



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB 04 2015

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mary Jane Rhoades
Attorney
Rhoades Mckee
55 Campau Avenue NW, Suite 300
Grand Rapids, Michigan 49503

Re: **FloraCraft Corporation, Ludington, Michigan**
Consent Agreement and Final Order
Docket No. **CAA-05-2015-0016**

Dear Ms. Rhoades,

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on **FEB 04 2015**. Please note FloraCraft Corporation's obligation to pay a civil penalty in the amount of \$25,464 in the manner prescribed in paragraphs 32-38 and please reference your check with the docket number. In addition, FloraCraft Corporation must complete a Supplemental Environmental Project worth \$55,130 as prescribed in paragraphs 39-47.

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 Robert Guenther, Regional Counsel, at (312) 886-0566. Thank you for your assistance in resolving this matter.

Sincerely yours,

Michael E. Hans, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

cc. Robert Guenther, ORC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	
)	DOCKET NO.: CAA-05-2015-0016
FLORACRAFT CORPORATION,)	
LUDINGTON, MICHIGAN,)	PROCEEDING TO ASSESS
)	A CIVIL PENALTY UNDER
EPA ID: 100000213798)	SECTION 113(d) OF THE
)	CLEAN AIR ACT,
RESPONDENT.)	42 U.S.C. § 7413(d)
_____)	

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and 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 (the Consolidated Rules) as codified at 40 C.F.R. part 22, for violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r).

2. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

3. Complainant is, by lawful delegation, the Director of the Superfund Division, U.S. EPA Region 5.

4. Respondent is FloraCraft Corporation, a corporation organized under the laws of the State of Michigan, and is thus a “person” according to section 302(e) of the CAA, 42 U.S.C. § 7602(e).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations or conclusions of law contained herein.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

STATUTORY AND REGULATORY BACKGROUND

9. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator of U.S. EPA to promulgate regulations regarding the prevention and detection of accidental releases of designated chemicals. These regulations require the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan to prevent or minimize risks of accidental releases of those designated substances.

10. Pursuant to section 112(r)(7)(A) and (B) of the CAA, 42 U.S.C. § 7412(r)(7)(A) and (B), the Administrator promulgated the Chemical Accident Pollution

Prevention rule on January 31, 1994. This rule is codified at 40 C.F.R. part 68 and has been modified from time to time since.

11. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.12(d), requires the owner and operator of a stationary source with a process subject to Program 3, as defined at 40 C.F.R. § 68.10(d), to develop and implement a management system as required by 40 C.F.R. § 68.15, conduct a hazard assessment pursuant to 40 C.F.R. §§ 68.20 to 68.42, implement the prevention requirements of 40 C.F.R. §§ 68.65 to 68.87, and develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 and 68.95. These requirements are collectively known as the “Risk Management Program.”

12. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.10(d), defines a Program 3 process as one which does not meet the requirements of a Program 1 process found at 40 C.F.R. § 68.10(b) and is subject to the process safety management standard at 29 C.F.R. § 1910.119.

13. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “stationary source” 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 Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “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.”

15. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “regulated substance” as “any substance listed pursuant to section 112(r)(3) of the Clean Air Act ... in [40 C.F.R.] § 68.130.”

16. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as “any person who owns, leases, operates, controls or supervises a stationary source.”

17. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “threshold quantity” as “the quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act ... , 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.”

18. The Chemical Accident Pollution Prevention rule, in Tables 3 and 4 referenced in 40 C.F.R. § 68.130, lists butane (CAS # 106-97-8), difluoroethane (CAS # 75-37-6) and pentane (CAS # 109-66-0) as regulated substances with threshold quantities of 10,000 pounds each.

19. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement imposed under section 112(r)(7), it is unlawful for any person to operate any stationary source in violation of such requirement.

20. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), provides that the Administrator may issue an administrative order against any person assessing civil administrative penalties of up to \$25,000 per day of violation whenever the

Administrator finds that person has violated a requirement of subchapter I of the CAA, including a requirement of any rule promulgated under that subchapter.

21. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. part 19, increased the statutory maximum penalty under section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), to \$32,500 per day of violation to a maximum of \$270,000 for violations occurring after March 15, 2004, through January 12, 2009, and to \$37,500 per day of violation to a maximum of \$295,000 for violations occurring after January 12, 2009.

22. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), further limits the Administrator's authority to pursue administrative penalties to matters where the date of the first alleged violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving an older period of violation is appropriate for administrative penalty action.

FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

23. At all times relevant to this Complaint, Respondent owned, operated, controlled and supervised a facility located at One Longfellow Place, Ludington, Michigan, which includes buildings, structures, equipment, and installations belonging to the same industrial group, located on one or more contiguous properties and under the control of Respondent. The facility manufactures solid craft foam for the floral industry and others. Respondent uses butane, difluoroethane and pentane in its manufacturing processes.

24. Respondent's facility in Ludington is a "stationary source" as that term is defined in 40 C.F.R. § 68.3.

25. Respondent is an "owner or operator" as that term is used in 40 C.F.R. § 68.3.

26. Respondent's Ludington facility had butane, since November 2011, difluoroethane since November 2011, and pentane since May 2013, each in quantities exceeding 10,000 pounds through 2013. Respondent thus maintained certain regulated substances at its Ludington facility at certain times at certain times in quantities exceeding the thresholds under the Chemical Accident Pollution Prevention rule.

27. Respondent's processes at its Ludington facility subject it to Program 3 requirements because the distance to public receptors, as defined at 40 C.F.R. § 68.30, is less than the distance to the flammable or toxic endpoint for a worst-case release assessment under 40 C.F.R. § 68.25, and because the processes are subject to the process safety management standard at 29 C.F.R. § 1910.119.

28. The Administrator of U.S EPA and the Attorney General of the United States, each through their respective delegates, have determined that administrative penalty action is appropriate for the period of violations alleged in this CAFO.

29. On July 24, 2013, Respondent's Risk Management Program for the Ludington facility, prepared pursuant to 40 C.F.R. § 68.12(d), failed to implement certain mandatory elements required by those provisions. A table listing the deficiencies in Respondent's Risk Management Program at its Ludington facility is attached as Table A.

30. Respondent's failure to develop and implement a complete Risk Management Program at the Ludington facility violates the requirements of 40 C.F.R. § 68.12(d).

31. Respondent's violation of 40 C.F.R. § 68.12(d) at its Ludington facility constitutes unlawful operation of a stationary source subject to a regulation or requirement promulgated under section 112(r) of the CAA, 42 U.S.C. § 7412(r), and authorizes the Administrator to seek penalties pursuant to section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B).

CIVIL PENALTY

32. Based on an analysis of the factors as specified in section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation in quickly resolving this matter and Respondent's willingness to perform the supplemental environmental project described below, Complainant has determined that an appropriate civil penalty to settle this action is \$25,464.

33. Within 30 days after the effective date of this CAFO, Respondent must pay the \$25,464 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

34. The check must note the case caption and the docket number of this CAFO.

35. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to each of the following:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Monika Chrzaszcz (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

37. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited

to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. According to section 113(d) of the CAA, 42 U.S.C. § 7413(d)(5), this nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

39. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health. Respondent proposes to triple the capacity of deluge fire-suppression systems at its facility in Ludington, Michigan, to limit any potential releases of regulated materials at the facility from fire or explosion.

40. Respondent must spend at least \$55,130 to purchase and install the improved deluge system. Respondent will complete work on the project by May 1, 2015.

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

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in

completing the SEP will not be excused.

- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above.

41. By its execution of this CAFO, Respondent certifies as follows:

I certify that FloraCraft Corporation is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that FloraCraft Corporation has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that FloraCraft Corporation is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

42. Until EPA has notified Respondent that Respondent has satisfactorily completed the SEP and SEP completion report detailed in the following paragraph, EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

43. Subject to the force majeure provisions of paragraph 41, above, Respondent must submit a SEP completion report to EPA by June 1, 2015. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;

- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

44. Respondent must submit the SEP completion report required by this CAFO by first-class mail to Mr. Chomycia at the address provided in paragraph 35, above. Respondent must certify the report with the following statement:

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.

45. Following receipt of the SEP completion report described in the preceding paragraph, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 46.

46. If Respondent fails to comply with any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent does not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$44,200.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to

complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 40, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 40, Respondent must pay a penalty of \$10,000.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$200	15 th through 30 th day
\$500	31 st day and beyond

47. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

GENERAL PROVISIONS

48. This CAFO resolves only Respondent's liability, and any liability of Respondent's parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, servants, successors and assigns for federal civil penalties for the violations and facts alleged in this CAFO.

49. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

50. This CAFO does not affect Respondent's responsibility to comply with the CAA or other applicable federal, state and local laws or regulations.

51. This CAFO is a "final order" for purposes of U.S. EPA's enforcement response policy for section 112(r) of the CAA.

52. The terms of this CAFO bind Respondent, Respondent's parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, servants, successors and assigns.


53. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

54. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

FloraCraft Corporation, Respondent

1/16/15
Date


James Scatena
President
FloraCraft Corporation

U.S. Environmental Protection Agency, Complainant

1/29/2015
Date


Richard C. Karl, Director
Superfund Division


In the Matter of:
FloraCraft Corporation,
Ludington, Michigan
Docket No: CAA-05-2015-0016



FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. **IT IS SO ORDERED.**

Date: 2-3-15

By: 

Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

FloraCraft, Inc.

Table A

Citation	Description
Process Safety Information	
68.685(c)(1)(iii)	Failure to document information pertaining to the technology of the process that included maximum intended inventories.
68.65(c)(1)(iv)	Failure to document information pertaining to technology of the process that includes safe upper and lower temperatures, pressures, flows and compositions.
68.65(d)(1)(v)	Failure to have information pertaining to the ventilation system.
68.65(d)(1)(vi)	Failure to have information pertaining to the equipment in the process that included the design codes and standards employed.
68.65(d)(1)(vii)	Failure to have information pertaining to the equipment in the process that included material and energy balances.
Process Hazard Analysis	
68.67(c)(1)	Failure to perform an initial process hazard analysis that addressed pentane.
68.67(c)(5)	Failure to perform an initial process hazard analysis that addressed stationary source siting.
68.67(c)(6)	Failure to perform an initial process hazard analysis that addressed human factors.
68.67(c)(7)	Failure to perform an initial process hazard analysis that addressed possible safety and health effects of failure of controls that directly relate to pentane.
Operating Procedures	
68.69(a)(2)	Failure to develop operating procedures that address operating limits including consequences of deviation and steps required to correct or avoid deviation.
68.69(a)(3)	Failure to develop and implement written operating procedures that address safety and health considerations.
68.69(a)(4)	Failure to develop and implement written operating procedures that address safety systems and their functions.
68.69(b)	Failure to have operating procedures readily accessible to employees who are involved in a process.
68.69(c)	Failure to certify annually that operating procedures are current and accurate.
Training	
68.71(a)(1)	Failure to initially train employees involved in operating a process, and each employee before being involved in operating a newly assigned process, in an overview of the process and in the operating procedures.
68.71(c)	Failure to document in record that each employee involved in operating a process has received and understood the training required and that the record contains the identity of the employee, the date of the training, and the means used to certify that the employee understood the training.
Mechanical Integrity	
68.73(b)	Failure to establish a written procedure to maintain the ongoing integrity of process equipment.
Management of Change	
68.75(a)	Failure to establish and implement written procedure to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process.
68.75(c)	Failure to inform and train employees involved in operating a process and maintenance and contract employees whose job tasks would be affected by a change prior to start-up of the process.
68.75(e)	Failure to update procedures and practices that resulted in a change.
Pre-Startup Safety Review	
68.77(b)	Failure to perform a pre-startup safety review prior to the introduction of a regulated substance to a process.

FloraCraft, Inc.

Table A

Contractors

68.87(b)(1)	Failure to obtain and evaluate information regarding the contract owner or operator's safety performance and programs.
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Risk Management Plan

68.160(b)(7)	Failure to complete a single registration form that include the correct name and CAS number of each regulated substance held above a threshold quantity in the process and the maximum quantity of each regulated substance or mixture in the process.
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CONSENT AGREEMENT AND FINAL ORDER
In the Matter of FloraCraft Corporation
Docket No. CAA-05-2015-0016



Certificate of Service

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Mary Jane Rhoades
Attorney
Rhoades McKee
161 Ottawa Avenue NW, Suite 600
Grand Rapids, Michigan 49503-2793

Electronic copy sent to:

Monika Chrzaszcz
U.S. EPA, Region 5

Robert Guenther
U.S. EPA, Region 5

Dated this 04 day of February, 2015.

A handwritten signature in blue ink, appearing to read "Jarrah P. Sanders".

Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5