

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of)
)
 Fuller Industries, Inc.,) **Docket No. CAA-07-2022-0018**
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Fuller Industries, Inc. (Respondent) have agreed to a settlement of this action before the 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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated 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, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA’s intent to issue an order assessing penalties for these violations.

Parties

3. Complainant, by delegation from the Administrator of the EPA, the Regional Administrator of Region 7, and the Enforcement and Compliance Assurance Division Director, is the Chief of the Air Branch, EPA, Region 7.

4. Respondent is Fuller Industries, Inc., a corporation in good standing under the laws of the state of Kansas. On September 15, 2021, Respondent acquired ownership and commenced operation of the manufacturing facility located at One Fuller Way in Great Bend, Kansas (Facility). The prior owner of the Facility was Fuller Industries LLC, currently GB FI GROUP, LLC (GB FI GROUP).

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the 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 that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

6. On June 20, 1996, the EPA promulgated a final rule known as the Risk Management Plan Rule, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This rule requires owners and operators of stationary sources to develop, and implement a risk management program that includes preparation of a hazard assessment, implementation of a prevention program, and coordination of emergency response activities.

7. The regulations at 40 C.F.R. Part 68, titled Chemical Accident Prevention Provisions, set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a Risk Management Plan (“RMP”) that must be submitted to the 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, an RMP must be submitted for all covered processes by the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

9. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the eligibility requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and it either falls under a specified North American Industry Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

10. 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 Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$48,762 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 23, 2020.

11. Pursuant to Section 113(d)(2)(B) of the Clean Air Act, 42 U.S.C. § 7413(d)(2)(B), the Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

Definitions

12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 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.

14. 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, as amended, in 40 C.F.R. § 68.130.

15. 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, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. 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 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.

General Factual Allegations

17. 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).

18. Respondent is the current owner and operator of a facility that is a “stationary

source” pursuant to 40 C.F.R. § 68.3.

19. GB FI GROUP was the owner and operator of the Facility at all times prior to September 15, 2021.

20. Isobutane is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for Isobutane, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

21. Propane is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for propane, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

22. On or about October 22-23, 2019, representatives of the EPA conducted an inspection of the Facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68. GB FI GROUP owned and operated the Facility at the time of the inspection.

23. Information gathered during the EPA inspection revealed that 22,209 pounds of isobutane were on site at the time of inspection.

24. Information gathered during the EPA inspection revealed that 7,385 pounds of propane were on site at the time of inspection, with a maximum intended inventory of 34,374 pounds listed in the most recent RMP. Records submitted to EPA by GB FI GROUP reveal that in 2018 the maximum daily amount of propane on site during the calendar year was 15,987 pounds, and the average daily amount was 10,956 pounds.

25. From the time there was first onsite greater than 10,000 pounds of isobutane or propane in a process, the owner or operator of the Facility was subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 as an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

26. From the time there was first onsite greater than 10,000 pounds of isobutane or propane in a process, the owner or operator of the Facility was subject to Program 3 prevention program requirements because pursuant to 40 C.F.R. § 68.10(i), the covered process at the Facility did not meet the eligibility requirements of Program 1 and was subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

27. From the time there was first onsite greater than 10,000 pounds of isobutane or propane in a process, the owner or operator of the Facility was required under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 requirements provided at 40 C.F.R. § 68.12(d) and detailed in Subpart D.

Allegations of Violation

28. Complainant hereby states and alleges that violations of the CAA and federal regulations promulgated thereunder occurred at the Facility as follows:

Count 1

29. The facts stated in Paragraphs 17 through 26 above are herein incorporated.

30. The regulation at 40 C.F.R. § 68.28(c) requires the owner or operator of a stationary source subject to the Risk Management Plan Rule, 40 C.F.R. Part 68, to use appropriate parameters, as defined in 40 C.F.R. § 68.22, to determine the distance to the endpoints for the alternative release scenario analyzed in the offsite consequence analysis for each regulated substance held in a covered process.

31. The EPA inspection revealed that GB FI GROUP did not use appropriate parameters to determine the distance to the endpoints, and specifically did not show how the distance to the endpoints was calculated for the alternate release scenario analyzed in the offsite consequence analysis, as is required by 40 C.F.R. § 68.28(c).

