

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CAA-05-2024-0005
)	
Online Packaging, Inc.)	Proceeding to Assess a Civil Penalty
Michigan City, Indiana,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final OrderPreliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Online Packaging, Inc. (Online Packaging), a corporation doing business in Indiana.
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 the assessment of the civil penalty specified in this CAFO and to the terms of this 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

Clean Air Act, Subsection 112(r)

9. Section 112(r)(1) of the CAA, 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), or any other extremely hazardous substance.
10. Section 112(r)(3) of the CAA, 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 CAA, 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 CAA, 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 CAA, 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 (RMP) 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. Pursuant to Section 112(r) of the CAA, 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 is codified, as amended, at 40 C.F.R. § 68.130.

15. Pursuant to Section 112(r) of the CAA, 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 is codified, as amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (CAPP). See Fed. Reg. 69834 (Dec. 19, 2019).

16. 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 promulgated pursuant to Section 112(r) of the

CAA, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

Chemical Accident Prevention Provisions

Applicability

17. Section 68.10(a) of CAPP provides, in pertinent part, that the 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, shall comply with the requirements of CAPP no later than the date on which a regulated substance is first present above a threshold quantity in a process.
18. Section 68.3 of CAPP provides that “regulated substance” means any substance listed pursuant to Section 112(r)(3) of the CAA at 40 C.F.R. § 68.130.
19. Table 1 at Section 68.130(a) of CAPP lists chlorine as a regulated toxic substance with a threshold quantity of 2,500 pounds.
20. Section 68.3 of CAPP provides that “process” means “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 purposes of this definition, a single process includes “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” A “covered process” means “a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.”
21. Section 68.10(i) of CAPP provides, in pertinent part, 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 code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or the process is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 CFR § 1910.119.

22. In order to be subject to the requirements of 40 C.F.R. § 68.10(g), a covered process must, in pertinent part, show that the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. part 68 subpart B and 40 C.F.R. § 68.25 is less than the distance to any public receptor.

23. Section 68.3 of CAPP defines “public receptor” as “offsite residences, institutions (e.g., schools, hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time without restriction by the stationary source where members of the public could be exposed to toxic concentrations, radiant heat, or overpressure, as a result of an accidental release.”

24. Section 68.12(a) and (d) of CAPP identify requirements that the owner or operator of a stationary source with a process subject to Program 3, including, among other provisions, requirements regarding hazard assessment, the Program 3 prevention program, and the submittal of an updated RMP.

Hazard Assessment

25. Section 68.25(a)(2)(iii) of CAPP provides, in pertinent part, that the owner or operator shall analyze and report in the RMP additional worst-case release scenarios for a hazard class if a worst-case release from another covered process at the stationary source potentially affects

public receptors different from those potentially affected by the worst-case release scenario developed under paragraph (a)(2)(i) of this section.

Process Safety Information

26. Section 68.65 of CAPP provides, in pertinent part, that before conducting any process hazard analysis required by CAPP, the owner or operator of a stationary source with a process subject to Program 3 shall complete a compilation of written process safety information pertaining to the technology of the process and the equipment in the process. The compilation of written process safety information shall include, among other requirements:

- a. information pertaining to the technology of the process, pursuant to 40 C.F.R. § 68.65(c)(1), including: the maximum intended inventory of the process; safe upper and lower limits for such items as temperatures, pressures, flows, or compositions; and an evaluation of the consequences of deviations;
- b. information pertaining to the equipment in the process, pursuant to 40 C.F.R. § 68.65(d)(1), including: the materials of construction; the relief system design and design basis; and ventilation system design; and
- c. documentation that equipment complies with recognized and generally accepted good engineering practices, pursuant to 40 C.F.R. § 68.65(d)(2).

Process Hazard Analysis

27. Section 68.67 of CAPP provides, in pertinent part, that the owner or operator of a stationary source with a process subject to Program 3 shall:

- a. Perform an initial process hazard analysis appropriate to the complexity of the process; and identify, evaluate, and control the hazards involved in the process.

