

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

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Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7011 1570 0003 0363 3697

July 31, 2013

Alphonse McMahon
Senior Counsel, EHSS, Legal Affairs
Saudi Basic Industries Corporation
1 Lexan Lane
Mount Vernon, IN 47620

Re: Order on Consent
SABIC Innovative Plastics US LLC
R4-2013-0416-58

Dear Mr. McMahon:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$95,000 the civil penalty pursuant to Paragraph
I.

Sincerely,

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

cc: D. Welsted

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 19
of the Environmental Conservation
Law of the State of New York and
Title 6 of the Official Compilation
of the Codes, Rules and Regulations
of the State of New York

ORDER ON CONSENT
DEC CASE.
R4-2013-0416-58

-by-

SABIC Innovative Plastics US LLC
1 Noryl Ave
Selkirk, New York 12158

Respondent

1. The New York State Department of Environmental Conservation (DEC or Department) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to § 3-0301 of the Environmental Conservation Law (ECL). In particular, DEC is and has been responsible for the protection of air resources of the State pursuant to ECL Article 19 and the rules and regulations promulgated there under.
2. Respondent, SABIC Innovative Plastics US LLC, is a Limited Liability Company of the State of Delaware that owns and operates a plastics manufacturing facility in Selkirk, New York (“facility”).
3. Respondent operates the facility pursuant to a 6 NYCRR Part 201-6 Title V permit (#4-0122-00007/00719) that contains general and special conditions (“permit”).
4. On April 10, 2013, a Notice of Violation was sent to the Respondent setting forth the violations identified in this Order on Consent for the time periods addressed in Annual Reports (“Annual Certification Report”) covering July 1, 2010-February 1, 2011 (“Period 1”), February 1, 2011-July 1, 2011 (“Period 2”), and July 1, 2011-July 1, 2012 (“Period 3”).
5. Since there are two permits during the reporting periods 1,2 and 3, permit ID 4-0122-00007/00719 Ren:0 Mod:4 is hereafter referred to as “Permit ID 1.” Permit ID 4-0122-00007/00719 Ren:1 Mod:0 is hereafter referred to as “Permit ID 2.”
6. On March 26, 2012, August 21, 2012, and October 23, 2012, Department staff conducted inspections of the facility.

7. Regulations at 6 NYCRR 201-6.4(a)(2) provide that: “*The permittee must comply with all conditions of the Title V facility permit. Any permit non-compliance constitutes a violation of the act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.*”

8. Regulations at 6 NYCRR 201-6.4(a)(5) provide that: “*It is not a defense for an owner and/or operator in an enforcement action to claim that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.*”

9. Regulations at 6 NYCRR 200.10(d) incorporate by reference the 40 CFR 63 NESHAPS regulations cited in this order.

FIRST CAUSE OF ACTION

10. Regulations at 6 NYCRR 236.3(c) provide that “*Any owner or operator of a synthetic organic chemical manufacturing facility must also comply with the following component standards:*

(3) Open-ended valves or lines in gas/vapor or light liquid service must be sealed with either a second valve, blind flange, cap, or plug. The sealing device may only be removed while a sample is being taken or during maintenance operations.

11. Regulations at 6 NYCRR 236.2(c) provide that “*Components subject to Federal regulations which require either an equal or more stringent leak detection and repair program (i.e., equivalent or lower definition of leak and equivalent or more frequent monitoring requirements), or equal or more stringent equipment specifications, are deemed to be in compliance with the provisions of this Part contingent on the source owner or operator complying with such Federal regulations.*”

12. Regulations at 40 CFR 63.161, Subpart H define an open-ended line or valve as “*any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.*”

13. Regulations at 40 CFR 63.167(a)(1) provide that: “*Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in 40 CFR 63.162(b) of this subpart and paragraphs (d) and (e) of this section.*”

14. Respondent reported in its Period 1 Annual Certification Report that its facility’s Leak Detection and Repair (“LDAR”) inspections found a total of two open ended valves or lines.

15. The open-ended valves or lines are violations of permit conditions: 13, 25, 50 and 181 of Permit ID 1 and 6 NYCRR 236.3(c)(3), 6 NYCRR 236.2(c), and 40 CFR 63.167(a)(1).

16. Respondent reported in its Period 2 Annual Certification Report that its facility’s LDAR inspections found twenty eight open-ended valves or lines.

