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July 23, 2012

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA – Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Via First Class Mail and Electronic Mail
Pearson.Evan@epamail.epa.gov

Re: *In the Matter of Ethyl Corporation, Pasadena, Texas*; Docket No. RCRA-06-2011-0957; United States Environmental Protection Agency, Region 6, Dallas, Texas

Dear Mr. Pearson:

This is in response to your emails of June 7, 2012 pursuant to which you transmitted a revised Consent Agreement and Final Order (CAFO) for Ethyl Corporation in the above-referenced matter. Pursuant to my email to you dated June 29, 2012, I indicated to you that Ethyl, MEMC and Albemarle were coordinating on their response to you regarding their respective revised CAFOs to ensure a consistent approach. In your email to me of July 3, 2012, you expressed disappointment regarding the length of time it was taking to resolve these cases. Accordingly, on July 5 and 11, 2012, I sent emails to you on behalf of counsel for MEMC, Albemarle and Ethyl, requesting an appointment to visit with you regarding the CAFOs. Bob Wilkinson sent you another email on July 16 regarding the same matter.

Unfortunately, so far we have not been able to arrange a time to discuss our comments on the CAFO with you. Accordingly, to further our discussions towards resolution, I am forwarding Ethyl's comments regarding the revised CAFO. The proposed changes are as follows:

1. Paragraph I.3 – The draft CAFO contains a statement that Ethyl "neither admits nor denies the specific factual allegations contained in the CAFO." However, the CAFO also contains extensive specific legal allegations and alleged violations in Section II. This paragraph has been revised to specifically state that Ethyl neither admits nor denies the legal allegations and denies the alleged violations.

2. Paragraphs I.5, II.B heading, II.B.37-40, 42, 43, 45 and 49-51 - These paragraphs are revised to simply clarify that they relate to alleged violations, rather than actual violations.

3. Paragraph II.36 - This paragraph is revised to clarify that pH readings may only serve as a basis for a hazardous waste determination if the waste is sampled and tested in accordance with 40 C.F.R. §261.22. This is significant in this matter because it is our understanding that none of the pH readings were obtained using this test method.

4. Paragraph III.52.A – This paragraph is revised to change "cease disposal" to "not dispose." This removes the assumption that hazardous waste has previously been disposed of in the Process Canal, a position that Ethyl denies. "In violation of applicable regulations" is also added for completeness.

5. Paragraph III.52.B – The stated purpose of the one time sampling outlined in this paragraph is to ensure that any characteristic hazardous waste loses its hazardous waste characteristic prior to discharge into the Process Canal. Once the waste loses its hazardous waste characteristic, there is no regulatory requirement to also meet any land treatment standard. Accordingly, this paragraph is revised to revise the sampling constituents to pH, which is the hazardous waste characteristic at issue. The remaining constituents are not related to the characteristic of corrosivity, or any other hazardous waste characteristic.

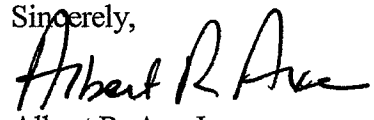
6. Paragraph IV.D.64 and certificate of service – These are simply corrections to the name of the outside law firm for Ethyl.

7. Paragraph IV.I.70 - The position of EPA was that the CAFO would be written such that there would be no approval required for the sampling and compliance plans. However, the termination clause was drafted to incorporate approval after the fact, by requiring EPA "concurrence." In order to remain consistent, the proposed change provides for termination when the work items are completed.

I have reviewed these proposed changes with counsel for MEMC and Albemarle and can represent to you that their clients agree with these proposed changes.

Your consideration of these proposed changes is greatly appreciated. Please let me know if you have any questions. For your convenience, I have also enclosed a redlined version of the CAFO.

Sincerely,



Albert R. Axe Jr.

ARA:mr
Enclosure
cc: Guy Tidmore, EPA Region 6
Robert Wilkinson
Charles Nestrud
Eric Berry

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
ETHYL CORPORATION PASADENA, TEXAS	)	DOCKET NO. RCRA-06-2011-0957
RESPONDENT	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Ethyl Corporation, Pasadena, Texas (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual and legal allegations and denies the alleged violations contained in this CAFO.

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those alleged violations which are set forth herein.

6. The Respondent consents to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. Ethyl Corporation (Respondent) is a corporation incorporated under the laws of the State of Virginia and authorized to do business in the State of Texas.

8. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2] as "an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity."

9. The Respondent is a "person" as that term is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2].

10. "Owner" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

11. "Operator" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person responsible for the overall operation of a facility."

12. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

13. "Facility" is defined in 30 T.A.C. § 335.1(59)(A) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them)."

14. The Respondent owns and/or operates a chemical manufacturing plant located at 1000 North South Street, Pasadena, Texas.

15. The plant identified in Paragraph 14 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59)(1) (40 C.F.R. § 260.10).

16. The Respondent is the "owner" and/or "operator" of the facility identified in Paragraph 14, as those terms are defined in 30 T.A.C. § 335.1(107) - (108) (40 C.F.R. §§ 260.10 and 270.2).

17. The Respondent's facility is part of a larger complex of property, which is located at 1000 N. South Street - 3000 N. South Street, Pasadena, Texas, which is owned and/or operated by the following entities: Albemarle Corporation, Bigler, L.P., MEMC Pasadena, Inc., and the Respondent.

18. On or about November 5 - 7, 2007, the Respondent's facility was inspected by a representative of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

19. On or about March 23, 2009, EPA sent an Information Request to the Respondent pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

20. On or about June 15, 2009, the Respondent submitted its Response to the Information Request.

B. ALLEGED VIOLATIONS

Count One - Disposal of Hazardous Waste Into an Unpermitted Surface Impoundment

21. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a permit is required for the processing (treatment), storage, or disposal of hazardous waste.

