

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
Futamura USA, Inc.)	Docket No. CAA-07-2021-0068
)	
<u>Respondent.</u>)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Futamura USA, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action and/or the penalty amount is greater than the statutory limitation, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant, by delegation from the Administrator of the EPA, the Regional Administrator of Region 7, and the Enforcement and Compliance Assurance Division Director, is the Chief of the Air Branch, EPA, Region 7.

4. Respondent is Futamura USA, Inc., a corporation in good standing under the laws of the state of Delaware, which owns and operates the Futamura USA, Inc. cellophane manufacturing facility located at 6000 SE 2nd Street in Tecumseh, Kansas (Respondent's Facility).

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

6. On June 20, 1996, the EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This rule requires owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

7. The regulations at 40 C.F.R. Part 68 set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a Risk Management Plan ("RMP") that must be submitted to the EPA.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

9. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet the eligibility requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and it either falls under a specified North American Industry Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

10. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt

Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$48,762 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 23, 2020.

Definitions

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

12. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulations at 40 C.F.R. § 68.3 define “stationary source,” in part, as 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.

14. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

15. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or 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 a regulated substance could be involved in a potential release, shall be considered a single process.

General Factual Allegations

17. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. Respondent is the owner and operator of a facility that is a “stationary source” pursuant to 40 C.F.R. § 68.3.

19. Carbon disulfide is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for carbon disulfide, as listed in 40 C.F.R. § 68.130, is 20,000 pounds.

20. On or about September 11 and 12, 2019, representatives of the EPA conducted an inspection of Respondent’s Facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

21. Information gathered during the EPA inspection revealed that Respondent had greater than 20,000 pounds of carbon disulfide in a process at its facility.

22. From the time Respondent first had onsite greater than 20,000 pounds of carbon disulfide in a process, Respondent was subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

23. From the time Respondent first had onsite greater than 20,000 pounds of carbon disulfide in a process, Respondent was subject to Program 3 prevention program requirements because pursuant to 40 C.F.R. § 68.10(i), the covered process at its facility did not meet the eligibility requirements of Program 1 and was subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

24. From the time Respondent first had onsite greater than 20,000 pounds of carbon disulfide in a process, Respondent was required under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 requirements provided at 40 C.F.R. § 68.12(d) and detailed in Subpart D.

Allegations of Violation

25. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1

26. The facts stated in Paragraphs 17 through 24 above are herein incorporated.

27. The regulation at 40 C.F.R. § 68.12(d)(2) requires the owner or operator of a stationary source with a process subject to Program 3 to conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42.

28. The regulation at 40 C.F.R. § 68.30(c) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to use the most recent Census data, or other updated information, to estimate the population potentially affected by a release from the facility.

29. The EPA inspection revealed that Respondent failed to use the most recent Census data, or other updated information, to estimate the population potentially affected by a release from the facility.

30. Respondent's failure to use the most recent Census data, or other updated information, to estimate the population potentially affected by a release from the facility as required by 40 C.F.R. § 68.30(c) and 40 C.F.R. § 68.12(d)(2) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2

31. The facts stated in Paragraphs 17 through 24 above are herein incorporated.

32. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. §§ 68.65 through 68.87.

33. The regulation at 40 C.F.R. § 68.67(e) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to establish a system to promptly address the process hazard analysis team's findings and recommendations, and assure and document that the recommendations are resolved in a timely manner.

34. The EPA inspection revealed that Respondent failed to assure that the recommendations from the process hazard analysis team's finding were resolved in a timely manner

35. Respondent's failure to comply with the Program 3 prevention requirements of 40 C.F.R. § 68.67(e), as required by 40 C.F.R. § 68.12(d)(3), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3

36. The facts stated in Paragraphs 17 through 24 above are herein incorporated.

37. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. §§ 68.65 through 68.87.

38. The regulation at 40 C.F.R. § 68.79(a) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to certify that they have evaluated compliance with the provisions of the Program 3 prevention requirements at least every three years to verify that the procedures and practices developed by the facility for compliance with Program 3 requirements are adequate and being followed.

39. The regulation at 40 C.F.R. §§ 68.79(d) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

40. The EPA inspection revealed that Respondent failed to certify a compliance audit that was performed at the facility in 2018, and had not promptly documented an appropriate response and correction for each of the findings of the compliance audit.

41. Respondent's failure to comply with the Program 3 prevention requirements of 40 C.F.R. §§ 68.79(a) and (d), as required by 40 C.F.R. § 68.12(d)(3), violate Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4

42. The facts stated in Paragraphs 17 through 24 above are herein incorporated.

43. The regulation at 40 C.F.R. § 68.195(b) requires the owner or operator of a stationary source for which an RMP was submitted to correct the RMP within one month of a change of the emergency contact information required under 40 C.F.R. § 68.160(b)(6).

44. The EPA inspection revealed that the emergency contact information for the facility had not been updated since May 2017, when the emergency contact for the facility was no longer accurate.

45. Respondent's failure to update the emergency contact information in the RMP as required by 40 C.F.R. §§ 68.195(b) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

46. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;

- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

47. Respondent consents to the issuance of this Consent Agreement and Final Order.

48. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

49. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: klarkins@shb.com.

Penalty Payment

50. EPA has considered the appropriateness of the penalty pursuant to Section 113(e)(1) of the CAA, 42 U.S.C.7413(e)(1), and has determined that the appropriate penalty for the violations is \$97,984. However, pursuant to the statutory requirement that EPA consider the economic impact of the penalty on Respondent's business, Respondent has demonstrated that it is unable to pay any penalty in this matter. Because of Respondent's inability to pay the penalty, therefore, Complainant conditionally agrees to resolve the claims alleged herein.

51. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Zero Dollars (\$0.00), based on a substantiated ability to pay claim.

Effect of Settlement and Reservation of Rights

52. This Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

53. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph directly below.

54. Respondent certifies by the signing of this Consent Agreement that, upon investigation and to the best of its knowledge and belief, it is presently in compliance with regard to the violations alleged in this Consent Agreement.

55. This Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

56. This Consent Agreement and Final Order constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Combined Enforcement Response Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68 to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

57. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

58. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

59. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

60. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent’s agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT:
FUTAMURA USA, INC.**

Date: 11-19-21

Michael Basore
Signature

Michael Basore
Name

Director of Operations
Title

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: _____

Tracey Casburn
Air Branch Chief
Enforcement and Compliance Assurance Division

Date: _____

Jonathan Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date