



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 11 2019

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kristin Reynolds
Equistar Chemicals, LP
625 East U.S. Highway 36
Tuscola, Illinois 61953
Email: Kristin.reynolds@lvondellbasell.com

Dear Ms. Reynolds:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Equistar Chemicals, LP docket no. **CAA-05-2019-0028**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 11, 2019.

Pursuant to Paragraph 35 of the CAFO, Equistar Chemicals must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Susan Prout, Associate Regional Counsel, 312-353-1089.

Sincerely,

A handwritten signature in black ink that reads "Charles Hall for DP".

Dakota Prentice, Acting Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Susan Prout /C-14J
Julie Armitage, Chief, Bureau of Air, Illinois EPA/via email



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	Docket No.	CAA-05-2019-0028
	)		
Equistar Chemicals, LP	)	Proceeding to Assess a Civil Penalty	
Tuscola, IL	)	Under Section 113(d) of the Clean Air Act,	
	)	42 U.S.C. § 7413(d)	
Respondent.	)		
_____	)		

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Equistar Chemicals, LP, a partnership doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 111(b) of the CAA, 42 U.S.C. § 7411(b) requires EPA to publish a list of categories of stationary sources and, within a year after the inclusion of a category of stationary sources in the list, to publish proposed regulations establishing Federal standards of performance for new sources within the source category.

10. Under Section 111 of the CAA, 42 U.S.C. § 7411, EPA proposed General Provisions to the New Source Performance Standards (NSPS Subpart A) on August 17, 1971. *See* 36 Fed. Reg. 15704. EPA promulgated NSPS Subpart A on December 23, 1971. *See* 36 Fed. Reg. 24877. The subpart has been subsequently amended. NSPS Subpart A is codified at 40 C.F.R. §§ 60.1 – 60.19.

11. 40 C.F.R. § 60.1(a) provides that, “[e]xcept as provided in subparts B and C, the provisions of this part apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in this part of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.”

12. 40 C.F.R. § 60.11(d) requires that “at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and

operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.”

13. Under Section 111 of the CAA, 42 U.S.C. § 7411, EPA proposed Standards of Performance for Volatile Organic Liquid (VOL) Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction or Modification Commenced after July 23, 1984 (NSPS Subpart Kb) on July 23, 1984. *See* 49 Fed. Reg. 29698. EPA promulgated NSPS Subpart Kb on April 8, 1987. *See* 52 Fed. Reg. 11420. NSPS Subpart Kb has been subsequently amended. The subpart is codified at 40 C.F.R. §§ 60.110b – 60.117b.

14. Under Section 111 of the CAA, 42 U.S.C. § 7411, EPA proposed Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations (NSPS Subpart NNN) on December 30, 1983. *See* 48 Fed. Reg. 57538. EPA promulgated NSPS Subpart NNN on June 29, 1990. *See* 55 Fed. Reg. 26931. NSPS Subpart NNN has been subsequently amended. The subpart is codified at 40 C.F.R. §§ 60.660 – 60.668.

15. 40 C.F.R. § 60.660(b) identifies the affected facility covered by NSPS Subpart NNN, which includes any distillation unit that produces ethanol, along with its associated vent gas recovery system, for which construction, modification, or reconstruction commenced after December 30, 1983.

16. 40 C.F.R. § 60.660(c)(6) provides that “[e]ach affected facility operated with a vent stream flow rate less than 0.008 [standard cubic meters per minute (scm/min)] is exempt from all provisions of this subpart except for the test method and procedure and the recordkeeping and reporting requirements in §60.664(g) and paragraphs (i), (l)(5), and (o) of §60.665.”

17. 40 C.F.R. § 60.664(a) provides that “[f]or the purpose of demonstrating compliance with §60.662, all affected facilities shall be run at full operating conditions and flow rates during any performance test.”

18. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations that occurred after January 12, 2009 through December 6, 2013, \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015, and \$46,192 per day of violation up to a total of \$369,532 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

19. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

21. Equistar is a “person,” as that term is defined in Section 301(e) of the CAA, 42 U.S.C. § 7602(e).

22. Equistar owns and operates a chemical manufacturing facility at 625 East U.S. Highway 36, Tuscola, Illinois.

23. The facility previously utilized, among other control equipment, two steam-assisted flares, formerly known as the East Flare and the West Flare, to control emissions from the Alcohol Plant at the Tuscola facility.

24. The East Flare was permanently removed from service in 2016. All permits for the East Flare have been surrendered and it is no longer being operated.

25. The remaining flare, formerly called the West Flare, is now called the Process Flare.

26. The facility also includes a molecular sieve dehydration unit (MSDU), which includes a distillation column that produces ethanol. The MSDU was constructed in 1998.

27. On April 2, 2003, the facility conducted a performance test demonstrating that the vent stream flow rate from the MSDU was less than 0.008 standard cubic meters per minute (scm/min). During this test, the distillation column was operating at a feed rate of approximately 63 gallons per minute (gpm).

28. From January 2009 through July 2013, Equistar at times operated its distillation column at a monthly average feed rate greater than 63 gpm.

29. Thus, this performance test was not conducted at the maximum production rate as required by 40 C.F.R. §§ 60.664(a) and 60.665(o).

30. On February 17, 2015, Equistar conducted a performance test at a feed rate of 82 gpm which demonstrated that the vent stream flow rate from the MSDU was less than 0.008 scm/min.

31. Equistar also operates an ether surge drum storage tank (Dr-1277) which is subject to NSPS Subpart Kb. Prior to being permanently removed from service, the East Flare

was used as the control device for the ether surge drum storage tank pursuant to NSPS Subpart Kb and was subject to the requirements of NSPS Subparts A and Kb.

32. The manufacturer's manual for the East Flare states that "[a] yellow or orange flame is preferred to a clear flame. A clear or blue flame will typically indicate too much steam is being applied. In addition, the operator should ensure the flame is visible at the top of the flare tip."

33. Equistar's September 20, 2013 response to EPA's August 16, 2013 Section 114 Information Request included Document 2.27.6.1 – the facility's manual for normal operation of the East and West Flares (Document 2.27.6.1). Paragraph 29 of Document 2.27.6.1 instructs operators to operate the flares in a manner inconsistent with the instructions from the manufacturer on how to properly operate the flare, resulting in Equistar operating the flare with a low heating value and a transparent flame.

34. By failing to include procedures for its operators to look for the presence of a yellow or orange flame, as recommended by the manufacturer's manual, and intermittently allowing the flame to become transparent before reducing the steam flow to the flare tip, Equistar failed to operate the East Flare, when it was in service, in a manner consistent with good engineering practices to minimize emissions, in violation of 40 C.F.R. § 60.11(d).

Civil Penalty

35. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Equistar's cooperation, prompt return to compliance and agreement to perform a Supplemental Environmental Project, Complainant has determined that an appropriate civil penalty to settle this action is \$25,000.

36. Within 30 days after the effective date of this CAFO, Respondent must pay a \$25,000 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

37. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-18J)
Air Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Susan Prout (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

38. This civil penalty is not deductible for federal tax purposes.

39. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the

collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

40. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environmental Project

41. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment by reducing the amount of diethyl ether flared at the facility.

42. At its Tuscola facility, Respondent must complete the SEP as follows. Respondent must upgrade the reflux drum system used in the diethyl ether production process with an improved design which will stabilize the pressure control in the Ether Purification Tower to facilitate the return of diethyl ether back to the process rather than to the flare. Design work for the project must be substantially completed by December 31, 2019, and the installation, commissioning and startup of the equipment must take place by December 31, 2020. Respondent must submit progress reports to EPA at the address identified in Paragraph 37, above, by January 31, 2020 and January 31, 2021, which identify the actions taken to complete the SEP during the reporting period and which identify any problems encountered or anticipated with completing the SEP or meeting the SEP deadlines.

