

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:)
)
)
INFRAMARK, LLC) DOCKET NO. CAA-06-2020-3368
JONES, OKLAHOMA)
)
RESPONDENT)
_____)

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Inframark, LLC (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall only resolve the Respondent's liability for Federal civil penalties for those violations and facts which are set forth herein.

5. The Respondent consents to the issuance of the CAFO, to the assessment and payment of the civil penalty in the amount and by the method set forth in this CAFO, and to the conditions specified in the CAFO.

6. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

7. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

8. On September 30, 2019, the EPA conferred with Respondent regarding the violations alleged herein and provided an opportunity for Respondent to submit additional information or materials.

9. Inframark, LLC (Respondent or Inframark) is a limited liability company authorized to do business in the State of Oklahoma.

10. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency of the United States and any officer, agent, or employee thereof."

11. The Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

12. The Respondent operates a wastewater treatment plant (North Canadian Wastewater Plant) located at 12800 North Anderson Road, Jones, Oklahoma 73049.

13. "Stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning:

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 Respondent's facility identified in Paragraph 12 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

15. The Respondent is the operator of the stationary source identified in Paragraph 12.

16. Chlorine, propane, and sulfur dioxide (anhydrous) are each a "regulated substance", as set forth in 40 C.F.R. § 68.130.

17. "Process" is defined in 40 C.F.R. § 68.3 as meaning:

any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose 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.

18. The Respondent operates a wastewater chlorination process at the stationary source identified in Paragraph 12.

19. 40 C.F.R. § 68.130 specifies a 2,500 pound threshold for chlorine, a 10,000 pound threshold for propane, and a 5,000 pound threshold for sulfur dioxide (anhydrous).

20. The Respondent's facility as identified in Paragraph 12 has propane in exceed of the 10,000 pound threshold, however, such propane is not used in the wastewater chlorination

process. Therefore, the Respondent's facility is not subject to the "Program 3" requirements of the RMP regulations for the regulated substance of propane. The facility must still comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D for the other regulated substances identified in Paragraph 16.

21. The Respondent exceeded the threshold quantity for chlorine and sulfur dioxide (anhydrous) at the wastewater chlorination process identified in Paragraph 18.

22. "Covered process" is defined in 40 C.F.R. § 68.3 as meaning "a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115."

23. The wastewater chlorination process identified in Paragraph 18 is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

24. The wastewater chlorination process identified in Paragraph 18 is subject to the "Program 3" requirements of the RMP regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

25. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d), authorizes EPA to bring an administrative action for penalties that exceed \$385,535¹ and/or the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

¹ The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$385,535 for violations that occurred after November 2, 2015, and assessed on or after January 13, 2020.

26. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the alleged violations occurred more than twelve (12) months prior to the initiation of the administrative action.

27. On or about June 13, 2019, a representative of EPA conducted an inspection of the Respondent's facility.

28. On or about September 30, 2019, the Complainant sent an informal request for information to the Respondent and the Oklahoma City Water Utilities Trust.

29. On or about October 14, 2019, the City of Oklahoma City Water & Wastewater Utilities Department (on behalf of the Respondent) sent its written response to the information requested by the Complainant.

B. VIOLATIONS

Count One – Failure to Compile Process Safety Information

30. 40 C.F.R. § 68.65(a) & (d) provide the following:

(a) The owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule, and shall keep process safety information up-to-date. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

* * * *

(d) Information pertaining to the equipment in the process.

(1) Information pertaining to the equipment in the process shall include:

- (i) Materials of construction;
- (ii) Piping and instrument diagrams (P&ID's);
- (iii) Electrical classification;
- (iv) Relief system design and design basis;
- (v) Ventilation system design;

- (vi) Design codes and standards employed;
- (vii) Material and energy balances for processes built after June 21, 1999; and
- (viii) Safety systems (e.g. interlocks, detection or suppression systems).

31. On or about the June 13, 2019 EPA Inspection, the Respondent failed to compile complete information regarding safety systems for the wastewater chlorination process.

32. Therefore, the Respondent violated 40 C.F.R. § 68.65(a) & (d) by failing to compile the required process safety information.

Count Two - Inadequate Process Hazard Analysis

33. 40 C.F.R. § 68.67(a) and (c) provide the following:

(a) The owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by this part. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator shall determine and document the priority order for conducting process hazard analyses based on a rationale which includes such considerations as extent of the process hazards, number of potentially affected employees, age of the process, and operating history of the process. The process hazard analysis shall be conducted as soon as possible, but not later than June 21, 1999. Process hazards analyses completed to comply with 29 CFR 1910.119(e) are acceptable as initial process hazards analyses. These process hazard analyses shall be updated and revalidated, based on their completion date.

* * * *

(c) The process hazard analysis shall address:

- (1) The hazards of the process;
- (2) The identification of any previous incident which had a likely potential for catastrophic consequences.
- (3) Engineering and administrative controls applicable to the hazards and their interrelationship such as appropriate application of detection methodologies to provide early warning of releases (Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors.);
- (4) Consequences of failure of engineering and administrative controls;
- (5) Stationary source siting;
- (6) Human factors: and
- (7) A quantitative evaluation of a range of possible safety and health effects of failure of controls.

34. A copy of the latest Water Chlorination Process PHA submitted to EPA on or about October 14, 2019 failed to address stationary source siting.

35. Therefore, the Respondent violated 40 C.F.R. § 68.67(c) by failing to address all required elements of a process hazard analysis.

Count Three - Inadequate Operating Procedure

36. 40 C.F.R. § 68.69(a) provides the following:

(a) The owner or operator shall 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 and shall address at least the following elements.

