



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

FEB 19 2013

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Don J. McConnell
The Sherwin-Williams Company
101 Prospect Avenue, N.W.
Cleveland, Ohio 44115

Re: **The Sherwin Williams Company, Holland, Michigan**
Consent Agreement and Final Order
Docket No. **CAA-05-2013-0009**

Dear Mr. McConnell:

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 February 19, 2013. Please inform your client of their obligation to pay a civil penalty in the amount of \$62,450 in the manner prescribed in paragraphs 38-43 and please note that your client must reference their check with the docket number.

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 Reginald Pallesen, Regional Counsel, at (312) 886-0555. Thank you for your assistance in resolving this matter.

Sincerely yours,

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

Enclosure

cc. Reginald Pallesen, ORC (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No. CAA-05-2013-0009
)	
The Sherwin-Williams Company Holland, Michigan)	Proceeding to Assess a Civil Penalty under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)
)	
EPA ID: MID006020929)	
)	
Respondent.)	
)	

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REGION 5

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 (Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 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* (Consolidated Rules), as codified at 40 C.F.R. Part 22, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and its implementing regulations.

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency, Region 5.

3. Respondent is The Sherwin-Williams Company (Respondent), a corporation doing business in the State of Michigan.

4. 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). 40 C.F.R. § 22.13(b).

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

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

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. 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 Chemical Accident Prevention Program (CAPP) regulations, are codified at 40 C.F.R. Part 68.

10. As provided at 40 C.F.R. § 68.10(a), the CAPP 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. Procedures to determine whether a threshold quantity of a regulated substance is present in a process at a stationary source are codified at 40 C.F.R. § 68.115.

11. The Chemical Accident Pollution Prevention rule, under 40 C.F.R. § 68.115(b)(2), subjects flammable mixtures containing a regulated substance in excess of one

percent of the total mixture and maintained in quantities in excess of the 10,000 pounds to the requirements of the rule.

12. As defined at 40 C.F.R. § 68.3, “process” means any activity involving a regulated substance including any use, storage, manufacturing, handling, on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that regulated substances could be involved in a potential release, shall be considered a single process.

13. As defined at 40 C.F.R. § 68.3, “stationary source” means 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, and from which an accidental release may occur.

14. According to 40 C.F.R. § 68.12(a), the owner or operator of a stationary source subject to the requirements of 40 C.F.R. Part 68 must submit a single Risk Management Plan (RMP), as provided in 40 C.F.R. §§ 68.150 to 68.185.

15. Under 40 C.F.R. §§ 68.10(a) and 68.150, the owner or operator of a stationary source subject to the requirements of 40 C.F.R. Part 68 must submit the RMP 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.

16. Under 40 C.F.R. § 68.10, covered processes are subjected to one of three sets of program requirements: Program 1 eligibility requirements; Program 2 eligibility requirements; or Program 3 eligibility requirements.

17. Under 40 C.F.R. § 68.10(d), Program 3 applies to a process that: (1) does not meet the requirements of Program 1 eligibility, as set forth at 40 C.F.R. § 68.10(b); and (2) is subject to the OSHA Process Safety Management (PSM) standard set forth at 29 C.F.R. § 1910.119.

18. Under 40 C.F.R. § 68.10(b), Program 1 applies to a process that meets all the following requirements: (1) for the five years prior to the submission of an RMP, the process has not had an accidental release of a regulated substance where exposure to the substance, its reaction products, over-pressure generated by an explosion involving the substance, or radiant heat generated by a fire involving the substance led to off-site death, injury, or response or restoration activities for an exposure of an environmental receptor; (2) the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. § 68.25 is less than the distance to any public receptor; and (3) emergency response procedures have been coordinated between the stationary source and local emergency planning and response organizations.

19. The OSHA PSM standard applies to a process which involves a chemical at or above the threshold quantities listed in Appendix A of 29 C.F.R. § 1910.119.

20. The general requirements at 40 C.F.R. § 68.12(d)(2) require that the owner or operator of a stationary source with a process subject to Program 3 requirements conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42, implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87, develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 through 68.95.

21. Under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, the Administrator of U.S. EPA (Administrator) may assess a civil penalty of up to

\$27,500 per day of violation of the Act, up to a total of \$220,000, for violations that occurred on or after January 31, 1997, through March 15, 2004; may assess a civil penalty of up to \$32,500 per day of violation, up to a total of \$270,000, for violations that occurred after March 15, 2004, through January 12, 2009; and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000, for violations that occurred after January 12, 2009.

22. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of 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 a longer period of violation is appropriate for an administrative penalty action.

23. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

Factual Allegations and Alleged Violations

24. Respondent is a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

25. Respondent owns and operates a facility, located at 636 E. 40th Street, Holland, Michigan, which consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

26. The facility is a "stationary source," as that term is defined at 40 C.F.R. § 68.3.

27. Respondent is the "owner or operator" of the facility, as defined at Section 112(a)(9) of the Act, 42 U.S.C. § 7412(a)(9).

28. Respondent's use and storage of flammable mixtures that include propane, butane, isobutene, and methyl ether is a "process," as defined at 40 C.F.R. § 68.3.

29. Respondent's facility maintained flammable mixtures containing more than one percent of propane, butane, isobutene, or methyl ether in quantities exceeding 10,000 pounds during calendar years 1999 through 2010. Respondent thus maintained flammable substances in quantities exceeding the threshold quantities under the Chemical Accident Pollution Prevention rule.

30. The distance from the facility to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. § 68.25 is greater than the distance to any public receptor.

31. Respondent's process is subject to the OSHA PSM standard set forth at 29 C.F.R. § 1910.119.

32. Respondent submitted Risk Management Plans for the Facility on June 24, 1999; June 17, 2004; and June 15, 2009, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations, 40 C.F.R. Part 68.

33. On March 17, 2010, an authorized representative of U.S. EPA conducted an inspection at the Facility to determine its compliance with 40 C.F.R. Part 68.

34. Based on the inspection, U.S. EPA alleges that Respondent has committed the following violations:

a. The owner or operator failed to compile and maintain process safety information that included the relief system design basis, before conducting any process hazard analysis (PHA), as required under 40 C.F.R. § 68.65(d)(1)(iv).

b. The owner or operator failed to establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and documented; document what actions are to be taken; completed actions as soon as possible; developed a written schedule for when these actions are to be completed; and communicated the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations, as required under 40 C.F.R. § 68.67(e).

c. The owner or operator failed to update and revalidate the PHA every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process, as required under 40 C.F.R. § 68.67(f).

d. The owner or operator failed to implement written procedures to maintain the ongoing integrity of the process equipment listed in 40 C.F.R. § 68.73(b), as required under 40 C.F.R. § 68.73(a).

e. The owner or operator failed to ensure that the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience, as required under 40 C.F.R. § 68.73(d)(3).

f. The owner or operator failed to correct equipment deficiencies that were outside acceptable limits before further use or in a safe and timely manner when necessary means were taken to assure safe operation, as required under 40 C.F.R. § 68.73(e).

The owner or operator failed to certify that they have evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed, as required under 40 C.F.R. § 68.79(a).

g. The owner or operator failed to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected, as required under 40 C.F.R. § 68.79(d).

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 compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$62,450.

36. Within 30 days after the effective date of this CAFO, Respondent must pay a \$62,450 civil penalty by sending a cashier's or certified check by regular U.S. Mail 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

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

37. A transmittal letter stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent must send a copy 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, IL 60604

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

Reginald Pallesen
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

39. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 40, below, 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.

40. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must 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.

General Provisions

41. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

42. The 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 violation of law.

43. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 41, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

44. Respondent certifies that it is complying fully with Section 112(r) of the Act, 42 U.S.C. § 7412(r).

45. This CAFO constitutes an "enforcement response" as that term is used in U.S. EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

46. The terms of this CAFO bind Respondent, its successors, and assigns.

47. 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.

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

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

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: The Sherwin-Williams Company
Holland, Michigan
Docket No.

The Sherwin-Williams Company, Respondent

2/1/13
Date

Name: 
Title: V.P. GENERAL COUNSEL

United States Environmental Protection Agency, Complainant

2-11-13
Date


Richard C. Karl, Director
Superfund Division

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: The Sherwin-Williams Company
Holland, Michigan
Docket No. CAA-05-2013-0009

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2-14-13
Date



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

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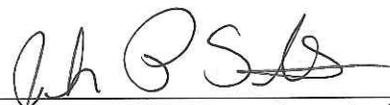
Certificate of Service

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

Don J. McConnell
The Sherwin-Williams Company
101 Prospect Avenue, N.W.
Cleveland, Ohio 44115

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

Dated this 19 day of February, 2013.


~~Monika Chrzaszcz~~ Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5

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