

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

-----X
In the Matter of:)
Sodus Cold Storage Company, Inc.)
Sodus, New York)
Respondent.)
-----X

Docket No. CAA-02-2013-1212
CONSENT AGREEMENT AND
FINAL ORDER

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 AUG 29 P 4 52
REGIONAL HEARING
CLERK

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CA/FO”) is issued pursuant to Section 113(d) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(d). The Complainant in this action is the Director of the Emergency and Remedial Response Division of the United States Environmental Protection Agency (“EPA”), Region 2, who has been delegated the authority to institute this action.

2. EPA and the U.S. Department of Justice have determined, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that EPA may pursue this matter through administrative enforcement action.

3. Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

4. It has been agreed by the parties that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without litigation.

STATUTORY BACKGROUND

5. Section 113(d) of the Act, 42 U.S.C. § 7413(d), provides for the assessment of penalties for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r).

6. Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate release prevention, detection, and correction requirements regarding regulated substances in order to prevent accidental releases of regulated substances. EPA promulgated regulations in 40 C.F.R. Part 68 to implement Section 112(r)(7) of the Act, which set forth the

requirements of risk management programs that must be established and implemented at affected stationary sources. The regulations at 40 C.F.R. Part 68, Subparts A through G, require owners and operators of stationary sources to, among other things, develop and implement: (1) a management system to oversee the implementation of the risk management program elements; and (2) a risk management program that includes, but is not limited to, a hazard assessment, a prevention program, and an emergency response program. Pursuant to 40 C.F.R. Part 68, Subparts A and G, the risk management program for a stationary source that is subject to these requirements is to be described in a risk management plan ("RMP") that must be submitted to EPA.

7. Sections 112(r)(3) and (5) of the Act, 42 U.S.C. §§ 7412(r)(3) and (5), require the Administrator to promulgate a list of regulated substances, with threshold quantities. EPA promulgated a regulation known as the List Rule, at 40 C.F.R. Part 68, Subpart F, which implements Section 112(r)(3) of the Act, and which lists the regulated substances and their threshold quantities.

8. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. §7412(r)(7), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process shall comply with the requirements of 40 C.F.R. Part 68 (including, but not limited to, submission of an RMP to EPA), no later than June 21, 1999, or three years after the date on which such regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which the regulated substance is first present in a process above the threshold quantity, whichever is latest.

9. The regulations set forth at 40 C.F.R. Part 68 separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3. A covered process is subject to Program 3 requirements, as per 40 C.F.R. § 68.10(d), if the process: a) does not meet one or more of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b); and b) if either one of the following conditions is met: the process is listed in one of the specific North American Industry Classification System (generally referred to as "NAICS") codes found at 40 C.F.R. § 68.10(d)(1) or the process is subject to the United States Occupational Safety and Health Administration process safety management standard set forth in 29 C.F.R. § 1910.119. As required by 40 C.F.R. § 68.10(c), a facility must register its RMP-covered process as a Program 2 process if it does not meet the requirements of either Program 1 or Program 3.

10. The regulations set forth at 40 C.F.R. § 68.12(d) require that the owner or operator of a stationary source with a Program 3 process undertake certain tasks, including, but not limited to, development and implementation of a management system (pursuant to 40 C.F.R. § 68.15), the implementation of prevention program requirements, which include mechanical integrity (pursuant to 40 C.F.R. §§ 68.65-68.87), the development and implementation of an emergency response program (pursuant to 40 C.F.R. §§ 68.90-68.95), and the submission of additional information on prevention program elements regarding Program 3 processes (pursuant to 40 C.F.R. § 68.175).

11. The regulations set forth at 40 C.F.R. §68.190(a) require that the owner or operator of a stationary source review and update the RMP as specified under 40 C.F.R. §68.190(b) and

submit it to EPA. 40 C.F.R. §190(b)(1) requires that the owner or operator of a stationary source revise and update the RMP submitted under 40 C.F.R. §68.150 within five years of its initial submission or most recent update, whichever is later.

FINDINGS OF FACT

12. Respondent is the owner and/or operator of a facility located at 50 Maple Avenue, Sodus, New York, hereinafter referred to as the "Facility."

