



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 02 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Jann Fisher
Vice-President
Acid Products Company, Inc.
600 West 41st Street
Chicago, Illinois 60609

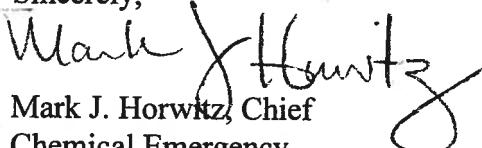
Re: **Acid Products Company, Inc., Chicago, Illinois,**
Consent Agreement and Final Order
Docket No. **CAA-05-2009-0030**

Dear Ms. Fisher:

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 original CAFO with the Regional Hearing Clerk on SEP 02 2009. Please pay the civil penalty in the amount of \$10,984 in the manner prescribed in paragraphs 43-49 and reference your check with the number BD 2750903A032 and docket number. In addition, please perform the Supplemental Environmental Project in the manner prescribed in paragraphs 50-65.

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 Jose C. de Leon, Esq., Associate Regional Counsel, at (312) 353-7456. Thank you for your assistance in resolving this matter.

Sincerely,


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

Enclosure

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
Acid Products Company, Inc.) CONSENT AGREEMENT
600 West 41st Street) and
Chicago, Illinois 60609) FINAL ORDER
EPA ID: 100000160256)
Respondent) Docket No. **CAA-05-2009-0030**

CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY

1. The United States Environmental Protection Agency (“Complainant” or “U.S. EPA”), and Acid Products Company, Inc. (“Respondent”), 600 West 41st Street, Chicago, Illinois 60609, have agreed to settle this action 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. §§ 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 600 West 41st Street, Chicago, Illinois 60609.

5. This CAFO is based on information which indicates that Respondent has 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 (c), at the above-referenced stationary source.

STATUTORY AND REGULATORY BACKGROUND

6. Section 112(r)(1) of the CAA, 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 paragraph (3) or any other extremely hazardous substance.

7. Section 112(r)(3) of the CAA, 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.

8. Section 112(r)(7)(A) of the CAA, 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.

9. Section 112(r)(7)(B)(i) of the CAA, 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.

10. Section 112(r)(7)(B)(ii) of the CAA, 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.

11. Pursuant to authority under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 FR 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

12. Pursuant to authority under Section 112(r) of the CAA, 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 FR 31668 (June 20, 1996), which have since been codified, and amended, at 40 CFR Part 68 – Chemical Accident Prevention Provisions.

13. In November 2006, pursuant to authority under Section 113(d)(1) of the CAA,

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 CAA, 42 U.S.C. § 7412(r), not otherwise precluded by any statute of limitations.

VIOLATIONS AND PENALTY PROVISIONS

14. 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.

15. 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 after March 15, 2004.

16. 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.

FINDINGS OF FACT AND CONCLUSION OF LAW

17. That Respondent is a "person," as defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
18. That Respondent owns and operates a facility, located at 600 West 41st Street, Chicago, Illinois 60609, which facility consists of buildings and operating equipment ("the Facility").
19. That in August 1999, pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412, and implementing regulations, 40 CFR Part 68, Respondent submitted to U.S. EPA a Risk Management Plan.
20. That in the Risk Management Plan it submitted to U.S. EPA, Respondent admitted the following:
- (1) that the Facility fell within NAICS Code 42269, as an Other Chemical and Allied Products Wholesaler;
 - (2) that it used "Formaldehyde," CAS No. 50-00-0, and "Hydrogen Fluoride/Hydro fluoric Acid," CAS No. 7664-39-3, as process chemicals during its operations;
 - (3) that, at the time it submitted its Risk Management Plan, it held at its facility 60,000 lbs. of Formaldehyde, CAS No. 50-00-0 and 47,000 lbs. of Hydrogen Fluoride/Hydrofluoric Acid, CAS No. 7664-39-3.
21. That on November 30, 2004, an authorized representative of U.S. EPA conducted an inspection at the Facility to determine its compliance with 40 C.F.R. Part 68.
22. That pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), the Administrator has listed formaldehyde (CAS No. 50-00-0) and hydrogen fluoride/hydro fluoric acid (CAS No. 7664-39-3) as substances regulated under Section 112(r) of the CAA, 42 U.S.C. §

7412r, identifying a threshold quantity of 15,000 lbs. of formaldehyde (CAS No. 50-00-0) and 1,000 lbs. of hydrogen fluoride/hydro fluoric acid (CAS No. 7664-39-3) as causing regulations promulgated there under to be applicable. 40 C.F.R. § 68.130, Table 1.

23. That the Administrator has defined "stationary source" 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.

24. That the Facility, identified at Paragraph 18, is a "stationary source" as defined at 40 C.F.R. § 68.3.

25. That 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."

26. That the Administrator has defined "process" 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.

27. That in June 1999, having held for use in its operations at the Facility 60,000 lbs. of Formaldehyde (CAS No. 50-00-0), and 47,000 lbs. of Hydrogen Fluoride/ Hydrofluoric Acid (CAS No. 7664-39-3), see Paragraph 17, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and was governed by 40 CFR Part 68.

