



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

MAY - 8 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ICM, Inc.
Attn: Brian Burris, General Counsel
310 N. First Street
Colwich, KS 67030

Re: **ICM, Inc. Colwich Kansas**
Consent Agreement and Final Order
Docket No. **CAA-05-2013-0022**

Dear Mr. Burris:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on May 8, 2013. Please pay the civil penalty in the amount of \$30,000 in the manner prescribed in paragraphs 46-48 and reference your check with the docket number.

Please feel free to contact Greg Chomycia at (312) 353-8217 if you have any questions regarding the enclosed documents. Please direct any legal questions to Louise Gross, Regional Counsel, at (312) 886-6844. Thank you for your assistance in resolving this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael E. Hans".

Michael E. Hans, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

cc. Louise Gross, ORC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



MAY - 8 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)
)
ICM, Inc.)
Colwich, Kansas)
)
)
)
)
Respondent)
_____)

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

Docket No. CAA-05-2013-0022

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 ICM, Inc. (Respondent), a corporation doing business in the States of Indiana and Michigan, among others.
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 respective interests and in the public interest.

6. In order to resolve this matter without litigation, 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 set out in paragraphs 9-25 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. In any proceeding to enforce the terms and conditions of this CAFO, the Respondent waives any right to contest the allegations set out herein. This waiver shall not preclude the Respondent from challenging the same or similar allegations in proceedings, if any, not resolved by this CAFO.

Statutory and Regulatory Background
(Jurisdictional Allegations)

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 (RMP) 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. Section 112(a)(9) of the Act, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as “any person who owns, leases, operates, controls or supervises a stationary source.”

16. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental 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: Chemical Accident Prevention Provisions.

17. “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.

18. “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.

19. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed anhydrous ammonia, CAS No. 7664-47-7, as a substance which, in the case of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The Administrator has further identified a threshold quantity of 10,000 lbs. of anhydrous ammonia for determining whether sources are subject to the Risk Management Program . 40 C.F.R. § 68.130, Table 1.

20. 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.”

21. 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 RMP, as provided in 40 C.F.R. §§68.150 through 68.185.

22. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirements 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).

23. 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 \$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 to January 12, 2009 and a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for each violation of Section 112(r) of the Act that occurred after January 12, 2009.

24. 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.

25. 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.

Factual Allegations and Alleged Violations

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

27. Respondent constructed and assisted in the commissioning and start-up of an ethanol manufacturing facility located at 26250 B Drive North, Albion, Michigan (the Albion Facility), which consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are currently owned and operated by The Andersons Albion Ethanol, LLC (The Andersons Albion).

28. On April 4, 2007, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations, 40 C.F.R. Part 68, The Andersons Albion submitted to U.S. EPA an RMP for the Albion Facility.

29. According to the RMP submitted to U.S. EPA by The Andersons Albion, the Albion Facility:

- a. fell within NAICS Code 325193, as Ethyl Alcohol Manufacturing;
- b. used anhydrous ammonia CAS No. 7664-47-7 as a process chemical during its operations; and
- c. held 85,527 lbs. of anhydrous ammonia.

30. On April 14, 2009, an authorized representative of U.S. EPA conducted an inspection at the Albion Facility to determine its compliance with 40 C.F.R. Part 68.

31. The Albion Facility is a “stationary source,” as defined at 40 C.F.R. § 68.3.

32. On July 25, 2006, having held for use in its operations 10,000 lbs. or more of anhydrous ammonia, the Albion Facility exceeded the applicability threshold established by 40 C.F.R. § 68.130, and became subject to 40 C.F.R. Part 68.

33. For purposes of compliance with 40 C.F.R. Part 68, in its RMP, The Andersons Albion acknowledged that the Albion Facility was required to meet Program 3 eligibility requirements at the Albion Facility.

34. Based on the inspection conducted on April 14, 2009, U.S. EPA determined that there had been no RMP at the Albion Facility for the time period July 25, 2006 through September 14, 2006.

