



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

JAN 19 2011

REPLY TO THE ATTENTION OF:

SM-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jordan Hemaidan, Esq.
Michael, Best, & Friedrich, LLP
One Pinkney Street
Suite 700
Madison, Wisconsin 53703
Re: Briess Industries, Inc.

Re: Briess Industries, Inc., Consent Agreement and Final Order.
Docket No. **CAA-05-2011-0020**

Dear Mr. Hemaidan:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on January 19, 2011. Please pay the civil penalty in the amount of **\$73,500** in the manner prescribed in paragraph(s) 50 thru 56 and reference your check with the number BD 2751103A018 and the docket number.

Please feel free to contact Bob Mayhugh at 312-886-5929 if you have any questions regarding the enclosed documents. Please direct any legal questions to Mark Koller, Associate Regional Counsel at 312-353-2591. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Silvia Palomo".

Silvia Palomo, Acting Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

cc: Regional Hearing Clerk
U. S. EPA Region 5

Mark Koller (w/enclosure)
Office of Regional Counsel (C-14J)
U.S. EPA Region 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
BRIESS INDUSTRIES, INC.,)
CHILTON, WISCONSIN,)
)
)
RESPONDENT.)
_____)

DOCKET NO.: CAA-05-2011-0020

PROCEEDING TO ASSESS
A CIVIL PENALTY UNDER
SECTION 113(d) OF THE
CLEAN AIR ACT,
42 U.S.C. § 7413(d)

RECEIVED
JAN 19 2011

CONSENT AGREEMENT AND FINAL ORDER REGIONAL HEARING CLERK
PRELIMINARY STATEMENT USEPA
REGION 5

1. This is an administrative action commenced and concluded under section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d)(1), and sections 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* (the Consolidated Rules) as codified at 40 C.F.R. Part 22, for violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r).

2. According to 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, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

3. 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.

4. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

5. Respondent stipulates that EPA has jurisdiction over the subject matter of this CAFO, and waives any jurisdictional objections it may have.

6. Respondent neither admits nor denies Complainant's findings of fact and conclusions of law set forth in paragraphs 7 through 56 of this CAFO.

7. 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

8. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator to issue regulations regarding the prevention and detection of accidental releases of designated chemicals. These regulations further require the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a Risk Management Plan to prevent or minimize risks of accidental releases of those designated substances.

9. Pursuant to section 112(r)(7)(A) and (B) of the CAA, 42 U.S.C. § 112(r)(7)(A) and (B), the Administrator promulgated the Chemical Accident Pollution Prevention rule on January 31, 1994. This rule is codified at 40 C.F.R. Part 68 and has been modified from time to time since.

10. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.12(d), requires the owner or operator of a stationary source with a process subject to Program 3, as defined at 40 C.F.R. § 68.10(d), to submit a single Risk Management Plan as required by 40 C.F.R. §§ 68.150 to 68.185, to develop and implement a management system as

required by 40 C.F.R. § 68.15, conduct a hazard assessment pursuant to 40 C.F.R. §§ 68.20 through 68.42, implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87, and develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 and 68.95, and submit as part of the Risk Management Plan the data on prevention program elements for Program 3 processes as provided in § 68.175. These requirements are collectively known as the “Risk Management Program.”

11. An owner or operator shall review and update the Risk Management Plan pursuant to the applicable deadline pursuant to 40 C.F.R. § 68.190.

12. An owner or operator of a stationary source for which a Risk Management Plan was submitted shall correct the Risk Management Plan within one month of any change in emergency contact information and shall submit a correction of that information pursuant to 40 C.F.R. § 68.195.

13. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “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.”

14. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “process” as “... any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of those activities...”

15. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “regulated substance” as “... any substance listed pursuant to section 112(r)(3) of the Clean Air Act ... in [40 C.F.R.] § 68.130.”

16. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as “... any person who owns, leases, operates, controls or supervises a stationary source.”

17. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “threshold quantity” as “... the quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act ..., 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 ...”

