

FINAL SETTLEMENT AGREEMENT

This Final Settlement Agreement (“Agreement”) is made by and between American Chemistry Council (“ACC” or “Petitioner”) and the United States Environmental Protection Agency (“EPA” or “Respondent”) (collectively, the “Parties”);

WHEREAS, on May 18, 2015, ACC and Eastman Chemical Company (“Eastman”) filed petitions for review of an EPA rule titled “National Emission Standards for Hazardous Air Pollutants for Major Sources: Off-Site Waste Recovery Operations,” published at 80 Fed. Reg. 14,248 (March 18, 2015) (the “Final Rule”). The petitions have been docketed as case numbers 15-1146 and 15-1147, respectively. The petitions were consolidated under the lead case name, *American Chemistry Council v. EPA* (15-1146);

WHEREAS, on May 18, 2015, ACC and Eastman jointly submitted to EPA a Petition for Reconsideration of the Final Rule. ACC and Eastman requested reconsideration of two issues: equipment leak provisions for connectors and monitoring requirements for pressure relief devices (“PRD”) on portable containers;

WHEREAS, on February 8, 2016, EPA granted the request of ACC and Eastman for reconsideration of the Final Rule on the issue of PRD monitoring requirements for portable containers;

WHEREAS, EPA is also willing to reconsider the Final Rule’s prohibition on any PRD releasing to the atmosphere;

WHEREAS, in a letter dated May 5, 2016, EPA denied the request of ACC and Eastman for reconsideration of the equipment leak provisions for connectors. EPA provided public notice of this denial through a Federal Register notice published on May 16, 2016 at 81 Fed. Reg. 30,182;

WHEREAS, on September 26, 2016, Eastman filed an unopposed motion for voluntary dismissal from the action, which the court granted on September 29, 2016;

WHEREAS, Petitioner and EPA consider this Agreement to be a fair, adequate, and equitable resolution of all claims that were or could have been raised in the Litigation;

WHEREAS, by entering into this Agreement, EPA does not waive or limit any defense, on any grounds, related to any agency action that may be taken pursuant to this Agreement;

WHEREAS, Petitioner and EPA believe it is in the interest of the public, the Parties, and judicial economy to resolve the issues in this action without protracted litigation;

NOW, THEREFORE, PETITIONER AND EPA AGREE AS FOLLOWS:

I. Parties Bound.

This Agreement applies to, is binding upon, and inures to the benefit of Petitioner (and its successors, assigns and designees) and EPA.

II. Definitions.

Unless otherwise expressly provided, terms used in this Agreement that are defined in the Clean Air Act or in implementing regulations shall have the meaning assigned to them therein as of the date that this Agreement is executed by both Parties. For the purposes of this Agreement, the following terms shall have the meaning provided below:

A. The “Litigation” means *American Chemistry Council v. EPA* (D.C. Circuit Case No. 15-1146).

B. “Parties” means ACC and EPA.

C. “United States” means the United States of America, including its officers, agencies, departments, and instrumentalities.

D. “PRDs” means “pressure relief devices,” which are safety devices used to prevent

operating pressures from exceeding the maximum allowable working pressure of process equipment. Petitioner does not concede that portable containers are process equipment. Devices that are actuated by pressures of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

E. “Container” means a portable unit used to hold material and includes, but is not limited to: drums, dumpsters, roll-off boxes, bulk cargo containers commonly known as “portable tanks” or “totes,” cargo tank trucks, and tank rail cars.

III. Terms.

A. By no later than October 28, 2016, Petitioner will provide EPA with requested data on PRDs, including PRDs on portable containers. Appendix A attached to this Agreement identifies the requested data. Appendix A may be modified by agreement of the Parties pursuant to Section XIV.

B. No later than 15 days after this Agreement is finalized in accordance with Section V, but as soon as possible after the submission referenced in paragraph III.A, EPA will inform Petitioner by electronic mail as to whether the submission(s) fully responds to EPA’s request in Appendix A and is sufficient to enable EPA to propose a rule pursuant to paragraph III.C, or whether EPA requires any additional information. If EPA informs Petitioner that EPA requires additional information, EPA will specify in writing the additional information needed at that time and Petitioner will have 30 days from the date of receipt of the written request to provide the information, and the deadline for EPA action in paragraphs III.C and III.D shall be extended by 30 days.

C. If EPA, pursuant to paragraph III.B, informs Petitioner, no later than 15 days after this Agreement is finalized, that the submission referenced in paragraph III.A is sufficient

to enable EPA to reconsider the PRD provisions in the Final Rule pursuant to this paragraph, then EPA will sign a proposed rule on or before July 20, 2017 that reflects its reconsideration of provisions in the Final Rule relating to PRDs and will make the rule available for public comment. EPA's obligation in this paragraph is contingent upon Petitioner's timely compliance with paragraphs III.A and III.B.

