



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

JUL 07 2009

REPLY TO THE ATTENTION OF:
SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William L. Elson, Esq.
Senior Vice-President and General Counsel
Fritz Products, Inc.
225 Marion Street
River Rouge, Michigan 48218

Re: **Fritz Products, Inc., River Rouge, Michigan,** Consent Agreement and Final Order.
Docket No. CAA-05-2009-0027

Dear Mr. Elson:

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 July 7, 2009. Please pay the civil penalty in the amount of \$46,550 in the manner prescribed in paragraphs 39-44 and reference your check with the number BD 2750903A028 and 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 Cynthia King, Associate Regional Counsel, at (312) 886-6831. 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
Chemical Emergency
Preparedness & Prevention Section

Enclosure

RECEIVED
JUL 07 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)
)
Fritz Products, Inc.)
255 Marion Street)
River Rouge, MI 48218)
)
EPA ID: 1000 0013 5953)
RMP IC: 12816)
)
Respondent)
)

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

Docket No. CAA-05-2009-0027

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 (the 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 the implementing regulations.
2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.
3. Respondent is Fritz Products, Inc. (Respondent), a corporation, doing business in the State of Michigan.
4. Under 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. 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 this 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. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include

monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

15. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated "Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)," 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68 - Chemical Accident Prevention Provisions.

16. At 40 C.F.R. § 68.3, "stationary source" is defined to mean "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 (or persons under common control), and from which an accidental release may occur.”

17. At 40 C.F.R. § 68.3, “process” is defined to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.”

18. Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, provide that the Administrator of the U.S. EPA may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for each violation of Section 112(r) of the Act that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for each violation of Section 112(r) of the Act that occurred from 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 each violation of Section 112(r) of the Act that occurred after January 12, 2009.

19. Section 113(d)(1), 42 U.S.C. § 7413(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 the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. On April 7, 2009 and May 27, 2009, respectively, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the Administrator and U.S. Attorney General jointly determined that an administrative penalty action was an appropriate remedy for the violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), alleged in this matter.

Factual Allegations and Alleged Violations

21. Respondent is a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).
22. Respondent owns and operates a facility, located at 255 Marion Street, River Rouge, Michigan, 48218, which consists of buildings and operating equipment (Facility).
23. The Facility is a "stationary source" as defined at 40 C.F.R. § 68.3.
24. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), and the implementing regulations at 40 C.F.R. § 68.130, Table 1, chlorine, CAS No. 7782-50-5, is listed as a substance regulated under Section 112(r) of the Act, 42 U.S.C. § 7412(r), with a threshold quantity of 2,500 pounds.
25. Under 40 C.F.R. § 68.115 a "threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold."
26. In June 1999, having held for use in its operations at the Facility 2,500 pounds or more of chlorine, CAS No. 7782-50-5, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and was governed by 40 C.F.R. Part 68.
27. Under the compliance schedule identified at 40 C.F.R. § 68.10, Respondent was required to comply with the requirements of 40 C.F.R. Part 68 by no later than June 21, 1999.
28. Under 40 C.F.R. § 68.12, the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single Risk Management Plan, as provided in 40 C.F.R. § 68.150.
29. On June 21, 1999 and June 23, 2006, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations, 40 C.F.R. Part 68, Respondent submitted a Risk

Management Plan to U.S. EPA.

30. Under 40 C.F.R. § 68.12(d), in addition to meeting the general requirements of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

31. The Respondent is subject to "Program 3" eligibility requirements for its chlorine process because the process does not meet the requirements of 40 C.F.R. § 68.10(b), since the distance 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 and the process is subject to the OSHA PSM standard set forth at 29 C.F.R. § 1910.119, 40 C.F.R. § 68.10(d).

32. The Risk Management Plan submitted to U.S. EPA by Respondent includes the following:

- a. the Facility falls within NAICS Code 331314, a Secondary Smelting and Alloying of Aluminum;
- b. chlorine, CAS No. 7782-50-5, is a process chemical used during operations; and
- c. at the time it submitted its Risk Management Plan, 32,000 lbs. of chlorine were held at the Facility.

33. On June 27, 2007, 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 conducted on June 27, 2007, U.S. EPA identified the following alleged violations of Risk Management Plan (RMP) Requirements:

- a. Failure to review and update the off-site consequence analyses at least once every five years, as required under 40 C.F.R. § 68.36(a);
- b. Failure to document that equipment complies with recognized and generally accepted good engineering practices, as required under 40 C.F.R. § 68.30(c);
- c. Failure to conduct an initial process hazard analysis for the covered process that