This process hazard analysis shall be updated and revalidated, based on the completion date (40 C.F.R. § 68.67(a));

- b. Use one or more of the methodologies, listed in §§ 68.67(b)(1-7), that are appropriate to determine and evaluate the hazards of the process being analyzed (40 C.F.R. § 68.67(b));
- c. Address, in the process hazard analysis, the hazards of the process; the identification of any previous incident which had a likely potential for catastrophic consequences; engineering and administrative controls applicable to the hazards and their interrelationships; the consequences of failure of engineering and administrative controls; stationary source siting; human factors; and a qualitative evaluation of a range of the possible safety and health effects of failure of controls (40 C.F.R. §§ 68.67(c)(1-7));
- d. Have the process hazard analysis be performed by a team with expertise in engineering and process operations, experience and knowledge specific to the process being evaluated, and knowledge in the specific process hazard analysis methodology being used (40 C.F.R. § 68.67(d));
- e. Establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is 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; communicate the actions to operating, maintenance and other employees whose work assignments are in the process

and who may be affected by the recommendations or actions (40 C.F.R. § 68.67(e));

- f. At least every five (5) years after the completion of the initial process hazard analysis, have the process hazard analysis be updated and revalidated by a team meeting the requirements in § 68.67(d), to assure that the process hazard analysis is consistent with the current process (40 C.F.R. § 68.67(f)); and
- g. Retain process hazards analyses and updates or revalidations for each process subject to Program 3, as well as the documented resolution of recommendations described in § 68.67(e) for the life of the process. (40 C.F.R. § 68.67(g))

Operating Procedures

28. Section 68.69(a) of CAPP provides, in pertinent part, among other provisions, that the owner or operator of a stationary source with a process subject to Program 3 shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with process safety information and that address the elements in §§ 68.69(a)(1)(iii-v, vii) and 68.69(a)(2-3).

29. Section 68.69(c) of CAPP provides that the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

Training

30. Section 68.71(b) of CAPP provides that refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

31. Section 68.71(c) of CAPP provides that the owner or operator shall ascertain, verify, and record that each employee involved in operating a process has received and understood the training required by 40 C.F.R. § 68.71.

Mechanical Integrity

32. Section 68.73(b) of CAPP provides that the owner or operator of a stationary source with a process subject to Program 3 shall establish and implement written procedures to maintain the ongoing integrity of process equipment, as identified at 40 C.F.R. § 68.73(a).

33. Sections 68.73(d)(1-4) of CAPP provides that inspections and tests shall be performed on process equipment; follow recognized and generally accepted good engineering practices; conducted at a frequency consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience; and documented.

Management of Change

34. Section 68.75(d) of CAPP provides that information on a change in the process safety information required by § 68.65 shall be updated accordingly, if the change resulted from a change to process chemicals, technology, equipment, and procedures, and a change to a stationary source that affects a covered process.

35. Section 68.75(e) of CAPP provides that if a change covered by § 68.75 results in a change in the operating procedures or practices required by § 68.69, such procedures or practices shall be updated accordingly.

Compliance Audits

36. Section 68.79(a) of CAPP provides that the owner or operator of a stationary source with a process subject to Program 3 shall certify that they have evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart D, Program 3 Prevention Program, at least every three years to verify that procedures and practices developed under Subpart D, referenced above, are adequate and are being followed.

37. Section 68.79(b) of CAPP provides that the compliance audit shall be conducted by at least one person knowledgeable in the process.

38. Section 68.79(c) of CAPP provides that a report of the findings of the audit shall be developed.

39. Section 68.79(d) of CAPP provides that the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

Employee Participation

40. Section 68.83(b) of CAPP provides that the owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management required by CAPP.

Emergency Response and Coordination Activities

41. Section 68.90(b)(4) of CAPP provides that the owner or operator of a stationary source with a process subject to Program 3 and whose employees will not respond to accidental releases of regulated substances must perform the annual emergency response coordination activities required under § 68.93.

42. Sections 68.93(a) and (c) of CAPP provides, in pertinent part, that the owner or operator shall coordinate emergency response needs and document the coordination with local emergency planning and response organizations at least annually, and more frequently if necessary, to address changes: at the stationary source; in the stationary source's emergency response and/or emergency action plan; and/or in the community emergency response plan.