28. That pursuant to the compliance schedule identified at 40 C.F.R. § 68.10, Respondent was required to comply with the requirements of 40 CFR Part 68 no later than June

21, 1999.

29. That for purposes of compliance with 40 C.F.R. Part 68, in its Risk Management Plan, identified at Paragraph 20, Respondent acknowledged that it was required to meet Program 2 eligibility requirements.

30. That the Respondent is subject to "Program 2" eligibility requirements for its hydrogen fluoride/hydrofluoric acid 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, the process is not subject to the OSHA PSM standard set for at 29 C.F.R. § 1910.119, 40 C.F.R. § 68.10(d), and the process is not subject to one of the NAICS Codes as specified in 40 C.F.R. § 68.10(d)(1).

31. That the Respondent is subject to "Program 3" eligibility requirements for its formaldehyde 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 for at 29 C.F.R. § 1910.119, 40 C.F.R. § 68.10(d).

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

33. That 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 2 shall meet additional requirements identified at 40 C.F.R. § 68.12(c) and with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. §68.12(d).

34. That during the inspection conducted on November 20, 2004 Complainant found the following alleged violations of RMP Requirements:

- a. Failed to document, when responsibility for implementing individual requirements for the Risk Management Program is assigned to persons other than the person identified under 40 C.F.R. § 68.15(b), the names or positions of those people and the lines of authority defined through an organization chart or similar document;
- b. Failed to prepare a worst-case release scenario analysis as provided under 40 C.F.R. § 68.25(b);
- c. Failed to review and update the offsite consequence analysis at least once every five years as provided under 40 C.F.R. § 68.36(a);
- d. Failed to maintain records on the offsite consequence analysis as provided under 40 C.F.R. § 68.39;
- e. Failed to compile and maintain up-to date safety information that included safe upper and lower temperatures, pressures, flows, and compositions as provided under 40 C.F.R. § 68.48(a)(3);
- f. Failed conduct a review of the hazards associated with hydrogen fluoride/ hydrofluoric acid, the process, and procedures as provided under 40 C.F.R. § 68.50(a);

- g. Failed to update the hazard review at least once every five years, as provided under 40 C.F.R. § 68.50(4)(d);
- h. Failed to prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with the hydrogen fluoride/hydrofluoric acid process consistent with the safety information for that process as provided under 40 C.F.R. § 68.52(a);
- i. Failed to provide refresher training at least every three years, and more often if necessary, to each employee operating the hydrogen fluoride/hydrofluoric acid process to ensure that the employee understands and adheres to the current operating procedures of the process as provided under 40 C.F.R. § 68.54(a);
- j. Failed to prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment, as provided under 40 C.F.R. § 68.56(a);
- k. Failed to perform or cause to perform inspections and tests on process equipment, as provided under 40 C.F.R. § 68.56(d);
- l. Failed to certify that they have evaluated compliance with the provisions of subpart C at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed, as provided under 40 C.F.R. § 68.58(a);
- m. Failed to compile written process safety information pertaining to the technology of the process, as provided under 40 C.F.R. § 68.65(1)(iv), 40 C.F.R. § 68.65(1)(v), and 40 C.F.R. § 68.65((d)(viii));

- n. Failed to perform an initial process hazard analysis on the Formaldehyde process, as provided under 40 C.F.R. § 68.67(a);
- o. Failed to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in the formaldehyde process consistent with the process safety information, as provided under 40 C.F.R. § 68.69(a);
- p. Failed to review operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and change to stationary sources, as provided under 40 C.F.R. § 68.69(c);
- q. Failed to provide refresher training at least every three years, and more often as necessary, to each employee involved in operating the formaldehyde process to assure that the employee understands and adheres to the current operating procedures of the process, as provided under 40 C.F.R. § 68.71(b);
- r. Failed to ascertain that each employee involved in operating a process has received and understood training, as provided under 40 C.F.R. § 68.71(c);
- s. Failed to establish and implement written procedure to maintain the ongoing integrity of process equipment, as provided under 40 C.F.R. § 68.73(b);
- t. Failed to document each inspection and test that has been performed on process equipment, as provided under 40 C.F.R. § 68.73(4);
- u. Failed to certify that they have evaluated compliance with the provisions of subpart D at least every three years to verify that procedures and practices

developed under subpart D are adequate and are being followed, as provided under 40 C.F.R. § 68.79(a);

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

36. 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 the CAFO

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).

VI. TERMS OF SETTLEMENT

38. 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.

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

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

41. Respondent consents to the issuance of this CAFO, payment of a civil penalty, and completion of a Supplemental Environmental Project (SEP), as set forth below in this CAFO.

42. 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.

VII. PENALTIES and FEES

43. In consideration of Acid Products Company, Inc.'s agreement to perform a supplemental environmental project (SEP), and such other factors as justice may require, U.S. EPA agreed to mitigate the penalty of \$37,100 to \$10,984.

