



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

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert Marley
Jackson-Jennings Co-op
103 N. Community Drive
Seymour, IN 67274

Re: Jackson-Jennings Co-op, North Vernon, Indiana Consent Agreement and Final Order

Dear Mr. Marley:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on NOV 18 2008. Please pay the civil penalty in the amount of \$35,000.00 in the manner prescribed in paragraph(s) 36 through 38 and reference your check with the number BD 2750903A002 and docket number CAA-05-2009-0003 your payment is due on DEC 18 2008.

Please feel free to contact Greg Chomycia at 312/353-8217 if you have any questions regarding the enclosed documents. Please direct any legal questions to Karen Peaceman at 312/353-5751. Thank you for your assistance in resolving this matter.

Sincerely yours,

A handwritten signature in black ink that reads "Mark J. Horwitz".

Mark J. Horwitz, Chief
Office of Chemical Emergency
Preparedness & Prevention

Enclosure

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

Karen Peaceman(w/enclosure)
Office of Regional Counsel
U.S. EPA Region 5

Regina Kosik(w/enclosure)
Regional Judicial Officer
U.S. EPA, Region 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
NOV 18 2008

IN THE MATTER OF:

Jackson-Jennings Co-Op
Seymour, Indiana,

Respondent.

) Docket No. CAA-05-2009-0003
)
) Proceeding to Assess a Civil
) Penalty under Section 113 of the Clean
) Air Act,
) 42 U.S.C. § 7413
)
)

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Consent Agreement and Final Order

I. Preliminary Statement

1. This is an administrative action commenced and concluded under Sections 113(a)(3)(A) and (d) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a)(3)(A) and (d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).
2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).
3. Respondent is Jackson-Jennings Co-Op (Jackson-Jennings or Respondent), a corporation doing business in Indiana.
4. In accordance with 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, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO).

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. Jackson-Jennings consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

II. Jurisdiction and Waiver of Right to Hearing

7. Jackson-Jennings admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Jackson-Jennings 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.

III. Statutory and Regulatory Background

9. In accordance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), on June 20, 1996, U.S. EPA promulgated regulations to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur. These regulations, known as the Risk Management Program regulations, are codified at 40 C.F.R. Part 68.

10. The Risk Management Program regulations apply to all stationary sources that have more than a threshold quantity of a regulated substance in a process. The List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention is codified at 40 C.F.R. § 68.130, Table 1. Procedures to determine whether a threshold quantity of a regulated substance is present at a stationary source are codified at 40 C.F.R. § 68.115.

11. Anhydrous ammonia is a “regulated substance,” as that term is defined in Section 112(r)(3) of the Act, 40 C.F.R. § 68.3, and 40 C.F.R. § 68.130, Table 1.

12. The “threshold quantity” (as that term is defined in 40 C.F.R. § 68.3 and 40 C.F.R. § 68.130, Table 1) for anhydrous ammonia is 10,000 pounds.

13. "Process" as defined at 40 C.F.R. § 68.3, means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such a substance.

14. Pursuant to 40 C.F.R. §§ 68.10(a) and 68.150, an owner or operator of a stationary source subject to the Risk Management Program must comply with the requirements of 40 C.F.R. Part 68 by no later than the latest of the following dates: June 21, 1999; three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or the date on which a regulated substance is first present in more than a threshold quantity in a process.

15. The Risk Management Program regulations at 40 C.F.R. §§ 68.12 , require that the owner or operator of a facility subject to the regulations develop and implement a Risk Management Program (Program) for preventing accidental releases to the air and minimizing the consequences of releases that do occur.

16. The Risk Management Program regulations at 40 C.F.R. §§ 68.12(a) and 68.150-68.185, require the owner or operator of a facility subject to the regulations to submit a Risk Management Plan (RMP) to U.S. EPA on or before the date the facility is subject to the regulations.

IV. Factual Allegations

17. Jackson-Jennings operates a retail facility located at 2100 E. CR 200 N, North Vernon, Indiana (the facility). At the facility, Jackson-Jennings sells anhydrous ammonia as a fertilizer. Jackson-Jennings stores anhydrous ammonia at the facility prior to sale.

