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

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Aurora Cooperative Elevator Company,	)	**Docket No. CAA-07-2024-0019**
	)	
	)	
Respondent.	)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

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

Jurisdiction

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

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

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is Aurora Cooperative Elevator Company, a corporation in good standing under the laws of the state of Nebraska doing business in the state of Nebraska, which owns and operates the agronomy business located at 565 South York Street in Harvard, Nebraska (Respondent's Facility).

Statutory and Regulatory Background

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

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

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

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

9. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(h), a covered process is subject to Program 2 requirements if the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(g) and (i), respectively.

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

Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to $55,808 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023.

Definitions

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

12. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulations at 40 C.F.R. § 68.3 define "stationary source," in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

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

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

15. The regulations at 40 C.F.R. § 68.3 define "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

General Factual Allegations

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

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

18. Anhydrous ammonia is a "regulated substance" pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

19. On or about January 31, 2023, representatives of the EPA conducted an inspection

of Respondent's Facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

20. Information gathered during the EPA inspection revealed that Respondent had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

21. Information gathered during the EPA inspection revealed that Respondent stores, distributes, and sells agricultural products, including anhydrous ammonia, at its facility, and therefore is engaged in a process at its facility.

22. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

23. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to Program 2 prevention program requirements because pursuant to 40 C.F.R. § 68.10(h), the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(g) and (i), respectively.

24. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was required under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 2 requirements provided at 40 C.F.R. § 68.12(c) and detailed in Subpart C.

Allegations of Violation

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

Count 1

26. The facts stated in Paragraphs 17 through 25 above are herein incorporated.

27. The regulation at 40 C.F.R. § 68.12(c) requires the owner or operator of a stationary source with a process subject to Program 2 to implement the Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60.

28. 40 C.F.R. § 68.50(d) requires the owner or operator to perform an updated hazard review at least once every five years.

29. The EPA inspection revealed that Respondent failed to perform an updated hazard review at least once every five years. Specifically, Respondent had not performed a hazard review since October 14, 2013.

30. Respondent's failure to comply with the hazard review requirements of 40 C.F.R. § 68.50(d), as required by 40 C.F.R. § 68.12(c), violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2

31. The facts stated in Paragraphs 17 through 25 above are herein incorporated.

32. The regulation at 40 C.F.R. § 68.12(c) requires the owner or operator of a stationary source with a process subject to Program 2 to implement the Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60.

33. 40 C.F.R. § 68.52(c) requires the owner or operator to update the operating procedures whenever a major change occurs and prior to startup of the changed process.

34. The EPA inspection revealed that Respondent failed ensure that the operating procedures were updated at the time of a major change and prior to the startup of the changed process, as required by 40 C.F.R. § 68.52(c).

35. Respondent's failure to comply with the operating procedure requirements in 40 C.F.R. § 68.52(c), as required by 40 C.F.R. § 68.12(c), violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3

36. The facts stated in Paragraphs 17 through 25 above are herein incorporated.

37. The regulation at 40 C.F.R. § 68.12(c) requires the owner or operator of a stationary source with a process subject to Program 2 to implement the Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60.

38. 40 C.F.R. § 68.58(a) requires the owner or operator to conduct a compliance audit and certify that it has evaluated compliance with the provisions of Part 68 at least every three years.

39. The EPA inspection revealed that Respondent failed to conduct a compliance audit at least every three years, as required by 40 C.F.R. § 68.58(a). Specifically, Respondent had not performed a compliance audit since May 29, 2013.

40. Respondent's failure to conduct a compliance audit at least every three years as required by of 40 C.F.R. § 68.58(a), as required by 40 C.F.R. § 68.12(c), violate Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4

41. The facts stated in Paragraphs 17 through 25 above are herein incorporated.

42. The regulation at 40 C.F.R. § 68.12(a) requires the owner or operator of a stationary source subject to the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, to submit a single RMP as provided in 40 C.F.R. §§ 68.150 to 68.185.

43. The EPA inspection revealed that Respondent failed to submit an RMP pursuant to the requirements of 40 C.F.R. §§ 68.150 to 68.185, as required by 40 C.F.R. § 68.12(a). Specifically, Respondent failed to submit an RMP for the covered processes upon moving the facility to a new location in 2021.

44. Respondent's failure to submit an RMP pursuant to the requirements of 40 C.F.R. §§ 68.150 to 68.185, as required by 40 C.F.R. § 68.12(a), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 5

45. The facts stated in Paragraphs 17 through 25 above are herein incorporated.

46. The regulation at 40 C.F.R. § 68.190(c) requires the owner or operator to submit an RMP de-registration to the EPA within six months of a stationary source no longer being subject to the Chemical Accident Prevention Provisions at 40 C.F.R. Part 68.

47. The EPA inspection revealed that when Respondent moved its covered process to a new location in 2021, it failed to de-register the RMP for its previous facility location.

48. Respondent's failure to de-register the RMP pursuant to the requirement of 40 C.F.R. § 68.190(c) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

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

i. admits the jurisdictional allegations set forth herein;

ii. neither admits nor denies the specific factual allegations stated herein;

iii. consents to the assessment of a civil penalty, as stated herein;

iv. consents to the issuance of any specified compliance or corrective action order;

v. consents to any conditions specified herein;

vi. consents to any stated Permit Action;

vii. waives any right to contest the allegations set forth herein; and

viii. waives its rights to appeal the Final Order accompanying this Consent Agreement.

50. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

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

52. The parties consent to service of this Consent Agreement and Final Order electronically at the following e-mail addresses: *palumbo.antonette@epa.gov* (for Complainant) and *skluck@auroracoop.com* (for Respondent). Respondent understands that the Consent Agreement and Final Order will become publicly available upon filing.

Penalty Payment

53. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of eighty-two thousand six hundred seventy-seven dollars ($82,677), as set forth below.

54. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at *http://www.epa.gov/financial/makepayment*.

55. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Antonette Palumbo, Attorney
palumbo.antonette@epa.gov.

56. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall

begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

57. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

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

59. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

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

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

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

General Provisions

63. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and have the legal capacity to bind the party they represent to this Consent Agreement.

64. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the

Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

65. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

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

RESPONDENT:
AURORA COOPERATIVE ELEVATOR COMPANY

Shane Kluck

Signature

10/12/23

Date

Shane Kluck

Printed Name

VP of Compliance and Operations

Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

DAVID COZAD Digitally signed by DAVID COZAD
Date: 2023.12.12 13:58:17 -06'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

ANTONETTE PALUMBO Digitally signed by ANTONETTE PALUMBO
Date: 2023.12.12 14:21:28 -06'00'

Antonette Palumbo
Assistant Regional Counsel
Office of Regional Counsel

Date

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

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

IT IS SO ORDERED.

KARINA BORROMEO
Digitally signed by KARINA BORROMEO
Date: 2023.12.13 08:12:16 -06'00'

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE
(to be completed by EPA)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via E-mail to Complainant:

Antonette Palumbo, Assistant Regional Counsel
palumbo.antonette@epa.gov

Milady Peters, Paralegal
peters.milady@epa.gov

Copy via E-mail to Respondent:

Shane Kluck, Vice President of Compliance & Operations
skluck@auroracoop.com

Kara Ronnau, Executive Vice President & General Counsel
kronnau@auroracoop.com

Dated this _____ day of _____, _____.

AMY GONZALES Digitally signed by AMY GONZALES
Date: 2023.12.14 07:40:03 -06'00'

_____
Signed