44. Acid Products Company, Inc. must pay the \$10,984 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.

45. Acid Products Company, Inc. must send the check to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

46. 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

47. This civil penalty is not deductible for federal tax purposes.
48. If Acid Products Company, 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.
49. 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. SUPPLEMENTAL ENVIRONMENTAL PROJECT

50. Acid Products Company, Inc. agrees to complete two SEPs designed to protect public health and the environment by November 30, 2009.
51. Acids Products Company, Inc. agrees to purchase ultrasonic testing equipment and create a storage tank inspection program to conduct more frequent and detailed

testing of storage tanks in use at the facility. Acids Products Company, Inc. represents that the cost of this SEP will be at least \$12,398.

52. Acid Products Company, Inc. agrees to purchase and install a mitigation system to control off-site impacts. Acid Products Company, Inc. will install and operate a fume mitigation water deluge system surrounding its storage tanks. Acid Products Company, Inc. represents that the cost of this SEP will be at least \$18,284.

53. Acid Products Company, Inc. certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Acid Products Company, Inc. further certifies that it has not received, and is not negotiation to receive, credit for the SEP in any other enforcement action.

54. Acid Products Company, Inc. must submit a SEP Completion Report to U.S. EPA by December 31, 2009. The SEP Completion Report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

55. Acid Products Company, Inc. must submit the SEP Completion Report to:

Attn: Monika Chrzaszcz (SC-6J)
Chemical Emergency Preparedness and Prevention Section
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

56. Acid Products Company, Inc. must certify that the SEP Completion Report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

57. Following receipt of the SEP Completion Report, U.S. EPA will notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Acid Products Company, Inc. 30 days to correct the deficiencies; or
- c. Acid Products Company, Inc. has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under Paragraph 60.

58. If U.S. EPA does not provide notice to Respondent under the provisions of Paragraph 57, above, within 45 days from receipt of the SEP Completion Report, it shall be deemed that U.S. EPA has exercised option a. under Paragraph 57.

59. If U.S. EPA exercises option b. under Paragraph 57, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its

objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision.

If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 45 below.

60. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

a. Except as provided in subparagraph c, below, if Respondent did not complete the SEP outlined in paragraph 51 above, satisfactorily according to this CAFO, Respondent must pay a stipulated penalty of **\$12,398**.

b. Except as provided in subparagraph c, below, if Respondent did not complete the SEP outlined in paragraph 52 above, satisfactorily according to this CAFO, Respondent must pay a stipulated penalty of **\$18,284**.

c. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, Respondent will not be liable for any stipulated penalty.

c. If Respondent satisfactorily completed the SEP outlined in paragraph 51 above, but spent less than 90 percent of the required amount on the SEP, Respondent must pay a stipulated penalty of **\$2,480**.

d. If Respondent satisfactorily completed the SEP outlined in paragraph 52 above, but spent less than 90 percent of the required amount on the SEP, Respondent must pay a stipulated penalty of **\$3,657**.

e. If Respondent failed to timely submit the SEP Completion report required by paragraph 54, above, Respondent must pay a stipulated penalty of \$50 for each day after the report was due until it submits the report.

61. U.S. EPA's determinations of whether Respondent satisfactorily completed the

SEP and whether it made good faith, timely efforts to complete the SEP will bind Respondent.

62. Acid Products Company, Inc. must pay any stipulated penalties within 15 days

of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 44, 45 and 46, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

63. Any public statement that Acid Products Company, Inc. makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of Section 112(r) of the Act, 40 C.F.R. Part 68.

64. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

65. For Federal Income Tax purposes, Acid Products Company, Inc. agrees that it

will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

IX. GENERAL TERMS of SETTLEMENT

66. Compliance with the terms of this CAFO shall constitute full settlement of this proceeding with respect to all civil and administrative claims alleged in the Violations section of this CAFO.

67. 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.

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

69. 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.

70. 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.

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

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

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

Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the facility.

74. 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.

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

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

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REGIONAL HEARING CLERK
U.S. EPA REGION 5

20

The foregoing Consent Agreement is hereby stipulated, agreed, and approved for entry: *2009 SEP -2 AM 9:45*

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

Date: 8/28/09

By: Michael D. Nanis for R.K.

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

**Acid Products Company, Inc.
Respondent**

Date: 8-11-09

By: Jann Fisher

Jann Fisher, President

VICE-PRESIDENT

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REGIONAL HEARING CLERK
U.S. EPA REGION 5

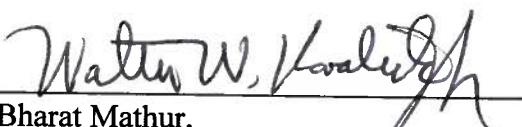
Consent Agreement and Final Order
Acid Products Company, Inc.
Docket No. CAA-05-2009-0030

2009 SEP -2 AM 9:45

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: 9/1/09



Bharat Mathur,
Acting Regional Administrator
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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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:

Jann Fischer
Acid Products Company, Inc.
600 W. 41st street
Chicago, Illinois 40086

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 2 date of September, 2009.


Monika Chrzaszcz
U.S. Environmental Protection Agency
Region 5

CAA-05-2009-0030