13. Anhydrous ammonia is present in a process at the Facility.

14. On August 6, 1999, Respondent submitted an initial RMP for the Facility in which it identified the process chemical as anhydrous ammonia, specified a quantity of 14,000 pounds, and identified the process as subject to Program 3 requirements. On January 29, 2001, November 13, 2003, April 27, 2007, February 5, 2010 and June 13, 2011, Respondent submitted updated RMPs which identified the process chemical as anhydrous ammonia, specified quantities of 14,693 pounds, 15,800 pounds, 14,600 pounds, 14,600 pounds and 14, 600 pounds, respectively and identified the process as subject to Program 3 requirements.

15. On or about November 18, 2009, EPA conducted an inspection ("Inspection") at the Facility to determine compliance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the applicable regulations listed in 40 C.F.R. Part 68.

16. On September 29, 2010, EPA issued a Compliance Order to Respondent, Index No. CAA-02-2010-1017 (the "Order") pursuant to Section 113 of the Act regarding the Facility. The Order required Respondent to perform certain activities at the Facility to come into compliance with Section 112(r) of the Act and 40 C.F.R. Part 68.

17. On July 29, 2011, Respondent submitted the Final Report required by the Order to EPA, which included a certification that it is in compliance with Section 112(r) of the Act.

18. On September 11, 2012, November 2, 2012 and December 16, 2012, Respondent submitted financial information to EPA in support of its claim that it cannot afford to pay a penalty in this matter.

EPA CONCLUSIONS OF LAW

19. Respondent, Sodus Cold Storage Company, Inc., is, and at all times referred to herein was, a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

20. The Facility is a stationary source as that term is defined at 42 U.S.C. §7412(9) and 40 C.F.R. § 68.3.

21. Anhydrous ammonia is a regulated substance pursuant to Section 112(r)(2) and (3) of the Act and 40 C.F.R. § 68.3.

22. The threshold quantity for anhydrous ammonia as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

23. At the time of the Inspection, and as detailed in the Order, Respondent did not fully comply with the requirements of 40 C.F.R. Part 68 regarding the Facility.

24. Respondent's failure to fully comply with the requirements of 40 C.F.R. Part 68 regarding the Facility constitute violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r). Respondent is therefore subject to the assessment of penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

25. Based on a review of the financial information submitted to EPA, it was determined that Respondent has a limited ability to pay a penalty.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 113(d) of the Act and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (40 C.F.R. Part 22), it is hereby agreed by and between Complainant and Respondent, as follows:

26. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent a) admits the jurisdictional basis for this matter, b) admits the Findings of Fact set forth above, c) consents to the assessment of the civil penalty set forth below, d) consents to the issuance of the attached Final Order, and e) waives its right to contest or appeal the attached Final Order.

27. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

28. Respondent hereby certifies that it is now in compliance with all applicable requirements of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, that it has implemented a risk management program at the Facility, and that it has submitted a Risk Management Plan to EPA pursuant to the requirements of 40 C.F.R. Part 68.

29. Respondent agrees to pay a civil penalty in the total amount of **seven thousand five hundred** (\$7,500.00), as described below. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer ("EFT"). Payment of the penalty must be received by EPA **on or before thirty (30) calendar days** after the date of signature of the Final Order at the end of this document (hereinafter referred to as the "due date").

If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America" and shall be mailed to:

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

The check shall be identified with a notation listing the following: "In the Matter of Sodus Cold Storage Company, Inc." and shall bear thereon "Docket No. CAA-02-2013-1212."

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment: \$7,500.00
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: Sodus Cold Storage, Inc.
- g. Case Number: CAA-02-2013-1212

If payment is made by check, Respondent shall simultaneously furnish proof that such payment has been made to:

Sharon E. Kivowitz
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866.

If payment is made by EFT, Respondent shall simultaneously send a letter to each of the above addressees which references the date of the EFT, the payment amount, the name of the case, the case number, and Respondent's name and address.

