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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

REGION VII
11201 Renner Blvd.
Lenexa, Kansas 66219

In the Matter of:)
Pretium Packaging, LLC)
15450 S. Outer Forty Drive, Suite 120)
Chesterfield, Missouri 63017,)
Respondent.)
One Devco Drive)
Manchester, Pennsylvania 17345,)
and)
5408 61st Avenue West)
Muscatine, Iowa 52761,)
Facilities.)

EPA Docket Nos. CAA-03-2013-0216,
CAA-07-2013-0029
Proceedings Pursuant to Sections
112(r) and 113 of the Clean Air Act,
42 U.S.C. §§ 7412(r) and 7413

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 113 of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7413, and under the authority of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Administrator has delegated these authorities to the Regional Administrators, who have, in turn, delegated them to the Director, Hazardous Site Cleanup Division, Region III, and the Director of the Air and Waste Management Division, Region VII.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as “CA/FO”) as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(2).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Consent Agreement.
4. With the exception of Paragraph 3, above, for purposes of this proceeding, Respondent neither admits nor denies factual allegations set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT
MANCHESTER FACILITY**

5. Pretium Packaging, LLC ("Respondent") is the operator of a manufacturing facility located on or near One Devco Drive in Manchester, Pennsylvania (the "Manchester Facility").
6. Respondent is organized in the State of Missouri with its principal place of business located at 15450 South Outer Forty Drive, Suite 120 in Chesterfield, Missouri.
7. Respondent submitted to EPA a Risk Management Plan ("RMP") for the Manchester Facility on November 4, 2010.
8. Respondent has been the operator of the Manchester Facility since February 2010.
9. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).
10. Section 112(r) to the CAA, 42 U.S.C. § 7412(r), requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7), 42 U.S.C. § 7412(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7). The list of regulated substances and threshold levels can be found in 40 C.F.R. § 68.130.

11. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. The regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program is described in a risk management plan that must be submitted to EPA. The risk management plan must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in response to an accidental release of a regulated substance, so as to protect human health and the environment.

12. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and its regulations at 40 C.F.R. §§ 68.10(a) and 68.150(a), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity must submit a risk management plan to EPA no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

13. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$32,500 per day for each violation of Section 112(r) of the CAA that occurs after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation of Section 112(r) of the CAA that occurs after January 12, 2009.

14. The regulations at 40 C.F.R. § 68.3 define “stationary source,” in part, 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.

15. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA in 40 C.F.R. § 68.130.

17. The 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. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

18. EPA conducted an inspection of the Facility on December 17, 2012, to determine Respondent's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the Chemical Accident Prevention Provisions at 40 C.F.R. Part 68.

19. The Manchester Facility handles and/or stores and has handled and/or stored fluorine, Chemical Abstracts Service ("CAS") Number 7782-41-4, at all times relevant to this Consent Agreement. Fluorine is a listed toxic substance at 40 C.F.R. § 68.130.

20. The Manchester Facility produces blow-molded, in-line fluorinated, high density polyethylene containers using concentrated fluorine. A mixture of 20% fluorine and 80% nitrogen is diluted further, and then delivered to mold machines to create a barrier on the bottle surface to minimize permeation through the plastic. The fluorine-nitrogen mixture is stored in eight tubes on a tube trailer, with each tube containing 1,800 pounds.

21. The Standard Industrial Classification code for the Manchester Facility is 3089 (manufacturing plastics products) and the North American Industrial Classification System code for the Facility is 326216 (plastics bottle manufacturing).

22. The inspection and documents received after the inspection revealed a number of concerns at the Manchester Facility:

- a. The process hazard analysis did not document either the assignment of tasks or the resolution of tasks. On January 18, 2013, Respondent provided EPA with an updated process hazard analysis that included task completion dates and assigned personnel;
- b. The Facility had no written procedures for mechanical integrity or maintenance for some of the fluorine process equipment, including the fluorine transfer hose and the blender piping. After the inspection, Respondent provided EPA with a new maintenance schedule, which included applicable inspections codes, frequencies, and the change-out period for all of the equipment in the fluorine process;
- c. Respondent had failed to update emergency contact information in March 2012, when responsibilities for the RMP and for emergency response changed. Respondent submitted corrections on December 27, 2012, after the inspection; and
- d. Respondent did not submit an RMP in February 2010, when the Facility was acquired by Respondent. Respondent submitted an RMP to EPA on November 4, 2010.