22. The Respondent discharges process wastewater into the Process Canal.

23. MEMC Pasadena, Inc. discharges process wastewater into the Process Canal.

24. Albemarle Corporation discharges process wastewater into the Process Canal.

25. The Process Canal is owned by the Respondent and operated by Albemarle Corporation.

26. The Process Canal has an unlined earthen bottom.

27. "Surface impoundment" is defined in 30 T.A.C. § 335.1(145) (40 C.F.R. § 260.10) as " facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons."

28. The Process Canal is a "surface impoundment" as that term is defined by 30 T.A.C. § 335.1(145) (40 C.F.R. § 260.10).

29. The process wastewater identified in Paragraph 22 being discharged is a "solid waste", as that term in defined in 30 T.A.C. § 335.1(138) (40 C.F.R. § 261.2).

30. The process wastewater identified in Paragraph 23 being discharged is a "solid waste", as that term in defined in 30 T.A.C. § 335.1(138) (40 C.F.R. § 261.2).

31. The process wastewater identified in Paragraph 24 being discharged is a "solid waste", as that term in defined in 30 T.A.C. § 335.1(138) (40 C.F.R. § 261.2).

32. According to readings at Sample Point SP-101 (Albemarle), pH readings of less than 2 and greater than 12.5 occurred on the following days:

DATE	pH
A. May 27, 2007	12.71
B. May 28, 2007	12.52
C. May 29, 2007	12.62
D. June 29, 2007	12.59

33. According to readings at Sample Point SP-102 (Albemarle), pH readings of less than 2 and greater than 12.5 occurred on the following days:

DATE	pH
A. November 3, 2006	12.60
B. November 4, 2006	12.76
C. November 5, 2006	12.60
D. December 30, 2006	12.83
E. January 1, 2007	12.73
F. January 14, 2007	12.72
G. February 25, 2007	12.67
H. October 3, 2007	13.00 & 13.05
I. October 4, 2007	12.83, 12.75 & 12.83
J. October 5, 2007	13.05
K. October 6, 2007	12.69
L. December 21, 2007	12.53
M. April 3, 2008	12.87

34. According to the readings at Sample Point SP-105 (MEMC), pH readings of less than 2 and greater than 12.5 occurred on the following days:

DATE	pH
A. June 6, 2006	12.52
B. June 8, 2006	12.51
C. June 17, 2006	12.66
D. August 1, 2006	12.55
E. October 21, 2006	12.61
F. October 25, 2006	12.72
G. November 1, 2006	12.54
H. November 2, 2006	12.75
I. November 13, 2006	12.74
J. December 14, 2006	12.52
K. January 2, 2007	12.62
L. March 17, 2007	12.65
M. March 26, 2007	12.53
N. April 11, 2007	12.67
O. April 25, 2007	12.62
P. April 28, 2007	12.56
Q. April 30, 2007	12.83
R. May 1, 2007	12.70
S. May 9, 2007	12.60
T. May 11, 2007	1.900
U. June 5, 2007	12.65
V. June 10, 2007	12.51
W. August 25, 2008	13.10, 12.9, 12.8, & 13
X. August 26, 2008	13.10
Y. August 31, 2008	13.20
Z. February 3, 2009	12.71

35. According to the readings at Sample Point SP-106 (Ethyl), pH readings of less than 2 and greater than 12.5 occurred on the following days:

DATE	pH
A. December 23, 2006	12.90
B. December 28, 2006	13.26
C. December 29, 2006	12.98
D. December 31, 2006	12.85
E. January 2, 2007	12.52
F. January 3, 2007	12.88
G. January 14, 2007	12.67

H. February 10, 2009	12.54
I. February 11, 2009	12.67
J. February 24, 2009	12.65
K. February 27, 2009	12.67
L. March 1, 2009	12.86
M. April 6, 2009	12.58
N. April 7, 2009	12.72

36. Solid waste with pH readings of less than 2 or greater than 12.5, when sampled and tested in accordance with 40 C.F.R. §261.22, is a hazardous waste which exhibits the characteristic of corrosivity. 30 T.A.C. § 335.1(69) (40 C.F.R. § 261.22).

37. On the dates identified in Paragraph 32 above, EPA alleges that Albemarle Corporation discharged a characteristic hazardous waste (D002) from its facility into the Process Canal, which is owned by the Respondent.

38. On the dates identified in Paragraph 33 above, EPA alleges that Albemarle Corporation discharged a characteristic hazardous waste (D002) from its facility into the Process Canal, which is owned by the Respondent.

39. On the dates identified in Paragraph 34 above, EPA alleges that MEMC Pasadena, Inc. discharged a characteristic hazardous waste (D002) from its facility into the Process Canal, which is owned by the Respondent.

40. On the dates identified in Paragraph 35 above, EPA alleges that the Respondent discharged a characteristic hazardous waste (D002) from its facility into the Process Canal, which is owned by the Respondent.

41. "Disposal" is defined in 30 T.A.C. § 335.1(44) (40 C.F.R. § 260.10) as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that

such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters."

42. EPA alleges that the Respondent is disposing of hazardous waste in the Process Canal.

43. EPA alleges that the Respondent is allowing hazardous waste to be disposed of in the Process Canal.

44. To date, the Process Canal is not permitted to allow the disposal of hazardous waste.

45. Therefore, EPA alleges that the Respondent has violated and continues to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by disposing of hazardous waste, and allowing the disposal of hazardous waste, into an unpermitted surface impoundment.

Count Two - Failure to Meet Land Disposal Restrictions

46. Pursuant to 30 T.A.C. § 335.431(c)(1) [40 C.F.R. § 268.40], D002 hazardous waste is prohibited from land disposal unless the generator treats the waste in accordance with the treatment standards set forth at 30 T.A.C. § 335.431(c)(1) [40 C.F.R. § 268.40].

