



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

NOV 20 2007

REPLY TO THE ATTENTION OF:
SC-6J

CERTIFIED MAIL RETURN
RECEIPT REQUESTED

Gary Jones
Vice President Operations
Frozen Assets Cold Storage, LLC
2635 S. Western Avenue
Chicago, IL 60608

Re: Frozen Assets Cold Storage, LLC, Chicago, Illinois
Docket No. **CAA-05-2008-0002**

Dear Mr. Jones:

Enclosed is a copy of the Administrative Complaint which the United States Environmental Protection Agency (Agency) has filed today, 11/20/2007, pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), against Frozen Assets Cold Storage, LLC, 2635 S. Western Avenue, Chicago, Illinois, 60608. In the Complaint, the Agency alleges that Frozen Assets Cold Storage, LLC violated the reporting requirements of the Risk Management Program, 40 C.F.R. Part 68. Specifically, the Complaint alleges that Frozen Assets Cold Storage, LLC failed to prepare, implement, and submit an RMP no later than September 29, 2004.

By law, you have a right to request a hearing regarding the violation alleged in the Complaint and proposed penalty. Please pay particular attention to the section entitled "*Opportunity to Request a Hearing.*" You are required to respond to this Complaint within thirty (30) calendar days of receipt of the Complaint. Should you fail to timely file an answer to the Complaint, the proposed civil penalty will become due and payable thirty (30) days after a default order becomes the final order of the Region 5 Administrator for the United States Environmental Protection Agency.

For additional information regarding this matter you may contact Monika Chrzaszcz, Environmental Engineer, 312.886.0181. If you have any legal questions, you may contact William Wagner, Attorney Advisor at 312.886.4684

Sincerely yours,

for
Richard C. Karl, Director
Superfund Division

Enclosures (3) Administrative Complaint

Combined Enforcement Policy for Section 112(r) of the Clean Air Act
40 C.F.R. Part 22- Consolidated Rules

cc: William Wagner

Office of Regional Counsel

Monika Chrzaszcz

Chemical Emergency

Preparedness and Prevention Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

RECEIVED
REGIONAL CLERK

IN THE MATTER OF:) Docket No. CAA-05-2008-0002
)
Frozen Assets Cold Storage , LLC) Proceeding to Assess a
2635 S. Western Ave.) Civil Penalty under
Chicago, Illinois 60608) Section 113(d) of the
) Clean Air Act,
Respondent.) 42 U.S.C. § 7413(d)

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(d).
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5, Chicago, Illinois.
3. The Respondent is Frozen Assets Cold Storage LLC, a corporation doing business in the State of Illinois.

Statutory and Regulatory Background

4. Congress promulgated Section 112(r) of the Act, 42 U.S.C. §7412(r), for the purpose of preventing the accidental release, and minimizing the consequences of any such release, of extremely hazardous substances.
5. On January 31, 1994, pursuant to Section 112(r)(3) of the Act, 42 U.S.C. §7412(r)(3), U.S. EPA promulgated a list of regulated substances with threshold quantities. 59 Fed. Reg. 4478. This list, which has been subsequently amended, is set forth at 40 C.F.R. §130.
6. On June 20, 1996, pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), U.S. EPA promulgated regulations implementing Section 112(r)(7)(B)(ii) of the Act,

which requires, among other things, that the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity prepare and implement a Risk Management Plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the stationary source. 59 Fed. Reg. 31668. These regulations, which are known as the Risk Management Program Regulations, are set forth at 40 C.F.R. Part 68.

7. The Risk Management Program regulations require an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process to submit a RMP to U.S. EPA no later than: 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, whichever is later. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. §7412(r)(7)(B)(ii); 40 C.F.R. §68.150. RMP requirements are references at 40 C.F.R. §68.12.

8. The term “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)(C) of the Act, 42 U.S.C. §7412(r)(2)(C); 40 C.F.R. §68.3.

