

regulations in 40 C.F.R. Part 68 to implement Section 112(r)(7) of the Act, which set forth the requirements of risk management programs that must be established and implemented at affected stationary sources. The regulations at 40 C.F.R. Part 68, Subparts A through G, require owners and operators of stationary sources to, among other things, develop and implement: (1) a management system to oversee the implementation of the risk management program elements; and (2) a risk management program that includes, but is not limited to, a hazard assessment, a prevention program, and an emergency response program. Pursuant to 40 C.F.R. Part 68, Subparts A and G, the risk management program for a stationary source that is subject to these requirements is to be described in a risk management plan ("RMP") that must be submitted to EPA.

7. Sections 112(r)(3) and (5) of the Act, 42 U.S.C. §§ 7412(r)(3) and (5), require the Administrator to promulgate a list of regulated substances, with threshold quantities. EPA promulgated a regulation known as the List Rule, at 40 C.F.R. Part 68, Subpart F, which implements Section 112(r)(3) of the Act, and which lists the regulated substances and their threshold quantities.

8. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. §7412(r)(7), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process shall comply with the requirements of 40 C.F.R. Part 68 (including, but not limited to, submission of an RMP to EPA), no later than June 21, 1999, or three years after the date on which such regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which the regulated substance is first present in a process above the threshold quantity, whichever is latest.

9. The regulations set forth at 40 C.F.R. Part 68 separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3. A covered process is subject to Program 3 requirements, as per 40 C.F.R. § 68.10(d), if the process: a) does not meet one or more of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b); and b) if either one of the following conditions is met: the process is listed in one of the specific North American Industry Classification System (generally referred to as "NAICS") codes found at 40 C.F.R. § 68.10(d)(1) or the process is subject to the United States Occupational Safety and Health Administration process safety management standard set forth in 29 C.F.R. § 1910.119. As required by 40 C.F.R. § 68.10(c), a facility must register its RMP-covered process as a Program 2 process if it does not meet the requirements of either Program 1 or Program 3.

10. The regulations set forth at 40 C.F.R. § 68.12(d) require that the owner or operator of a stationary source with a Program 3 process undertake certain tasks, including, but not limited to, development and implementation of a management system (pursuant to 40 C.F.R. § 68.15), the implementation of prevention program requirements, which include mechanical integrity (pursuant to 40 C.F.R. §§ 68.65-68.87), the development and implementation of an emergency response program (pursuant to 40 C.F.R. §§ 68.90-68.95), and the submission of additional information on prevention program elements regarding Program 3 processes (pursuant to 40 C.F.R. § 68.175).

FINDINGS OF FACT

11. Respondent is the owner and/or operator of a facility located at 300 Forge Avenue in Geneva, New York, hereinafter referred to as the "Facility."

12. On or about July 26, 2010, EPA conducted an inspection ("Inspection") at the Facility to determine compliance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the applicable regulations listed in 40 C.F.R. Part 68.

13. At the time of the Inspection, Respondent had been storing about 64,000 pounds of butane since January 15, 2010, about 50,000 pounds of dimethyl ether since May 7, 2010 and about 68,000 pounds of 152A difluoroethane since January 7, 2010. These regulated substances were stored in amounts in excess of the Risk Management Program threshold of 10,000 pounds.

14. Respondent should have developed and implemented a Risk Management Program at the Facility and submitted a Risk Management Plan to EPA no later than the dates on which the regulated substances exceeded the Risk Management Program threshold quantities, pursuant to the requirements of 40 C.F.R. §§ 68.10(a)(3) and 68.150(b)(3).

15. On or about January 11, 2011, Respondent submitted to EPA a Risk Management Plan for the Facility that, among other things, indicated the Facility is subject to the Program 3 requirements in 40 C.F.R. Part 68.

EPA CONCLUSIONS OF LAW

16. Respondent, Zotos International, Inc., is, and at all times referred to herein was, a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

17. Respondent is the owner and/or operator of a facility located at 300 Forge Avenue in Geneva, New York, hereinafter referred to as the "Facility."

18. The Facility is a "stationary source" as that term is defined at 40 C.F.R. § 68.3.

19. Butane, dimethyl ether, and 152A difluoroethane are regulated substances as that term is defined in 40 C.F.R. § 68.3.

20. The threshold quantity for butane (CAS #106-97-8) is listed in 40 C.F.R. § 68.130 as 10,000 pounds.

21. The threshold quantity for dimethyl ether [methane oxybis] (CAS #115-10-6) is listed in 40 C.F.R. § 68.130 as 10,000 pounds.

22. The threshold quantity for 152A difluoroethane [ethane,1,1-difluoro-] (CAS # 75-37-6) is listed in 40 C.F.R. § 68.130 as 10,000 pounds.

23. Respondent's failures to timely develop and implement a Risk Management Program at the Facility and timely submit a Risk Management Plan to EPA constitute violations of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder at 40 C.F.R. Part 68. Respondent is therefore subject to the assessment of penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 113(d) of the Act 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), it is hereby agreed by and between Complainant and Respondent, as follows:

1. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent a) admits the jurisdictional basis for this matter, b) admits the Findings of Fact set forth above, c) consents to the assessment of the civil penalty set forth below, d) consents to the issuance of the attached Final Order, and e) waives its right to contest or appeal the attached Final Order.

2. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

3. Respondent hereby certifies that it is now in compliance with all applicable requirements of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, that it has implemented a risk management program at the Facility and has submitted a Risk Management Plan to EPA pursuant to the requirements of 40 C.F.R. Part 68.