30. If Respondent fails to make full and complete payment of the civil penalty that it is required to pay pursuant to this CA/FO, this case may be referred by EPA to the United States

Department of Justice and/or the United States Department of the Treasury for collection. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

- a. Interest. If Respondent fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment due date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment due date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly non-payment penalty for each calendar quarter during which such a failure to pay persists. Such non-payment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding penalties and non-payment penalties accrued from the beginning of such quarter.

31. The penalties specified in Paragraphs 29 and 30, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or federal taxes.

32. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liability that might have attached under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), as a result of the violations set forth in the Findings of Fact and Conclusions of Law. Respondent's payment of the civil penalty in accordance with the terms and conditions of this section shall resolve any such liability.

33. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent also consents to the issuance of the accompanying Final Order.

34. Respondent waives its right to request and/or obtain a hearing on this Consent Agreement, or the accompanying Final Order, including any right to contest any of the Findings of Fact and Conclusions of Law set forth in this Consent Agreement and any right to contest any of the terms or conditions set forth in this Consent Agreement.

35. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions between EPA staff and the Regional Administrator, Deputy Regional Administrator, Regional Judicial Officer, or Director of the Emergency and Remedial Response Division of EPA Region 2, and further waives the right to be served with and to reply to any memorandum or communication addressed by EPA staff to the Regional Administrator, Deputy Regional Administrator, Regional Judicial Officer, or Director of the Emergency and Remedial Response Division of EPA Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official issue the attached Final Order.

36. This CA/FO and any provision herein shall not be construed of as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CA/FO or any of its terms and conditions.

37. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, State, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State, or local permit. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

38. Each party hereto shall bear its own costs and attorneys' fees in this action resolved by this CA/FO.

39. Full and complete satisfaction of the requirements of this CA/FO shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

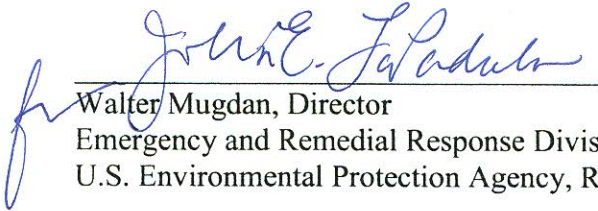
40. The person signing below on behalf of Respondent hereby certifies that he or she is fully authorized by Respondent to execute this Consent Agreement on behalf of Respondent and to bind Respondent legally to this Consent Agreement in accordance with all of the terms and conditions contained herein.

41. The Director of the Emergency and Remedial Response Division of EPA Region 2 has been delegated the authority to sign the Consent Agreement in this action, and the Regional Judicial Officer of EPA Region 2 has been delegated the authority to sign the Final Order in this action.

42. Respondent consents to service upon Respondent of a copy of this CA/FO by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

**Re: In the Matter of Sodus Cold Storage Company, Inc.
Docket No. CAA-02-2013-1212**

**For Complainant
U.S. Environmental Protection Agency, Region 2**



Walter Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

Date: 8/16/13

Re: In the Matter of Sodus Cold Storage Company, Inc.
Docket No. CAA-02-2013-1212

For Respondent
Sodus Cold Storage Company, Inc.

Sandra J. Bishop
Signature

Date: July 2, 2013

SANDRA J. BISHOP
Name (Printed or Typed)

PRESIDENT
Title (Printed or Typed)

**Re: In the Matter of Sodus Cold Storage Company, Inc.
Docket No. CAA-02-2013-1212**

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.



Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection
Agency – Region 2
290 Broadway
New York, New York 10007-1866

Date: August 27, 2013

Re: In the Matter of Sodus Cold Storage Company, Inc.
Docket No. CAA-02-2013-1212

CERTIFICATE OF SERVICE

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, bearing Docket No. CAA-02-2013-1212 in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007

Copy by Certified Mail,
Return Receipt Requested

Sandra Jewett Bishop, President
Sodus Cold Storage Company, Inc.
50 Maple Avenue
Sodus, New York 14551-1018

Copy by Regular Mail

Thomas A. DeSimon
Harris Beach, PLLC
99 Garnsey Road
Pittsford, NY 14534

Dated: 8/29/13
New York, New York

Rayetta Martin