



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 16 2009

REPLY TO THE ATTENTION OF:

SC-6J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Howard Laga  
The Penray Companies, Inc.  
440 Denniston Court  
Wheeling, Illinois 60090

Re: **The Penray Companies, Inc., Wheeling, Illinois**  
Consent Agreement and Final Order  
Docket No. **CAA-05-2009-0034**

Dear Mr. Laga:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The United States Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on SEP 16 2009. Please pay the civil penalty in the amount of \$15,000 in the manner prescribed in paragraph(s) 39-44 and reference your check with the number BD **2750903A036** and 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 Steven Kaiser, Regional Counsel, at (312) 353-3804. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in blue ink that reads "Mark J. Horwitz".

Mark J. Horwitz, Chief  
Chemical Emergency  
Preparedness & Prevention Section

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

<b>In the Matter of:</b>	)	
	)	
<b>The Penray Companies, Inc.</b>	)	
<b>440 Denniston Court</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Wheeling, Illinois 60090</b>	)	<b>Under Section 113(d) of the Clean Air</b>
	)	<b>Act, 42 U.S.C. § 7413(d)</b>
<b>EPA ID: 1000 0018 6728</b>	)	
	)	
<b>Respondent</b>	)	<b>CAA-05-2009-0034</b>
	)	<b>Docket No.</b> _____

**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.
2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.
3. Respondent is The Penray Companies, Inc. (Respondent), a corporation doing business in the State of Illinois.
4. 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). 40 C.F.R. § 22.13(b).

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. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

**Jurisdiction and Waiver of Right to Hearing**

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

8. Respondent 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 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 have 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 AAccidental 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 B Chemical Accident Prevention Provisions.

16. "Stationary source" is defined to mean "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.” 40 C.F.R. ' 68.3.

17. “Process” is defined to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.” 40 C.F.R. ' 68.3.

18. 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 \$27,500 per day of violation up to a total of \$220,000 for each violation of Section 112(r) of the Act that occurred from January 31, 1997 through March 15, 2004, and 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 through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day violation up to a total of \$295,000 for each violation of Section 112(r) of the Act that occurred after January 12, 2009.

19. Section 113(d)(1) of the Act 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.

20. On May 12, 2009 and June 3, 2009, respectively, under Section 113(d)(1) of the Act, 42 U.S.C. ' 7413(d)(1), the Administrator and U.S. Attorney General jointly determined that administrative penalty actions were an appropriate remedy for all violations of Section 112(r) of the Act, 42 U.S.C. ' 7412(r), not otherwise precluded by any statute of limitations.

### **Factual Allegations and Alleged Violations**

21. Respondent is a “person,” as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).
22. Respondent owns and operates a facility, located at 440 Denniston Court, Wheeling, Illinois 60090, which consists of buildings and operating equipment (Facility).
23. On May 5, 2008, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations, 40 C.F.R. Part 68, Respondent submitted to U.S. EPA a Risk Management Plan.
  - a. the Facility falls within NAICS Code 46810, as All Other Miscellaneous Chemical Product and Preparation Manufacturing;
  - b. it used “flammable mixture,” CAS No. 00-11-11 as a process chemical during its operations;
  - c. the referenced “flammable mixture” contains propane, CAS No. 74-98-6, butane, CAS No. 106-97-8, and isobutane, CAS No. 75-28-5; and
  - d. at the time it submitted its Risk Management Plan, it held at its facility 82,440 lbs. of flammable mixture, CAS No. 00-11-11.
25. On April 15, 2008, U.S. EPA sent a Request for Information Pursuant to Section 114(a) of the Clean Air Act to the Respondent to determine their compliance with 40 C.F.R. Part 68.
26. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed propane, CAS No. 74-98-6, butane, CAS No. 106-97-8, and isobutane, CAS No. 75-28-5, as substances regulated under Section 112(r) of the Act, 42 U.S.C. § 7412(r), identifying a threshold quantity of 10,000 lbs. of flammable mixture, CAS No. 00-11-11, as causing

regulations promulgated there under to be applicable to a flammable mixture, CAS No. 00-11-11 that contains propane, butane and isobutane. See, 40 C.F.R. ' 68.130, Table 1.

