



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 10 2018

REPLY TO THE ATTENTION OF

SC-5J

Jerry Planeta
Plant Manager
Chicago Aerosol, LLC
1300 North Street
Coal City, Illinois 60416
jplaneta@chicagoaerosol.com


Re: Chicago Aerosol, LLC, Coal City, Illinois
Consent Agreement and Final Order
Docket No: CAA-05-2018-0013

Dear Mr. Planeta:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on July 10, 2018. Please note Chicago Aerosol, LLC's obligation to pay a civil penalty in the amount of \$63,000 in the manner prescribed in paragraphs 36-41 and please reference your check with the docket number.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jon Micah Goeller, Regional Counsel, at (312) 886-3446. Thank you for your assistance in resolving this matter.

Sincerely yours,


Michael E. Hans, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

cc. Jon Micah Goeller, ORC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Chicago Aerosol, LLC
Coal City, Illinois

Respondent.



Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

Docket No. CAA-05-2018-0013

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations at 40 C.F.R. Part 68.

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. Respondent is Chicago Aerosol, LLC (Chicago Aerosol or Respondent), a corporation doing business in the State of Illinois.

4. Under 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. In order to resolve this matter without litigation, Chicago Aerosol consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Chicago Aerosol admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Chicago Aerosol waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include

monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which has since been codified, as amended, at 40 C.F.R. § 68.130.

15. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated "Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)," 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (Risk Management Program Regulations).

16. The Risk Management Program Regulations, at 40 C.F.R. § 68.3, define "stationary source" as "any buildings, structures, equipment, installations, or substance emitting

stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.”

17. The Risk Management Program Regulations, at 40 C.F.R. § 68.3, define “process” as “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.”

18. The Risk Management Program Regulations, at Tables 3 and 4 referenced in 40 C.F.R. § 68.130, list butane (CAS #106-97-8), difluoroethane (CAS # 75-37-6), isobutane (CAS#75-28-5), methyl ether (CAS #75-115-10-6) and propane (CAS# 74-98-6), as regulated flammable substances with threshold quantities of 10,000 lbs. Under 40 C.F.R. § 68.115(b)(2), a regulated flammable substance is subject to Risk Management Program regulations if it is present in a mixture and the concentration of the substance is in excess of one percent of the total mixture and maintained in quantities in excess of 10,000 pounds.

19. The Risk Management Program Regulations, at 40 C.F.R. § 68.115(a), provide that a “threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”

20. The Risk Management Program Regulations, at 40 C.F.R. § 68.12(a), require that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided in 40 C.F.R. §§ 68.150 through 68.185.

21. The Risk Management Program Regulations, at 40 C.F.R. § 68.12(c), require that, in addition to meeting the general requirements of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements

identified at 40 C.F.R. § 68.12(d).

22. Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for each violation of Section 112(r) of the Act that occurred from March 15, 2004, to January 12, 2009, and a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for each violation of Section 112(r) of the Act, 42 U.S.C. § 7412(r), that occurred after January 12, 2009, to December 6, 2013, and a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for each violation of Section 112(r) of the Act 42 U.S.C. § 7412(r), that occurred after December 6, 2013, through November 2, 2015; and a civil penalty up to \$44,359 per day for each violation, with a maximum of \$356,312 for each violation that occurred after November 2, 2015, but are assessed on or after August 1, 2016.

23. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

24. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

25. Chicago Aerosol is a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

26. Chicago Aerosol owns and operates the Chicago Aerosol, LLC facility at 1300

North Street, Coal City, Illinois, 60416, which consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

27. On May 8, 2014, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations at 40 C.F.R. Part 68, Chicago Aerosol submitted to U.S. EPA an RMP for the Coal City facility.

28. According to the RMP submitted to U.S. EPA by Chicago Aerosol:

a. fell within North American Industry Classification System Code 32599 as “all other chemical product and preparation manufacturing”;

b. used flammables including butane, difluoroethane, isobutane, methyl ether and propane as process chemicals and held at least 10,000 lbs.

29. Under the Risk Management Program Regulations, the Chicago Aerosol facility is a “stationary source” as defined in 40 C.F.R. § 68.3.

30. As of July 6, 2004, Chicago Aerosol’s Coal City, Illinois, facility exceeded the applicability threshold established by 40 C.F.R. § 68.130, and was subject to 40 C.F.R. Part 68.

31. For purposes of compliance with 40 C.F.R. Part 68, in its RMP, Chicago Aerosol has acknowledged that it was required to meet Program 3 eligibility requirements at the processes within the Coal City, Illinois, facility that are the subject of the violations alleged in this CAFO.

32. On August 18, 2015, an authorized representative of U.S. EPA conducted an inspection at Chicago Aerosol’s, Coal City, Illinois, facility to determine compliance with 40 C.F.R. Part 68.