17. The open-ended valves or lines are violations of permit conditions: 33, 34, 57, 80 and 129 of Permit ID 2 and 6 NYCRR 236.3(c)(3), 6 NYCRR 236.2(c), and 40 CFR 63.167(a)(1).

18. Respondent reported in its Period 3 Annual Certification Report that its facility's LDAR inspections found sixteen open ended valves or lines.

19. The open ended valves or lines are violations of permit conditions: 33, 34, 57, 80 and 129 of Permit ID 2 and 6 NYCRR 236.3(c)(3), 6 NYCRR 236.2(c), and 40 CFR 63.167(a)(1).

SECOND CAUSE OF ACTION

20. Regulations at 40 CFR 63.113(b), Subpart G provide that *"If a boiler or process heater is used to comply with the percent reduction requirement or concentration limit specified in paragraph (a)(2) of this section, then the vent stream shall be introduced into the flame zone of such a device."*

21. Respondent reported in its Period 1 Annual Certification Report, that there were eight instances of operator errors which involved bypassing the Distillation Vent Scrubber ("DVS") system.

22. The DVS operator error bypasses are violations of permit condition 77 of Permit ID 1 and 40 CFR 63.113(b), Subpart G.

23. Respondent reported in its Period 2 Annual Certification Report, that there was one instance of operator error which involved bypassing the DVS system.

24. The DVS operator error bypasses are violations of permit conditions 89 and 111 of Permit ID 2 and 40 CFR 63.113(b), Subpart G.

25. Regulations at 6 NYCRR 200.7 provide that *"Any person who owns or operates an air contamination source which is equipped with an emission control device shall operate such device and keep it in a satisfactory state of maintenance and repair in accordance with ordinary and necessary practices, standards and procedures, inclusive of manufacturer's specifications, required to operate such device effectively."*

26. Respondent reported in its Period 1 Annual Certification Report, that the filter of the DVS oxygen analyzer had plugged causing the DVS system to bypass.

27. The DVS emissions exceedance caused by the maintenance failure is a violation of permit condition 77 of Permit ID 1 and 6 NYCRR 200.7 and 40 CFR 63.113(b), Subpart G.

THIRD CAUSE OF ACTION

28. Regulations at 40 CFR 63.1313, Subpart JJJ provide:

“(a) Except as allowed under paragraphs (b) through (d) of this section, the owner or operator of an existing or new affected source shall comply with the provisions in:

(1) Section 63.1314 for storage vessels;

(2) Section 63.1315, or §§ 63.1316 through 63.1320, as appropriate, for continuous process vents;

(3) Section 63.1321 for batch process vents;

(4) Section 63.1328 for heat exchange systems;

(5) Section 63.1329 for process contact cooling towers;

(6) Section 63.1330 for wastewater;

(7) Section 63.1331 for equipment leaks;

(8) Section 63.1333 for additional test methods and procedures;

(9) Section 63.1334 for parameter monitoring levels and excursions; and

(10) Section 63.1335 for general recordkeeping and reporting requirements.”

29. Respondent reported in its Period 1 Annual Certification Report, that there were two instances of High Impact Polystyrene (“HIPS”) Devolatilization (“Devol”) Bypasses.

30. The two HIPS Devol Bypasses were violations of permit conditions 169, 171, 183 and 184 of Permit ID 1 and 40 CFR 63.1313, Subpart JJJ.

31. Respondent reported in its Period 3 Annual Certification Report, that there were three instances of HIPS Devol Bypasses.

32. The three HIPS Devol Bypasses were violations of permit conditions 122, 131 and 132 of Permit ID 2 and 40 CFR 63.1313, Subpart JJJ.

FOURTH CAUSE OF ACTION

33. Regulations at 6 NYCRR 212.10(c) (1) provide that *“The compliance plan must identify reasonably available control technology (RACT) for each emission point which emits nitrogen oxides for major nitrogen oxide facilities or volatile organic compounds for major volatile*

organic compound facilities. The compliance plan must identify the emission points which do not employ reasonably available control technology (RACT), and a schedule for implementation of RACT must be included in the plan. A RACT analysis is not required for emission points with nitrogen oxide and volatile organic compound emission rate potentials less than 3.0 pounds per hour and actual emissions in the absence of control equipment less than 15.0 pounds per day at facilities located in the lower Orange County and New York City metropolitan areas. A RACT analysis is not required for emission points with nitrogen oxide and volatile organic compound emission rate potentials less than 3.0 pounds per hour at facilities located outside of the lower Orange County and New York City metropolitan areas. Reasonably available control technology as approved by the department must be implemented on each emission point subject to this section by May 31, 1995.”

