

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

2010 DEC 20 PM 1:52

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Geneva Nitrogen LLC)
1165 North 1600 West)
Orem, Utah 84057)

Respondent.)

ADMINISTRATIVE ORDER

DOCKET NO. : CAA-08-2011-0001

INTRODUCTION (JURISDICTION)

1. This Administrative Order ("Order") is issued to Geneva Nitrogen LLC (Geneva Nitrogen) (Respondent) pursuant to Title I, § 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413 (a)(3)(B). Section 113(a)(3)(B) grants to the Administrator of the U.S. Environmental Protection Agency (EPA) the authority to make a finding of violation of a requirement or prohibition of Title I, and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition. This authority was delegated by the Administrator to the Regional Administrators on December 20, 1996, by EPA Delegation 7-6-A, and within Region 8, was redelegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice (ECEJ).
2. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added CAA § 112(r), 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances.
3. Pursuant to CAA § 112(r)(7), 42 U.S.C. § 7412(r)(7), the owners and operators of stationary sources are required to develop and implement a risk management plan (RMP) that includes a hazard assessment, a prevention program and an emergency response program.
4. The regulations at 40 Code of Federal Regulations (C.F.R.) part 68 set forth the requirements of a risk management program that must be established and implemented at a stationary source that has more than a threshold quantity of a regulated substance in a process. Pursuant to 40 C.F.R. part 68, subparts A and G, the risk management program is to be described in a RMP that must be submitted to EPA.
5. Pursuant to § 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, the RMP must be submitted to EPA for all covered processes, by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in

a process. The owner or operator shall comply with the requirements of 40 C.F.R. part 68 (including, but not limited to, submission of an RMP to EPA), no later than June 21, 1999, or three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which a regulated substance is first present in a process above the threshold quantity, whichever is latest.

6. The regulations at 40 C.F.R. part 68 separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3. A covered process is subject to Program 3 requirements, as per 40 C.F.R. § 68.10(d), if the process: a) does not meet the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b); and b) if either of the following conditions is met: (1) The process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or (2) The process is subject to the OSHA process safety management standard, 29 CFR 1910.119.

7. 40 C.F.R. § 68.12(d) requires that the owner or operator of a stationary source with a Program 3 process undertake certain tasks in addition to the submission of an RMP, including, but not limited to, development and implementation of a management system (pursuant to 40 C.F.R. § 68.15), conduct a hazard assessment (pursuant to 40 C.F.R. §§ 68.20-68.42), and the development and implementation of a prevention program (pursuant to 40 C.F.R. §§ 68.65-68.87).

8. Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d) and 40 C.F.R. part 19, states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$37,500 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 the Clean Air Act referenced therein, including § 112(r)(1) and/or § 112(r)7.

DEFINITIONS

9. 40 C.F.R. § 68.3 defines “stationary source” in the relevant 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.

10. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to § 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130.

11. 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to § 112(r)(5) of the Clean Air Act, 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.

12. 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 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.

13. 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

FINDINGS OF FACT

14. Respondent is the owner and/or operator of the Geneva Nitrogen facility located at 1165 North 1600 West in Orem, Utah (the “Facility”).

15. The Facility uses, handles, and/or stores, anhydrous ammonia, a regulated substance pursuant to § 112(r)(2) and (3) of the Clean Air Act and 40 C.F.R. § 68.3, which is listed at 40 C.F.R. § 68.130. The threshold quantity requiring the submittal of an RMP for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

16. On June 15, 2009, an RMP was submitted for the Facility which specified that Respondent had 8,558,812 pounds of anhydrous ammonia in a process at the Facility, and which identified the anhydrous ammonia process as Program 3.

17. EPA conducted an inspection of the Facility on September 13, 2010, to assess compliance with § 112(r) of the Clean Air Act.

18. Information collected during the September 2010 inspection confirmed that the Facility had greater than 10,000 pounds of anhydrous ammonia in a process at the Facility.

19. At the time of EPA’s inspection, Respondent had not met the requirements of 40 C.F.R. part 68. Specifically, on the day of EPA’s inspection, Respondent:

- had not completed inspections and testing that follow recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.73(d)(2).

CONCLUSIONS OF LAW

20. Respondent is, and at all times referred to herein was, a “person” as defined by § 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

21. The Facility is a “stationary source” pursuant to § 112(r)(2)(C) of the Clean Air Act and 40 C.F.R. § 68.3.

22. Facility is subject to the requirements of § 112(r)7 of the Clean Air Act, 42 U.S.C. § 7412(r)7, and 40 C.F.R. part 68, because it is an owner and operator of a stationary source that

had more than a threshold quantity of a regulated substance in a process.

