



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604-3590
April 27, 2022

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Mr. James M. Dee
Chief Financial Officer
TRIALCO, Inc.
900 E. 14th Street
Chicago Heights, Illinois 60411
jdee@trialco.net

Re: **TRIALCO, Inc., Chicago Heights, Illinois**
Consent Agreement and Final Order
Docket No. **CAA-05-2022-0016**

Dear Mr. Dee,

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 April 27, 2022. Please note TRIALCO, Inc.'s obligation to pay a civil penalty in the amount of \$70,000 in the manner prescribed in paragraphs 40-41 and please reference your check with the docket number.

Please feel free to contact Silvia Palomo at palomo.silvia@epa.gov if you have any questions regarding the enclosed documents. Please direct any legal questions to Puja Lakhani, Associate Regional Counsel, at lakhani.puja@epa.gov. Thank you for your assistance in resolving this matter.

Thank you for your cooperation. If you have any questions, please contact Silvia Palomo at palomo.silvia@epa.gov.

Sincerely,

MICHAEL
HANS

Digitally signed by
MICHAEL HANS
Date: 2022.04.18 11:26:47
-05'00'

Michael E. Hans, Supervisor
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc. Puja Lakhani, ORC
Silvia Palomo, CEPPS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2022-0016
)	
Trialco, Inc.)	Proceeding to Assess a Civil Penalty Under
Chicago Heights, Illinois)	Section 113(d) of the Clean Air Act, 42
)	U.S.C. § 7413(d)
Respondent.)	
)	
_____)	

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 Section 22.1(a)(2), 22.13(b), and 22.18(b)(2)-(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. § 22.1(a)(2), 22.13(b), and 22.18(b)(2)-(3), for alleged violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r) and the implementing regulations at 40 C.F.R. Part 68.

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Trialco, Inc. (“Trialco” or “Respondent”), a corporation doing business in the State of Illinois.

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). *See* 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 the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

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

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of review under Section 113(d)(4) of the Act, 42 U.S.C. § 7413(d)(4), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

9. Under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the Administrator of EPA (Administrator) may issue an administrative order against any person assessing a civil administrative penalty whenever, on the basis of any available information, the Administrator finds that such person has violated Section 112(r) of the Act and 40 C.F.R. Part 68. The Administrator may assess a civil penalty of up to \$51,796 per day for each violation, with a maximum of \$414,364, for violations that occurred after November 2, 2015, where penalties were assessed on or after January 12, 2022. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

10. The Administrator may assess a penalty greater than the administrative penalty cap where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action.

42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

11. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter, involving a penalty greater than \$385,535, is appropriate for an administrative penalty action.

12. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), 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.

13. 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 CAFO.

Statutory and Regulatory Background

14. In accordance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), EPA promulgated the "Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)," 61 Fed. Reg. 31,668 (June 20, 1996), to prevent accidental releases of regulated substances and to minimize the consequences of those releases that do occur. *See also* 84 Fed. Reg. 69,834 (Dec. 19, 2019). These regulations were codified at 40 C.F.R. Part 68 (Chemical Accident Prevention Provisions) and are commonly known as the

“Risk Management Program regulations.”

15. The Risk Management Program regulations apply to all stationary sources with processes that contain more than a threshold quantity of a regulated substance. *See* 40 C.F.R. § 68.10(a). The List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention is codified at 40 C.F.R. § 68.130.

16. The Risk Management Program regulations define a “stationary source” 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.” *See* 40 C.F.R. § 68.3.

17. The Risk Management Program regulations define a “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.” *See id.*

18. Chlorine is a “regulated substance,” as that term is defined in Section 112(r)(3) of the Act and 40 C.F.R. § 68.3. 40 C.F.R. § 68.130, Table 1.

19. The “threshold quantity” (as that term is defined in 40 C.F.R. § 68.3) for chlorine is 2,500 pounds. This threshold quantity is present at a stationary source if the total quantity of chlorine contained in a process exceeds 2,500 pounds. *See* 40 C.F.R. §§ 68.115(a) and 68.130, Table 1.