47. According to 40 C.F.R. § 268.40, before a corrosive hazardous waste can be land disposed, its hazardous waste characteristic (corrosivity) must be removed.

48. According to 40 C.F.R. § 268.2(c), placement of hazardous waste into a surface impoundment is land disposal.

49. EPA alleges that the Respondent placed D002 hazardous waste into the Process Canal without treating the waste to remove its corrosive characteristic.

50. EPA alleges that the Respondent allowed the placement of D002 hazardous waste into its Process Canal without ensuring the treatment of the waste to remove its corrosive characteristic.

51. Therefore, EPA alleges that the Respondent violated 30 T.A.C. § 335.431(c)(1) [40 C.F.R. § 268.40] by disposing of hazardous waste into a surface impoundment, and allowing the disposal of hazardous waste into its surface impoundment, without meeting the applicable treatment standard.

III. COMPLIANCE ORDER

52. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondent is hereby Ordered to take the following actions and provide evidence of compliance within the time period specified below:

A. As of the effective date of this CAFO, the Respondent shall not dispose of hazardous waste into the Process Canal in violation of applicable regulations.

B. Within sixty (60) days of the effective date of this CAFO, the Respondent shall develop a sampling plan that meets the procedures set forth in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846 and the corresponding method detection limits to sample the wastewater that is discharged to the Process Canal for the hazardous waste characteristic of corrosivity pursuant to 40 C.F.R. 261.22. This is a one-time sampling event. The plan shall provide that samples be taken after each point where any dilution or treatment occurs to ensure that any characteristic hazardous waste loses its hazardous waste characteristic prior to discharge into the Process Canal. The Respondent shall implement the plan within 120 days of the effective date of this CAFO, and submit notification to EPA of that implementation. Within 180 days of the effective date of the CAFO, Respondent shall submit a

report detailing the results of the sampling with sample locations illustrated on an engineering diagram. The Respondent shall keep a copy of the plan at the facility for a minimum of three years from the effective date of the CAFO.

C. Within sixty (60) days of the effective date of this CAFO, the Respondent shall submit a plan to EPA outlining the measures it will take to prevent future disposal of hazardous waste to the Process Canal. The plan shall identify the location of each source of wastewater contributing to the discharge on an engineering diagram. Consideration shall be given to installing additional sampling locations or relocating the current sampling locations after each point where any dilution or treatment occurs to ensure that any characteristic hazardous waste loses its hazardous waste characteristic and meets the appropriate treatment standard prior to discharge into the Process Canal. The Respondent shall implement the plan within 120 days of the effective date of this CAFO, and submit notification to EPA of that implementation. The Respondent shall keep a copy of the plan at the facility for a minimum of three years from the effective date of the CAFO.

D. In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Copies of all documents required by this Compliance Order shall be sent to the following:

Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6

1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Manager
Waste Enforcement Section
Texas Commission on Environmental Quality
P.O. Box 13087, MC-128
Austin, TX 78711-3087

IV. TERMS OF SETTLEMENT

A. PARTIES BOUND

53. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

B. STIPULATED PENALTIES

54. In addition to any other remedies or sanctions available to EPA, if the Respondent fails or refuses to comply with any provision of Section III of this CAFO, the Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

55. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The stipulated penalties shall be paid by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket number RCRA-06-2011-0957 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Guy Tidmore, Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

56. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the stipulated penalty paid to the United States Treasurer.

57. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective

date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

58. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

59. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

C. DISPUTE RESOLUTION

60. If the Respondent objects to any decision or directive of EPA in regard to Section III, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

61. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondent shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondent, the agreement shall be reduced to writing and signed by the Associate Director and the Respondent and incorporated by reference into this CAFO.

62. If no agreement is reached between the Associate Director and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

63. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.E (Modifications).

D. NOTIFICATION

64. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Guy Tidmore, Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent: Albert R. Axe, Jr.
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

E. MODIFICATION

65. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

F. RETENTION OF ENFORCEMENT RIGHTS

66. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

67. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or

prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

G. INDEMNIFICATION OF EPA

68. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out the activities required by this CAFO.

H. COSTS

69. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

I. TERMINATION

70. This CAFO shall terminate when the Respondent has received confirmation from EPA that EPA has received (i) the report detailing the results of the sampling with sample locations illustrated on an engineering diagram required by Paragraph 52.B. and (ii) the notification required by Paragraph 52.C. with respect to implementation of the plan outlining the measures Respondent will take to prevent future disposal of hazardous waste to the Process Canal.

J. EFFECTIVE DATE

71. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS COMPLAINT AND CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____
Ethyl Corporation

FOR THE COMPLAINANT:

Date: _____ _____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Albert R. Axe, Jr.
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

_____

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
ETHYL CORPORATION PASADENA, TEXAS	)	DOCKET NO. RCRA-06-2011-0957
RESPONDENT	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Ethyl Corporation, Pasadena, Texas (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual **and legal** allegations **and denies the alleged violations** contained in this CAFO.

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those **alleged** violations which are set forth herein.

6. The Respondent consents to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. Ethyl Corporation (Respondent) is a corporation incorporated under the laws of the State of Virginia and authorized to do business in the State of Texas.

8. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2] as "an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity."

9. The Respondent is a "person" as that term is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2].

10. "Owner" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

11. "Operator" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person responsible for the overall operation of a facility."

12. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

13. "Facility" is defined in 30 T.A.C. § 335.1(59)(A) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them)."

14. The Respondent owns and/or operates a chemical manufacturing plant located at 1000 North South Street, Pasadena, Texas.

15. The plant identified in Paragraph 14 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59)(1) (40 C.F.R. § 260.10).

16. The Respondent is the "owner" and/or "operator" of the facility identified in Paragraph 14, as those terms are defined in 30 T.A.C. § 335.1(107) - (108) (40 C.F.R. §§ 260.10 and 270.2).

