



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

JUL 12 2007

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert J. Verheulen
Registered Agent
Meijer, Inc.
2929 Walker NW
Grand Rapids, MI 49544

Re: **Meijer, Inc., Middlebury, Indiana** Consent Agreement and Final Order.
Docket No. **CAA-05-2007-0013**

Dear Mr. Verheulen:

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 JUL 12 2007. Please pay the civil penalty in the amount of \$25,000 in the manner prescribed in paragraph(s) 47-53 and reference your check with the number BD 2750703A017 and docket number **CAA-05-2007-0013**.

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 Janet Carlson, Regional Counsel, at (312) 886-6059. Thank you for your assistance in resolving this matter.

Sincerely yours,

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

Enclosure

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

Janet Carlson (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:)	Docket No. CAA-05-2007-0013
)	
Meijer, Inc.)	Proceeding to Assess a Civil
536 North Main Street)	Penalty under Section 113(d)
Middlebury, Indiana 46540)	of the Clean Air Act,
)	42 U.S.C. §7413(d)
EPA ID: 1000 000 5503)	
RMP ID: 580)	
)	
Respondent.)	
_____)	

CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY

1. The United States Environmental Protection Agency (“Complainant” or “U.S. EPA”), and Meijer, 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. § 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 536 North Main Street, Middlebury, Indiana, 46540.

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 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. On November 28, 2006, U.S. EPA requested renewal of the U.S. Department of Justice's determination to waive the 12-month limitation on U.S. EPA's authority to initiate administrative penalty actions for violations of 40 C.F.R. Part 68 by non-Title V Clean Air Act sources. On November 30, 2006, the U.S. Department of Justice approved U.S. EPA's request to waive the 12-month limitation on U.S. EPA's authority to initiate administrative

penalty actions for violations of 40 C.F.R. Part 68 against non-title V facilities under Clean Air Act Section 112(r)(7).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

24. Respondent is a corporation doing business in Indiana with a plant located at 536 North Main Street, Middlebury, Indiana 46540 (“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 recycled at least 22,000 pounds of anhydrous ammonia through a closed-loop system of storage vessels, refrigeration equipment, and piping (ammonia system) to maintain temperatures needed within the Facility.

29. Anhydrous ammonia 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 anhydrous ammonia is 10,000 pounds. 40 C.F.R. § 68.130, Table 1.

31. The amount of anhydrous ammonia 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 anhydrous ammonia.

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 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.

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 filed a RMP for the Facility on April 29, 1999.

37. On August 11, 2004, Respondent submitted the five-year update for the RMP for the process.

38. U.S. EPA conducted an inspection of the Facility on June 30, 2004 to assess compliance with the Risk Management Program requirements. During that inspection, USEPA found the following alleged violations of RMP Requirements:

- a. Respondent did not have documentation of the names or positions and lines of authority of those individuals who are responsible for implementing the individual requirements of the Risk Management Program. 40 C.F.R. § 68.15(c).

- b. 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).
- c. Respondent failed to review and update the offsite consequence analyses at least once every five years. “Off-site consequence analyses” include the worst case release scenarios and alternative release scenario analyses. 40 C.F.R § 68.36(a).
- d. Respondent failed to provide documentation for the worst-case release scenario that included a description of the vessel or pipeline and substances selected as worst case, assumptions and parameters used, the rationale for selection, and the anticipated effect of the administrative controls and passive mitigation on the release quantity and rate. 40 C.F.R. § 68.39(a).
- e. Respondent failed to provide documentation for the alternative release scenario that included a description of the vessel or pipeline and substance selected, assumptions and parameters used, the rationale for selection, and anticipated effect of the administrative controls and passive mitigation on the release quantity and rate. 40 C.F.R. § 68.39(b).
- f. Respondent failed to provide documentation of the estimated quantity released, release rate, and duration of release for its offsite consequence analysis. 40 C.F.R. § 68.39(c).
- g. Respondent failed to provide documentation of the data used to estimate population and environmental receptors potentially affected for its offsite consequence analysis. 40 C.F.R. § 68.39(e).

h. Respondent failed to provide documentation of the following written process safety information:

(A) information pertaining to technology of the process that included a block flow diagram or simplified flow diagram of the ammonia system. 40 C.F.R. § 68.65(c)(1)(i).

(B) information pertaining to the relief system design and design basis. 40 C.F.R. § 68.65(d)(1)(iv).

i. Respondent failed to provide documentation of a process hazard analysis (“PHA”) that addressed human factors. 40 C.F.R. § 68.67(c)(6).

j. Respondent failed to establish a system to promptly address their team’s findings and recommendations of its PHA; 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).

k. Respondent failed to retain process hazard analyses and updated or revalidations, as well as the documented resolution of recommendations made by the process hazard team for the life of the process. 40 C.F.R. § 68.67(g).

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

- m. Respondent failed to, in lieu of initial training for those employees already involved in operating a process on June 19, 1999, certify in writing that each employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures. 40 C.F.R. § 68.71(a)(2).
- n. Respondent failed to provide documentation of refresher training at least every three years, or more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. 40 C.F.R. § 68.71(b).
- o. Respondent failed to ascertain that each employee involved in operating a process has received and understood the training as required by 40 C.F.R. § 68.71(a)-(b) and failed to prepare a record that contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training. 40 C.F.R. § 68.71(c).
- p. Respondent failed to establish and implement written procedures to maintain the ongoing integrity of process equipment. 40 C.F.R. § 68.73(b).
- q. Respondent failed to certify in an audit that they have evaluated compliance with the Program 3 Prevention Program at least every three years to verify that procedures and practices developed under the Program 3 Prevention Program are adequate and being followed. 40 C.F.R. § 68.79(a).
- r. Respondent failed to review and update its RMP at least once every five years from the date of its initial submission or most recent update, whichever is later, and submit that update to U.S. EPA. 40 C.F.R. § 68.190.

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

40. The Administrator and the Attorney General of the United States, each through their respective delegates, have agreed to waive the one year limitation on U.S. EPA's authority to initiate administrative cases under Clean Air Act Section 112(r)(7).

41. 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

42. 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.

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

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

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

46. 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 this CAFO.

VI. PENALTIES

47. 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 \$25,000.

48. Meijer, Inc. must pay the \$25,000 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.

49. Meijer, Inc. must send the check to:

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

50. 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
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (SC-6J)
Chicago, Illinois 60604

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

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

52. If Meijer, 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.

53. 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

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

55. 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.

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

57. 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.

58. 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.

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

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

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

62. 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.


63. Respondent and U.S. EPA agree to the issuance and entry of this CAFO.

64. 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: 7/5/07

By: 

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

CAA-05-2007-0013

Consent Agreement and Final Order
Meijer, Inc., Middlebury, Indiana
Docket No. CAA-05-2007-0013

The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to bind Respondent to this document.

Agreed this 26th day of June, 2007.

Date: 06-26-07

By: 

Robert J. VerHeulen, Vice President
Meijer, Inc.
Respondent

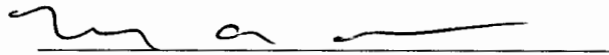
Consent Agreement and Final Order
Meijer, Inc., Middlebury, Indiana
Docket No. GAA-05-2007-0013

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: 7 | 12 | 07



Mary A. Gade
Regional Administrator
U.S. EPA, Region 5


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:

**Robert J. Verheulen, Registered Agent
Meijer, Inc.
2929 Walker NW
Grand Rapids, MI 49544**

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 12 date of July, 2007.



Monika Chrzaszcz
U.S. Environmental Protection Agency
Region 5

CAA-05-2007-0013