34. Respondent reported in its Period 1 Annual Certification Report, that fresh Toluene was unloaded from a tanker truck and transferred to a Toluene tank without control, due to the Resin plant being shutdown and operators not following standard operating procedures which prohibit Toluene unloading during shutdown.

35. Failure to control emissions is a violation of permit condition 221 of Permit ID 1 and 6 NYCRR 212.10(c) (1).

FIFTH CAUSE OF ACTION

36. Regulations at 40 CFR 63.6(e)(3) provide that “*Startup, shutdown, and malfunction plan. (i) The owner or operator of an affected source must develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction; and a program of corrective action for malfunctioning process, air pollution control, and monitoring equipment used to comply with the relevant standard. The startup, shutdown, and malfunction plan does not need to address any scenario that would not cause the source to exceed an applicable emission limitation in the relevant standard. This plan must be developed by the owner or operator by the source's compliance date for that relevant standard. The purpose of the startup, shutdown, and malfunction plan is to—*

(A) Ensure that, at all times, the owner or operator operates and maintains each affected source, including associated air pollution control and monitoring equipment, in a manner which satisfies the general duty to minimize emissions established by paragraph (e)(1)(i) of this section;

(B) Ensure that owners or operators are prepared to correct malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of hazardous air pollutants; and

(C) Reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation)."

37. Regulations at 40 CFR 63.8(c)(1)(iii) provide that *"The owner or operator of an affected source must develop a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3)."*

38. Respondent reported in its Period 2 Annual Certification Report, that Respondent failed to address maintenance wastewater in the Startup, Shutdown, and Malfunction Plan ("SSMP").

39. Respondent's failure to address maintenance wastewater in the SSMP is a violation of permit conditions 81 and 141 in Permit ID 2.

37. Regulations at 40 CFR 63.8(c)(1)(iii) provide that *"The owner or operator of an affected source must develop a written startup, shutdown, and malfunction plan for CMS as specified in § 63.6(e)(3)."*

38. Respondent reported in its Period 2 Annual Certification Report, that Respondent failed to address maintenance wastewater in the Startup, Shutdown, and Malfunction Plan ("SSMP").

39. Respondent's failure to address maintenance wastewater in the SSMP is a violation of permit conditions 81 and 141 in Permit ID 2 and 40 CFR 63.6(e)(3), Subpart A

SIXTH CAUSE OF ACTION

40. Regulations at 40 CFR 63.182(d)(2), Subpart H provide that *"For each process unit complying with the provisions of § 63.163 through § 63.174 of this subpart, the summary information listed in paragraphs (i) through (xvi) of this paragraph for each monitoring period during the 6-month period.*

(ix) The number of connectors for which leaks were detected as described in § 63.174(a) of this subpart, the percent of connectors leaking, and the total number of connectors monitored;"

41. Respondent's mischaracterization of equipment monitored resulted in an inaccurate percent leaker calculation in the Periodic Reports, submitted for Reporting Period 1, pursuant to 40 CFR 63, Subpart JJJ.

42. During and prior to Reporting Period 1, Respondent violated reporting procedures pursuant to 40 CFR 63, Subpart JJJ.

43. Regulations at 6 NYCRR 236.4(b) provide that *"Once a leaking component is identified, any owner or operator subject to this Part must:*

(4) remonitor all leaking components within 48 hours after repairs have been completed."

44. Respondent failed to re-monitor 48 hours after repairs were completed therefore is in violation of permit condition 36 for Permit ID 2 and 6 NYCRR 236.4(b).

45. Regulations at 40 CFR 63.160 (a), Subpart H provide that *“The provisions of this subpart apply to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or closed vent systems required by this subpart that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR part 63 that references this subpart.”*

46. Respondent reported during and prior to Reporting Period 3 Annual Certification Report that it found and failed to monitor, a total of 113 valves and 1 pump in the Resin process. Prior to Reporting Period 3, the components were not included in the LDAR program. Therefore, Respondent is in violation of 40 CFR 63.160 (a), Subpart H.