18. The Chemical Accident Pollution Prevention rule, in Tables 1 and 2 referenced in 40 C.F.R. § 68.130, lists sulfur dioxide (anhydrous) as a regulated toxic substance with a threshold quantity of 5,000 pounds.

19. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement imposed under section 112(r), it is unlawful for any person to operate any stationary source in violation of such requirement.

20. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), provides that the Administrator may issue an administrative order against any person assessing civil administrative penalties of up to \$25,000 per day of violation whenever the Administrator finds that person has violated a requirement of subchapter I of the CAA, including a requirement of any rule promulgated under that subchapter.

21. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty under section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), to \$32,500 per day of violation to a maximum of \$270,000 for violations occurring after March 15, 2004, but before January 13, 2009.

22. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty under section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), to \$37,500 per day of violation to a maximum of \$295,000 for violations occurring after January 12, 2009.

23. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), further limits the Administrator's authority to pursue administrative penalties to matters where the first alleged date of violation occurred no more than twelve 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.

GENERAL ALLEGATIONS

24. Complainant is, by lawful delegation, the Director of the Superfund Division, U.S. EPA Region 5.

25. Respondent is Briess Industries, Inc., a corporation organized under the laws of the State of Wisconsin, and is thus a "person" according to section 302(e) of the CAA, 42 U.S.C. § 7602(e).

26. At all times relevant, Respondent owned, operated, controlled and supervised buildings, structures, equipment, and installations: 1) which belong to the same industrial group, 2) which are located on one or more contiguous properties, and 3) from which an accidental release may occur (hereinafter referred to as “the Facility”).

27. The Facility is located at 901 West Madison Street, Waterloo, Wisconsin.

28. Prior to the spring of 2005, Respondent stored and used sulfur dioxide (anhydrous) (CAS No. 7446-09-05) in manufacturing to produce malts. Respondent thereafter stored its sulfur dioxide (anhydrous) at the Facility, ultimately disposing of its sulfur dioxide (anhydrous) by August 6, 2009.

29. The Facility is a “stationary source” as that term is defined in 40 C.F.R. § 68.3.

30. Respondent is an “owner or operator” as that term is defined at 42 U.S.C. § 7412(9).

31. Respondent’s Facility had sulfur dioxide (anhydrous) in quantities exceeding 5,000 pounds up through August 2009, and thus maintained a hazardous substance in quantities exceeding a threshold quantity under the Chemical Accident Pollution Prevention rule.

32. Respondent’s processes subjected it to the Program 3 requirements because the process was subject to the process safety management standard at 29 C.F.R. § 1910.119.

33. On December 14, 2009 and January 18, 2010, respectively, the Administrator and the Attorney General of the United States, each through their

respective delegates, determined that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

SPECIFIC ALLEGATIONS

34. Briess Industries, Inc. failed to complete a revised analysis and submit a revised Risk Management Plan within six months of a change in process, quantities stored or handled, or any other aspect that might reasonably be expected to increase or decrease the distance to the endpoint by a factor of two or more as required by 40 C.F.R. § 68.36(b).

35. Briess Industries, Inc. failed to determine and document that existing equipment, designed and constructed in accordance with codes, standards, or practices that are no longer in general use, is designed, maintained, inspected, tested, and operating in a safe manner as required by 40 C.F.R. § 68.65(d)(3).

36. Briess Industries, Inc. failed to update the Process Hazards Analysis every five years as required by 40 C.F.R. § 68.67(f).

37. Briess Industries, Inc. failed to annually certify that operating procedures were current and accurate as required by 40 C.F.R. § 68.69(c).

38. Briess Industries, Inc. failed to ascertain and document that each employee involved in operating a process has received and understood the training required by 40 C.F.R. § 68.71(c).

39. Briess Industries, Inc. failed to provide training records that contain the identity of the employee, the date of training, and the means used to verify that the employee understood his training as required by 40 C.F.R. § 68.71(c).

40. Briess Industries, Inc. failed to establish and implement written procedures to maintain the on-going integrity of the process equipment listed in 40 C.F.R. § 68.73 as required by 40 C.F.R. § 68.73(b).