27. The Facility, identified at Paragraph 22, is a "stationary source" as defined at 40 C.F.R. ' 68.3.

28. 40 C.F.R. ' 68.115 provides that a "threshold quantity of a regulated substance listed in ' 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold."

29. In June 1999, having held for use in its operations at the Facility 10,000 lbs. or more of flammable mixture, CAS No. 00-11-11, that contained propane, butane and isobutene (See, Paragraph 17), Respondent exceeded the applicability threshold established by 40 C.F.R. ' 68.130, and was governed by 40 C.F.R. Part 68.

30. Under the compliance schedule identified at 40 C.F.R. ' 68.10, Respondent was required to comply with the requirements of 40 C.F.R. Part 68 by no later than June 1999.

31. For purposes of compliance with 40 C.F.R. Part 68, in its Risk Management Plan, identified at Paragraph 23, Respondent acknowledged that it was required to meet Program 3 eligibility requirements.

32. The Respondent is subject to "Program 3" eligibility requirements for its flammable mixture process because the process does not meet the requirements of 40 C.F.R. ' 68.10(b), since the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. ' 68.25 is greater than the distance to any public receptor and the process is subject to the OSHA PSM standard set forth at 29 C.F.R. ' 1910.119, 40 C.F.R. ' 68.10(d).

33. 40 C.F.R. ' 68.12 requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single Risk Management Plan, as provided in 40 C.F.R. ' ' 150 through 185.

34. 40 C.F.R. ' 68.12(d) requires that, in addition to meeting the general requirement 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).

35. Based on the information obtained in response to the April 15, 2008 Request for Information, EPA has identified the following alleged violations of Risk Management Plan (RMP) Requirements:

a. The owner or operator experienced an accidental release that met the five year accident history reporting criteria (as described at 68.42(a)), in effect after April 9, 2004, and failed to submit information required at 68.42(b), 68.168, and 68.175(l) within six months of the release or by the time the RMP was updated as required at 68.190, whichever was earlier, as required under 68.195(a).

36. The above-described violations of the RMP regulations are violations of Section 112(r)(7)(E) of the Act.

37. 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.

38. 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**

39. Based on 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 return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$15,000.

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty by sending a cashier's or certified 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 "The Penray Companies, Inc.", docket number of this CAFO and the billing document number.

41. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Monika Chrzaszcz, (SC-6J)  
Chemical Emergency Preparedness and Prevention Section  
Superfund Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

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

43. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 44, below, 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.

44. 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**

45. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

46. The 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.

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

48. Respondent certifies that it is complying fully with 40 C.F.R. Part 68.

49. The terms of this CAFO bind Respondent, its successors, and assigns.

50. Each person signing this consent agreement 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.

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

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

53. The effective date of this CAFO is the date when this CAFO is filed with the Regional Hearing Clerk's office

**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of The Penray Companies, Inc.  
Docket No.**

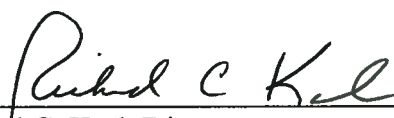
**The Penray Companies, Inc. Respondent**

Date: 8/12/09

By:   
Howard Laga  
The Penray Companies, Inc.

**United States Environmental Protection Agency, Complainant**

9-11-09  
Date

By:   
Richard C. Karl, Director  
Superfund Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

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**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of The Penray Companies, Inc.**  
**Docket No. CAA-05-2009-0034**

**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. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-11-09  
Date



\_\_\_\_\_  
Bharat Mathur,  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5

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AUG 14 2009

OFFICE OF REGIONAL  
COUNSEL

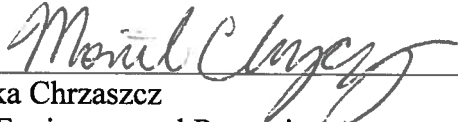
**Certificate of Service**

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

Howard Laga  
The Penray Companies, Inc.  
440 Denniston Court  
Wheeling, Illinois 60090

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 16 date of September 2009.

  
\_\_\_\_\_  
Monika Chrzaszcz  
U.S. Environmental Protection Agency  
Region 5

**CAA-05-2009-0034**

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