23. Based on information available to EPA, including information gathered during the inspection performed by EPA at the Facility and the Findings of Fact set forth above, EPA has determined that Respondent failed to satisfy the requirements outlined in 19 above. Therefore, Respondent violated the provisions of § 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7).

ORDER

24. Based upon the foregoing Findings of Fact, Findings of Violations, other information available to EPA, it is hereby ordered that Respondent comply with the requirements set forth below. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

PARTIES BOUND

25. The provisions of this Order shall apply to Respondent and its officers, agents, servants, employees, and successors and to all persons, firms and corporations acting under, through or for Respondent.

WORK TO BE PERFORMED

26. The Facility shall take at least the following steps to come into compliance with 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), and the regulations promulgated at 40 C.F.R. part 68:

- a. By January 24, 2011, Respondent shall perform inspections and testing on ammonia spheres following recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.73(d)(2). Data obtained from inspections and testing shall be analyzed in accordance with applicable industry standards to ensure that the spheres are fit for service and in safe operable condition.
- b. By February 7, 2011, Respondent shall submit a summary report to EPA. This report will describe the inspections, testing, and other activities conducted at the Facility. The report shall identify specific recognized and generally good engineering practices applied along with the results of the analysis. The report shall include a verification statement confirming that Respondent has completed the requirements of subparagraph 26 a. above. The verification shall include the following certification, signed by an officer of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- c. EPA will review the reports and analysis submitted pursuant to subparagraphs a and b above, and will either approve them or direct Respondent to make changes or make further assessments, and resubmit the document(s).
- d. The submissions required by the above subparagraphs shall be made to:

Greg Bazley, 8ENF-AT
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

ENFORCEMENT

27. Section 113(a)(3) of the Clean Air Act provides that upon failure to comply with an order issued under § 113(a)(3)(B), the EPA Administrator may, inter alia: issue an administrative penalty order pursuant to § 113(d) for civil administrative penalties of up to \$25,000 per day of violation; or bring a civil action pursuant to § 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and the Civil Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009), this penalty maximum was increased to \$37,500 per day. In addition, Respondent may be subject to an administrative or civil action for similar penalties and/or injunctive relief, pursuant to §§ 113(b) and (d) of the Clean Air Act, based on the violations addressed by this Order. Furthermore, for any person who knowingly violates the provisions of the Clean Air Act as set forth in § 113(c) of the Clean Air Act, § 113(c) provides for criminal penalties or imprisonment, or both.

28. This Order shall not relieve Respondent of its obligation to comply with all applicable federal, State, and local laws, regulations and other legal requirements, including but not limited to § 112(r)(1) of the Clean Air Act, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit.

29. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, other extremely hazardous substance, or other substance on, at, or from the Facility. EPA reserves the right to bring an action against Respondent assessing or seeking penalties and/or other relief for any violations, including, without limitation, the violations referred to in the Findings of Fact and Conclusions of Law set forth above. This Order shall not constitute or be construed as a release of any liability that the Respondent or any other person has under the Clean Air Act or any other law. EPA also reserves all of its rights to obtain access to the Facility and require Respondent's submission of information to EPA.

EFFECTIVE DATE:
OPPORTUNITY FOR CONFERENCE

30. Respondent may request a conference with EPA concerning the violations alleged in, and the requirements of, this Order. Respondent has the right to be represented by counsel at such a conference. If a conference is held, this Order shall become effective the day after the conference, unless the effective date is extended by EPA. If a conference is not timely requested, the Order shall become effective eleven (11) days after Respondent's receipt of the Order.

31. A request for a conference must be made in writing in time for EPA's receipt no later than ten (10) days after Respondent's receipt of this Order. The written request for a conference may be sent by fax or mail. The conference may be conducted in person or by telephone.

32. The request for a conference and other inquiries concerning this Order should be addressed to:

U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Attn: David Cobb, ENF-AT
Email: cobb.david@epa.gov
Phone: (303) 312-6592
Fax: (303) 312-6409

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

for Michael T. Bisser
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Date: 12/20/10

To: Geneva Nitrogen LLC
1165 North 1600 West
Orem, Utah 84057
Attn: Steven R. Thompson, Vice President

**In the Matter of:
Geneva Nitrogen LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE ORDER were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail, Postage Pre-Paid, to:

Geneva Nitrogen LLC
1165 North 1600 West
Orem, Utah 84057
Attn: Steven R. Thompson, Vice President

12/20/10
Date

Andrea Reed
Andrea Reed