

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

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In the Matter of: )  
Sodus Cold Storage Company, Inc. )  
Sodus, New York )  
Respondent. )  
-----X

Docket No. CAA-02-2013-1212  
CONSENT AGREEMENT AND  
FINAL ORDER

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 AUG 29 P 4 52  
REGIONAL HEARING  
CLERK

**PRELIMINARY STATEMENT**

1. This Consent Agreement and Final Order (“CA/FO”) is issued pursuant to Section 113(d) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(d). The Complainant in this action is the Director of the Emergency and Remedial Response Division of the United States Environmental Protection Agency (“EPA”), Region 2, who has been delegated the authority to institute this action.

2. EPA and the U.S. Department of Justice have determined, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that EPA may pursue this matter through administrative enforcement action.

3. Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

4. It has been agreed by the parties that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without litigation.

**STATUTORY BACKGROUND**

5. Section 113(d) of the Act, 42 U.S.C. § 7413(d), provides for the assessment of penalties for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r).

6. Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate release prevention, detection, and correction requirements regarding regulated substances in order to prevent accidental releases of regulated substances. EPA promulgated 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).

11. The regulations set forth at 40 C.F.R. §68.190(a) require that the owner or operator of a stationary source review and update the RMP as specified under 40 C.F.R. §68.190(b) and

