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REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

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EPA REGION VI

In the Matter of: **TPC PORT NECHES** **Port Neches, Texas** **Respondent**	**CONSENT AGREEMENT AND FINAL ORDER** **EPA Docket No. CAA 06-2016-3354**

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 TPC Port Neches ("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 assessment of civil penalties is brought by EPA pursuant to sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, as amended ("Act" or "CAA"), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

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

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

4. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for those violations and facts alleged in this CAFO.

5. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

II. ALLEGATIONS

6. Respondent is a limited liability company, which is authorized to do business in the State of Texas.

7. Respondent owns and operates a specialty chemical company which processes butadiene at its Port Neches Operations. The facility is located in Port Neches, Texas in Jefferson County.

8. The Respondent produces at the Port Neches Operations up to 900 million pounds of butadiene per year and also supplies C4 raffinate.

9. The facility processes, manufacturers, stores, and otherwise uses regulated substances and other extremely hazardous and flammable substances. Part of the process involves sending water through a cooling tower. The facility uses chlorine in the cooling tower to control slime and microbial growth as a disinfectant. Chlorine cylinders are used to supply the treatment chemical via piping to the cooling tower.

10. The Respondent reported a release of chlorine to the National Response Center. The release was identified at 7:12 p.m. on October 24, 2015. The TPC Emergency Response team responded and isolated the leak at 7:26 p.m.

11. The Respondent provided information that the cause of the October 24, 2015 release was due to external corrosion on a one inch (1") chlorine line immediately adjacent to the plant cooling tower. On October 13, 2015 a work request was written that identified the area as

presenting the potential for a leak. The line was not shut down or placed out of service in time to avoid a leak.

12. The Respondent reported that the chlorine line was isolated and the active chlorine cylinder was disconnected from the system.

13. The Respondent's subsequent investigation revealed the leak had occurred over a 48 hour period and had released an estimated maximum of 900 pounds of chlorine gas. The facility's air monitors did not identify a leak.

14. Pursuant to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source producing, processing, handling or storing substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, has a general duty to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur.

15. Respondent is a "person" as that term is defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e).

16. The Facility is a "stationary source" as that term is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

17. Respondent is the "owner or operator" as those terms are defined by section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

18. At the Facility, Respondent produces, processes, handles, or stores substances listed in, or pursuant to, CAA § 112(r)(3) or other extremely hazardous substances identified as such due to toxicity, reactivity, flammability, volatility, or corrosivity.

19. The Respondent is required to take measures to ensure that a safe facility is maintained, and that these measure achieve a level of quality, accuracy, and completeness in order to prevent releases.

20. Respondent failed to maintain a safe facility so as to prevent releases by not accurately tracking preventative maintenance and repairs or routine inspections.

21. Respondent's failure constitutes a violation of the general duty clause in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

22. Pursuant to the authority granted in sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the Respondent's business, the economic impact of the penalty on the Respondent's business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation (if any), the economic benefit of noncompliance, and the seriousness of the violation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is $30,750.00.

23. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty 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 ways: regular U.S. Postal mail (including certified mail), or U.S. Postal Service express mail - the check 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), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines and 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 No. 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 CAA 06-2016-3354 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 the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this 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:

Samuel Tates
Chief, Chemical Accident Enforcement Section (6EN-AS)
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

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received in the Region.

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

25. 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 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).

26. 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.

B. PARTIES BOUND

27. 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.

C. RETENTION OF ENFORCEMENT RIGHTS

28. 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.

29. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

30. 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, or contaminants at or from the 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.

31. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United

States in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to this CAFO.

D. COSTS

32. Each party shall bear its own costs and attorney's fees. Furthermore, 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.

E. EFFECTIVE DATE

33. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

In the Matter of: **TPC Port Neches** **Port Neches, Texas** **Respondent**

CONSENT AGREEMENT AND FINAL ORDER
EPA Docket No. CAA 06-2016-3354

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

FOR THE RESPONDENT:

5/6/16
Date

TPC Port Neches

FOR THE COMPLAINANT:

5/19/16
Date

John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), 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 in this CAFO. 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 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.

5-24-16
Date

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) were hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States mail to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 7014 0150 0000 2453 3634

Mr. Kevin Harren
Environmental Manager
TPC Port Neches
2102 Spur 136
Port Neches, TX 77002

05-24-2016
Date

Lori Jackson
U.S. EPA, Region 6
Dallas, Texas