23. EPA's investigation indicates that Respondent failed to satisfy the requirements of 40 C.F.R. Part 68 to fully implement a Program 3 Risk Management Program for the Manchester Facility. Respondent failed to comply with the following requirements of Subpart D and Subpart G of 40 C.F.R. Part 68:

- a. Failure to assure that assignment of recommendations from a process hazard analysis are documented, or that resolution of tasks are documented, in accordance with 40 C.F.R. § 68.67(e);
- b. Failure to establish and/or implement written procedures to maintain the on-going mechanical integrity of the process equipment, in accordance with 40 C.F.R. § 68.73(b);
- c. Failure to update emergency contact information, in accordance with 40 C.F.R. § 68.195(b); and
- d. Failure to timely submit an RMP, in accordance with 40 C.F.R. § 68.150(b)(3).

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT
MUSCATINE FACILITY**

24. The findings of fact contained in Paragraphs 5 through 23 of this CA/FO are incorporated by reference herein as though fully set forth at length.
25. Based on its investigation, Region VII determined that Pretium Packaging, LLC (“Respondent”) was the operator of a manufacturing facility located on or near 5408 61st Avenue West in Muscatine, Iowa (the “Muscatine Facility”).
26. Respondent was the operator of the Muscatine Facility from at least September 30, 2008 through October 2010.
27. Respondent closed the Muscatine Facility prior to the date of this Consent Agreement.
28. During its period of operation, the Muscatine Facility handled and/or stored fluorine.
29. The Muscatine Facility produced blow-molded, in-line fluorinated, high density polyethylene containers using concentrated fluorine. Respondent stored a mixture of 20% fluorine and 80% nitrogen, then diluted it and delivered to mold machines to create a barrier on the bottle surface to minimize permeation through the plastic. The fluorine-nitrogen mixture was stored in eight tubes on a tube trailer, with each tube containing 1,800 pounds.
30. Respondent never submitted to EPA an RMP for the Muscatine Facility, in accordance with 40 C.F.R. § 68.150(b)(3).

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT
MANCHESTER FACILITY**

31. The findings of fact contained in Paragraphs 5 through 30 of this CA/FO are incorporated by reference herein as though fully set forth at length.

32. Fluorine is a regulated substance pursuant to Section 112(r)(2) and (3) of the Clean Air Act, and is listed at 40 C.F.R. § 68.130, with a threshold quantity of 1,000 pounds.

33. The entire weight of the fluorine-nitrogen mixture in each of the tubes, 1,800 pounds, constitutes a regulated substance under Part 68, pursuant to 40 C.F.R. § 68.115(b).

34. At all times relevant to this Consent Agreement, fluorine has been present in a process at the Manchester Facility.

35. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

36. Respondent has been the operator of a "stationary source," as the term is defined at 40 C.F.R. § 68.3, since approximately February 2010 at the Manchester Facility.

37. Respondent is subject to the requirements of Section 112(r) of the CAA, 40 U.S.C. § 7412(r), and 40 C.F.R. Part 68, because it is the owner and/or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

38. The Manchester Facility is a Program 3 Facility under the Chemical Accident Prevention Provisions, in accordance with 40 C.F.R. § 68.10(c).

39. Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its regulations at 40 C.F.R. Part 68, at the Manchester Facility by failing to meet the requirements of Subparts D and G of the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68, as set forth in Paragraph 23 above. Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT
MUSCATINE FACILITY**

40. The findings of fact contained in Paragraphs 5 through 39 of this CA/FO are incorporated by reference herein as though fully set forth at length.

41. From approximately September 2008 through at least October 2010, fluorine was present in a process at the Muscatine Facility.

42. Respondent was the operator of a "stationary source," as the term is defined at 40 C.F.R. § 68.3, from approximately September 2008 through at least October 2010 at the Muscatine Facility.

43. Respondent was subject to the requirements of Section 112(r) of the CAA, 40 U.S.C. § 7412(r), and 40 C.F.R. Part 68, at the Muscatine Facility because it was the owner and/or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

44. The Muscatine Facility was a Program 3 Facility under the Chemical Accident Prevention Provisions, in accordance with 40 C.F.R. § 68.10(c).

45. Respondent failed to submit an RMP for the Muscatine Facility, in violation of 40 C.F.R. § 68.150(b)(3).

46. Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its regulations at 40 C.F.R. Part 68, at the Muscatine Facility by failing to meet the requirements of Subpart G of the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68, as set forth in Paragraph 30 above. Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

SETTLEMENT

47. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), at the Manchester Facility and the Muscatine Facility, as set forth above, in the amount of **\$75,860**.

48. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

PAYMENT TERMS

49. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the civil penalty of \$75,860, no later than thirty (30) days after the effective date of the Final Order (the "final due date") by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Numbers of this action, *i.e.*, CAA-03-2013-0216, and CAA-07-2013-0029;
- b. All checks shall be made payable to **United States Treasury**;

- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell, 513-487-2044

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed 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

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706

Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

45. Respondent shall submit copies of the check, or verification of wire transfer or ACH, to the following persons:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Cynthia T. Weiss
Senior Assistant Regional Counsel (3RC42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

46. The CAA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012).

47. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to 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, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions of this CA/FO shall result in the assessment of late payment charges, including interest beyond that required by this CA/FO, penalties and/or administrative costs of handling delinquent debts.

48. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. 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).

49. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix B of EPA's *Resource Management Directives – Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

50. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

51. Failure of Respondent to pay the penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

52. By entering into this CA/FO, Respondent does not admit any liability for the civil claims alleged herein.

53. For purposes of this proceeding, Respondent expressly waives its right to hearing and to appeal the Final Order pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

54. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, the Manchester Facility is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

55. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind said Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

56. This CA/FO does not constitute a waiver, suspension or modification of the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r); or any regulations promulgated thereunder.

57. This CA/FO is a complete and final settlement of all civil and administrative claims and causes of action set forth in this CA/FO for alleged violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Nothing herein shall be construed to limit the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the

public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

58. Each party to this action shall bear its own costs and attorney's fees.

In the Matter of Pretium Packaging, LLC

EPA Docket Nos. CAA-03-2013-0216,
CAA-07-2013-0029

FOR PRETIUM PACKAGING, LLC



Name:

Title: TIMOTHY J. WEHRFRITZ
UT ADMINISTRATION

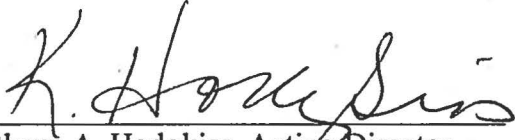
9/20/13

Date

In the Matter of Pretium Packaging, LLC

EPA Docket Nos. CAA-03-2013-0216,
CAA-07-2013-0029

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION III



Kathryn A. Hodgkiss, Acting Director
Hazardous Site Cleanup Division

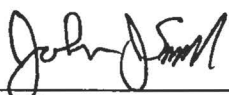


Date

In the Matter of Pretium Packaging, LLC

EPA Docket Nos. CAA-03-2013-0216,
CAA-07-2013-0029

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION VII



for Becky Weber, Director
Air and Waste Management Division

9/24/13

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

**REGION VII
11201 Renner Blvd.
Lenexa, Kansas 66219**

**In the Matter of:)
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15450 S. Outer Forty Drive, Suite 120)
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Proceedings Pursuant to Sections
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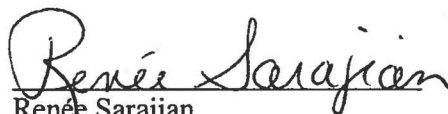
FINAL ORDER

Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ORDERED to pay \$75,860 and otherwise comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk for U.S. EPA, Region III

Date: 9/26/13



Renee Sarajian
Regional Judicial Officer/Presiding Officer
U.S. EPA, Region III

Date: 9-25-13



Karina Borromeo
Regional Judicial Officer
U.S. EPA, Region VII