UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 12 2019

REPLY TO THE ATTENTION OF

VIA E-MAIL

Email: adam.kushner@hoganlovells.com

Anthony Saviano
North American General Counsel
and Officer of Cytec Industries, Inc.
Cytec Industries, Inc.
3115 Miller Road
Kalamazoo, Michigan

Dear Mr. Kushner:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Cytec Industries, Inc., docket no. **CAA-05-2019-0024**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on June 12, 2019.

Pursuant to paragraph 21 of the CAFO, Cytec Industries, Inc. 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 Cathleen Martwick, Associate Regional Counsel, (312) 886-7166.

Sincerely,

Sarah Marshall

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Regional Hearing Clerk/via electronic mail
Cathleen Martwick/via electronic mail
Jenine Camilleri, Enforcement Unit Supervisor, Air Quality Division, EGLE/via electronic mail
Mary Douglas, Kalamazoo District Supervisor, EGLE/via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
RECEIVED
JUN 12 2019
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No.** CAA-05-2019-0024
	)	
Cytec Industries, Inc. **Kalamazoo, Michigan**	)	**Proceeding to Assess a Civil Penalty 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 Cytec Industries, Inc., a corporation doing business in Michigan.

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. On May 31, 1972, EPA approved the State of Michigan's February 3, 1972 State Implementation Plan (SIP) submittal. 37 Fed. Reg. 10873 (May 31, 1972). On May 6, 1990, EPA approved the State of Michigan's April 25, 1979 SIP submittal. 45 Fed. Reg. 29790 (May 6, 1990). On May 13, 1993, EPA approved the State of Michigan's October 10, 1986 SIP submittal (portions of which were withdrawn in a January 28, 1993 letter from the State of Michigan). 58 Fed. Reg. 28359 (May 13, 1993).

10. The Michigan SIP includes Mich. Admin. Code r. 336.1201 (1980). Mich. Admin. Code r. 336.1201 provides that a person shall not install, construct, reconstruct, relocate, or alter any process, fuel-burning, or refuse-burning equipment, or control equipment pertaining thereto which may be a source of an air contaminant, until a permit is issued by the commission. Mich. Admin. Code r. 336.1201 further provides that this permit shall be known as a permit to install and shall cover construction, reconstruction, relocation, and alteration of equipment where such is installed.

11. 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.

12. 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.

13. 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

14. Cytec owns and operates a chemical manufacturing facility located 3115 Miller Road in Kalamazoo, Michigan ("Facility").

15. Cytec began construction of process equipment that emits methanol, a volatile organic compound, at the Facility in 2005.

16. In 2012, Cytec expanded its Facility with the construction of additional equipment that also emits methanol.

17. Cytec did not obtain a permit to install for installation, construction or operation of methanol emitting equipment.

18. Cytec is subject to Michigan Admin. Code r. 336.1201.

19. On June 30, 2015, EPA issued to Cytec a notice of violation and finding of violation alleging a continuous violation of the Michigan SIP beginning in 2005 and certain other allegations which EPA is no longer pursuing.

Civil Penalty

20. 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 Cytec's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is $50,000.

21. Within 30 days after the effective date of this CAFO, Respondent must pay a $50,000 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.

22. 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
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Cathleen Martwick (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

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

24. 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.

25. 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).

General Provisions

26. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: martwick.cathleen@epa.gov (for Complainant), and

adam.kushner@hoganlovells.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

28. 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.

29. 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 27, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

30. Respondent certifies that it is complying fully with the Michigan SIP.

31. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

32. 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).

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

34. 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.

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

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

Cytec Industries, Inc., Respondent

5/8/19
Date

Anthony Saviano
Anthony Saviano
North American General Counsel and Officer of
Cytec Industries Inc.

United States Environmental Protection Agency, Complainant

5/17/2019
Date

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

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.

June 10, 2019
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: Cytec Industries, Inc.
Docket Number: **CAA-05-2019-0024**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA05 2019 0024, which was filed on June 12, 2019, in the following manner to the following addressees:

Copy by E-mail to Attorney for Complainant:	Cathleen Martwick martwick.cathleen@epa.gov
Copy by E-mail to Attorney for Respondent:	Adam Kushner adam.kushner@hoganlovells.com
Copy by E-mail to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Dated: June 12, 2019

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