9. The term “process” means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances. 40 C.F.R. §68.3.

10. The term “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.

11. The processes subject to these requirements are divided into three tiers of eligibility: Programs 1, 2, and 3. 40 C.F.R. § 68.10.

12. Program 3 applies to all processes which do not meet the requirements of 40 C.F.R. §68.10(b) and are subject to the OSHA Process Safety Management (“PSM”) standard set forth at 29 C.F.R. § 1910.119. 40 C.F.R. § 68.10(d).

13. Section 112(r)(7)(E) of the Act, 42 U.S.C. §74.12(r)(7)(E), provides that after the effective date of any regulations or requirements under Section 112(r)(7) of the Act, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Section 112(r)(7)(E) of the Act further provides that, for purposes of Section 112 of the Act, 42 U.S.C. §7413, the regulations and requirements under Section 112(r)(7) shall be treated as a standard in effect under Section 112(d) of the Act, 42 U.S.C. §7412(d).

14. According to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, the Administrator of U.S. EPA (“the Administrator”) may assess a civil penalty of up to \$27,500 per day of violation, up to a total of \$220,000, for violations that occurred on or after January 31, 1997 and before March 16, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred on and after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).

15. Section 113(d)(1) 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

16. 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 complaint.

General Allegations

17. The Respondent is an Illinois company which owns and/or operates a refrigerated warehouse located at 2635 South Western Avenue, Chicago, Illinois 60608 ("Facility").

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

19. The Facility is a "stationary source," as that term is defined at 40 C.F.R. § 68.3.

20. The Respondent is the "owner or operator" of the Facility. §112(a)(9) of the Act.

21. The Respondent's anhydrous ammonia refrigeration system at the Facility is a "process," as defined at 40 C.F.R. § 68.3.

22. The Facility is subject to the "Program 3" eligibility requirements because the process: (a.) does not meet the requirements of 40 C.F.R. §68.10; (b) the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under Subpart B and 40 C.F.R. §68.25 is greater than the distance to any public receptor; and (c) is subject to the OSHA process safety management standard set forth at 29 C.F.R. § 1910.119. 40 C.F.R. § 68.10(d).

23. On November 21, 2005, U.S. EPA issued an Information Request to the Respondent under Section 114(a) of the Act, 42 U.S.C. § 7414(a). The purpose of the Information Request was to determine whether the Facility was in compliance with Section 112(r) of the Act and the regulations implementing Section 112(r) at 40 C.F.R. Part 68.

24. A subsequent call was made to the Respondent on January 17, 2006. The purpose of this call was to determine why the Respondent had not responded to the Information Request sent. The Respondent stated that the Information Request was never received, therefore, on January 17, 2006; a copy of the Information Request was faxed to the Respondent.

25. On February 17, 2006, the Respondent sent a response to the Information Request, informing U.S. EPA that the Facility operates a refrigeration system with 20,000 pounds of anhydrous ammonia.

26. A follow up Information Request was sent to the Respondent on April 5, 2006, to determine when the Respondent began using an amount of anhydrous ammonia greater than the 10,000 lb. threshold amount of anhydrous ammonia.

27. On April 26, 2006, the Respondent sent a response to the follow up Information Request.

28. Based on Respondent's response, on or about September 29, 2004, the Respondent had present at the Facility an amount of anhydrous ammonia 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.

29. Because the Respondent had present at the Facility an amount of anhydrous ammonia greater than the threshold quantity listed in 40 C.F.R. §68.130 on September 29, 2004,

Respondent was required to prepare, implement, and submit an RMP no later than September 29, 2004. 40 C.F.R. §§ 68.10(a), 68.150.

30. Despite the presence of an amount greater than the threshold quantity of anhydrous ammonia in a process at the Facility, the Respondent failed to prepare, implement, and submit its RMP.