18. Jackson-Jennings is a "person," as that term is defined at Section 302(e) of the Act, 42 U.S.C. §7602(e).

19. The facility is a “stationary source,” as that term is defined at 40 C.F.R. § 68.3.
20. For purposes of the requirements at 40 C.F.R. Part 68, Respondent is the “owner or operator” of the facility. Section 112(a)(9) of the Act, 42 U.S.C. § 7412(a)(9).
21. The facility stores more than 10,000 pounds of anhydrous ammonia in its ammonia storage process.
22. The facility is subject to the requirements of 40 C.F.R. Part 68.
23. Under 40 C.F.R. § 68.50, the owner or operator shall conduct a review of the hazards associated with the regulated substances, process, and procedures. The review shall identify the following: (1) The hazards associated with the process and regulated substances; (2) Opportunities for equipment malfunctions or human errors that could cause an accidental release; (3) The safeguards used or needed to control the hazards or prevent equipment malfunction or human error; and (4) Any steps used or needed to detect or monitor releases.
24. Under 40 C.F.R. § 68.58, the owner or operator shall certify that it has evaluated compliance with the provisions of this subpart at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.
25. Under 40 C.F.R. § 68.60, the owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.
26. Under 40 C.F.R. § 86.195, for any accidental release meeting the five-year accident history reporting criteria of § 68.42 and occurring after April 9, 2004, the owner or operator shall submit the data required under §§ 68.168, 68.170(j), and 68.175(l) with respect to that accident within six months of the release or by the time the RMP is updated under § 68.190, whichever is earlier.

27. Pursuant to 40 C.F.R. § 68.195, beginning June 21, 2004, within one month of any change in the emergency contact information required under § 68.160(b)(6), the owner or operator shall submit a correction of that information.

28. On April 27, 2006, U.S. EPA sent an information request to the facility.

29. On June 1, 2006, the U.S. EPA received a response (Response) from Jackson-Jennings.

V. Violations

30. Jackson-Jennings failed to conduct an adequate hazard review as required by 40 C.F.R. § 68.50.

31. Jackson-Jennings failed to conduct an audit of the prevention program as required by 40 C.F.R. § 68.58.

32. Jackson-Jennings failed to conduct an incident investigation of the August 3, 2004 accident as required by 40 C.F.R. § 68.60.

33. Jackson-Jennings failed to submit an updated RMP after an accident as required by 40 C.F.R. § 68.195.

34. Jackson-Jennings failed to update its emergency contact information as required by 40 C.F.R. § 68.195.

VI. Civil Penalty

35. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation and prompt return to compliance, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$35,000.

36. Jackson-Jennings must pay the \$35,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

37. Jackson-Jennings must send the check to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

38. A transmittal letter, stating Jackson-Jennings's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check.

Jackson-Jennings must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Greg Chomycia, (SC-6J)
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Karen Peaceman, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

40. If Jackson-Jennings does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

41. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Jackson-Jennings will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Jackson-Jennings will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 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.

VII. Final Statement

42. This CAFO resolves only Jackson-Jennings's liability for federal civil penalties for the violations alleged in this CAFO.

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

44. This CAFO does not affect Jackson-Jennings's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in Paragraph 42 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

45. The terms of this CAFO bind Jackson-Jennings, and its successors, and assigns.

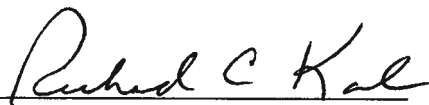
46. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

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

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

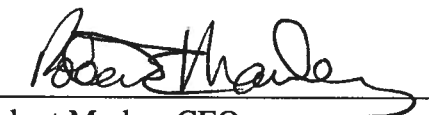
U.S. Environmental Protection Agency, Complainant

11-4-08
Date


Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

Jackson Jennings Co-Op, Respondent

10/15/08
Date


Robert Marley, CEO
Jackson-Jennings Co-Op

**CONSENT AGREEMENT AND FINAL ORDER
In Re the Matter of Jackson-Jennings Co-Op
Docket No. CAA-05-2009-0003**

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Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

Richard C. Karl for

Lynn Buhl
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

CAA-05-2009-0003

CERTIFICATE OF SERVICE

RECEIVED
NOV 18 2008

Greg Chomycia

I, ~~[name]~~, certify that I hand delivered the original and one copy of the Consent Agreement

REGIONAL HEARING CLERK
ENVIRONMENTAL
PROTECTION AGENCY

CAA-05-2009-0003

and Final Order, docket number [] to the Regional Hearing Clerk, Region 5, United States

Environmental Protection Agency, and that I mailed correct copies by first-class, postage

Jackson-Jennings Co-op

prepaid, certified mail, return receipt requested, to ~~[names]~~ by placing them in the custody of the

United States Postal Service addressed as follows:

Daniel P. McInerny
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204

on the 18 day of November, 2008.



[Name of Secretary]
([Section]) *CRPS*

CERTIFIED MAIL RECEIPT NUMBER: _____