D. On or before January 18, 2018, after proposing a rule in accordance with paragraph III.C, and after reviewing and considering any public comments received, EPA will sign a final rule that reflects its reconsideration of provisions in the Final Rule relating to PRDs. EPA's obligation in this paragraph is contingent upon EPA proposing a rule in accordance with paragraph III.C.

E. In the event that any Party to this Agreement believes that any other Party has failed to comply with any term or condition of this Agreement, or in the event that there is any dispute or controversy about any part of this Agreement, the Parties shall use their best efforts to settle and resolve the controversy. To that end, the Party raising the dispute shall give written notice to the other Party stating the nature of the matter to be resolved and the position of the Party asserting the controversy. This written notice will commence an informal dispute resolution period that will be no shorter than sixty (60) days, and may be extended by mutual agreement of the Parties. The Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests in the ongoing integrity of this Agreement, attempt to reach a just and equitable solution satisfactory to all Parties. If, after implementation of the informal dispute resolution process in this paragraph, Petitioner contends that EPA has not performed the obligations established in paragraphs III.B–D of this Agreement, Petitioner's sole judicial remedy will be to reactivate the petitions for review in the Litigation. If, after

implementation of the informal dispute resolution process in this paragraph, EPA contends that Petitioner has not performed the obligations established in paragraphs III.A of this Agreement, EPA is not obligated to comply with paragraphs III.C-D.

F. Nothing herein shall prohibit any Petitioner from challenging any EPA final agency action taken pursuant to this Agreement.

G. Within 10 days of EPA's finalization of a rule pursuant to paragraph III.D above, Petitioner agrees to move for dismissal of its petition for review in the Litigation, pursuant to Fed. R. App. P. 42(b), with each Party bearing its own costs and attorneys' fees.

H. Petitioner and EPA agree to file all necessary motions with the court, if any are needed, to stay all proceedings in the Litigation pending an order by the court dismissing the Litigation.

IV. Agency Discretion.

Except as expressly provided herein, nothing in this Agreement shall be construed to limit or modify the discretion accorded EPA by the CAA or by general principles of administrative law. Nothing in the terms of this Agreement shall be construed to limit EPA's authority to alter, amend, or revise any final rule EPA issues in accordance with this Agreement.

V. Effect of Agreement

This Agreement shall not constitute an admission by EPA in the Litigation of any fact, wrongdoing, misconduct or liability on the part of the United States, its officers, or any person affiliated with them. This Agreement shall not constitute an admission or evidence of jurisdiction of the Court over EPA or the subject matter of the Litigation. The provisions, terms and conditions of this Agreement shall not be admissible in any judicial or administrative proceeding other than a proceeding involving, directly or indirectly, Section III of this Agreement.

The Parties agree and acknowledge that before this Agreement is final, EPA must provide notice in the Federal Register and an opportunity for public comment pursuant to Clean Air Act section 113(g), 42 U.S.C. § 7413(g). EPA shall submit notice of this Agreement to the Office of the Federal Register for publication as expeditiously as possible after this Agreement is executed (i.e., signed) by the Parties. After this Agreement has undergone an opportunity for notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold their consent to the Agreement, in accordance with section 113(g) of the Clean Air Act. EPA shall then promptly provide written notice to Petitioner regarding whether or not EPA and/or the Attorney General elects to withdraw or withhold its consent to this Agreement. This Agreement shall become final on the date that EPA provides such written notice to Petitioners

VI. Notice.

Any notice required or made with respect to this Agreement shall be in writing and shall be effective upon receipt. Any notice or other documents required pursuant to this Agreement shall be sent to the following contact persons:

For Petitioner ACC:

Leslie A. Hulse
American Chemistry Council
700 Second Street NE
Washington, DC 20002
(202) 249-6131

David M. Friedland
Beveridge & Diamond, PC
1350 I Street, NW Suite 700
Washington, DC 20005-3311
(202) 789-6047

For EPA:

Elizabeth B. Dawson
Environmental Defense Section
601 D St. NW
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-8293 (tel)
(202) 514-8865 (fax)
elizabeth.dawson@usdoj.gov

Upon written notice to the other Parties, a Party may designate a successor contact person for any matter relating to this Agreement.

VII. Representative Authority.

Each undersigned representative of the Parties certifies that he or she is fully authorized by the Party to enter into this Agreement and to bind such Party to comply with the terms and conditions of this Agreement.

VIII. Mutual Drafting.

It is expressly understood and agreed that this Agreement was jointly drafted by the Parties. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting Party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement.

IX. Counterparts and Effective Date.

This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts. The terms of this Agreement shall become effective upon execution by all Parties.

X. Compliance with Other Laws.

No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or that EPA take actions in contravention of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706, the CAA, or any other law or regulation, either substantive or procedural.