43. Section 68.93(b) of CAPP provides, in pertinent part, that the owner or operator, coordinating emergency response needs, shall provide to the local emergency planning and response organizations: the stationary source's emergency response plan if one exists; emergency action plan; updated emergency contact information; and other information necessary for developing and implementing the local emergency response plan.

RMP Registration

44. Section 68.160(b)(7) of CAPP provides, in pertinent part, that the owner or operator shall complete a single registration form and include, for each covered process, the maximum quantity of each regulated substance or mixture in the process.

Authority

45. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$57,617 per day of violation up to a total of \$460,926 for violations that occurred after November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

46. 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.

47. 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

48. Online Packaging owns and operates a bleach manufacturing facility at 124 Tri Quad Dr, Michigan City, Indiana (the Facility).

49. The Facility operates a bleach manufacturing process (the Process) and maintains a maximum inventory of chlorine that is greater than the threshold quantity of 2,500 pounds.

50. The Process at the Facility is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 C.F.R. § 1910.119, because the Process involves greater than the threshold quantity of 1,500 pounds of chlorine, which is a chemical listed in Appendix A to 29 C.F.R. § 1910.119.

51. The Facility is subject to the requirements of CAPP in accordance with 40 C.F.R. § 68.10.

52. The worst-case release scenario models a distance to end point that has public receptors within its radius, therefore the Facility does not meet the criteria to be classified as Program 1 in accordance with 40 C.F.R. § 68.10(g).

53. The facility is subject to Program 3 because the process is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119, in accordance with 40 C.F.R. § 68.10(i).

54. At all times relevant to this Order, Online Packaging's Process at the Facility was a "process," as that term is defined at 40 C.F.R. § 68.3.

55. At all times relevant to this Order, Online Packaging's Process at the Facility was a "covered process," as that term is defined at 40 C.F.R. § 68.3.

56. On August 10, 2021, EPA conducted an announced inspection of the Facility (the "Inspection").

57. The Facility provided numerous documents for the Inspection. These documents were related to various aspects of its Program 3 RMP including: hazard assessment, the Program 3 prevention program, emergency response, and the RMP.

Hazard Assessment

58. During the Inspection, Online Packaging personnel (Personnel) informed EPA inspectors that in 2021 the facility started to receive an additional railcar of chlorine to be on standby during the high-demand season, for a total of two railcars of chlorine on-site.

59. The Facility failed to analyze and report in the RMP an additional worst-case release scenario from the second railcar that potentially affects public receptors different from those potentially affected by the worst-case release scenario that was reported in the Facility's June 13, 2017 RMP. This is in violation of 40 C.F.R. § 68.25(a)(2)(iii).

Process Safety Information (PSI)

60. At the time of the Inspection, the Facility did not have a design plate on the bleach reactor and has not labeled the bleach reactor and bleach make tank, in violation of 40 C.F.R. § 68.65(d)(2).
61. At the time of the Inspection, the chlorine pipeline that connects from the railcar to the process pipeline was color-coded but was unlabeled, in violation of 40 C.F.R. § 68.65(d)(2).
62. During the Inspection, EPA inspectors reviewed PSI documentation compiled as required by CAPP. The following determinations were made by EPA inspectors.
- a. The maximum intended inventory was inaccurately documented as the capacity of one rail car, whereas the Facility stores up to two rail cars during the high-demand season, in violation of 40 C.F.R. § 68.65(1)(iii);
 - b. Safe upper and lower limits for process equipment were not documented, in violation of 40 C.F.R. § 68.65(c)(1)(iv);
 - c. The consequences of deviation were not evaluated or documented, in violation of 40 C.F.R. § 68.65(c)(1)(v);
 - d. The materials of construction were not documented, in violation of 40 C.F.R. § 68.65(d)(1)(i); and
 - e. The relief system design and design basis and the ventilation system design information did not include design calculations, in violation of 40 C.F.R. § 68.65(d)(1)(iv, v).

Process Hazard Analysis (PHA)

63. During the Inspection, EPA inspectors reviewed documentation that Online Packaging submitted to EPA as a PHA. The documentation included a What-if Worksheet with What-if Scenarios.