17. The Respondent's facility is part of a larger complex of property, which is located at 1000 N. South Street - 3000 N. South Street, Pasadena, Texas, which is owned and/or operated by the following entities: Albemarle Corporation, Bigler, L.P., MEMC Pasadena, Inc., and the Respondent.

18. On or about November 5 - 7, 2007, the Respondent's facility was inspected by a representative of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

19. On or about March 23, 2009, EPA sent an Information Request to the Respondent pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

20. On or about June 15, 2009, the Respondent submitted its Response to the Information Request.

B. ALLEGED VIOLATIONS

Count One - Disposal of Hazardous Waste Into an Unpermitted Surface Impoundment

21. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a permit is required for the processing (treatment), storage, or disposal of hazardous waste.

22. The Respondent discharges process wastewater into the Process Canal.

23. MEMC Pasadena, Inc. discharges process wastewater into the Process Canal.

24. Albemarle Corporation discharges process wastewater into the Process Canal.

25. The Process Canal is owned by the Respondent and operated by Albemarle Corporation.

26. The Process Canal has an unlined earthen bottom.

27. "Surface impoundment" is defined in 30 T.A.C. § 335.1(145) (40 C.F.R. § 260.10)
as " facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons."

28. The Process Canal is a "surface impoundment" as that term is defined by 30 T.A.C. § 335.1(145) (40 C.F.R. § 260.10).

29. The process wastewater identified in Paragraph 22 being discharged is a "solid waste", as that term in defined in 30 T.A.C. § 335.1(138) (40 C.F.R. § 261.2).

30. The process wastewater identified in Paragraph 23 being discharged is a "solid waste", as that term in defined in 30 T.A.C. § 335.1(138) (40 C.F.R. § 261.2).

31. The process wastewater identified in Paragraph 24 being discharged is a "solid waste", as that term in defined in 30 T.A.C. § 335.1(138) (40 C.F.R. § 261.2).

32. According to readings at Sample Point SP-101 (Albemarle), pH readings of less than 2 and greater than 12.5 occurred on the following days:

DATE	pH
A. May 27, 2007	12.71
B. May 28, 2007	12.52
C. May 29, 2007	12.62
D. June 29, 2007	12.59

33. According to readings at Sample Point SP-102 (Albemarle), pH readings of less than 2 and greater than 12.5 occurred on the following days:

DATE	pH
A. November 3, 2006	12.60
B. November 4, 2006	12.76
C. November 5, 2006	12.60
D. December 30, 2006	12.83
E. January 1, 2007	12.73
F. January 14, 2007	12.72
G. February 25, 2007	12.67
H. October 3, 2007	13.00 & 13.05
I. October 4, 2007	12.83, 12.75 & 12.83
J. October 5, 2007	13.05
K. October 6, 2007	12.69
L. December 21, 2007	12.53
M. April 3, 2008	12.87

34. According to the readings at Sample Point SP-105 (MEMC), pH readings of less than 2 and greater than 12.5 occurred on the following days:

DATE	pH
A. June 6, 2006	12.52
B. June 8, 2006	12.51
C. June 17, 2006	12.66
D. August 1, 2006	12.55
E. October 21, 2006	12.61
F. October 25, 2006	12.72
G. November 1, 2006	12.54
H. November 2, 2006	12.75
I. November 13, 2006	12.74
J. December 14, 2006	12.52
K. January 2, 2007	12.62
L. March 17, 2007	12.65
M. March 26, 2007	12.53
N. April 11, 2007	12.67
O. April 25, 2007	12.62
P. April 28, 2007	12.56
Q. April 30, 2007	12.83
R. May 1, 2007	12.70
S. May 9, 2007	12.60
T. May 11, 2007	1.900
U. June 5, 2007	12.65
V. June 10, 2007	12.51
W. August 25, 2008	13.10, 12.9, 12.8, & 13
X. August 26, 2008	13.10
Y. August 31, 2008	13.20
Z. February 3, 2009	12.71

35. According to the readings at Sample Point SP-106 (Ethyl), pH readings of less than 2 and greater than 12.5 occurred on the following days:

DATE	pH

A. December 23, 2006	12.90
B. December 28, 2006	13.26
C. December 29, 2006	12.98
D. December 31, 2006	12.85
E. January 2, 2007	12.52
F. January 3, 2007	12.88
G. January 14, 2007	12.67
H. February 10, 2009	12.54
I. February 11, 2009	12.67
J. February 24, 2009	12.65
K. February 27, 2009	12.67
L. March 1, 2009	12.86
M. April 6, 2009	12.58
N. April 7, 2009	12.72

36. Solid waste with pH readings of less than 2 or greater than ~~12.5~~**12.5, when sampled and tested in accordance with 40 C.F.R. §261.22,** is a hazardous waste which exhibits the characteristic of corrosivity. 30 T.A.C. § 335.1(69) (40 C.F.R. § 261.22).

37. On the dates identified in Paragraph 32 above, **EPA alleges that** Albemarle Corporation discharged a characteristic hazardous waste (D002) from its facility into the Process Canal, which is owned by the Respondent.

38. On the dates identified in Paragraph 33 above, **EPA alleges that** Albemarle Corporation discharged a characteristic hazardous waste (D002) from its facility into the Process Canal, which is owned by the Respondent.

39. On the dates identified in Paragraph 34 above, **EPA alleges that** MEMC Pasadena, Inc. discharged a characteristic hazardous waste (D002) from its facility into the Process Canal, which is owned by the Respondent.

40. On the dates identified in Paragraph 35 above, **EPA alleges that** the Respondent discharged a characteristic hazardous waste (D002) from its facility into the Process Canal, which is owned by the Respondent.