47. Regulations at 40 CFR 63.174 (b)(3)(ii) provide that *“After conducting the initial survey required in paragraph (b)(1) or (b)(2) of this section, the owner or operator shall perform all subsequent monitoring of connectors at the frequencies specified in paragraphs (b)(3)(i) through (b)(3)(v) of this section, except as provided in paragraph (c)(2) of this section:*

(ii) “Once every 2 years, if the percent leaking connectors was less than 0.5 percent during the last required monitoring period. An owner or operator may comply with this paragraph by monitoring at least 40 percent of the connectors in the first year and the remainder of the connectors in the second year. The percent leaking connectors will be calculated for the total of all monitoring performed during the 2-year period.”

48. Respondent violated regulations at 40 CFR 63.174 (b)(3)(ii) by failing to meet the required 40 percent monitoring of the components for total connectors monitored.

Civil Penalty

49. ECL Section 71-2103 provides that any person who violates any provision of article nineteen or any code, rule or regulation which was promulgated pursuant thereto; or any order except an order directing such person to pay a penalty by a specified date issued by the commissioner pursuant thereto, shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars for said violation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues. In the case of a second or any further violation, the liability shall be for a penalty not to exceed twenty-two thousand five hundred dollars for said violation and an additional penalty not to exceed twenty-two thousand five hundred dollars for each day during which such violation continues. In addition thereto, such person may be enjoined from continuing such violation as hereinafter provided.

Waiver of Hearing

50. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, having considered this matter and being duly advised, it is **ORDERED** that:

I. Civil Penalty

I. With respect to the aforesaid violations, a civil penalty in the amount of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000) is hereby assessed against the Respondent of which NINETY FIVE THOUSAND DOLLARS (\$95,000) shall be payable to the New York State Department of Environmental Conservation by money order or certified check at the time this Order is signed, notarized and returned to the Department. The balance THIRTY THOUSAND DOLLARS (\$30,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. Settlement

Timely payment of the civil penalty called for above and full compliance with the terms and conditions of this Order and Schedule of Compliance is accepted as full settlement of the violations described above.

III. Schedule of Compliance

Respondent shall comply with the attached Schedule of Compliance which is incorporated into the Order on Consent.

IV. Communications

All communications required herein shall be made to: Department -- DEC Region 4 , 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Engineer; and Respondent – Dominick Perfetti, SABIC Innovative Plastics US LLC, One Noryl Avenue, Selkirk, New York 12158.

V. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order or the ECL. The Department monitor shall have, at his discretion, full and unrestricted access to Respondent's records, and employees to discuss or inquire about all state, federal and Order on Consent compliance matters, and complaints.

VI. Summary Abatement

This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VII. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

VIII. Entire Agreement; Modification

This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating an intent to modify this Order.

IX. Document Review

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.
2. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.
3. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accept such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

c. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

X. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

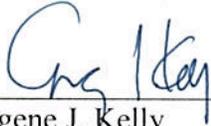
XI. Termination Date

This Order shall terminate upon the Respondent's compliance with all the terms, conditions and provisions of this Order and Schedule of Compliance.

DATED: 7/31/2013
Rotterdam, NY

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:



Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

SABIC Innovative Plastics US LLC

SIGNED: Michael L. Watson

TITLE: Vice President

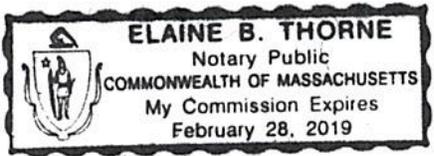
DATE: July 23, 2013

COMMONWEALTH
STATE OF MASSACHUSETTS

COUNTY OF BELKSHIRE) ss.:
)

On the 23 day of July in the year 2013 before me, the undersigned, a Notary Public in and for the State, personally appeared Michael L. Watson personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Elaine B. Thorne
Notary Public
Qualified in the County of:
My Commission Expires:



SCHEDULE OF COMPLIANCE

1. Within 60 days of the effective date of this Order, Respondent shall submit to the Department, a list of all remedial measures performed to remedy the aforementioned violations so as to operate the sources in a manner compliant with the regulations.
2. Compliance with this Schedule of Compliance shall not be a defense to any future occurrences of the violations cited in this Order.