



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

AUG 22 2008

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

S. Bismark Brackett
Manager
Frozen Assets Cold Storage, LLC
2635 S. Western Ave.
Chicago, Illinois 60174

Re: **Frozen Assets Cold Storage, LLC, Chicago, Illinois**, Consent Agreement and
Final Order.
Docket No. CAA-05-2008-002⁰

Dear Mr. Brackett:

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 August 22, 2008. Please pay the civil penalty in the amount of \$15,000 in the manner prescribed in paragraphs 11-17 and reference your check with the number BD 2750860A004 and docket number CAA-05-2008-0002.

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 William Wagner, Associate Regional Counsel, at (312) 886-4684. Thank you for your assistance in resolving this matter.

Sincerely yours,

A handwritten signature in black ink that reads "Bob Mayhugh for".

Mark J. Horwitz, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	
)	
Frozen Assets Cold Storage, LLC)	Proceeding to Assess a
2635 S. Western Ave.)	Civil Penalty under
Chicago, Illinois 60174)	Section 113(d) of the
)	Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent)	
)	
)	Docket No. CAA-05-2008-0002

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CONSENT AGREEMENT AND FINAL ORDER

I. AUTHORITY

1. Complainant, the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA or Agency), Region 5, having delegated authority from the U.S. EPA Administrator, brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (Act or CAA), 42 U.S.C. § 7413(d).

II. BACKGROUND

2. On November 20, 2007, U.S. EPA filed the Complaint in this action against Frozen Assets Cold Storage, LLC (Frozen Assets or Respondent). The Complaint alleges that Respondent violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and regulations promulgated thereunder by the Administrator, codified at 40 C.F.R. Part 68. More specifically, the Complaint proposed that a \$56,001 penalty be assessed against Respondent for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), for Respondent's alleged failure to prepare, implement, and submit a Risk Management Plan by September 29, 2004. 40 C.F.R. §§ 68.10(a) and 68.150.

3. On December 18, 2007, the parties met at the offices of U.S. EPA, Region 5, for an informal conference to discuss the facts of this matter. At that time, Frozen Assets informed the Agency that it had an inability to pay the penalty proposed in the Complaint. In order to demonstrate its inability to pay the proposed penalty, Respondent agreed to provide U.S. EPA with copies of its federal tax returns for 2005 and 2006, and, when available, its federal tax return for 2007.

4. In January 2008, Respondent provided U.S. EPA with copies of its federal tax returns for the years 2005 and 2006. Based upon these tax returns, the Superfund Technical Assessment and Response Team (START) contractor provided Financial Analysis Letter Reports dated February 4, 2008, and March 3, 2008, which confirmed the inability of Respondent to pay the penalty proposed in the Complaint.

5. On July 2, 2008, Respondent provided U.S. EPA with its 2007 federal tax return, which had been filed under an U.S. Internal Revenue Service filing extension. Based on the 2007 federal tax return, the START contractor provided a Financial Analysis Letter Report dated July 18, 2008, which confirmed the Respondent's continuing inability to pay the penalty proposed in the Complaint.

6. Because the parties were actively engaged in good faith negotiations, the Respondent, pursuant to Rule 22.7 of the Consolidated Rules of Practice, 40 C.F.R. Part 22, moved the Presiding Officer for agreed extensions of time within which to file a response pleading to the Complaint. By orders dated December 20, 2007, February 20, April 1, May 19, July 7, and July 29, 2008, Respondent's Agreed Motions were granted. Currently, the Respondent must file a response pleading to the Complaint by August 22, 2008.

II. AGREED TERMS

7. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint.
8. Respondent waives its right to a hearing on any issue of law or fact set forth in the Complaint or in this Consent Agreement and Final Order (CAFO), and waives its right to appeal the Final Order accompanying this Consent Agreement under Section 113(d) of the Act, 42 U.S.C. § 7413(d).
9. The parties consent to the terms of the CAFO.
10. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

III. CIVIL PENALTY and FEES

11. In consideration of Respondent's inability to pay the proposed penalty of \$56,001, as reflected in the START contractor's Financial Analysis Letter Reports dated February 4, March 3, and July 18, 2008, U.S. EPA agrees to mitigate the proposed penalty to \$15,000.
12. Respondent must pay the \$15,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," in two equal installments of \$7,500, to be paid within 30 days and 60 days after the effective date of this CAFO.
13. Respondent must send the checks to:

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

14. A transmittal letter, stating the Respondent's name, the complete address, the case docket number, and the billing document number must accompany the payments. Respondent must write the case docket number and the billing document number on the face of the checks.

