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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Avenue
Dallas, Texas 75202-2733

March 1, 2016

CONFIDENTIAL SETTLEMENT COMMUNICATION
CONTAINS CONFIDENTIAL BUSINESS INFORMATION Redacted

Mr. John King
Breazeale, Sachse & Wilson, L.L.P.
P.O. Box 3197
One American Place, 23rd Floor
Baton Rouge, LA 70821-3197

Dear John:

As you know, EPA conducted a Clean Air Act inspection at the Formosa Plastics (Formosa) facility in Baton Rouge, Louisiana from July 22 – 24, 2014. In a letter dated April 21, 2015, EPA requested additional information regarding the inspection from Formosa. In that letter, EPA stated that after we had a chance to review the information you submitted, we would like to set up a meeting with Formosa to discuss issues relating to the inspection. On September 9, 2015, a meeting was held to discuss the potential violations. After the meeting, EPA received some information we previously requested and also requested additional information regarding certain mechanical integrity inspections. In the meantime, Region 6 recently obtained a Clean Air Act waiver from EPA Headquarters and the U.S. Department of Justice. As such, EPA is in a position to begin settlement negotiations on the case. I enclosed a copy of a draft Consent Agreement and Final Order (CAFO) in an earlier e-mail.[1] The CAFO sets forth in detail the following violations, which were previously set forth in our August 4, 2015 letter. A brief description of the violations is also set forth below:

1. Failure to Document Individuals by Name or Position in Organizational Chart 40 C.F.R. § 68.15(c)

Formosa's RMP System Chart (FPC001) named departments, as opposed to providing names of responsible individuals or positions (e.g., Superintendent – Maintenance Department), as required by 40 C.F.R. § 68.15(c). It was my understanding at our meeting that Formosa was going to submit a document(s) regarding this issue. EPA never received such a document.

[1] Both the draft CAFO and AOC have not been approved by upper management. I will let you know when this occurs and if any changes are made. However, based on past experience, I do not expect any changes to be made by upper management.

2. Failure to Maintain Data Used to Estimate Population and Environmental Receptors for the Offsite Consequence Analyses – 40 C.F.R. § 68.39(e)

When EPA requested this information, it received only a single page about population estimates, the Results of Consequence Analysis from RMP Comp, and some pages from Formosa's RMP Plan (FPC002 – FPC014). This information is not sufficient to estimate population, public receptors, and environmental receptors for its off-site consequence analysis.

3. Failure to Compile a Maximum Intended Inventory of Regulated Substances 40 C.F.R. § 68.65(e)(1)(iii)

EPA requested this information during its July 22 – 24, 2014 inspection, but no inventory was provided to the inspector during the inspection. (b) (4) [redacted] (b) (4) [redacted]

4. Failure to Identify Hurricanes as a Hazard of the Process – 40 C.F.R. § 68.67

According to Appendix C of 29 C.F.R. § 1910.119, the process hazard analysis (PHA) focuses on equipment, instrumentation, utilities, human actions (routine and nonroutine), and external factors that might impact the process. These considerations assist in determining the hazards and potential failure points or failure modes in a process. In addition, hurricanes, along with tornados and earthquakes are listed as "Major Hazards" in the RMP ESubmit User's Manual under Process Hazard Analysis (which was previously provided to you).

5. Failure to Ensure that PHA Findings and Recommendations are Resolved in a Timely Manner – 40 C.F.R. § 68.67(e)

This violation involved findings and recommendations from the June 2008 Siting Study and the February 2012 PHA Revalidations for the VCM and PVC processes. (b) (4) [redacted] There were [redacted] missed deadlines for the VCM and PVC PHA findings and recommendations.

6. Failure to Update PHA Every Five Years - 40 C.F.R. § 68.67(f)

Formosa updated and revalidated the PHA for the VCM process in June 2006. Formosa was required to update and revalidate the PHA for the VCM process by June 2011, but failed to update and revalidate the PHA for the VCM process until February 3, 2012. Formosa updated and revalidated the PHA for the PVC process on May 17, 2006. Formosa was required to update and revalidate the PHA for the PVC process by May 17, 2011. However, Formosa failed to update and revalidate the PHA PVC process until February 16, 2012.