35. Respondent constructed and assisted in the commissioning and start-up of an ethanol manufacturing facility located at 3389 West County Road 300 South, Logansport, Indiana (the Logansport Facility), which consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are currently owned and operated by The Andersons Clymers Ethanol, LLC (Andersons Clymers).

36. On May 29, 2007, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations, 40 C.F.R. Part 68, The Andersons Clymers submitted to U.S. EPA an RMP for the Logansport Facility.

37. According to the RMP submitted to U.S. EPA by The Andersons Clymers, the Logansport Facility:

- a. fell within NAICS Code 325193, as Ethyl Alcohol Manufacturing;
- b. used anhydrous ammonia CAS No. 7664-47-7 as a process chemical during its operations; and
- c. held 85,527 lbs. of anhydrous ammonia.

38. On June 18, 2009, an authorized representative of U.S. EPA conducted an inspection at the Logansport Facility to determine its compliance with 40 C.F.R. Part 68.

39. The Logansport Facility is a “stationary source,” as defined at 40 C.F.R. § 68.3.

40. On April 30, 2007, having held for use in its operations 10,000 lbs. or more of anhydrous ammonia, the Logansport Facility exceeded the applicability threshold established by

40 C.F.R. § 68.130, and became subject to 40 C.F.R. Part 68.

41. For purposes of compliance with 40 C.F.R. Part 68, in its RMP, The Andersons acknowledged that the Logansport Facility was required to meet Program 3 eligibility requirements at the Logansport Facility.

42. Based on the inspection conducted on June 18, 2009, U.S. EPA determined that there had been no RMP at the Logansport Facility for the time period April 30, 2007 through May 29, 2007.

43. 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.

44. 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).

45. Complainant alleges that Respondent was the owner or operator of the Logansport Facility and the Albion Facility within the meaning of the Act. Respondent specifically denies that it was the owner or operator of the Logansport Facility or Albion Facility within the meaning of the Act, but is willing to enter into this CAFO for purposes of resolving the alleged violations. To the extent that there were any violations at the Logansport Facility and/or the Albion Facility, Respondent asserts that it was the responsibility of The Andersons Albion, The Andersons Clymers and/or The Andersons, Inc. as owners or operators, and not the Respondent.

Civil Penalty

46. Based on an 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 as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$30,000.00.

47 Within 30 days after the effective date of this CAFO, Respondent must pay the \$30,000.00 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 "ICM, Inc." and the docket number of this CAFO.

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

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

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

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

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

50. If Respondent does not pay timely the civil penalty, 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.

51. 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

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

53. 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.

54. 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 52, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by U.S. EPA.

55. Respondent certifies that, to the best of its knowledge and belief, it is complying fully with 40 C.F.R. Part 68 to the extent applicable to Respondent.

56. The terms of this CAFO bind Respondent, its successors, and assigns.
57. 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.
58. Each party agrees to bear its own costs and attorneys' fees in this action.
59. This CAFO constitutes the entire agreement between the parties.
60. 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 ICM, Inc.
Docket No.**

ICM, Inc., Respondent

Date: 4/22/2013

By: 

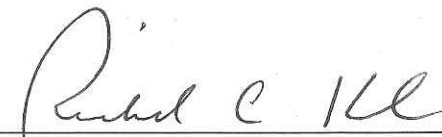
ICM, Inc.

Brian Burris

Secretary & General Counsel

United States Environmental Protection Agency, Complainant

5-3-13
Date


Richard C. Karl, Director
Superfund Division

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of ICM, Inc.

Docket No.

CAA-05-2013-0022

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.

5-6-13

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5



MAY - 8 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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:

ICM, Inc.
Attn: Brian Burris, General Counsel
310 N. First Street
Colwich, KS 67030

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 8 day of May, 2013.



Greg Chomycia
U.S. Environmental Protection Agency
Region 5



MAY - 8 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY