



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

AUG 17 2010

REPLY TO THE ATTENTION OF:  
SM-5J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Theodore Rogers  
President  
Rogers Elevator Company  
8352 N. Vassar Road  
Mt. Morris, Michigan 48458-9761

Re: **Rogers Elevator Company, Mt. Morris, Michigan**  
Consent Agreement and Final Order.  
Docket No. **CAA-05-2010-0060**

Dear Mr. Rogers:

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 AUG 17 2010. Please pay the civil penalty in the amount of \$8,500.00 in the manner prescribed in paragraphs 47-52 and reference your check with the number BD **2751003A059** 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 Mony Chabria, Associate Regional Counsel, at (312) 886-6842. Thank you for your assistance in resolving this matter.

Sincerely,

Mark J. Horwitz, Chief  
Chemical Emergency  
Preparedness & Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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In the Matter of:	)	Docket No. CAA-05-2010-0060
	)	
Rogers Elevator Company	)	Proceeding to Assess a Civil Penalty
Mt. Morris, Michigan	)	Under Section 113(d) of the Clean Air
	)	Act, 42 U.S.C. § 7413(d)
Respondent.	)	
	)	
	)	
	)	

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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.
2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Rogers Elevator Company (“Rogers”), a corporation doing business in Michigan.
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). 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 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 the 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. On June 20, 1996, in accordance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), U.S. EPA promulgated regulations to prevent accidental releases of regulated substances and to minimize the consequences of releases that do occur. These regulations, known as the CAPP regulations, are codified at 40 C.F.R. Part 68.

10. Under 40 C.F.R. § 68.10, the CAPP regulations apply to an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 C.F.R. § 68.115. Section 68.10 also describes the covered processes subject to Program 1, 2, and 3 requirements.

11. The regulations at 40 C.F.R. § 68.10(c) specify that the covered processes subject to Program 2 requirements are those that do not meet the requirements to be subject to Program 1 and Program 3 requirements. Program 1 requirements apply to processes which (1) for the five years prior to the RMP submission, have not had an accidental release of a regulated substance where exposure to the substance led to death, injury, or response or restoration activities for an exposure of an environmental receptor; (2) the distance to a toxic or flammable endpoint for a worst-case release assessment is less than the distance to any public receptor; and (3) emergency response procedures have been coordinated between the stationary source and local emergency

planning and response organizations. Program 3 requirements apply to processes which are not Program 1 processes and are either (1) in certain North American Industry Classification System (NAICS) codes 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or (2) subject to the OSHA process safety management standard.

12. Under 40 CFR § 68.12(a), the owner or operator of a stationary source subject to the CAPP regulations, shall submit a single Risk Management Plan (RMP), as provided in 40 CFR §§ 68.150 to 68.185.

13. Under 40 CFR § 68.12(c), the owner or operator of a stationary source subject to Program 2, in addition to submitting the RMP under § 68.12(a), must (1) develop and implement a management system as provided in § 68.15; (2) conduct a hazard assessment as provided in §§ 68.20 through 68.42; (3) implement the Program 2 prevention steps provided in §§ 68.48 through 68.60 or implement the Program 3 prevention steps provided in §§ 68.65 through 68.87; (4) develop and implement an emergency response program as provided in §§ 68.90 to 68.95; and (5) submit as part of the RMP the data on prevention program elements for Program 2 processes as provided in § 68.170.

14. Under 40 C.F.R. § 68.10, the 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 Part 68 no later than the latest of June 21, 1999; three years after the date on which a regulated substance is first listed under § 68.130; or the date on which a regulated substance is first present above a threshold quantity in a process.

15. The regulations, at 40 C.F.R. § 68, Subpart B (68.20-68.42), require that the owner or operator of a stationary source subject to the CAPP regulations conduct a hazard assessment.

16. Under 40 C.F.R. § 68.25(a)(2)(i), the owner or operator of a stationary source

subject to the CAPP regulations must analyze and report in the RMP one worst-case scenario that is estimated to create the greatest distance in any direction to an endpoint resulting from an accidental release of a regulated toxic substance from covered processes under worst-case conditions.

17. Under 40 C.F.R. § 68.33(a), the owner or operator of a stationary source subject to the CAPP regulations must list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint.

18. Under 40 C.F.R. § 68.39(a), the owner or operator of a stationary source subject to the CAPP regulations must maintain documentation for worst-case scenarios including a description of the vessel or pipeline and substance selected, assumptions and parameters used, and the rationale for selection; and the anticipated effect of the administrative controls and passive mitigation on the release quantity and rate.

19. Under 40 C.F.R. § 68.39(b), the owner or operator of a stationary source subject to the CAPP regulations must maintain documentation for alternative release scenarios, a description of the scenarios identified, assumptions and parameters used, and the rationale for the selection of specific scenarios; and the effect of the controls and mitigation on the release quantity and rate.

20. Under 40 C.F.R. § 68.39(e), the owner or operator of a stationary source subject to the CAPP regulations must maintain documentation of data used to estimate population and environmental receptors potentially affected.

21. The regulations, at 40 C.F.R. § 68, Subpart C (68.48 - 68.60), require that the owner or operator of a stationary source subject to Program 2 of the CAPP regulations develop a prevention program.

22. Under 40 C.F.R. § 68.48(a), the owner or operator of a stationary source subject to Program 2 of the CAPP regulations must compile and maintain up-to-date safety information related to the regulated substances, processes, and equipment, including the maximum intended inventory of equipment in which the regulated substances are stored or processed; safe upper and lower temperatures, pressures, flows, and compositions; equipment specifications; and codes and standards used to design, build, and operate the process.

23. Under 40 C.F.R. § 68.50(a), the owner or operator of a stationary source subject to Program 2 of the CAPP regulations must conduct a review of the hazards associated with the regulated substances, process, and procedures.

24. Under 40 C.F.R. § 68.52(a), the owner or operator of a stationary source subject to Program 2 of the CAPP regulations must prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process.

25. Under 40 C.F.R. § 68.54(a), the owner or operator of a stationary source subject to Program 2 of the CAPP regulations must ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in § 68.52 that pertain to their duties.

26. Under 40 C.F.R. § 68.54(b), the owner or operator of a stationary source subject to Program 2 of the CAPP regulations must provide refresher training at least every three years, and more often if necessary, to each employee operating a process, to ensure that the employee understands and adheres to the current operating procedures of the process.

27. Under 40 C.F.R. § 68.56(a), the owner or operator of a stationary source subject to Program 2 of the CAPP regulations must prepare and implement procedures to maintain the on-

going mechanical integrity of the process equipment.

28. Under 40 C.F.R. § 68.56(b), the owner or operator of a stationary source subject to Program 2 of the CAPP regulations must train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of the process, in the hazards of the process, how to avoid or correct unsafe conditions, and in the procedures applicable to the employee's job tasks.

29. Under 40 C.F.R. § 68.56(d), the owner or operator of a stationary source subject to Program 2 of the CAPP regulations must perform or cause to be performed inspections and tests on process equipment. Such inspections and tests must follow recognized and generally accepted good engineering practices.

30. Under 40 C.F.R. § 68.58(a), the owner or operator of a stationary source subject to Program 2 of the CAPP regulations must certify that it has evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart C, at least every three years to verify that the procedures and practices developed under Subpart C are adequate and are being followed.

31. Under 40 C.F.R. § 68.60(a), the owner or operator of a stationary source subject to Program 2 of the CAPP regulations must investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.

32. The regulations, at 40 CFR § 68, Subpart E (68.90-68.95), require the owner or operator of a stationary source with Program 2 processes to develop and implement an emergency response program for the purpose of protecting public health and the environment.

33. Under 40 C.F.R. § 68.90(a), unless exempted under 40 C.F.R. § 68.90(b), the owner or operator of a stationary source with Program 2 processes shall comply with the requirements of 40 C.F.R. § 68.95.

34. Under 40 C.F.R. § 68.95(a), the owner or operator of a stationary source with Program 2 processes shall develop and implement an emergency response program for the purpose of protecting public health and the environment, including an emergency response plan; procedures related to the use, inspection, testing, and maintenance of emergency response equipment; employee training; and procedures to review and update the emergency response plan to reflect changes at the stationary source.

35. Complainant has authority under Section 113 of the Act to pursue civil penalties for violations of the CAPP regulations found at 40 C.F.R. Part 68.

36. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred from January 31, 1997, through March 15, 2004; may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004; and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000, for violations that occurred after January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

37. Section 113(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.

38. 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.



### **Factual Allegations and Alleged Violations**

39. The Respondent is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

40. At all times relevant to this CAFO, Respondent operates a farm supply and ammonia sales facility, located at 8352 N. Vassar Road, Mt. Morris, Michigan (the “Facility”).

41. Rogers submitted RMPs for the facility on June 22, 1999, and June 15, 2004. The RMPs indicated that the facility is a Program Level 2 facility.