64. EPA inspectors identified the following deficiencies in the PHA for the Facility:

- a. The PHA did not address the hazards associated with chlorine storage and unloading from the railcar. Online Packaging failed to base the PHA on a rationale which includes the consideration of the extent of the process hazards, in violation of 40 C.F.R. § 68.67(a);
- b. The PHA did not consider consequences of failure of engineering and administrative controls, stationary source siting, human factors, and a qualitative evaluation of a range of the possible safety and health effects of the failure of controls. Online Packaging failed to address each of the requirements of 40 C.F.R. § 68.67(c), in violation of 40 C.F.R. §§ 68.67(c)(4-7); and
- c. The PHA worksheets did not include the name(s) of people involved in preparing the worksheets nor the person who led the analysis. Online Packaging failed to document the names of the individuals involved in conducting the PHA and whether those individuals were qualified to conduct the PHA, in violation of 40 C.F.R. § 68.67(d).

65. During the Inspection, Online Packaging was unable to produce an initial PHA to EPA while records were being reviewed. Online Packaging failed to maintain all PHAs conducted for the Facility for the life of the process, in violation of 40 C.F.R. § 68.67(g).

Operating Procedures

66. During the Inspection, EPA inspectors reviewed documents associated with the operating procedures compiled by Online Packaging for its RMP.
67. Online Packaging failed to develop written operating procedures for unloading chlorine from the railcar that address the following phases:
- a. Temporary operations, in violation of 40 C.F.R. § 68.69(a)(1)(iii);
 - b. Emergency shutdown, 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, in violation of 40 C.F.R. § 68.69(a)(1)(iv);
 - c. Emergency operations, in violation of 40 C.F.R. § 68.69(a)(1)(v); and
 - d. Startup following a turnaround, or after an emergency shutdown, in violation of 40 C.F.R. § 68.69(a)(1)(vii).
68. Online Packaging failed to develop written operating procedures that address the operating limits and safety and health considerations for unloading chlorine from the railcar(s), in violation of 40 C.F.R. §§ 68.69(a)(2) and (a)(3).
69. During the inspection, Personnel informed EPA inspectors that operating procedures are only reviewed when changes are made to them. Online Packaging failed to certify that the operating procedures are current and accurate on an annual basis, in violation of 40 C.F.R. § 68.69(c).

Training

70. During the Inspection, EPA inspectors asked Personnel about the training requirements for operators. Online Packaging stated twice that operators only receive initial training for operating the Process. Further, EPA inspectors obtained evidence that at least one of the operators has been working with the Process for greater than three years, which would require refresher training. Online Packaging failed to provide refresher training at least every three years, and more often, if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.

71. The failure to provide refresher training detailed in Paragraph 70 was in violation of 40 C.F.R. § 68.71(b).

72. Documents obtained during the Inspection indicate what training is conducted during the operator's initial training, but there is no verification that the operators understood the training. Online Packaging failed to ascertain, verify, and record that each employee involved in operating a process has understood the training required by Section 68.71 of CAPP, in violation of 40 C.F.R. § 68.71(c).

Mechanical Integrity

73. During the Inspection, EPA inspectors reviewed documented, written maintenance procedures submitted by Online Packaging.

74. During the Inspection, Personnel told EPA inspectors the following information about maintenance on the Process:

- a. No preventive maintenance is performed on the equipment associated with the bleach manufacturing and the chlorine pipeline feeding the process.
- b. The bleach manufacturing process is 20 years old. It has been working without any problems.
- c. The chlorine hoses are visually inspected every time they are hooked-up to the railcar(s).
- d. The chlorine sensors are self-calibrated, and no other calibration or test is performed on these sensors.
- e. The expansion chamber is not tested or inspected.

75. As described in Paragraph 74, Online Packaging failed to establish and implement written procedures to maintain the ongoing integrity of process equipment, specifically the bleach manufacturing equipment and the chlorine pipeline of the Process, in violation of 40 C.F.R. § 68.73(b).

76. As described in Paragraph 74, the inspections and tests conducted by Online Packaging on the Process were not performed according to recognized and generally accepted good engineering practices and at a frequency consistent with applicable manufacturers' recommendations and good engineering practices, in violation of 40 C.F.R. § 68.73(d).