7. Failure to Conduct an Adequate PHA for the VCM Process – 40 C.F.R. § 68.67

On or about October 14, 2011, the NE-111 nitrogen heater for the molecular sieves ruptured. The heater is used to heat nitrogen gas to regenerate the sieve beds. The NE-111 nitrogen heater is part of the VCM process. A hazard associated with the VCM process is overpressuring the NE-111 nitrogen heater. However, the Incident Report stated that the PHA for the VCM process failed to recognize the potential for overpressuring the heater without a connected control device (FPC1265; FPC002916).

8. Failure to Properly Implement Certain Operating Procedures – 40 C.F.R. § 68.69

On August 18, 2013, Formosa bypassed the low flow interlocks for the HCl, O_2, and ethylene feed to the D Oxy reactor to prevent the reactor from tripping due to spikes in flow without following the override procedure. On August 23, 2013, the low flow interlocks for HCl and ethylene feed to C Oxy reactor and the high flow interlock for O_2 feed to C Oxy reactor were preemptively bypassed without following the override procedure when an HCl leak was discovered that had the potential to shut down the plant. FPC1259

9. Failure to Conduct a Management of Change – 40 C.F.R. § 68.75

The NE-111 nitrogen heater for the molecular sieves is part of the VCM process. On or about October 2011, the Respondent replaced the dual action solenoid with a single action solenoid. The single action solenoid does not have a manual reset. The replacement of a dual action solenoid for a single action solenoid is not a "replacement in kind", and thus was a change in process equipment. The Incident Report stated that Formosa failed to conduct a management of change (MOC) prior to replacing a dual action solenoid with a single action solenoid. FPC1265. The fact that the solenoid was not involved in the incident is irrelevant.

10. Failure to Correct Timely Deficiencies in 2008 and 2011 Compliance Audits 40 C.F.R. § 68.79(d)

As of the July 2014 inspection, Formosa failed to timely determine and document an appropriate response to certain findings for both the November 2008 Compliance Audit and the October 2011 Compliance Audit.

11. Failure to Include the Date Incident Investigation Began – 40 C.F.R. § 68.81(d)(2)

This violation relates to the incident report for the August 23, 2013 bypass. As the Incident Report stated:

(b) (4) [redacted]

(b) (4) [redacted]

(b) (4) [redacted]

(b) (4) [redacted] an incident report was required to be prepared, as required by 40 C.F.R. § 68.81. 40 C.F.R. § 68.81 requires that the incident report must include the date on which the investigation began. (b) (4) [redacted]

12. Failure to Periodically Evaluate the Performance of Contractors in Fulfilling the Obligations Identified in 40 C.F.R. § 68.87(c) – 40 C.F.R. § 68.87(b)(5)

On July 28, 2014, EPA requested an example of a contractor periodic evaluation, which is required by 40 C.F.R. § 68.87(b)(5), for (b) (4) [redacted] Formosa's response was received on August 22, 2014. The information submitted only shows that Formosa only had training records. There were no records that show that Formosa evaluated the contractors' performance.

The draft CAFO also proposed a civil penalty of $763,000. I included a copy of EPA's penalty calculations and the CAA 112(r) Combined Enforcement Policy (which describes the methodology of how the penalty was calculated) in an earlier e-mail. Therefore, EPA is offering Formosa a short period of time to conduct prefiling negotiations. Although EPA and Formosa have previously met to discuss these potential violations, if Formosa wishes to have another meeting, we can arrange a meeting in the near future. In addition, you will notice the section of the CAFO "Supplemental Environmental Project" was left blank. EPA is extremely interested in Formosa undertaking a community-based supplemental environmental project (SEP). I have also previously sent you via e-mail, a copy of EPA's SEP Policy and the NextGen Guidance. Since EPA is providing Formosa with the opportunity for pre-filing negotiations, I have also included a copy of a proposed tolling agreement for your signature in the same e-mail.

Finally, EPA needs documentation that all of the violations set forth in the CAFO have been corrected or resolved. Based on our records, it appears that Counts 1, 2, 4, 5, 7, 10 have not been corrected. Therefore, I have sent you via an earlier e-mail a draft Administrative Order on Consent (AOC) which requires Counts 5, 7, and 10 to be corrected within a certain time periods. We believe that Counts 1, 2, and 4 may have been corrected or can be corrected within a short period of time. Therefore, we have not included those Counts in the draft AOC. However, we will need documentation that these violations have been corrected before we can settle the case or else they will be needed to be included in the AOC.

If you have any questions, please feel free to call me at (214) 665-8074 or e-mail me at pearson.evan@epa.gov.

Sincerely,

Evan L. Pearson

Evan L. Pearson
Senior Enforcement Counsel