43. Respondent must spend at least \$800,000 on the design, installation and commissioning of this project.

44. Respondent will submit an Application to modify its permit to include the reflux drum described in Paragraph 42. The Application for the permit modification will identify and set limits and conditions related to the use and operation of the reflux drum. The Application shall be prepared and submitted in accordance with applicable State of Illinois regulations. Respondent must submit the Application to modify the permit to the Illinois EPA within six (6) months of the effective date of this CAFO, and a copy shall be provided simultaneously to EPA. All supporting documentation required for the Application shall be included. Equistar shall make a good faith effort to assist the Illinois EPA in permitting these changes and shall apply to Illinois EPA to incorporate these changes into any subsequent permit, where appropriate. Equistar shall not retract the Application once it has been submitted. Respondent must continuously use or operate the equipment required to be installed in Paragraph 42 for 3 year(s) so long as the use and operation of the equipment is required by the permit, but under no circumstances for less than 3 years following its installation.

45. Respondent certifies as follows:

I certify that Equistar is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Equistar has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Equistar is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP. For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan

guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

46. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

47. Respondent must submit a SEP completion report to EPA by January 31, 2023, or within six months of the issuance of the revised permit described in Paragraph 44. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

48. Respondent must submit all notices and reports required by this CAFO by first class mail to the Compliance Tracker in the Air Enforcement and Compliance Assurance Branch at the address provided in Paragraph 37, above.

49. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

50. Following receipt of the SEP completion report described in Paragraph 47, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under Paragraph 52.

51. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 52, below.

52. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in Paragraph 42, Respondent must pay a penalty of \$100,000.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in Paragraph 43, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in Paragraph 43, Respondent must pay a penalty of \$15,000.
- d. If Respondent did not submit timely the SEP completion report or any other report required by Paragraph 42, Respondent must pay penalties in

the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$250	1 st through 14 th day
\$500	15 th through 30 th day
\$1,000	31 st day and beyond

53. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

54. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraph 36, above, and will pay interest and nonpayment penalties on any overdue amounts.

55. Any public statement that Respondent makes referring to the SEP must include the following language, "Equistar undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Equistar for violations of the Clean Air Act."

56. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any cost or expenditures incurred in performing the SEP.

General Provisions

57. The parties consent to service of this CAFO by e-mail at the following valid email addresses: Prout.Susan@epa.gov (for Complainant), and Aj.Wissinger@lyondellbasell.com (for Respondent).

58. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

59. The effect of the settlement described in Paragraph 58, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraphs 24 and 30 of this CAFO.

60. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

61. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in Paragraph 58, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

62. Respondent certifies that it is complying fully with NSPS Subparts A and NNN.

63. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

64. The terms of this CAFO bind Respondent, its successors and assigns.

65. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

66. Each party agrees to bear its own costs and attorneys fees in this action.

67. This CAFO will remain in effect until the permit described in Paragraph 44 has been issued by the State of Illinois.

68. This CAFO constitutes the entire agreement between the parties.

Equistar Chemicals, LP, Respondent

8/6/2019
Date



Andrew (AJ) Wissinger, HSE Counsel
Equistar Chemicals, LP

United States Environmental Protection Agency, Complainant

8-30-19
Date

Sara Brun
for Michael D. Harris
Acting Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Equistar Chemicals, LP
Docket No. CAA-05-2019-0028

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/10/19
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Equistar Chemicals, LP
Docket Number: **CAA-05-2019-0028**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2019-0028, which was filed on September 11, 2019, in the following manner to the following addressees:

Copy by E-mail to Respondent: Kristin Reynolds
Kristin.reynolds@lyondellbasell.com

Copy by E-mail to
Attorney for Complainant: Susan Prout
prout.susan@epa.gov

Copy by E-mail to
Attorney for Respondent: A.J. Wissinger
AJ.Wissinger@lyondellbasell.com

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: September 11, 2019

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): N/A