42. On September 16, 2008, U.S. EPA performed an inspection at the facility for compliance with 40 C.F.R. Part 68.

43. Rogers has stored at least 10,000 pounds of anhydrous ammonia since at least 1994.

44. The facility is not subject to the OSHA process safety management standard found at 29 C.F.R. § 1910.119.

45. The facility is in NAICS code 453998.

46. Based on the inspection, Rogers has committed the following violations:

- a. Rogers failed to analyze and report in the RMP one worst-case scenario that is estimated to create the greatest distance in any direction to an endpoint resulting from an accidental release of a regulated toxic substance from covered processes under worst-case conditions, in violation of 40 C.F.R. § 68.25(a)(2)(i); in particular, Rogers’s worst-case scenario in the RMP failed to include the actual full capacity of the ammonia storage tanks;
- b. Rogers failed to list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint, in violation of 40 C.F.R. § 68.33(a);
- c. Rogers failed to maintain documentation for worst-case scenarios including a description of the vessel or pipeline and substance selected, assumptions and parameters used, and the rationale for selection; and the anticipated effect of the administrative controls and passive mitigation on the release quantity and rate, in violation of 40 C.F.R. § 68.39(a);
- d. Rogers failed to maintain documentation for alternative release scenarios, a

- description of the scenarios identified, and the rationale for the selection of specific scenarios, in violation of 40 C.F.R. § 68.39(b);
- e. Rogers failed to maintain documentation of data used to estimate population and environmental receptors potentially affected, in violation of 40 C.F.R. § 68.39(e);
  - f. Rogers failed to compile and maintain up-to-date safety information related to the regulated substances, processes, and equipment, including the maximum intended inventory of equipment in which the regulated substances are stored or processed; safe upper and lower temperatures, pressures, flows, and compositions; equipment specifications; and codes and standards used to design, build, and operate the process, in violation of 40 C.F.R. § 68.48(a);
  - g. Rogers failed to conduct a review of the hazards associated with the regulated substances, process, and procedures, in violation of 40 C.F.R. § 68.50(a);
  - h. Rogers failed to prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process, in violation of 40 C.F.R. § 68.52(a);
  - i. Rogers failed to ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in § 68.52 that pertain to their duties, in violation of 40 C.F.R. § 68.54(a);
  - j. Rogers failed to provide refresher training at least every three years, and more often if necessary, to each employee operating a process, to ensure that the employee understands and adheres to the current operating procedures of the process, in violation of 40 C.F.R. § 68.54(b);
  - k. Rogers failed to prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment, in violation of 40 C.F.R. § 68.56(a);
  - l. Rogers failed to train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of the process, in the hazards of the process, how to avoid or correct unsafe conditions, and in the procedures applicable to the employee's job tasks, in violation of 40 C.F.R. § 68.56(b);
  - m. Rogers failed to perform or cause to be performed inspections and tests on process equipment, in violation of 40 C.F.R. § 68.56(d);
  - n. Rogers failed to certify that it has evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart C, at least every three years to verify that the

procedures and practices developed under Subpart C are adequate and are being followed, in violation of 40 C.F.R. § 68.58(a);

- o. Rogers failed to investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release, in violation of 40 C.F.R. § 68.60(a); in particular, Rogers did not investigate a release due to theft of ammonia from a nurse tank in winter of 2007-2008, or a neighboring property owner's calls to the police department regarding ammonia smells;
- p. Rogers failed to develop and implement an emergency response program for the purpose of protecting public health and the environment, including an emergency response plan; procedures related to the use, inspection, testing, and maintenance of emergency response equipment; employee training; and procedures to review and update the emergency response plan to reflect changes at the stationary source, in violation of 40 C.F.R. §§ 68.90(a) and 68.95(a).

### Civil Penalty

47. 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, prompt return to compliance by the Respondent, and Respondent's ability to pay, Complainant has determined that an appropriate civil penalty to settle this action is \$8,500.

48. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,500 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

The check must note the case name, docket number of this CAFO and the billing document number.

49. 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-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

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

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

51. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 52, below, 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.

52. 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**

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

54. 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.

55. 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 53 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

56. Respondent certifies that it is complying fully with Section 112(r) of the Act, 42 U.S.C. § 7412(r).

57. This CAFO constitutes an "enforcement response" as that term is used in U.S. EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

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

59. 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.

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

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

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**CONSENT AGREEMENT AND FINAL ORDER**


**In the Matter of:**

**Rogers Elevator Company, Michigan**

**Docket No. CAA-05-2010-0060**

**Rogers Elevator Company, Respondent**

7-29-2010  
Date

  
\_\_\_\_\_  
Theodore Rogers, President  
Rogers Elevator Company

**United States Environmental Protection Agency, Complainant**

8-10-10  
Date

  
\_\_\_\_\_  
Richard Karl, Director  
Superfund Division

**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of:**

**Rogers Elevator Company, Michigan**

**Docket No. CAA-05-2010-0060**

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**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.

8-12-10

Date



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

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**Certificate of Service**

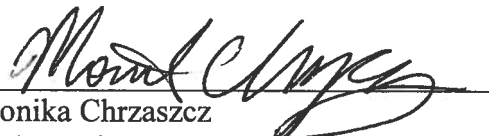
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I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

Theodore Rogers  
Rogers Elevator Company  
8352 N. Vassar Road  
Mt. Morris, Michigan 48454-9761

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 17<sup>th</sup> day of August, 2010.

  
Monika Chrzaszcz  
U.S. Environmental Protection Agency  
Region 5