4. Respondent agrees to pay a civil penalty in the total amount of **seventy-nine thousand dollars (\$79,000.00)**, as described below. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer ("EFT"). Payment of the penalty must be received by EPA **on or before sixty (60) calendar days** after the date of signature of the Final Order at the end of this document (hereinafter referred to as the "due date").

If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America" and shall be mailed to:

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

The check shall be identified with a notation listing the following: "In the Matter of Zotos International, Inc." and shall bear thereon "Docket Number CAA-02-2011-1214."

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment: \$79,000.00
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: Zotos International, Inc.
- g. Case Number: CAA-02-2011-1214

If payment is made by check, Respondent shall simultaneously furnish proof that such payment has been made to:

Beverly Kolenberg
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866.

If payment is made by EFT, Respondent shall simultaneously send a letter to each of the above addressees which references the date of the EFT, the payment amount, the name of the case, the case number, and Respondent's name and address.

- a) Failure to pay the penalty in full according to the above provisions may result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for appropriate enforcement, including collection of the amount set forth in this Paragraph plus allowable interest and such other penalties as provided for in this Consent Agreement.
- b) Further, if payment is not received on or before the due date, Respondent agrees to the assessment of interest, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, Respondent agrees to pay a late payment handling charge of \$15 for each

thirty day period (or any portion thereof) following the due date in which the balance remains unpaid.

- c) Respondent also agrees to pay a quarterly non-payment penalty for each calendar quarter during which such non-payment persists, pursuant to Section 113(d)(5) of the Clean Air Act, 42 U.S.C. § 7413(d)(5). This quarterly non-payment penalty will be imposed for each calendar quarter during which such non-payment persists. The quarterly non-payment penalty is 10% of the aggregate amount of penalties and quarterly non-payment penalties that are unpaid as of the beginning of such quarter.

5. The penalties specified in Paragraph 4, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or federal taxes.

6. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liability that might have attached under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), as a result of the violations set forth in the Findings of Fact and Conclusions of Law. Respondent's payment of the civil penalty in accordance with the terms and conditions of this section shall resolve any such liability.

7. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent also consents to the issuance of the accompanying Final Order.

8. Respondent waives its right to request and/or obtain a hearing on this Consent Agreement, or the accompanying Final Order, including any right to contest any of the Findings of Fact and Conclusions of Law set forth in this Consent Agreement and any right to contest any of the terms or conditions set forth in this Consent Agreement.

9. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions between EPA staff and the Regional Administrator or Deputy Regional Administrator of EPA Region 2, and further waives the right to be served with and to reply to any memorandum or communication addressed by EPA staff to the Regional Administrator or Deputy Regional Administrator, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

10. This CA/FO and any provision herein shall not be construed of as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CA/FO or any of its terms and conditions.

11. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, State, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State, or local permit. Nothing in this CA/FO

is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

12. Each party hereto shall bear its own costs and fees in this matter.

13. Full and complete satisfaction of the requirements of this CA/FO shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

14. The person signing below on behalf of Respondent hereby certifies that he or she is fully authorized by Respondent to execute this Consent Agreement on behalf of Respondent and to bind Respondent legally to this Consent Agreement in accordance with all of the terms and conditions contained herein.

15. The Director of the Emergency and Remedial Response Division of EPA Region 2 has been delegated the authority to sign the Consent Agreement in this action, and the Regional Administrator of EPA Region 2 has been delegated the authority to sign the Final Order in this action.

16. Respondent consents to service upon Respondent of a copy of this CA/FO by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

**Re: In the Matter of Zotos International, Inc.
Docket Number CAA-02-2011-1214**

**For Respondent
Zotos International, Inc.**



Signature

Date: 9/27/11

ANTHONY PERDIGAO

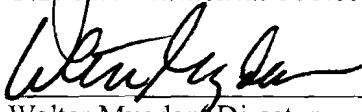
Name (Printed or Typed)

VP Operations & Chief Sustainability Officer

Title (Printed or Typed)

Re: In the Matter of Zotos International, Inc.
Docket Number CAA-02-2011-1214

For Complainant
U.S. Environmental Protection Agency, Region 2



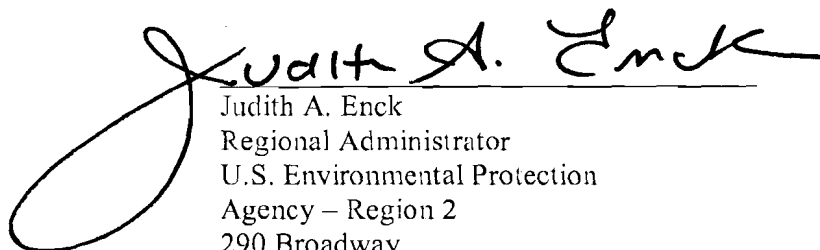
Date: 9/27/11

Walter Mugdan, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

Re: In the Matter of Zotos International, Inc.
Docket Number CAA-02-2011-1214

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.



Judith A. Enck

Judith A. Enck
Regional Administrator
U.S. Environmental Protection
Agency – Region 2
290 Broadway
New York, New York 10007-1866

Date: 9/28/11

**Re: In the Matter of Zotos International, Inc.
Docket Number CAA-02-2011-1214**

CERTIFICATE OF SERVICE

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, bearing Docket Number CAA-02-2011-1214 in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007

Copy by Certified Mail,
Return Receipt Requested

Anthony Perdigao, Vice President
Zotos International, Inc.
300 Forge Avenue
Geneva, New York 14456-1294

Copy by Regular Mail

Robert R. Tyson, Esq.
Bond Schoeneck & King PLLC
One Lincoln Center
Syracuse, New York 13202-1355

Dated: 10/5/11
New York, New York

Rayetta Martin