31. Accordingly, the Respondent violated the requirements of 40 C.F.R. Part 68, and is subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Proposed Civil Penalty

32. The Administrator must consider the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), when assessing an administrative penalty under Section 113(d), 42 U.S.C. § 7413(d).

33. Based upon an evaluation of the facts alleged in this Complaint and the factors in Section 113(e) of the Act, 42 U.S.C. § 7413(e), Complainant proposes that the Administrator assess a civil penalty of \$56,001 against the Respondent. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Combined Enforcement Policy for § 112(r) of the Clean Air Act, dated August 15, 2001.

34. Complainant developed the proposed penalty based on the best information available to Complainant at the time of the issuance of this Complaint. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriateness of the proposed penalty.

Rules Governing This Proceeding

35. The “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“the Consolidated Rules”), now at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with this Complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

36. The Respondent must file with the Regional Hearing Clerk the original and one copy of each document the Respondent intends to submit as part of the record in this proceeding.

The Regional Hearing Clerk’s address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

37. The Respondent must also serve a copy of each document filed in this proceeding on each party pursuant to 40 C.F.R. § 22.5. Complainant has authorized William Wagner, Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Wagner at (312)886-4684. Mr. Wagner’s address is:

Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

38. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). The Respondent has the right to request a hearing on any material fact alleged in the Complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, the Respondent must specifically make the request in its answer, as discussed below.

Answer

39. The Respondent must file a written Answer to this Complaint if it contests any material fact of the Complaint, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law. To file an Answer, the Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above and must serve copies of the written Answer on the other parties to this Complaint.

40. If the Respondent chooses to file a written Answer to the Complaint, it must do so within thirty (30) calendar days after receiving the Complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturday, Sunday, and federal legal holidays are counted. If the 30-day time period expires on Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

41. The Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint, or must state clearly that the Respondent has no knowledge of a particular factual allegation. When the Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

42. The Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

43. The Respondent's Answer must also state:

- a. the circumstances or arguments which the Respondent alleges constitute grounds of defense;
- b. the facts which the Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether the Respondent requests a hearing, as discussed above.

44. If the Respondent does not file a written Answer within thirty (30) calendar days of receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules, 40 C.F.R. §22.17(c). Default by the Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. As provided by 40 C.F.R. § 22.17(d), the Respondent must pay any penalty assessed in a default order without further proceedings thirty (30) days after the default order becomes the final order of the Administrator of U.S. EPA pursuant to 40 C.F.R. § 22.27(c).

Settlement Conference

45. Whether or not the Respondent requests a hearing, it may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, the Respondent may contact William Wagner at the address or phone number specified above.

46. The Respondent's request for an informal settlement conference does not extend

the thirty (30) calendar day period for filing a written Answer to this Complaint. The Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligations to Comply

47. Neither the assessment nor payment of a civil penalty will affect the Respondent's continuing obligations to comply with the Act and any other applicable federal, state, or local law.

11/16/07
Date

Richard C. Karl
Richard C. Karl, Director
Superfund Division

re: Frozen Assets Cold Storage
Chicago, Illinois

CAA-05-2008-0002

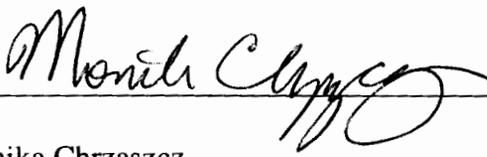
RECEIVED
REGIONAL OFFICE
NOV 20 11:32

CERTIFICATE OF SERVICE

I certify that the original and one copy of the attached Administrative Complaint was filed this day with the Regional Hearing Clerk (R-19J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that a true copy was sent to the Respondent, along with the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22, Penalty Policy, and Audit Policy at the following address:

Gary Jones
Frozen Assets Cold Storage, LLC
2635 S. Western Ave.
Chicago, IL 60608

Date: 11/20/2007



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

CAA-05-2008-0002

REGIONAL HEARING CLERK
U.S. EPA REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604