



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

REPLY TO THE ATTENTION OF:

SC-6J

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REGIONAL HEARING CLERK
US EPA REGION 5
2006 DEC 28 PM 2:25

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jerome Pudelek
The Penray Companies, Inc.
440 Denniston Court
Wheeling, IL 60090

Re: **The Penray Companies, Inc., Wheeling, Illinois** Consent Agreement and Final Order.
Docket No. CAA-05-2007-0003 *bbw*

Dear Mr. Pudelek:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on December 28, 2006. Please pay the civil penalty in the amount of \$8,500 in the manner prescribed in paragraph(s) 48-54 and reference your check with the number BD 2750703A002 and docket number CAA-05-2007-0003 *bbw*

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 John Tielsch, Associate Regional Counsel, at (312) 353-7447. Thank you for your assistance in resolving this matter.

Sincerely yours,

bbw

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

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

John Tielsch (w/enclosure)
Office of Regional Counsel
U.S. EPA Region 5

bcc:

FOIA File

File Copy (to originator)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

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

Respondent.

) Docket No. CAA-05-2007-0003
)
) CONSENT AGREEMENT
) and
) FINAL ORDER
)
)
)

for JSW
2007 DEC 23 PM 2:25
REGIONAL CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY

1. The United States Environmental Protection Agency (“Complainant” or “U.S. EPA”), and The Penray Companies, Inc. (“Respondent”), have agreed to settle this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded by the execution and filing of this Consent Agreement and Final Order (“CAFO”) pursuant to Sections 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”), 40 C.F.R. c 22.13(b), 22.18(b)(2) and (3).

II. JURISDICTION

2. This is an administrative action for the assessment of civil penalties instituted pursuant to Sections 113(a)(3)(A) and (d) of the Clean Air Act (“the Act”), 42 U.S.C. §§7413(a)(3)(A) and (d), and the Consolidated Rules, for violations of Section 112(r) of the Act, 42 U.S.C. §7412(r), and the regulations promulgated there under.

3. The Complainant is, by lawful delegation, the Director of the Superfund Division, U.S. EPA, Region 5, Chicago, Illinois.

4. Respondent is and was at all times relevant to this action the owner or operator of a stationary source located at 440 Denniston Court, Wheeling, Illinois 60090.

5. This CAFO is based on information which indicates that Respondent violated Section 112(r)(7)(E) of the Act, 42 U.S.C. §7412(r)(7)(E), and the provisions of 40 C.F.R. Part 68, as referenced at 40 C.F.R. §§ 68.12(a) and (d), at the above-referenced stationary source.

III. STATUTORY and REGULATORY BACKGROUND

6. In accordance with Section 112(r) of the Act, on June 20, 1996, U.S. EPA promulgated regulations to prevent accidental releases of regulated substances and to minimize the consequences of those releases that do occur. 59 Fed. Reg. 31668. These regulations, known as the Risk Management Program regulations, are codified at 40 C.F.R. Part 68.

A. APPLICABILITY OF RISK MANAGEMENT PROGRAM

7. The Risk Management Program regulations apply to all stationary sources that have more than a threshold quantity of a regulated substance in a process.

8. "Stationary source" means 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, and from which an accidental release may occur. Section 112(r)(2) of the Act; 40 C.F.R. § 68.3.

9. “Regulated substance” means any substance listed in, or pursuant to, Section 112(r)(3) of the Act, and listed at 40 C.F.R. § 68.130, Tables 1 - 4. Section 112(r)(2) of the Act; 40 C.F.R. § 68.3.

10. “Threshold quantity” means the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, listed at 40 C.F.R. § 68.130, Tables 1 - 4, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115. 40 C.F.R. § 68.3.

11. “Process” means 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.

12. “Covered process” means a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115. 40 C.F.R. § 68.3.

13. Based upon certain criteria set forth at 40 C.F.R. § 68.10, covered processes are subject to three levels of regulatory requirements which are identified as Programs 1, 2, and 3.

14. Program 3 applies to all processes which do not meet the requirements of Program 1 eligibility, as set forth at 40 C.F.R. §68.10(b), and are either subject to the OSHA Process Safety Management (PSM) standard set forth at 29 C.F.R. 1910.119, or the process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, 32532. 40 C.F.R. § 68.10(d).

B. REQUIREMENTS OF RISK MANAGEMENT PROGRAM

15. An owner or operator of a stationary source subject to the Risk Management Program regulations shall comply with the requirements of 40 C.F.R. Part 68 by no later than the latest of the following dates: June 21, 1999; three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or the date on which a regulated substance is first present in more than a threshold quantity in a process. Section 112(r) (7) (B) of the Act; 40 C.F.R. §§ 68.10(a) and 68.150.

