



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

NOV 27 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael P. Kuss
General Manager
Sanitary District of Michigan City, Indiana
1100 E. 8th Street
Michigan City, IN 46360-2567

Re: Sanitary District of Michigan City, Indiana Consent Agreement and Final Order.
Docket No. **CAA-05-2013-0005**

Dear Mr. Kuss:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on November 27, 2012. Please pay the civil penalty in the amount of \$25,500.00 in the manner prescribed in paragraphs 39, 40, and 41 and reference your check with the docket number. Due to changes in the payment management system the Agency is no longer issuing billing document numbers as mentioned in paragraphs 40 and 41. Billing document numbers are no longer required.

Please feel free to contact Greg Chomycia at chomycia.greg@epa.gov or (312)353-8217 if you have any questions regarding the enclosed documents. Please direct any legal questions to William Wagner, Associate Regional Counsel at (312) 886-4684. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hanis, Chief
Chemical Emergency
Preparedness and Prevention Section

Enclosure

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

William Wagner(w/enclosure)
Office of Regional Counsel
U.S. EPA Region 5

Ann Coyle (w/enclosure)
Regional Judicial Officer
U. S. EPA, Region 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

RECEIVED
REGION 5

In the Matter of:

NOV 27 2012

Sanitary District of Michigan City
Michigan City, Indiana,

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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

Respondent

Docket No. CAA-05-2013-0005

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 Sanitary District of Michigan City ("SDMC" or "Respondent"), a legal division of a municipality organized under the laws of the State of Indiana.

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 (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. 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.

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. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed chlorine and sulfur dioxide, as 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. The Administrator has further identified a threshold quantity of 2,500 lbs. of chlorine and 5,000 lbs. of sulfur dioxide for determining whether sources are subject to the Risk Management Program. 40 C.F.R. § 68.130, Table 1.

19. 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.”

20. 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 185.

21. 40 C.F.R. § 62.150(b) requires a facility that had over a threshold amount of a chemical listed at 40 C.F.R. Part 68.130 prior to June 21, 1999, to submit its first RMP no later than June 21, 1999.

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 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.

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.

Factual Allegations and Alleged Violations

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

25. Respondent is a Sanitary District of an Indiana municipality located at 1100 East Eighth Street, Michigan City, Indiana ("the Facility")

26. For purposes of the requirements at 40 C.F.R. Part 68, Respondent is the "owner or operator" of the Facility, as that term is defined at Section 112(a)(9) of the Act.

27. On October 5, 2010, EPA sent SDMC a request for information. On November 5, 2010, SDMC responded ("Response") to the information request.

28. In the Response, SDMC stated that it stores up to 10,000 pounds of chlorine and up to 10,000 pounds of sulfur dioxide at the Facility. Both the chlorine and the sulfur dioxide are stored in one ton cylinder containers. SDMC stores the cylinder containers in one room. U.S. EPA alleges that together these containers could be involved in one accident and potentially be released at the same time.

29. The definition of process states that “separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.”

30. Respondent’s storage process is a “process,” as that term is defined at 40 C.F.R. § 68.3.

31. 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 and 68.12.

32. In the Response, SDMC stated that chlorine and sulfur dioxide have been present at the Facility prior to June 21, 1999.

33. Therefore, the Respondent was required to comply with the Risk Management Program regulations set forth at 40 C.F.R. Part 68, by June 21, 1999.

34. Respondent failed to timely submit an RMP in accordance with 40 C.F.R. Part 68, in violation of 40 C.F.R. § 68.12. Respondent submitted an RMP to U.S. EPA on November 21, 2011.

35. 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.

36. By letters dated December 17, 2010, and March 28, 2010, respectively, 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.

37. 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

38. Based upon analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the “Combined Enforcement Policy for Clean Air Action Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68,” dated June 2012, the facts of this case, and factors such as cooperation and prompt compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$25,500. This penalty will be payable in two installments of \$8,500 and \$17,000.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,500 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 “Sanitary District of Michigan City,” the docket number of this CAFO and the billing document number.

40. Within 210 days after the effective date of this CAFO, Respondent must pay a \$17,000 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 "Sanitary District of Michigan City," the 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-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
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

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

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

43. 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.

44. 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 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, 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 Sanitary District of Michigan City
Docket No.**

Sanitary District of Michigan City, Respondent

Date: 9/26/12 By: Shelly E Jabowski, President
Board of Directors, Sanitary District of Michigan City

United States Environmental Protection Agency, Complainant

11-21-12 Richard C Karl
Date Richard C. Karl, Director
Superfund Division

**CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Sanitary District of Michigan City
Docket No.**

CAA-05-2013-0005

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U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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.

11-26-12

Date



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

CAA-05-2013-0005

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 person designated below, on the date below, by causing said copy 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:

Mary Ann F. Saggese
Plews Shadley Racher & Braun LLP
1346 North Delaware Street
Indianapolis, Indiana 46202

(As representative authorized to receive service on behalf of: Sanitary District of Michigan City.)

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.

In have further caused copies of the foregoing CAFO to be delivered 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, postage prepaid, at Chicago, Illinois, in respective envelopes addressed to:

Micheal J. Kuss, General Manager
Sanitary District of Michigan City
1100 East 8th Street
Michigan City, Indiana 46360

James B. Meyer
Meyer & Wyatt, PC
363 S. Lake St.
Gary, Indiana 46403

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

Dated this 27 day of November, 2012.



Greg Chomycia
U.S. Environmental Protection Agency
Region 5

CAA-05-2013-0005