after implementation of the SEP, to modify its approach to ensure continued optimization and improvements to its emissions monitoring program.