41. "Disposal" is defined in 30 T.A.C. § 335.1(44) (40 C.F.R. § 260.10) as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters."

42. ~~The~~**EPA alleges that the** Respondent is disposing of hazardous waste in the Process Canal.

43. ~~The~~**EPA alleges that the** Respondent is allowing hazardous waste to be disposed of in the Process Canal.

44. To date, the Process Canal is not permitted to allow the disposal of hazardous waste.

45. Therefore, **EPA alleges that** the Respondent has violated and continues to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by disposing of hazardous waste, and allowing the disposal of hazardous waste, into an unpermitted surface impoundment.

Count Two - Failure to Meet Land Disposal Restrictions

46. Pursuant to 30 T.A.C. § 335.431(c)(1) [40 C.F.R. § 268.40], D002 hazardous waste is prohibited from land disposal unless the generator treats the waste in accordance with the treatment standards set forth at 30 T.A.C. § 335.431(c)(1) [40 C.F.R. § 268.40].

47. According to 40 C.F.R. § 268.40, before a corrosive hazardous waste can be land disposed, its hazardous waste characteristic (corrosivity) must be removed.

48. According to 40 C.F.R. § 268.2(c), placement of hazardous waste into a surface impoundment is land disposal.

49. ~~The~~**EPA alleges that the** Respondent placed D002 hazardous waste into the Process Canal without treating the waste to remove its corrosive characteristic.

50. ~~The~~**EPA alleges that the** Respondent allowed the placement of D002 hazardous waste into its Process Canal without ensuring the treatment of the waste to remove its corrosive characteristic.

51. Therefore, **EPA alleges that** the Respondent violated 30 T.A.C. § 335.431(c)(1) [40 C.F.R. § 268.40] by disposing of hazardous waste into a surface impoundment, and allowing the disposal of hazardous waste into its surface impoundment, without meeting the applicable treatment standard.

III. COMPLIANCE ORDER

52. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondent is hereby Ordered to take the following actions and provide evidence of compliance within the time period specified below:

A. As of the effective date of this CAFO, the Respondent shall ~~cease disposal~~**not dispose** of hazardous waste into the Process Canal **in violation of applicable regulations**.

B. Within sixty (60) days of the effective date of this CAFO, the Respondent shall develop a sampling plan that meets the procedures set forth in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846 and the corresponding method detection limits to sample the wastewater that is discharged to the Process Canal for ~~VOC's, SVOC's, total metals, and pH.~~**the hazardous waste characteristic of corrosivity**

pursuant to 40 C.F.R. 261.22. This is a one-time sampling event. The plan shall provide that samples be taken after each point where any dilution or treatment occurs to ensure that any characteristic hazardous waste loses its hazardous waste characteristic ~~and meets the appropriate treatment standard~~ prior to discharge into the Process Canal. The Respondent shall implement the plan within 120 days of the effective date of this CAFO, and submit notification to EPA of that implementation. Within 180 days of the effective date of the CAFO, Respondent shall submit a report detailing the results of the sampling with sample locations illustrated on an engineering diagram. The Respondent shall keep a copy of the plan at the facility for a minimum of three years from the effective date of the CAFO.

C. Within sixty (60) days of the effective date of this CAFO, the Respondent shall submit a plan to EPA outlining the measures it will take to prevent future disposal of hazardous waste to the Process Canal. The plan shall identify the location of each source of wastewater contributing to the discharge on an engineering diagram. Consideration shall be given to installing additional sampling locations or relocating the current sampling locations after each point where any dilution or treatment occurs to ensure that any characteristic hazardous waste loses its hazardous waste characteristic and meets the appropriate treatment standard prior to discharge into the Process Canal. The Respondent shall implement the plan within 120 days of the effective date of this CAFO, and submit notification to EPA of that implementation. The Respondent shall keep a copy of the plan at the facility for a minimum of three years from the effective date of the CAFO.

D. In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there

are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Copies of all documents required by this Compliance Order shall be sent to the following:

Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Manager
Waste Enforcement Section
Texas Commission on Environmental Quality
P.O. Box 13087, MC-128
Austin, TX 78711-3087

IV. TERMS OF SETTLEMENT

A. PARTIES BOUND

53. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

B. STIPULATED PENALTIES

54. In addition to any other remedies or sanctions available to EPA, if the Respondent fails or refuses to comply with any provision of Section III of this CAFO, the Respondent shall

pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

55. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The stipulated penalties shall be paid by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket number RCRA-06-2011-0957 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Guy Tidmore, Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

56. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the stipulated penalty paid to the United States Treasurer.

57. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

58. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

59. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

C. DISPUTE RESOLUTION

60. If the Respondent objects to any decision or directive of EPA in regard to Section III, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

61. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondent shall then have an additional fifteen (15) calendar days from EPA's receipt of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondent, the agreement shall be reduced to writing and signed by the Associate Director and the Respondent and incorporated by reference into this CAFO.

62. If no agreement is reached between the Associate Director and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written

statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

63. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.E (Modifications).

D. NOTIFICATION

64. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Guy Tidmore, Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent: Albert R. Axe, Jr.
Winstead ~~Attorneys~~**PC**
401 Congress Avenue, Suite 2100
Austin, TX 78701

E. MODIFICATION

65. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

F. RETENTION OF ENFORCEMENT RIGHTS

66. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

67. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or

prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

G. INDEMNIFICATION OF EPA

68. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out the activities required by this CAFO.