Management of Change (MoC)

77. EPA reviewed the MoC documentation for the maximum inventory increase when the Facility started receiving two railcars of chlorine.

78. The Facility failed to update accordingly information on a change in the process safety information required by 40 C.F.R. § 68.65 due to the chlorine inventory increase, in violation of 40 C.F.R. § 68.75(d).

79. The Facility failed to update accordingly procedures and practices with the resulting changes in the operating procedures and practices required by 40 C.F.R. § 68.69 due to the chlorine inventory increase, in violation of 40 C.F.R. § 68.75(e).

Compliance Audits

80. During the Inspection, EPA inspectors reviewed a Self-Audit Checklist that Online Packaging used for conducting its compliance audit.

81. Online Packaging did not develop a report of the findings of the audit, in violation of 40 C.F.R. § 68.79(c).

82. Online Packaging did not promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that any deficiencies have been corrected, in violation of 40 C.F.R. § 68.79(d).

Employee Participation

83. During the Inspection, Personnel informed EPA inspectors that not every employee was consulted on the development of the PHA and the frequency of refresher training.

84. Online Packaging failed to consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management required by CAPP, in violation of 40 C.F.R. § 68.83(b).

Emergency Response and Coordination Activities

85. During the Inspection, Personnel informed EPA inspectors that the Facility is a non-responding stationary source and that Online Packaging had not performed the annual emergency response coordination activities required under 40 C.F.R. § 68.93.

86. The Facility failed to coordinate emergency response needs and document the coordination with local emergency planning and response organizations at least annually, and more frequently, if necessary, to address changes: at the stationary source; in the stationary source's emergency response and/or emergency action plan; and/or in the community emergency response plan, in violation of 40 C.F.R. §§ 68.93(a) and (c).

87. The Facility failed to provide to the local emergency planning and response organizations: the stationary source's emergency response plan if one exists; emergency action plan; updated emergency contact information; and other information necessary for developing and implementing the local emergency response plan, in violation of 40 C.F.R. § 68.93(b).

RMP Registration

88. In the Facility's RMP registration form, it reported a maximum quantity that was representative of one rail car of chlorine.

89. During the Inspection, Personnel informed EPA inspectors that a second chlorine railcar is stored on site during the high demand season. This doubled the reported maximum quantity for chlorine.

90. The Facility failed to complete a single registration form and include, for each covered process, the maximum quantity of each regulated substance or mixture in the process, in violation of 40 C.F.R. § 68.160(b)(7).

Civil Penalty

91. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C.

§ 7413(e), the facts of this case, cooperation, and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$88,383.

92. Penalty Payment. Respondent agrees to:

- a. pay the civil penalty of \$88,383 within 30 days after the effective date of this CAFO; and
- b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
<p>Automated Clearinghouse (ACH) payments made through the US Treasury</p>	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
<p>Wire transfers made through Fedwire</p>	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery:</p> <p>U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979078 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc):</p> <p>U.S. Environmental Protection Agency Government Lockbox 979078 3180 Rider Trail S. Earth City, Missouri 63045</p>

93. Within 24 hours of the payment of the civil penalty, respondent must send a notice of payment and states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

James Bonar-Bridges
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
bonarbridges.james@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

95. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

96. 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 pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. 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. 42 U.S.C. § 7413(d)(5).

97. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of a TIN issued by the IRS.

General Provisions

98. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: bonarbridges.james@epa.gov (for Complainant), and online@onlinepackaging.org (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.
99. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.
100. The 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 violation of law.
101. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 99, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.
102. Respondent certifies that it is complying fully with the CAPP.

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

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

105. 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.

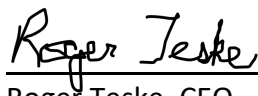
106. Each party agrees to bear its own costs and attorney’s fees in this action.

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

Online Packaging, Inc., Respondent

07/17/2024

Date



Roger Teske, CEO

Online Packaging, Inc.

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Online Packaging, Inc.
Docket No. CAA-05-2024-0005

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.

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5