20. Each process in which a regulated substance is present in more than a threshold quantity (a “covered process”) is subject to one of three risk management programs. *See* 40 C.F.R. § 68.10(g)-(i). Section 68.10(i) of the Risk Management Program regulations provides

that a covered process is subject to Program 3 requirements if the process does not meet the requirements of 40 C.F.R. § 68.10(g) and if either of the following conditions is met: the process is in NAICS codes 32211, 32411, 32511, 325188, 325192, 325199, 325211, or 32532; or the process is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 C.F.R. § 1910.119.

21. In addition to meeting the requirement to submit a risk management plan (RMP) under 40 C.F.R. § 68.12(a), the Program 3 requirements include developing and implementing a management system as provided in 40 C.F.R. § 68.15; conducting a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42; implementing the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87; developing and implementing an emergency response program as provided in 40 C.F.R. §§ 68.90 to 68.96; and submitting as part of the RMP the data on prevention program elements for Program 3 processes as provided in 40 C.F.R. § 68.175. *See* 40 C.F.R. § 68.12(d).

Factual Allegations and Alleged Violations

22. Respondent is a “person” as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

23. Respondent owns and operates a facility at 900 E. 14th Street, Chicago Heights, Illinois 60411 (“the Facility”). At the Facility, the Respondent is engaged in the production of primary and secondary aluminum alloys.

24. Respondent is thus the “owner or operator” of the facility for purposes of 40 C.F.R. Part 68. *See* 42 U.S.C. § 7412(a)(9) (definition of “owner or operator”).

25. The facility consists of 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. The facility is thus a “stationary source” under 40 C.F.R. § 68.3.

26. Respondent stores and uses chlorine, a “regulated substance” under Section 112(r)(3) of the Act and 40 C.F.R. § 68.3, as a fluxing agent during the melt process. Respondent’s activities involving a regulated substance thus constitute a “process” under 40 C.F.R. § 68.3.

27. Respondent uses and stores up to 72,000 lbs. of chlorine in 1-ton cylinders.

28. The chlorine cylinders are a “process,” as defined at 40 C.F.R. § 68.3.

29. Respondent’s chlorine process described in paragraphs 26 to 28 contains more than the threshold quantity (2,500 pounds) of chlorine. *See* 40 C.F.R. § 68.130, Table 1.

30. The Risk Management Program regulations apply to Respondent’s facility as a stationary source with a process that contains more than a threshold quantity of a regulated substance. *See* 40 C.F.R. § 68.10(a).

31. Respondent’s chlorine process does not meet the eligibility requirements for Program 1 under 40 C.F.R. § 68.10(g) and is subject to the OSHA process safety management standard since the process involves chlorine above the threshold quantity in 29 C.F.R. § 1910.119, App. A. Therefore, Respondent’s chlorine process is subject to Program 3 pursuant to 40 C.F.R. § 68.10(i), and must meet the requirements of Program 3 set forth at 40 C.F.R. § 68.12(a) and (d).

32. On April 13, 2017, U.S. EPA sent a Request for Information pursuant Section

114(a) of the Clean Air Act to the Trialco Facility. The purpose of the request was to determine whether the Respondent was complying with Section 112(r) of the Act and the regulations implementing Section 112(r) at 40 C.F.R. Part 68 at the Facility.

33. On May 2, 2017, Trialco provided information to U.S. EPA indicating that Trialco was subject to the RMP regulations and it had not submitted a risk management plan.

34. On November 16, 2017, U.S. EPA sent a follow-up Request for Information. After reviewing of both responses to U.S. EPA's Requests for Information, U.S. EPA discovered deficiencies regarding Trialco compliance with Section 112(r) of the Act and the regulations implementing Section 112(r) at 40 C.F.R. Part 68 at the Facility.

35. On May 31, 2018, U.S. EPA sent the Department of Justice (DOJ) a request for a waiver of the twelve-month limitation on administrative cases under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), to pursue an administrative enforcement action under 112(r) of the Act against Trialco for the violations described in paragraphs 32 through 54.

36. On October 15, 2018, DOJ approved U.S. EPA's waiver request. DOJ agreed with U.S. EPA that pursuing the violations described in paragraphs 32 to 54 by administrative rather than judicial action was appropriate.

37. EPA has identified the following alleged violations of the Act and Risk Management Program regulations by Respondent:

- a. Trialco failed to submit a Plan, as required under 40 C.F.R. § 68.12(a), 68.150(a) and 68.150(b) and its subsections.
- b. Trialco failed to adequately conduct a Process Hazard Analysis, as required by 40 C.F.R. § 68.67(a).