41. Briess Industries, Inc. failed to perform inspections and tests on the process equipment as required by 40 C.F.R. § 68.73(d)(1).

42. Briess Industries, Inc. failed to keep inspection records as required by 40 C.F.R. § 68.73(d)(4).

43. Briess Industries, Inc. failed to update process safety information due to a change in the process as required by 40 C.F.R. § 68.75(d).

44. Briess Industries, Inc. failed to update procedures or practices that resulted from a change in the operating procedures or practices as required by 40 C.F.R. § 68.75(e).

45. Briess Industries, Inc. failed to conduct compliance audits every three years as required by 40 C.F.R. § 68.79.

46. Briess Industries, Inc. failed to review and update the Risk Management Plan and submit it to EPA as required under 40 C.F.R. § 68.190(b)(6).

47. Briess Industries, Inc. did not update its emergency contact information as required by 40 C.F.R. § 68.195(b).

48. Respondent's failure to develop and implement a complete Risk Management Program at the Facility is a violation of the requirements of 40 C.F.R. § 68.12(d).

49. Respondent's violation of 40 C.F.R. § 68.12(d) constitutes the unlawful operation of a stationary source subject to a regulation or requirement promulgated under

section 112(r) of the CAA, 42 U.S.C. § 7412(r), and authorizes the Administrator to seek penalties pursuant to section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B).

CIVIL PENALTY

50. Considering Respondent's cooperation in resolving this matter and other factors as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$73,500.

51. Within 30 days after the effective date of this CAFO, Respondent must pay the \$73,500 civil penalty by sending a cashier's or certified check, 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

52. The check must note the following: the case caption, the docket number of this CAFO and the billing document number to be assigned by U.S. EPA upon filing of this CAFO.

53. A transmittal letter, stating Respondent's name, the case title, Respondent's 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:

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

Bob Mayhugh (SM-5J)
Chemical Emergency Preparedness
and Prevention Section

U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Mark Koller (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

55. If Respondent does not timely pay 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. Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

56. 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 CAA, 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

57. This CAFO resolves only Respondent's liability, and any liability of Respondent's parents, subsidiaries, affiliates, related corporations and entities, insurers,

reinsurers, indemnitors, stockholders, officers, directors, employees, agents, servants, successors and assigns for federal civil penalties for the violations and facts alleged in the CAFO.

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

59. This CAFO does not affect Respondent's responsibility to comply with the CAA or other applicable federal, state and local laws or regulations.

60. This CAFO is a "final order" for purposes of U.S. EPA's enforcement response policy for section 112(r) of the CAA.

61. The terms of this CAFO bind Respondent, Respondent's parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, servants, successors and assigns.


62. 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.

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

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

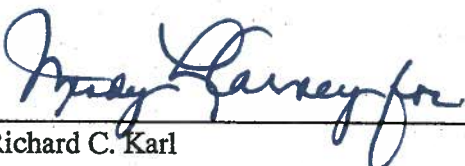
Briess Industries, Inc., Respondent

12-29-10
Date


Authorized Signatory
Briess Industries, Inc.

U.S. Environmental Protection Agency, Complainant

1/14/11
Date


Richard C. Karl
Director
Superfund Division

In the Matter of:
Briess Industries, Inc.,
Chilton, Wisconsin
Docket No: CAA-05-2011-0020


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JAN 19 2011
REGIONAL HEARING CLERK
USEPA
REGION 5
1/19/2011

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. **IT IS SO ORDERED.**

Date: 1-18-11

By: _____


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

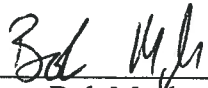
Certificate of Service

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:

Mr. Jordan Hemaïdan, Esq.
Michael, Best, & Friedrich, LLP
One South Pinckney Street
Suite 700
Madison, Wisconsin 53703
Re: Briess Industries, Inc.

I have further caused the original CAFO and this Certificate of Service, 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 19th day of January, 2011.



Bob Mayhugh
U.S. Environmental Protection Agency
Region 5

CAA-05-2011-0020

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JAN 19 2011
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