32. The failure to show how the distance to the endpoints was calculated in the alternative release scenario is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2

33. The facts stated in Paragraphs 17 through 26 above are herein incorporated.

34. The regulation at 40 C.F.R. § 68.39 requires the owner or operator of a stationary source with a process subject to Program 3 to maintain records of the offsite consequence analysis, including documentation of estimated quantity released, release rate, and duration of release; methodology used to determine the distance to the endpoints; and the data used to estimate population and environmental receptors potentially affected.

35. The EPA inspection revealed that GB FI GROUP did not maintain records to support the offsite consequence analysis included in the most recent RMP. Specifically, GB FI GROUP did not retain documentation of the estimated quantity released, release rate, and duration of release; the methodology used to determine the distance to the endpoints; and the data used to estimate population and environmental receptors potentially affected.

36. The failure to maintain records to support the offsite consequence analysis, as is required by 40 C.F.R. § 68.39(c)-(e), violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3

37. The facts stated in Paragraphs 17 through 26 above are herein incorporated.

38. The regulation at 40 C.F.R. § 68.69 requires the owner or operator of a stationary source with a process subject to Program 3 to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information.

39. The EPA inspection revealed that GB FI GROUP did not include all the required elements in the standard operating procedures under 40 C.F.R. § 68.69(a), including operating limits, temporary operations, emergency operations, emergency shutdown, normal shutdown, startup following a turnaround or after an emergency shutdown, and consequences of deviation.

40. The failure to include all the required elements in the standard operating procedures as required by 40 C.F.R. § 68.69(a) violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4

41. The facts stated in Paragraphs 17 through 26 above are herein incorporated.

42. The regulation at 40 C.F.R. § 68.73 requires the owner or operator of a stationary source with a process subject to Program 3 to ensure the mechanical integrity of piping systems through inspection and testing. 40 C.F.R. § 68.73(d)(3) requires that the frequency of inspections and tests of process equipment be consistent with applicable manufacturers' recommendations and good engineering practices.

43. The EPA inspection revealed that GB FI GROUP did not establish mechanical integrity procedures that address the frequency of inspections and tests pertaining to two loops of buried piping, each consisting of a supply line and a return line, consistent with applicable manufacturers' recommendations and good engineering practices, as is required by 40 C.F.R. § 68.73(d)(3). Specifically, applicable manufacturers' recommendations and good engineering practices dictate an inspection be conducted every 5-15 years, depending upon soil corrosivity. The EPA inspection revealed that GB FI GROUP had never inspected the two loops of buried piping and that the piping was installed over 15 years ago.

44. The failure to establish mechanical integrity procedures that address the frequency of inspections and tests pertaining to the two loops of buried piping in accordance with 40 C.F.R. § 68.73(d)(3) violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 5

45. The facts stated in Paragraphs 17 through 26 above are herein incorporated.

46. The regulation at 40 C.F.R. § 68.77 requires the owner or operator of a stationary source subject to the Risk Management Plan Rule, 40 C.F.R. Part 68, to perform a pre-startup safety review for modified stationary sources when the modification is significant enough to require a change in the process safety information.

47. The EPA inspection revealed that GB FI GROUP did not implement procedures outlined in the pre-startup safety review policy document, as is required by 40 C.F.R. § 68.77. Specifically, GB FI GROUP did not conduct the pre-startup safety review that was required to manage the change of pressure relief valves and manifolds for isobutane and propane tanks in the storage area.

48. The failure to implement procedures outlined in the pre-startup safety review policy document, as is required by 40 C.F.R. § 68.77, violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 6

49. The facts stated in Paragraphs 17 through 26 above are herein incorporated.

50. The regulation at 40 C.F.R. § 68.79 requires the owner or operator of a stationary source subject to the Risk Management Plan Rule, 40 C.F.R. Part 68, to retain and certify the two most recent compliance audits.

51. The EPA inspection revealed that GB FI GROUP did not retain and certify the two most recent compliance audits, as is required by 40 C.F.R. § 68.79. Specifically, at the time of inspection, GB FI GROUP could produce documentation of only one compliance audit, which was conducted in 2017 and was uncertified.

