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

March 11, 2016

CERTIFIED MAIL – RETURN RECEIPT REQUESTED – 7010 1060 0002 1872 6759

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 promised, the following is a brief explanation of our penalty justification for the violations set forth in the draft CAFO. EPA previously sent you a copy of our draft penalty calculations, along with the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68, dated June 2012.

Count One – 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). Having an accurate organization chart which defines the lines of authority, roles, and responsibilities of staff that oversee the risk management program elements will help ensure effective communication about process changes between divisions, clarify the roles and responsibilities, and avoid problems or conflicts among the various people responsible for implementing elements of the risk management program. Therefore, this violation was classified as a moderate/moderate lower level violation ($10,000).

Count Two – 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 (significant deviation). Therefore, this violation was classified as a minor/moderate violation, but at the lower level ($5,000).

Count Three – Failure to Compile a Maximum Intended Inventory of Regulated Substances – 40 C.F.R. § 68.65(c)(1)(iii) – EPA requested this information during its July 22 – 24, 2014 inspection, however, no inventory was provided to the inspector during the inspection. (b) (4) [redacted] which EPA classified as significant deviation. This justifies the upper level of the moderate/moderate matrix ($15,000).

Count Four – 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). Because Formosa did have a hurricane plan, EPA classified this as a minor potential for harm, and a moderate deviation, because Formosa did identify some of the process hazards, and because hurricanes are not an uncommon occurrence in Louisiana ($10,000).

Count Five – 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] If one doesn't establish deadlines, there is no pressure to address the items. There were also [redacted] missed deadlines for the VCM and PVC PHA findings and recommendations. EPA considers the failure to set deadlines, the length of time that the findings and recommendations went unaddressed, and the number of missed deadlines to be substantial noncompliance with the regulations. Potential significant hazards could go unaddressed which could result in catastrophic results (major potential for harm). This justifies the upper level of the major/major matrix ($37,500).

Count Six - Failure to Update PHA Every Five Years – 40 C.F.R. § 68.67(f) – A process hazard analysis (PHA) is one of the most important elements of the risk management program. A PHA is an organized and systematic effort to identify and analyze the potential hazards associated with the processing or handling of regulated substances. OSHA and EPA recognized that the PHA process is not a static process; therefore PHAs need to be revalidated every five years. A fresh look at the processes can result in identifying and addressing hazards that weren't previously considered, such as, what was identified as the (b) (4) [redacted] (major potential for harm - see discussion of Count Seven below). The (b) (4) [redacted] which EPA classified as a moderate deviation. Therefore, this violation was classified as an upper limit major/moderate violation ($20,000).

Count Seven - 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. (b) (4) [redacted] The NE-111 nitrogen heater is part of the VCM process. (b) (4) [redacted]. EPA considers this to be substantial noncompliance. Given the damage to the heater and the potential that two workers could have been injured (major potential for harm), EPA classified this violation as upper limit major/major violation ($37,500).

Count Eight – 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. EPA considers the multiple bypassing of the interlocks without following the override procedure to be substantial noncompliance. According to the Incident Report,

(b) (4) [redacted]

(b) (4) [redacted] Given these facts, EPA classified this violation as upper limit major/major violation ($37,500).

Count Nine – 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. Therefore, there was substantial noncompliance with the MOC regulation. The fact that the solenoid was not involved in the incident is irrelevant. Failure to conduct an MOC is a major contributing factor to a number of incidents that EPA has investigated. There is a major potential for harm when there is a change to process equipment, chemicals, and procedures.

Therefore, EPA is justified in classifying this violation as an upper limit major/major violation ($37,500).

Count Ten - 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. Going from the July 2014 inspection, over 5 ½ years have passed since the November 2008 Compliance Audit was completed and over 2 ½ years have passed since the October 2011 was completed. Given the time frame involved in correcting the violation, this justifies an upper limit moderate/moderate classification ($15,000).

Count Eleven – Failure to Include the Date Incident Investigation Began – 40 C.F.R. § 68.81(d)(2) – Since this violation was classified as a lower level minor/minor violation, no further explanation is needed since this is the lowest classification ($500).

Count Twelve – 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) – In many cases, contractors are directly involved in a potential or actual release or are injured as a result of a release. Companies that use contractors need to establish a screening process to ensure they hire contractors who can do the job without compromising safety. Using the wrong contractor increases the potential for a release. On July 28, 2014, EPA requested an example of a contractor periodic evaluation for (b) (4) [redacted] The contractor evaluation is required by 40 C.F.R. § 68.87(b)(5), 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. This item was identified in Formosa's 2008 PSM Audit (Item 79). FCP003047. However, this item was not closed until (b) (4), which EPA considers to be substantial noncompliance with the regulations. Thus, this violation was classified as a major/major violation, but at the lower level ($30,000).

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