33. Based on the inspection conducted on August 18, 2015, and a review of additional information received by U.S. EPA subsequent to that date, U.S. EPA alleged the following

violations of the Risk Management Program Regulations at the Coal City, Illinois, facility:

- a. Respondent failed to document names or positions of people who have responsibility to implement individual requirements of the risk management program, as required under 40 C.F.R. § 68.15(c);
- b. Respondent failed to review and update the offsite consequence analyses at least once every five years, as required under 40 C.F.R. §68.36(a);
- c. Respondent failed to maintain records on the offsite consequence analyses that includes data used to estimate population and environmental receptors potentially affected, as required under 40 C.F.R. §68.39(e);
- d. Respondent failed to compile information pertaining to the equipment in the process that included design codes and standards employed, as required under 40 C.F.R. §68.65(d)(1)(vi);
- e. Respondent failed to document that equipment complies with recognized and generally accepted good engineering practices, as required under 40 C.F.R. §68.65(d)(2);
- f. Respondent failed to establish a system to promptly address the process hazard analysis team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; and communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions, as required under 40 C.F.R. § 68.67(e);
- g. Respondent failed to update and revalidate the process hazard analysis to assure that the process hazard analysis is consistent with the current process at least every five years, as required under 40 C.F.R. § 68.67(f);
- h. Respondent failed to retain documented resolution of recommendations, as required under 40 C.F.R. § 68.67(g);
- i. Respondent failed to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and that addresses operating limits, as required under 40 C.F.R. § 68.69(a)(2);
- j. Respondent failed to certify annually that operating procedures are current and accurate, as required under 40 C.F.R. §68.69(c);
- k. Respondent failed to prepare a record which contains the identity of the employee, the date of training and the means used to verify that the employee understood the training, as required under 40 C.F.R. §68.71(c);
- l. Respondent failed to certify that they have evaluated compliance with the provisions of Subpart D – Program 3 Prevention Program at least every three years to verify that procedures and practices developed are adequate and being followed, as required under 40 C.F.R. § 68.79(a);
- m. Respondent failed to determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected, as required under 40 C.F.R. § 68.79(d).

34. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

35. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Civil Penalty

36. Based on an analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation and prompt compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$63,000.

37. Within 30 days after the effective date of this CAFO, Respondent must pay the \$63,000 civil penalty by sending a company or personal check, by regular U.S. Postal Service mail, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "Chicago Aerosol, LLC" and the docket number of this CAFO.

38. A transmittal letter stating Respondent's name, complete address, and the docket number of this CAFO must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Monika Chrzaszcz (SC-5J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Jon Micah Goeller(C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

39. This civil penalty is not deductible for federal tax purposes.

40. If Chicago Aerosol does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

41. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

42. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail address: toney.marcy@epa.gov (for Complainant), and ploughnane@chicagoaerosol.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. 22.6.

43. This CAFO fully resolves Chicago Aerosol's liability for civil penalties for the violations alleged in this CAFO.

44. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

45. This CAFO does not affect Chicago Aerosol's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 43, above, compliance with this CAFO will not be a defense to any actions subsequently commenced by Complainant pursuant to federal laws administered by it.

46. This CAFO is for settlement purposes only. It shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this CAFO. This CAFO and the statements contained herein shall not be used for any purpose in any proceeding except the enforcement of this CAFO by Complainant and Chicago Aerosol. As to others who are not parties to this CAFO, nothing contained herein is an admission of Chicago Aerosol, and by entering this CAFO, Chicago Aerosol has not waived any right, cause of action or defense available to Respondent unless otherwise stated herein.

47. Respondent certifies, upon information and belief, that it is complying fully with

40 C.F.R. Part 68.

48. The terms of this CAFO bind Chicago Aerosol, its successors, and assigns.

49. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

50. Each party agrees to bear its own costs and attorneys' fees in this action.

51. This CAFO constitutes the entire agreement between the parties.

52. This CAFO is effective when filed with the Regional Hearing Clerk.

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of Chicago Aerosol, LLC
Docket No. CAA-05-2018-0013


Chicago Aerosol, Inc., Respondent

Date: 6-4-18

By: 
Chicago Aerosol, LLC
Jerry Planeta

United States Environmental Protection Agency, Complainant

Date: 6/28/2018


Douglas Ballotti, Acting Director
Superfund Division

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. EPA, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

July 6, 2018

Date

Ann Coyle

Ann Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Chicago Aerosol, LLC
Docket No. CAA-05-2018-0013

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2018-0013, which was filed on July 10, 2018, in the following manner to the addressees:

Copy by E-Mail to
Respondent:

Jerry Planeta
jplaneta@chicagoaerosol.com

Copy by E-Mail to
Attorney for Complainant,
EPA, Region 5:

Jon Micah Goeller
Goeller.jon@epa.gov @epa.gov

Copy by E-Mail to
Enforcement Officer
EPA, Region 5:

Monika Chrzaszcz
Chrzaszcz.monika@epa.gov

Copy by E-Mail to
Regional Judicial Officer,
EPA, Region 5:

Ann Coyle
coyle.ann@epa.gov

Dated: July 10, 2018


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5