H. COSTS

69. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

I. TERMINATION

70. ~~At such time as the Respondent believes that it has complied with all terms and conditions of this CAFO, it may request that EPA concur whether the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing as expeditiously as possible. This CAFO shall terminate when all actions required to be taken by this CAFO have been~~

~~completed, and the Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.~~**This CAFO shall terminate when the Respondent has received confirmation from EPA that EPA has received (i) the report detailing the results of the sampling with sample locations illustrated on an engineering diagram required by Paragraph 52.B. and (ii) the notification required by Paragraph 52.C. with respect to implementation of the plan outlining the measures Respondent will take to prevent future disposal of hazardous waste to the Process Canal.**

J. EFFECTIVE DATE

71. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS COMPLAINT AND CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: _____ _____

Ethyl Corporation

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Albert R. Axe, Jr.
Winstead ~~Attorneys~~PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

_____

TXD008096158

HZ/RC/EN

WINSTEAD

Austin Dallas Fort Worth Houston San Antonio The Woodlands Washington, D.C.

401 Congress Avenue
Suite 2100
Austin, Texas 78701

512.370.2800 OFFICE
512.370.2850 FAX
winstead.com

direct dial: 512.370.2806
aaxe@winstead.com

COPY

September 5, 2012

Evan L. Pearson
Senior Enforcement Counsel (6RC-ER)
RCRA Enforcement Branch
Office of Regional Counsel
U.S. EPA – Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Via Federal Express and Electronic Mail
Pearson.Evan@epamail.epa.gov

Re: *In the Matter of Ethyl Corporation, Pasadena, Texas*; Docket No. RCRA-06-2011-0957; United States Environmental Protection Agency, Region 6, Dallas, Texas

Dear Evan:

Enclosed please the original Consent Agreement and Final Order signed by John Street of Ethyl Corporation.

Thank you for your attention to this matter.

Sincerely,

Albert R. Axe

Albert R. Axe Jr.

ARA:mr
Enclosure
cc: Guy Tidmore, EPA Region 6 ✓
Kindra Kirkeby

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HAZARDOUS WASTE
ENFORCEMENT BRANCH

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
ETHYL CORPORATION PASADENA, TEXAS	)	DOCKET NO. RCRA-06-2011-0957
RESPONDENT	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Ethyl Corporation, Pasadena, Texas (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the issuance of a compliance order is brought by EPA pursuant to Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and is simultaneously commenced and concluded through the issuance of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.37.

2. Notice of this action was given to the State of Texas prior to the issuance of this CAFO, as required by Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

3. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO.

4. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Compliance with all the terms and conditions of this CAFO shall resolve only those causes of action which are set forth herein.

6. The Respondent consents to the issuance of the CAFO hereinafter recited and consents to the issuance of the Compliance Order contained therein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

7. Ethyl Corporation (Respondent) is a corporation incorporated under the laws of the State of Virginia and authorized to do business in the State of Texas.

8. "Person" is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2] as "an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity."

9. The Respondent is a "person" as that term is defined in 30 T.A.C. § 3.2(25) [40 C.F.R. §§ 260.10 and 270.2].

10. "Owner" is defined in 30 T.A.C. § 335.1(108) (40 C.F.R. § 260.10) as "the person who owns a facility or part of a facility."

11. "Operator" is defined in 30 T.A.C. § 335.1(107) (40 C.F.R. § 260.10) as "the person responsible for the overall operation of a facility."

12. "Owner or operator" is defined in 40 C.F.R. § 270.2 as "the owner or operator of any facility or activity subject to regulation under RCRA."

13. "Facility" is defined in 30 T.A.C. § 335.1(59)(A) (40 C.F.R. § 260.10) as meaning "all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them)."

14. The Respondent owns and/or operates a chemical manufacturing plant located at 1000 North South Street, Pasadena, Texas.

15. The plant identified in Paragraph 14 is a "facility" as that term is defined in 30 T.A.C. § 335.1(59)(1) (40 C.F.R. § 260.10).

16. The Respondent is the "owner" and/or "operator" of the facility identified in Paragraph 14, as those terms are defined in 30 T.A.C. § 335.1(107) - (108) (40 C.F.R. §§ 260.10 and 270.2).

17. The Respondent's facility is part of a larger complex of property, which is located at 1000 N. South Street - 3000 N. South Street, Pasadena, Texas, which is owned and/or operated by the following entities: Albemarle Corporation, Bigler, L.P., MEMC Pasadena, Inc., and the Respondent.

18. On or about November 5 - 7, 2007, the Respondent's facility was inspected by a representative of EPA pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

19. On or about March 23, 2009, EPA sent an Information Request to the Respondent pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

20. On or about June 15, 2009, the Respondent submitted its Response to the Information Request.

B. VIOLATIONS

Count One - Disposal of Hazardous Waste Into an Unpermitted Surface Impoundment

21. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)], a permit is required for the processing (treatment), storage, or disposal of hazardous waste.

22. The Respondent discharges process wastewater into the Process Canal.

23. MEMC Pasadena, Inc. discharges process wastewater into the Process Canal.

24. Albemarle Corporation discharges process wastewater into the Process Canal.

25. The Process Canal is owned by the Respondent and operated by Albemarle Corporation.

26. The Process Canal has an unlined earthen bottom.

27. "Surface impoundment" is defined in 30 T.A.C. § 335.1(145) (40 C.F.R. § 260.10) as " facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons."

28. The Process Canal is a "surface impoundment" as that term is defined by 30 T.A.C. § 335.1(145) (40 C.F.R. § 260.10).

29. The process wastewater identified in Paragraph 22 being discharged is a "solid waste", as that term in defined in 30 T.A.C. § 335.1(138) (40 C.F.R. § 261.2).

30. The process wastewater identified in Paragraph 23 being discharged is a "solid waste", as that term in defined in 30 T.A.C. § 335.1(138) (40 C.F.R. § 261.2).

31. The process wastewater identified in Paragraph 24 being discharged is a "solid waste", as that term in defined in 30 T.A.C. § 335.1(138) (40 C.F.R. § 261.2).