XI. Force Majeure

The Parties recognize that the possibility exists that circumstances outside the reasonable control of EPA could delay compliance with the timetables contained in this Agreement. Such situations include, but are not limited to, a government shut-down such as occurred in 1995, 1996, and 2013, a lapse in appropriations for EPA, or currently unforeseen catastrophic environmental events requiring immediate and/or time-consuming response by EPA. Should a delay occur due to such circumstances, any resulting failure to meet the timetables set forth herein shall not constitute a failure to comply with the terms of this Agreement, and any deadlines occurring within one hundred twenty (120) days of the termination of the delay shall be extended automatically one day for each day of the shut-down, lapse in appropriations or unforeseen catastrophic environmental event, or more if the Parties so agree. Nothing in this Section (i.e., Section XI) shall preclude EPA from seeking an additional extension through modification of this Agreement for any reason

XII. Third-Party Beneficiaries.

Nothing in this Agreement shall be construed to make any person or entity not executing this Agreement a third-party beneficiary to this Agreement.

XIII. Integration Clause.

This Agreement constitutes the final, complete and exclusive agreement and understanding between Petitioners and EPA with respect to the matters addressed in this Agreement. There are no representations, agreements or understandings relating to the settlement and dismissal of the Litigation other than those expressly contained in this Agreement.

XIV. Modifications.

The Parties may agree to modify this Agreement in a written document signed by the Parties.

XV. General Reservation of Rights.

Except as set forth in this Agreement, the Parties reserve and do not waive any and all other legal rights and remedies.

WHEREFORE, after having reviewed the terms and conditions of this Agreement, Petitioners and the United States on behalf of EPA hereby consent and agree to the terms and conditions of this Agreement.

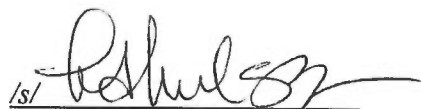
So agreed,

~~John C. Cruden~~ Jeffrey H. Wood
Acting Assistant Attorney General

/s/ ~~Elizabeth B. Dawson~~ Eric G. Hostetler
Environmental Defense Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611 (202)
~~514-8293~~ 305-2326
Counsel for Respondent EPA

June 15, 2017

David M. Friedland
Beveridge & Diamond, PC
1350 I Street, NW Suite 700
Washington, DC 20005-3311
(202) 789-6047
*Counsel for Petitioner
American Chemistry Council*


/s/

Leslie A. Hulse
American Chemistry Council
700 Second Street NE
Washington, DC 20002
(202) 249-6131
*Assistant General Counsel for Petitioner
American Chemistry Council*

October 18, 2016

Appendix A

1. Information differentiating PRDs that serve as miscellaneous process vents in routine service from PRDs in emergency shutdown systems designed to open automatically in the event of a process upset
2. Number and types of PRDs that are actuated by a pressure of more than 2.5 pounds per square inch gauge (including low-emitting, vented to wastewater drains, on vacuum lines, on containers, those used in vapor service, gas or light liquid service, heavy liquid service, etc.)
3. Identification of practices used in the industry to limit or control releases from PRDs, including practices used to prevent conditions that could cause a release, and the characterization of those controls to determine their effectiveness, and practices that result in mitigation of releases
4. Information on applicable state or local requirements on PRDs—including information on requirements to monitor, report or control releases
5. Best practices in the industry to monitor and detect PRD releases
6. Best practices in the industry to prevent PRD atmospheric releases
7. Availability, capacity (particularly during high flow emergency events) and operational characteristics of on-site controls to accept additional flow from PRDs and cost and feasibility information regarding constructing controls in the industry
8. Availability of backup power to run controls during a force majeure type event (e.g., hurricane, external loss of power, etc.)
9. For the calendar years 2013-2015, information about PRDs including set pressure, capacity, how frequently PRDs are inspected, when and how often the PRD releases, the duration of PRD releases, the pressure when the PRD released, the amount of the release, and how the facility knows a release has occurred
10. Information on ownership, operation and other regulations applicable to PRDs, particularly PRDs on mobile containers such as railcars and over-the-road tanker vehicles, including, but not limited to, US Department of Transportation regulations applicable to mobile containers and citations to these applicable regulations
11. For mobile containers, such as railcars and over-the-road tanker vehicles, information regarding how long the different categories of containers are on site at the facility and information on schedule and frequency of unloading these containers at the facility ; different categories of containers can include, at least, the following: (1) containers at the facility incidental to transport; (2) containers at the facility that move throughout the facility; and (3) containers that are at the facility for at least a year, but are not permanently at the facility
12. Information on the contents and composition (including speciation and bulk material

properties) of the contents of the mobile containers, such as railcars and over-the-road tankers that are at the facility for six months or longer; some information may be provided by the container's manifest

13. Information on why mobile containers must be stored on site for six months or longer at the facility