(1) Steps for each operating phase:

- (i) Initial startup;
- (ii) Normal operations;
- (iii) Temporary operations;
- (iv) Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.
- (v) Emergency operations;
- (vi) Normal shutdown; and,
- (vii) Startup following a turnaround, or after an emergency shutdown.

(2) Operating limits:

- (i) Consequences of deviation; and
- (ii) Steps required to correct or avoid deviation.

(3) Safety and health considerations:

- (i) Properties of, and hazards presented by, the chemicals used in the process;
- (ii) Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment;
- (iii) Control measures to be taken if physical contact or airborne exposure occurs;
- (iv) Quality control for raw materials and control of hazardous chemical inventory levels; and,
- (v) Any special or unique hazards.

(4) Safety systems and their functions.

37. On or about October 14, 2019, the Respondent submitted a copy of their “Emergency Operations – Chlorine & Sulfur Dioxide Leaks” Procedure.

38. The operating procedure identified in Paragraph 37 did not require the operator responding to certain chlorine or sulfur dioxide leaks with respiratory protection. The operating procedure identified in Paragraph 37 was not specifically designed for this particular facility.

39. The operating procedure identified in Paragraph 37 did not include sufficient precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment. The operating procedures developed by owner or operator were not developed providing clear instructions for safely conducting Emergency Operation activities in the situation of Chlorine & Sulfur Dioxide Leaks.

40. Therefore, the Respondent violated 40 C.F.R. § 68.69(a) by not developing written operating procedures that provided clear instructions for safely conducting activities involved in each covered process consistent with the process safety information.

Count Four – Failure to Certify Operating Procedures

41. 40 C.F.R. § 68.69(c) provides that the operating procedures shall be reviewed 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 changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

42. As of the date of the June 13, 2019 EPA Inspection, the Respondent failed to certify the operating procedures for 2017, 2018, and 2019.

43. Therefore, the Respondent violated 40 C.F.R. § 68.69(c) by failing to certify annually that their operating procedures are current and accurate.

Count Five – Training Violations

44. 40 C.F.R. § 68.71(a) – (c) provide the following:

(a)(1) Each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in § 68.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

(2) In lieu of initial training for those employees already involved in operating a process on June 21, 1999 an owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.

(b) Refresher training. Refresher training shall be provided at least every three years, and 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. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

(c) Training documentation. The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

45. 40 C.F.R. § 68.95(a)(3) provides that the owner or operator shall, as part of its emergency response program, provide training in all relevant [emergency response] procedures.

46. The Respondent failed to provide initial training and/or refresher training for certain employees involved in the operation of the wastewater chlorination process.

47. Alternatively, or in addition to, the Respondent failed to provide training documentation for certain employees involved in the operation of the wastewater chlorination process.

48. Therefore, the Respondent violated 40 C.F.R. § 68.71 by failing the train certain employees, and/or failed to provide training documentation for certain employees involved in the operation of the wastewater chlorination process.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

49. For the reasons set forth above, the Respondent has agreed to pay a civil penalty of **EIGHTY THOUSAND, NINE HUNDRED TWO DOLLARS (\$80,902)**.

50. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency” with a phone number of
(412) 234-4381”.

PLEASE NOTE: Docket Number CAA-06-2020-3368 shall be clearly typed on the check or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent’s name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent’s name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Elizabeth Rogers
Enforcement Officer
Chemical Accident Prevention Section (ECDAC)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
rogers.elizabeth@epa.gov

Lorena Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270
Vaughn.Lorena@epa.gov

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

51. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

52. If any Respondent fails to submit payment within thirty (30) days of the effective date of this CAFO, the Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth below.

53. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

54. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a

penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply

55. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent (10%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

56. This CAFO is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the Clean Air Act Stationary Source Penalty Policy, and the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012).

B. RETENTION OF ENFORCEMENT RIGHTS

57. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

58. Nothing in this CAFO shall relieve the Respondent of the duty to comply with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

59. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility whether related to

the violations addressed in this CAFO or otherwise. Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

60. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, the Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations, or any other equitable defense based on the passage of time. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under the Clean Air Act or its implementing regulations, or under other federal or state laws, regulations, or permit conditions.

61. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, to enforce the provisions of this CAFO, or other appropriate relief relating to this Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims for civil penalties that have been specifically resolved pursuant to this CAFO.

62. The Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA or the United States to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action. The Respondent also consents

to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District Court.

63. The Respondent also waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of law or fact set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

64. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the Clean Air Act or with any other provisions of federal, State, or local laws, regulations, or permits.

C. COSTS

65. Except as provided in Paragraph 55, each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

D. SERVICE OF CAFO

66. The Complainant and Respondent agree to the use of electronic signatures for this matter. The Respondent further agrees to electronic service of this CAFO pursuant to 40 C.F.R.

§ 22.6, by e-mail to the following address:

To the Respondent:

Michael Alpago, Esq.
Inframark, LLC
220 Gibraltar Road, Suite 200
Horsham, PA 19044
Phone: 215.283.3478
michael.alpago@inframark.com

E. EFFECTIVE DATE

67. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 1/28/2021



Inframark, LLC

FOR THE COMPLAINANT:

Date: February 1, 2021

Cheryl T. Seager
Director
Enforcement and Compliance
Assurance Division
EPA – Region 6

FINAL ORDER

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consent Agreement and Final Order (CAFO) was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy of the CAFO was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

pittman.lawrence@epa.gov

Copy via Email to Respondent:

michael.alpago@inframark.com

Dated this _____ day of _____, _____.

Signed