52. The failure to retain and certify the two most recent compliance audits, as is required by 40 C.F.R. § 68.79, violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 7

53. The facts stated in Paragraphs 17 through 26 above are herein incorporated.

54. The regulation at 40 C.F.R. § 68.15 requires the owner or operator of a stationary source subject to the Risk Management Plan Rule, 40 C.F.R. Part 68, to establish a written management system to oversee the implementation of all of the risk management program elements.

55. The EPA inspection revealed that GB FI GROUP did not establish a management system for oversight of the implementation of all of the risk management program elements, as is required by 40 C.F.R. § 68.15.

56. The failure to establish a management system in accordance with 40

C.F.R. § 68.15 violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 8

57. The facts stated in Paragraphs 17 through 26 above are herein incorporated.

58. The regulation at 40 C.F.R. § 68.180(b) requires the owner or operator of a stationary source subject to the Risk Management Plan Rule, 40 C.F.R. Part 68, to identify in the RMP whether the facility is a responding stationary source or a non-responding stationary source, pursuant to 40 C.F.R. § 68.90.

59. The EPA inspection revealed that GB FI GROUP did not accurately report whether the Facility is a responding or non-responding facility in its 2016 Risk Management Plan, as is required by 40 C.F.R. § 68.180. Specifically, GB FI GROUP stated in its most recent RMP that the Facility is a responding facility, when in fact the Facility does not intend to actively respond to accidental releases and is therefore a non-responding facility.

60. The failure to accurately report the Facility's status as a non-responding facility in the most recent RMP, in accordance with 40 C.F.R. § 68.180(b), violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

61. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

62. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

63. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

64. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: *jwest@fullerind.com*.

Penalty Payment

65. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of \$144,924.

66. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

67. A copy of the check or other information confirming payment shall simultaneously be emailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
R7_Hearing_Clerk_Filings@epa.gov;
and

Katie Gulley, Attorney
U.S. Environmental Protection Agency, Region 7
Gulley.katherine@epa.gov.

68. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil penalty from the date of delinquency until such civil penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and 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. 31 U.S.C. § 3717(e)(2).

Conditions

69. As a condition of settlement, Respondent agrees to the following:
- (a) Within 180 days of the effective date of this Consent Agreement and Final Order, Respondent shall perform non-destructive testing of the two loops of buried piping, each comprised of a supply line and a return line, located at the Facility. Respondent shall address any findings indicating compromised piping integrity and establish a schedule to promptly remedy these findings.
 - (b) Within 15 days of receiving the results of the testing, Respondent shall provide a copy of the results via e-mail to EPA Compliance Officer Jodi Harper at *harper.jodi@epa.gov*.
 - (c) Should activities be needed to address compromised piping, within 45 days of receiving testing results, Respondent shall provide a document describing the planned activities and the schedule for such activities via email to EPA Compliance Officer Jodi Harper at *harper.jodi@epa.gov*.

70. Respondent must submit notice that it has complied with Paragraph 69 via e-mail to EPA Compliance Officer Jodi Harper at *harper.jodi@epa.gov* within twelve months after the effective date of this Consent Agreement and Final Order.

71. In the notice that Respondent submits as provided by Paragraph 70 of this Consent Agreement and Final Order, it must certify that the notice 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, it 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.

Effect of Settlement and Reservation of Rights

72. Full payment of the penalty proposed and performance of the conditions in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

73. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph directly below.

74. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

75. Full payment of the penalty proposed and performance of the conditions in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

76. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

77. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

78. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

79. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

80. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the conditions identified in Paragraph 69 is required to come into compliance with the law.

81. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT:
FULLER INDUSTRIES, INC.**

Date: 1/12/2022



Signature

JAKE WEST

Name

General Manager

Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

Tracey Casburn
Air Branch Chief
Enforcement and Compliance Assurance Division

Date: _____

Katie Gulley
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that 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 via E-mail to Complainant:

Katie Gulley, Attorney
U.S. Environmental Protection Agency, Region 7
Gulley.katherine@epa.gov

Copy via E-mail to Respondent:

Jake West
Fuller Industries, Inc.
jwest@fullerind.com

Dated this _____ day of _____, _____.

Signed