- identifies, evaluates, and controls the hazards involved in the process, as required under 40 C.F.R. § 68.67(a);
- d. Failure to address consequences of failure of engineering and administrative controls in its process hazard analysis, as required under 40 C.F.R. § 68.67(c)(4);
 - e. Failure to address stationary source siting in its process hazard analysis, as required under 40 C.F.R. § 68.67(c)(5);
 - f. Failure to address human factors in its process hazard analysis, as required under 40 C.F.R. § 68.67(c)(6);
 - g. Failure to address a qualitative evaluation of a range of the possible safety and health effects of failure of controls in its process hazards analysis, as required under 40 C.F.R. § 68.67(c)(7);
 - h. Failure 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; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate 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);
 - i. Failure to conduct a process hazard analysis at least every five years after the completion of the initial process hazard analysis, as required under 40 C.F.R. § 68.67(f);
 - j. Failure to maintain documentation on procedures that reflected normal operations, emergency shutdown and operations, normal shutdown, startup following a normal or emergency shutdown or a major change that requires a hazard review, consequences of deviations and steps required to correct or avoid deviations, and equipment inspections, and safety systems and their functions, as required under 40 C.F.R. § 68.69(a);
 - k. Failure to certify annually that operating procedures are current and accurate and that procedures have been reviewed as often as necessary, as required under 40 C.F.R. § 68.69(c);
 - l. Failure to provide refresher training at least every three years, or more often if necessary, to each employee involved in operating the chlorine system to assure that each employee understands and adheres to the current operating procedures of the chlorine system, as required under 40 C.F.R. § 68.71(b);
 - m. Failure to ascertain and document in a record that each employee involved with

the chlorine covered process has received and understood the initial and refresher training required and to create a record with the identity of the employee, the date of training, and the means used to verify that the employee understood the training, as required under 40 C.F.R. § 68.71(c);

- n. Failure to have and implement written procedures to maintain the on-going integrity of equipment in the chlorine system, as required under 40 C.F.R. § 68.73(b);
 - o. Failure to train each employee involved in maintaining the on-going integrity of process equipment, as required under 40 C.F.R. § 68.73(c);
 - p. Failure to perform inspection and tests on all process equipment, as required under 40 C.F.R. § 68.73(d)(1);
 - q. Failure to follow recognized and generally accepted good engineering practices for inspections and testing procedures, as required under 40 C.F.R. § 68.73(d)(2);
 - r. Failure 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);
 - s. Failure to document each inspection and test performed on covered process equipment accordingly, as required under 40 C.F.R. § 68.73(d)(4);
 - t. Failure to certify that the stationary source has 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);
 - u. Failure to obtain and evaluate information regarding the contract owner or operator's safety performance and program, as required under 40 C.F.R. § 68.87(b)(1);
 - v. Failure to explain to the contract owner or operator the applicable provisions of the emergency response or the emergency action program, as required under 40 C.F.R. § 68.87(b)(3)); and
 - x. Failure to review and update its RMP for its five-year update, as required under 40 C.F.R. § 68.190(b)(1).
35. The above-described violations of the RMP regulations are violations of Section

112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E).

36. During the inspection on June 20, 2007, U.S. EPA identified potential violations of 40 C.F.R. §§ 68.65(c) and (d), 68.75(a), and 68.95(a)(2) and (3). Respondent later submitted information to U.S. EPA that resolved these potential violations.

37. Section 112 (r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

38. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act, 42 U.S.C. § 7412(r), are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Civil Penalty

39. 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, Complainant has determined that an appropriate civil penalty to settle this action is \$46,550.

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$46,550 civil penalty by sending a cashier's or certified check, by regular U.S. Postal Service 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 "Fritz Products, Inc.," docket number of this CAFO and the billing document number.

41. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

42. This civil penalty is not deductible for federal income tax purposes.

43. If Respondent does not pay timely 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.

44. 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

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

46. 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.

47. 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 45, above, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

48. Respondent certifies to the best of its knowledge and belief that it is complying fully with 40 C.F.R. Part 68.

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

50. 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.

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

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

53. The effective date of this CAFO is the date when this CAFO is filed with the Regional Hearing Clerk's office.

Fritz Products, Inc. Respondent

Date: 6/11/09 By: William L. Elson
William L. Elson, Esq.
Senior Vice-President and General Counsel
Fritz Products, Inc.

United States Environmental Protection Agency, Complainant

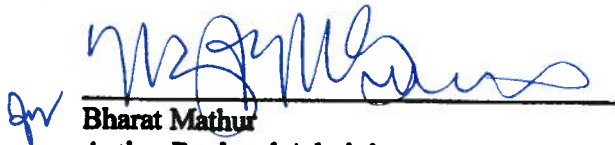
7/2/09
Date
Richard C. Karl
Richard C. Karl, Director
Superfund Division (SC-6J)
U.S. EPA, Region 5 (SC-6J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Fritz Products, Inc.
Docket No CAA-05-2009-0027

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.

7/2/09
Date


Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK
OFFICE OF REGIONAL COUNSEL

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:


William L. Elson, Esq.
Senior Vice-President and General Counsel
Fritz Products, Inc.
225 Marion Street
River Rouge, Michigan 48218

Christopher Dunsky, Esq.
Honigman Miller
2290 First National Building
660 Woodward Ave.
Detroit, Michigan 48226

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 7 date of July, 2009.

CAA-05-2009-0027



Monika Chrzaszcz
U.S. Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL
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