32. According to readings at Sample Point SP-101 (Albemarle), pH readings of less than 2 and greater than 12.5 occurred on the following days:

DATE	pH
A. May 27, 2007	12.71
B. May 28, 2007	12.52
C. May 29, 2007	12.62
D. June 29, 2007	12.59

33. According to readings at Sample Point SP-102 (Albemarle), pH readings of less than 2 and greater than 12.5 occurred on the following days:

DATE	pH
A. November 3, 2006	12.60
B. November 4, 2006	12.76
C. November 5, 2006	12.60
D. December 30, 2006	12.83
E. January 1, 2007	12.73
F. January 14, 2007	12.72
G. February 25, 2007	12.67
H. October 3, 2007	13.00 & 13.05
I. October 4, 2007	12.83, 12.75 & 12.83
J. October 5, 2007	13.05
K. October 6, 2007	12.69
L. December 21, 2007	12.53
M. April 3, 2008	12.87

34. According to the readings at Sample Point SP-105 (MEMC), pH readings of less than 2 and greater than 12.5 occurred on the following days:

DATE	pH
A. June 6, 2006	12.52
B. June 8, 2006	12.51
C. June 17, 2006	12.66
D. August 1, 2006	12.55
E. October 21, 2006	12.61
F. October 25, 2006	12.72
G. November 1, 2006	12.54
H. November 2, 2006	12.75
I. November 13, 2006	12.74
J. December 14, 2006	12.52
K. January 2, 2007	12.62
L. March 17, 2007	12.65
M. March 26, 2007	12.53
N. April 11, 2007	12.67
O. April 25, 2007	12.62
P. April 28, 2007	12.56
Q. April 30, 2007	12.83
R. May 1, 2007	12.70
S. May 9, 2007	12.60
T. May 11, 2007	1.900
U. June 5, 2007	12.65
V. June 10, 2007	12.51
W. August 25, 2008	13.10, 12.9, 12.8, & 13
X. August 26, 2008	13.10
Y. August 31, 2008	13.20
Z. February 3, 2009	12.71

35. According to the readings at Sample Point SP-106 (Ethyl), pH readings of less than 2 and greater than 12.5 occurred on the following days:

DATE	pH
A. December 23, 2006	12.90
B. December 28, 2006	13.26
C. December 29, 2006	12.98
D. December 31, 2006	12.85
E. January 2, 2007	12.52
F. January 3, 2007	12.88
G. January 14, 2007	12.67

H. February 10, 2009	12.54
I. February 11, 2009	12.67
J. February 24, 2009	12.65
K. February 27, 2009	12.67
L. March 1, 2009	12.86
M. April 6, 2009	12.58
N. April 7, 2009	12.72

36. Solid waste with pH readings of less than 2 or greater than 12.5 is a hazardous waste which exhibits the characteristic of corrosivity. 30 T.A.C. § 335.1(69) (40 C.F.R. § 261.22).

37. On the dates identified in Paragraph 32 above, Albemarle Corporation discharged a characteristic hazardous waste (D002) from its facility into the Process Canal, which is owned by the Respondent.

38. On the dates identified in Paragraph 33 above, Albemarle Corporation discharged a characteristic hazardous waste (D002) from its facility into the Process Canal, which is owned by the Respondent.

39. On the dates identified in Paragraph 34 above, MEMC Pasadena, Inc. discharged a characteristic hazardous waste (D002) from its facility into the Process Canal, which is owned by the Respondent.

40. On the dates identified in Paragraph 35 above, the Respondent discharged a characteristic hazardous waste (D002) from its facility into the Process Canal, which is owned by the Respondent.

41. "Disposal" is defined in 30 T.A.C. § 335.1(44) (40 C.F.R. § 260.10) as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that

such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters."

42. The Respondent is disposing of hazardous waste in the Process Canal.

43. The Respondent is allowing hazardous waste to be disposed of in the Process Canal.

44. To date, the Process Canal is not permitted to allow the disposal of hazardous waste.

45. Therefore, the Respondent has violated and continues to violate Sections 3005(a) and (e) of RCRA, 42 U.S.C. §§ 6925(a) and (e) and 30 T.A.C. § 335.43(a) [40 C.F.R. § 270.1(b)] by disposing of hazardous waste, and allowing the disposal of hazardous waste, into an unpermitted surface impoundment.

Count Two - Failure to Meet Land Disposal Restrictions

46. Pursuant to 30 T.A.C. § 335.431(c)(1) [40 C.F.R. § 268.40], D002 hazardous waste is prohibited from land disposal unless the generator treats the waste in accordance with the treatment standards set forth at 30 T.A.C. § 335.431(c)(1) [40 C.F.R. § 268.40].

47. According to 40 C.F.R. § 268.40, before a corrosive hazardous waste can be land disposed, its hazardous waste characteristic (corrosivity) must be removed.

48. According to 40 C.F.R. § 268.2(c), placement of hazardous waste into a surface impoundment is land disposal.

49. The Respondent placed D002 hazardous waste into the Process Canal without treating the waste to remove its corrosive characteristic.

50. The Respondent allowed the placement of D002 hazardous waste into its Process Canal without ensuring the treatment of the waste to remove its corrosive characteristic.

51. Therefore, the Respondent violated 30 T.A.C. § 335.431(c)(1) [40 C.F.R. § 268.40] by disposing of hazardous waste into a surface impoundment, and allowing the disposal of hazardous waste into its surface impoundment, without meeting the applicable treatment standard.

III. COMPLIANCE ORDER

52. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), the Respondent is hereby Ordered to take the following actions and provide evidence of compliance within the time period specified below:

A. As of the effective date of this CAFO, the Respondent shall not dispose of hazardous waste into the Process Canal in violation of applicable regulations.

