

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
United Industries Corporation )  
8464 Chapin Industrial Drive ) Docket No. CAA-07-2011-0005  
St. Louis, Missouri 63114, )  
)  
Respondent. )

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and United Industries (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the date of the alleged violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order (CA/FO) serves as notice that EPA has reason to believe that Respondent has violated certain provisions governing Chemical Accident Prevention, set forth at 40 C.F.R. Part 68 and Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this CA/FO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

#### Parties

3. The Complainant, by delegation from the Administrator of EPA, and the Regional Administrator, EPA Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. The Respondent is United Industries Corporation, a Delaware Corporation, and a company registered and authorized to do business in the State of Missouri. The facility is located at 8464 Chapin Industrial Drive, St. Louis, Missouri, 63114; is leased by Respondent; and is used for the manufacturing of lawn and garden chemical products and insecticide aerosol products.

#### Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7).

Specifically, Section 112(r)(7)(A) authorizes the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances. 42 U.S.C. § 7412(r)(7)(A).

6. On June 20, 1996, EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. These regulations require owners and operators of stationary sources that have more than a threshold quantity of a regulated substance to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

7. The regulations at 40 C.F.R. Part 68, Subpart G set forth the requirements of a risk management plan (RMP) that each such stationary source must prepare for all covered processes. The (RMP) must be submitted to EPA.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than June 21, 1999; or the date on which a regulated substance is first present above the threshold quantity in a process.

9. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112(r)(7), 42 U.S.C. § 7412(r)(7). Section 113(d) of the CAA, 42 U.S.C. §

7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of up to \$27,500 per day for each violation that occurs between January 30, 1997, and March 15 2004; \$32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

#### Definitions

10. The regulations at 40 C.F.R. § 68.3 define “stationary source” in part, as 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.

11. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

12. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), as amended, in 40 C.F.R. § 68.130.

13. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances or a combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate

vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

#### Alleged Violations

14. EPA alleges that Respondent has violated the CAA and federal regulations promulgated pursuant to the CAA as follows:

15. Respondent is, and at all times referred to herein, was a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

16. Respondent’s facility, located at 8464 Chapin Industrial Drive, St. Louis, Missouri 63114, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

17. Isobutane, normal butane, and propane are regulated substances pursuant to 40 C.F.R. § 68.3. The threshold quantity for isobutane, normal butane, and propane, as listed in 40 C.F.R. § 68.130, Table 3, is 10,000 pounds.

18. On or about August 12, 2009, EPA conducted an inspection of Respondent’s facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

19. Records collected during the inspection showed that Respondent exceeded the threshold quantity for isobutane, normal butane, and propane. Respondent filed an RMP in January 2004.

20. Respondent is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

21. Respondent is required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

22. Records collected during the inspection showed that Respondent failed to implement a risk management program that included all the requirements of a prevention program. Specifically, Respondent failed to: (1) prepare and submit a five year update of the Risk Management Plan as required by 40 C.F.R. § 68.190(b); (2) address aerosol filling in the Process Hazard Analysis as required by 40 C.F.R. § 68.67(c); (3) annually certify the Operating Procedures as current and accurate as required by 40 C.F.R. § 68.69(c); (4) adequately document initial and refresher training for operators as required by 40 C.F.R. § 68.71(c); (5) develop written procedures for maintaining the ongoing integrity of process equipment as required by 40 C.F.R. § 68.73(b); and (6) conduct compliance audits as required by 40 C.F.R. §§ 68.79(a-d).

23. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth in Paragraph 22, violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

#### CONSENT AGREEMENT

24. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

25. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

26. Respondent neither admits nor denies the factual allegations set forth in Paragraphs 14 through 23.

27. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CA/FO.

28. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this action.

29. This CA/FO addresses all civil and administrative claims for the CAA violations identified in Paragraph 22 above, existing through the effective date of this CA/FO. Complainant reserves the right to take an enforcement action with respect to any other violations of the CAA or other applicable law.

30. Respondent certifies that by signing this CA/FO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

31. The effect of settlement described in Paragraph 29 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 30 of this CA/FO.

32. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

33. Nothing in this CA/FO shall be construed as a release from any other action under law and/or regulation administered by EPA. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to

comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

34. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of the debt collection including processing and handling costs and attorneys' fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

35. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

36. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to legally bind Respondent to it.



FINAL ORDER

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Forty-Four Thousand One Hundred Dollars and No Cents (\$44,100.00), within thirty (30) days of the effective date of this Final Order. Payment shall be made by wire transfer, cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

This payment shall reference docket number CAA-07-2011-0005.

2. A copy of the check should be sent to:

Kathy Robinson  
Regional Hearing Clerk  
United States Environmental Protection Agency—Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101

and to:

Sara Hertz Wu  
Assistant Regional Counsel  
United States Environmental Protection Agency—Region 7  
901 North Fifth Street  
Kansas City, Kansas 66101.


3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of the CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

5. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:

U. S. ENVIRONMENTAL PROTECTION AGENCY

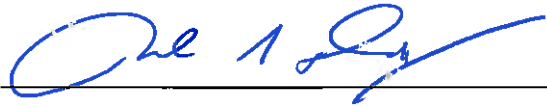
Date: 1/4/11 By:   
Becky Weber  
Director  
Air and Waste Management Division

Date: 1/4/11 By:   
Sara Hertz Wu  
Assistant Regional Counsel

RESPONDENT:

UNITED INDUSTRIES CORPORATION

Date: 12/20/10

By: 

Printed Name: Michael G. Pfefferkorn

Title: Secretary

IT IS SO ORDERED. This Final Order shall become effective immediately.

By: Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

Date: Jan. 6, 2011

IN THE MATTER OF United Industries Corporation, Respondent  
Docket No. CAA-07-2011-0005

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Sara Hertz Wu  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Michael Pfefferkom, Secretary  
United Industries Corporation  
8464 Chapin Industrial Drive  
St. Louis, Missouri 63114

Dated: 1/6/11



Kathy Robinson  
Hearing Clerk, Region 7