Respondent must send copies of the checks and transmittal letters to:

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

Monika Chrzaszcz
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (SC-6J)
Chicago, Illinois 60604

15. Respondent shall not deduct this civil penalty for federal tax purposes.

16. If Respondent does not timely pay civil penalties as required by this CAFO, U.S. EPA may bring an action pursuant to Section 113(d)(5) of the Act, 42 U.S.C. §7413(d)(5), to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The parties agree that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action in this matter.

17. Interest will accrue on any amount of penalty overdue from the date the payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a penalty at the rate of at least six percent per year on any principal amount

not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

V. GENERAL TERMS of SETTLEMENT

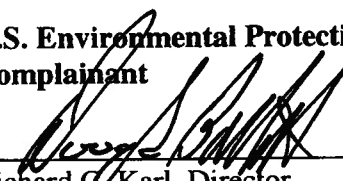
18. Compliance with the terms of this CAFO shall constitute full settlement of this proceeding with respect to all civil and administrative claims alleged in the Complaint.
19. If Respondent fails to meet any requirement of this CAFO, the full amount of proposed penalty, that being \$56,001, shall become immediately due and owing, minus any amount of penalty already paid by Respondent.
20. Nothing in this CAFO shall relieve Respondent from complying with any provision of the Act or any other applicable federal, State, or local environmental law or regulation.
21. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with the CAA and other applicable laws and regulations.
22. If Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with the regulations cited above, and to assess a civil penalty in an amount greater than the amount assessed in this CAFO.
23. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO (or one or more of its terms and conditions) is held invalid, or is not executed by all of the signatory parties in identical form, then the entire CAFO shall be null and void.

- 24. This CAFO constitutes the entire agreement between the parties.
- 25. Respondent and Complainant agree to bear their own respective costs and attorney's fees.
- 26. The terms of this CAFO bind Respondent, its successors, and assigns. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the facility.
- 27. 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.
- 28. Respondent and U.S. EPA agree to the issuance and entry of the accompanying Final Order.
- 29. This CAFO shall become effective on the date that it is filed with the Regional Hearing Clerk, Region 5.

The foregoing Consent Agreement is hereby stipulated, agreed, and approved for entry:

**U.S. Environmental Protection Agency
Complainant**

Date: 8/21/08

By: 
 Richard C. Karl, Director
 Superfund Division
 U.S. EPA, Region 5
 77 West Jackson Boulevard (SC-6J)
 Chicago, Illinois 60604-3590

**Frozen Assets Cold Storage, LLC
Respondent**

Date: 8/19/08

By: 
 S. Bismarck Brackett, Manager

**Consent Agreement and Final Order
Frozen Assets Cold Storage, LLC
Docket No. CAA-05-2008-0002**

FINAL ORDER

The foregoing Consent Agreement, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 8/21/08

Lynn Buhl

Lynn Buhl
Regional Administrator
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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Certificate of Service

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be sent this day in the following manner to the persons designated below:

S. Bismark Brackett
Frozen Assets Cold Storage, LLC
2635 S. Western Ave.
Chicago, Illinois 60608-5218

U.S. Mail, First Class, Certified.

Edward V. Walsh, III
Reed Smith Sachnoff & Weaver, LLP
10 S. Wacker Drive, 40th Floor
Chicago, Illinois 60606

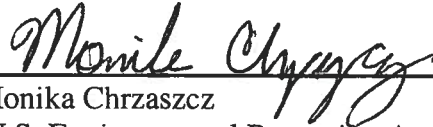
Copy by fax (312.207.6400).

Marcy A. Toney
Presiding Officer
U.S. Environmental Protection Agency
Region 5, C-14J
77 W. Jackson Blvd.
Chicago, Illinois 60604

Copy hand delivered.

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed this date with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Dated this 22 date of August, 2008.



Monika Chrzaszcz
U.S. Environmental Protection Agency
Region 5

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