B. Within sixty (60) days of the effective date of this CAFO, the Respondent shall develop a sampling plan that meets the procedures set forth in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846 and the corresponding method detection limits to sample the wastewater that is discharged to the Process Canal for VOC's, SVOC's, total metals, and pH. This is a one-time sampling event. The plan shall provide that samples be taken after each point where any dilution or treatment occurs to ensure that any characteristic hazardous waste loses its hazardous waste characteristic prior to discharge into the Process Canal. The Respondent shall implement the plan within 120 days of the effective date of this CAFO, and submit notification to EPA of that implementation. Within 180 days of the effective date of the CAFO, Respondent shall submit a report detailing the results of the sampling with sample locations illustrated on an engineering diagram. The Respondent shall keep a copy of the plan at the facility for a minimum of three years from the effective date of the CAFO.

C. Within sixty (60) days of the effective date of this CAFO, the Respondent shall submit a plan to EPA outlining the measures it will take to prevent future disposal of hazardous waste to the Process Canal. The plan shall identify the location of each source of wastewater contributing to the discharge on an engineering diagram. Consideration shall be given to installing additional sampling locations or relocating the current sampling locations after each point where any dilution or treatment occurs to ensure that any characteristic hazardous waste loses its hazardous waste characteristic and meets the appropriate treatment standard prior to discharge into the Process Canal. The Respondent shall implement the plan within 120 days of the effective date of this CAFO, and submit notification to EPA of that implementation. The Respondent shall keep a copy of the plan at the facility for a minimum of three years from the effective date of the CAFO.

D. In all instances in which this Compliance Order requires written submissions to EPA, each submission must be accompanied by the following certification:

> "I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. Copies of all documents required by this Compliance Order shall be sent to the following:

Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Manager
Waste Enforcement Section
Texas Commission on Environmental Quality
P.O. Box 13087, MC-128
Austin, TX 78711-3087

IV. TERMS OF SETTLEMENT

A. PARTIES BOUND

53. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

B. STIPULATED PENALTIES

54. In addition to any other remedies or sanctions available to EPA, if the Respondent fails or refuses to comply with any provision of Section III of this CAFO, the Respondent shall pay stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 15th day	$ 1,000
16th through 30th day	$ 1,500
31st day and beyond	$ 2,500

Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

55. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The stipulated penalties shall be paid by certified

check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket number RCRA-06-2011-0957 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the

CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Guy Tidmore, Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

56. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the stipulated penalty paid to the United States Treasurer.

57. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

58. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

59. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

C. DISPUTE RESOLUTION

60. If the Respondent objects to any decision or directive of EPA in regard to Section III, the Respondent shall notify the following persons in writing of its objections, and the basis for those objections, within fifteen (15) calendar days of receipt of EPA's decision or directive:

Associate Director
Hazardous Waste Enforcement Branch (6EN-H)
Compliance Assurance and Enforcement Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

Chief, RCRA Enforcement Branch (6RC-ER)
Office of Regional Counsel
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

61. The Associate Director of the Hazardous Waste Enforcement Branch or his/her designee (Associate Director), and the Respondent shall then have an additional fifteen (15)

calendar days from EPA's receipt of the Respondent's written objections to attempt to resolve the dispute. If an agreement is reached between the Associate Director and the Respondent, the agreement shall be reduced to writing and signed by the Associate Director and the Respondent and incorporated by reference into this CAFO.

62. If no agreement is reached between the Associate Director and the Respondent within that time period, the dispute shall be submitted to the Director of the Compliance Assurance and Enforcement Division or his/her designee (Division Director). The Division Director and the Respondent shall then have a second 15-day period to resolve the dispute. If an agreement is reached between the Division Director and the Respondent, the resolution shall be reduced to writing and signed by the Division Director and Respondent and incorporated by reference into this CAFO. If the Division Director and the Respondent are unable to reach agreement within this second 15-day period, the Division Director shall provide a written statement of EPA's decision to the Respondent, which shall be binding upon the Respondent and incorporated by reference into the CAFO.

63. If the Dispute Resolution process results in a modification of this CAFO, the modified CAFO must be approved by the Regional Judicial Officer and filed pursuant to Section IV.E (Modifications).

D. NOTIFICATION

64. Unless otherwise specified elsewhere in this CAFO, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be directed to the individuals specified below at the addresses given (in addition to any action specified by

law or regulation), unless these individuals or their successors give notice in writing to the other parties that another individual has been designated to receive the communication:

EPA: Guy Tidmore, Chief
Compliance Enforcement Section (6EN-HE)
Hazardous Waste Enforcement Branch
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent: Albert R. Axe, Jr.
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

E. MODIFICATION

65. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of both parties, and approved by a Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

F. RETENTION OF ENFORCEMENT RIGHTS

66. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

67. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

G. INDEMNIFICATION OF EPA

68. Neither EPA nor the United States Government shall be liable for any injuries or damages to person or property resulting from the acts or omissions of the Respondent, their officers, directors, employees, agents, receivers, trustees, successors, assigns, or contractors in carrying out the activities required by this CAFO, nor shall EPA or the United States Government be held out as a party to any contract entered into by the Respondent in carrying out the activities required by this CAFO.

H. COSTS

69. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

I. TERMINATION

70. At such time as the Respondent believes that it has complied with all terms and conditions of this CAFO, it may request that EPA concur whether the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA shall, within ninety (90) days, identify in writing any specific objections it may have, noting the specific section of the CAFO at issue and the deficiency. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.

J. EFFECTIVE DATE

71. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS COMPLAINT AND CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 04SEP12

John Street, Director of Environmental Affairs
Ethyl Corporation

FOR THE COMPLAINANT:

Date: _____

_____
John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to the Section 3008 of RCRA, 42 U.S.C. § 6928, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the Compliance Order and terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b) this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

_____
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2012, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was were placed in the United States Mail, certified mail, return receipt requested, _____ addressed to the following:

Albert R. Axe, Jr.
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

_____