16. The owner or operator of a stationary source with a process subject to Program 3 shall submit a Risk Management Plan ("RMP") as provided in 40 C.F.R. Part 68, Subpart G, which shall include information regarding, among other things: hazard assessments; an accidental release prevention program; and, an emergency response program. Section 112(r) (7) of the Act; 40 C.F.R. § 68.12(a) and (d).

17. The owner or operator of a stationary source with a process subject to Program 3 shall develop and implement a management system as provided in 40 C.F.R. § 68.15. 40 C.F.R. § 68.12(d).

18. The owner or operator of a stationary source with a process subject to Program 3 shall conduct a hazard assessment as provided in 40 C.F.R. Part 68, Subpart B. Section 112(r)(7) of the Act; 40 C.F.R. § 68.12(a) and (d).

19. The owner or operator of a stationary source with a process subject to Program 3 shall implement the prevention requirements of 40 C.F.R. Part 68, Subpart D. Section 112(r)(7) of the Act; 40 C.F.R. § 68.12(d).

20. The owner or operator of a stationary source with a process subject to Program 3 shall develop and implement an emergency response program as provided in 40 C.F.R. Part 68, Subpart E. Section 112(r)(7) of the Act; 40 C.F.R. § 68.12(a) and (d).

C. VIOLATION AND PENALTY PROVISIONS

21. Section 112(r)(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.

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 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 after March 15, 2004.

23. 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.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

24. Respondent is a Delaware corporation doing business in Illinois with a plant located at 440 Denniston Court, Wheeling, Illinois 60090 (“Facility”).

25. Respondent is a “person,” as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

26. For purposes of the requirements at 40 C.F.R. Part 68, Respondent is the “owner or operator” of the Facility. Section 112(a)(9) of the Act, 42 U.S.C. § 7412(a)(9).

27. The Facility is a “stationary source,” as that term is defined at 40 C.F.R. § 68.3.

28. Respondent mixes, fills, and packs liquid and aerosol chemical products containing a flammable mixture of propane, isobutane, and butane.

29. Flammable Mixture (any mixture with NFPA fh rating of 4) is a “regulated substance,” as that term is defined in Section 112(r)(3) of the Act and 40 C.F.R. § 68.3, and is listed at 40 C.F.R. § 68.130, Table 1.

30. The “threshold quantity” (as the term is defined in 40 C.F.R. § 68.3) for Flammable Mixture is 10,000 pounds. 40 C.F.R. § 68.130, Table 1.

31. The amount of Flammable Mixture present in the process at the Facility, as determined in accordance with the threshold determination requirements of 40 C.F.R. § 68.115, exceeds the threshold quantity for Flammable Mixture.

32. Based on the above, the Facility is subject to the requirements of the Risk Management Program regulations set forth at 40 C.F.R. Part 68. Section 112(r)(7) of the Act; 40 C.F.R. § 68.10(a).

33. The Facility is subject to the “Program 3” requirements because the process does not meet the requirements for Program 1, as set forth at 40 C.F.R. § 68.10(b), and the process is subject to the OSHA PSM standard as set forth at 29 C.F.R. § 1910.119. 40 C.F.R. § 68.10(d).

34. On June 21, 1999, the Respondent had present at its Facility an amount of Flammable Mixture greater than the threshold quantity listed in 40 C.F.R. § 68.130, as determined in accordance with the threshold determination requirements of 40 C.F.R. § 68.115.

35. Accordingly, Respondent was required to comply with the Risk Management Program regulations set forth at 40 C.F.R. Part 68 by June 21, 1999. 40 C.F.R. §§ 68.10(a).

36. Respondent failed to timely submit and register an RMP in accordance with 40 C.F.R. Part 68, Subpart G, in violation of 40 C.F.R. § 68.12(a) and (d) and 68.150 to 68.185.

37. Respondent failed to implement any of the requirements of a Risk Management Plan described at 40 C.F.R. § 68.12 and 40 C.F.R. § 68.150 to 68.185 by the date required by 40 C.F.R. § 68.12 and 68.150 to 68.185.

38. Respondent filed a Risk Management Plan for the Facility on or about June 18, 2004. USEPA conducted an inspection of the Facility on or about September 16, 2004 to assess compliance with the Risk Management Plan requirements. As a result of that inspection, USEPA found the following alleged violations of Risk Management Plan Requirements:

- a. Respondent failed to fully conduct a hazard assessment because Respondent in defining off-site impacts, did not use the most recent Census data or other updated information, to estimate the population potentially affected. 40 C.F.R. §§68.30(c)
- b. Respondent failed to compile the following written process safety information before conducting a process hazard analysis:
 - (i). information pertaining to the material of construction of equipment in their process. 40 C.F.R. §§68.30(d)(1)(i).
 - (ii) accurate information pertaining to the piping and instrument diagrams (P&ID's) of the process. 40 C.F.R. §§68.65(d)(1)(ii).
 - (iii) information pertaining to the relief system design and design basis. 40 C.F.R. §§68.65(d)(1)(iv).
- c. Respondent failed to establish a system to promptly address their team's findings and recommendations of their Process Hazard Analysis; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; 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. 40 C.F.R. §§68.67(e).
- d. 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 addressing conditions under which

emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner. 40 C.F.R. §§68.69(a)(1)(iv).

e. Respondent failed to certify that operation procedures are current and accurate. 40 C.F.R. §§68.69(c).

f. Respondent failed to establish and implement written procedures to maintain the ongoing integrity of process equipment. 40 C.F.R. §§68.73(b).

g. Respondent failed to conduct inspections and test on all of their process equipment. 40 C.F.R. §§68.73(d)(1).

i. Respondent failed to document each inspection and test that has been performed on process equipment. 40 C.F.R. §§68.73(D)(4).

g. Respondent failed to certify that they have evaluated compliance with the provisions of the Program 3 Prevention Program requirements found at 40 C.F.R. Subpart D at least every three years to certify that procedures and practices developed under this subpart are adequate and are being followed. 40 C.F.R. §§68.79(a).

39. Thereafter, in or about the Fall of 2005, Respondent revised its Risk Management Plan to address the items identified during USEPA's inspection.

40. The above-described violations of the Risk Management Program regulations are violations of Section 112(r)(7)(E) of the Act.

41. 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.

42. 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).

V. TERMS OF SETTLEMENT

43. Complainant and Respondent agree that the settlement of this matter pursuant to Section 22.13(b) of the Consolidated Rules, 40 C.F.R. § 22.13(b), is in the public interest and that the entry of this CAFO without engaging in litigation is the most appropriate means of resolving this matter.

44. Respondent stipulates that Complainant has jurisdiction over the subject matter of this CAFO, and Respondent waives any jurisdictional defenses.

45. Respondent neither admits nor denies the factual allegations and conclusions of law set forth above in this CAFO.

46. Respondent consents to the issuance of this CAFO and payment of a civil penalty, as set forth below in this CAFO.

47. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, and waives its right to appeal the Final Order accompanying this Consent Agreement.

VI. PENALTIES

48. 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 Respondent's cooperation, prompt return to compliance, and accelerated compliance audit, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$8,500.

49. The Penray Companies, Inc. must pay the \$8,500 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

50. The Penray Companies, Inc must send the check to:

U.S. EPA Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

51. A transmittal letter, stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604

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

John Tielsch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604

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

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

54. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a penalty at the rate of at least six percent per year on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

VIII. GENERAL TERMS OF SETTLEMENT

55. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.

56. Nothing in this CAFO shall relieve Respondent from complying with any provision of the Act or any other applicable federal, State, or local environmental law or regulation.

57. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws and regulations.

58. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with the regulations cited above, and to assess a civil penalty in an amount greater than assessed in this CAFO.

59. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO (or one or more of its terms and conditions) is held invalid, or is not executed by all of the signatory parties in identical form, then the entire CAFO shall be null and void.

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

61. Respondent and Complainant agree to bear their own respective costs and attorneys' fees.

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

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

64. Respondent and U.S. EPA agree to the issuance and entry of the accompanying Final Order.

65. This CAFO shall become effective on the date that it is filed with the Regional Hearing Clerk, Region 5.

The foregoing Consent Agreement is hereby stipulated, agreed, and approved for entry:

**U.S. Environmental Protection Agency
Complainant**

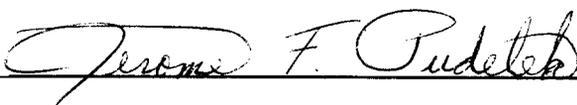
Date: 12/20/06

By: 

for Richard C. Karl, Director
Superfund Division
U.S. EPA, Region 5
77 West Jackson Boulevard (SC-6J)
Chicago, Illinois 60604-3590

**The Penray Companies, Inc
Respondent**

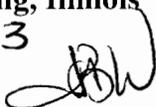
Date: 13 NOVEMBER 2006

By: 

Jerome Pudelek
Environmental, Health & Safety Manager

CAA-05-2007-0003


Consent Agreement and Final Order
The Penray Companies, Inc, Wheeling, Illinois
Docket No. CAA-05-2007-0003



FINAL ORDER

The foregoing Consent Agreement, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date:

12/27/2006



Mary A. Gade
Regional Administrator
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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:

**Jerome Pudelek, Environmental, Health and Safety Manager
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 28 date of December, 2006.



Monika Chrzaszcz
U.S. Environmental Protection Agency
Region 5

CAA-05-2007-0003