- c. Trialco failed to address in its operating procedures emergency shutdown procedures including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner, as required under 40 C.F.R. § 68.69(a)(1)(iv).
- d. Trialco failed to address in its operating procedures startup procedures following a turnaround, or after emergency shutdown, as required by 40 C.F.R. § 68.69(a)(1)(iv).
- e. Trialco failed to address health and safety considerations in its operating procedures, as required by 40 C.F.R. § 68.69(a)(3).
- f. Trialco failed to adequately conduct a compliance audit, as required by 40 C.F.R. § 68.79(a).

38. 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 imposed under Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement.

Civil Penalty

39. Complainant has determined that an appropriate civil penalty to settle this action is \$70,000. In determining the penalty amount, Complainant has considered the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts and circumstances of this case, and other factors such as cooperation and expeditious return to compliance. Complainant has also considered U.S. EPA's Combined Enforcement Policy for Clean Air Act Sections 112(r)(1),

112(r)(7), and 40 C.F.R. Part 68 (June 2012).

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$70,000 civil penalty for the CAA 112(r) violations. Respondent must pay the penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
SWIFT address: FRNYUS33

[In the comment or description field of the electronic funds transfer, state the following: [case name] and the docket number[s] of this CAFO.]

The check must note the following: the case title (“In the Matter of Trialco, Inc.”) and the docket number of this CAFO.

41. A transmittal letter stating Respondent’s name, complete address, and the docket number of this CAFO must accompany the payment in paragraph 40. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Silvia Palomo (SE-5J)
Environmental Engineer
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
palomo.silvia@epa.gov

Puja Lakhani (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
lakhani.puja@epa.gov

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

43. If Respondent does not timely pay the civil penalty, EPA shall request the Attorney General to bring a civil action in the appropriate district court to recover the amount assessed (plus interest at rates established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the CAFO), as well as the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. Respondent acknowledges that, in such an action, the validity, amount, and appropriateness of the civil penalty shall not be subject to review.

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 amount overdue from the date the 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). Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter. *Id.*

General Provisions

45. Pursuant to 40 C.F.R. § 22.5(b)(2), the Parties consent to service of this CAFO by email at the following email addresses: lakhani.puja@epa.gov (for Complainant) and

jdee@trialco.net and sturner@nixonpeabody.com (for Respondent). *See* 40 C.F.R. § 22.5-6. The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

47. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

48. This CAFO does not affect Respondent's responsibility to comply with the Act, the Risk Program Management regulations, and any other applicable federal, state, and local laws and regulations.

49. Respondent certifies that it is complying fully with Section 112(r) of the Act and 40 C.F.R. Part 68.

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

51. Each person signing this CAFO 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.

52. Each party agrees to bear its own costs and attorney's fees in this action.

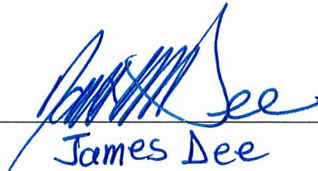
53. This CAFO constitutes the entire agreement between the parties.

54. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

In the Matter of Trialco, Inc.
Docket No. CAA-05-2022-0016

4/5/2022

Date



James Dee
CFO
Trialco, Inc.

United States Environmental Protection Agency, Complainant

Date

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2022.04.22
09:52:35 -05'00'

Michael D. Harris,
Director
Enforcement and Compliance Assurance Division

In the Matter of Trialco, Inc.
Docket No. CAA-05-2022-0016

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.

ANN COYLE Digitally signed by ANN COYLE
Date: 2022.04.26 15:28:46
-05'00'

Date

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Trialco, Inc.
Docket Number: **CAA-05-2022-0016**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2022-0016 which was filed on April 27, 2022 in the following manner to the following addresses:

Copy by E-mail to
Respondent:

Jim Dee
jdee@trialco.com

Scott Turner
sturner@nixonpeabody.com

Copy by E-mail to
RMP Contact:

Silvia Palomo
Palomo.silvia@epa.gov

Copy by E-mail to
Attorney for Complainant:

Puja Lakhani
lakhani.puja@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: _____

Isidra Martinez
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5