

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. CAA-10-2020-0110
)
SHERMAN COUNTY FARM) **CONSENT AGREEMENT**
CHEMICAL & FERTILIZER CO.,)
)
Wasco, Oregon,)
)
Respondent.)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Sherman County Farm Chemical & Fertilizer Co. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and its implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a company organized and doing business in the State of Oregon.

3.2. Respondent is the owner and/or operator of a chemical and fertilizer distribution facility located at 1120 Highway 206 in Wasco, Oregon (“the Facility”).

3.3. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations at 40 C.F.R. Part 68, require the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity (“TQ”) to develop and

implement a Risk Management Plan (“RMP”) and Program 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.

3.4. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), makes it unlawful for any person to operate a stationary source subject to the regulations promulgated under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in violation of such regulations.

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

3.6. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include, among other things, a corporation, partnership, or association.

3.7. 40 C.F.R. § 68.3 defines “stationary source” in 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.

3.8. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and 40 C.F.R. § 68.130.

3.9. Anhydrous ammonia is a regulated substance with a TQ of 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.10. 40 C.F.R. § 68.3 defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

3.11. 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 a combination of these activities. For 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.

3.12. The regulations at 40 C.F.R. Part 68 divide covered processes into three categories, designated as Program 1, Program 2, and Program 3, which contain specific requirements for owners and operators of stationary sources with processes that fall within the respective programs.

3.13. Pursuant to 40 C.F.R. § 68.10(h), a covered process is subject to Program 2 requirements if the process does not meet all of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(g) or the Program 3 eligibility requirements set forth in 40 C.F.R. § 68.10(i).

3.14. Under 40 C.F.R. §§ 68.12(a) and (c) and 68.150, the owner or operator of a subject stationary source must submit to EPA a single RMP that includes the information required by 40 C.F.R. §§ 68.155 through 68.185 for all covered processes in the method and format to the central point specified by EPA as of the date of submission.

3.15. 40 C.F.R. § 68.12(a) and (c) require that, in addition to submitting a single RMP as provided in 40 C.F.R. §§ 68.150 to 68.185, the owner or operator of a stationary source with a Program 2 covered process shall, among other things, develop and implement a management system as provided in 40 C.F.R. § 68.15; conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42; implement the Program 2 prevention steps provided in 40 C.F.R.

§§ 68.48 through 68.60 or implement the Program 3 prevention steps provided in 40 C.F.R. §§ 68.65 through 68.87; develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 to 68.96; and submit as part of the RMP the data on prevention program elements for Program 2 processes as provided in 40 C.F.R. § 68.170.

3.16. Under 40 C.F.R. §§ 68.10(a) and 68.150(b), after June 21, 1999, the requirements of 40 C.F.R. Part 68, including the requirement to submit an RMP, apply to a covered process that uses, stores, manufactures, or handles anhydrous ammonia no later than the date on which the covered process first exceeded the 10,000 TQ for anhydrous ammonia.

3.17. Respondent is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.18. The Facility includes anhydrous ammonia storage tanks, applicators, and other buildings, structures, equipment, installations, or substance emitting stationary activities from which an accidental release of anhydrous ammonia may occur; which belong to the same industrial group; which are located on one or more contiguous properties; and which are under the control of the same person (or persons under common control).

3.19. The Facility is therefore a single “stationary source” as defined in 40 C.F.R. § 68.3.

3.20. The Facility has an anhydrous ammonia storage system and loading and unloading equipment that have at all relevant times contained more than 10,000 pounds of anhydrous ammonia and constitute a single “covered process” under 40 C.F.R. § 68.3 (“the Facility Process”).

3.21. The Facility Process exceeded the 10,000-pound TQ for anhydrous ammonia on or about June 21, 1999, became a “covered process” within the meaning of 40 C.F.R. § 68.3 at that time, and became subject to the requirements of 40 C.F.R. Part 68 at that time.

3.22. The Facility has an 18,000-gallon anhydrous ammonia storage tank and a 21,500-gallon anhydrous ammonia storage tank (“the ammonia storage tanks”) that have each at all relevant times qualified as a single covered process, and which are co-located such that they also qualify as a single covered process together.

3.23. The Facility Process is a “Program 2” covered process because it does not meet the Program 1 eligibility requirements in 40 C.F.R. § 68.10(g) or the Program 3 eligibility requirements in 40 C.F.R. § 68.10(i).

Violation of Safety Information Requirements

3.24. Under 40 C.F.R. § 68.48, the owner or operator of a subject stationary source with processes subject to Program 2 must compile and maintain up-to-date safety information related to the regulated substances, processes, and equipment as provided in 40 C.F.R. § 68.48(a) and ensure that the process is designed in compliance with recognized and generally accepted good engineering practices as provided in 40 C.F.R. § 68.48(b).

3.25. At the time of an EPA inspection of the Facility on or about April 26, 2018, Respondent had not compiled and maintained the codes and standards used to design, build, and operate the 18,000-gallon anhydrous ammonia storage tank, as required by 40 C.F.R. § 68.48(a).

3.26. At the time of the EPA inspection on or about April 26, 2018, Respondent had failed to ensure that both ammonia storage tanks were designed in compliance with recognized and generally accepted good engineering practices 40 C.F.R. § 68.48(b). Such practices require

that the storage tanks are installed on substantial reinforced concrete footings and foundations or structural steel supports mounted on reinforced concrete foundations; the ammonia storage tanks are protected with suitable barriers to avoid damage by trucks or other vehicles; and that storage tank shutoff valves are secured and protected by suitable means against tampering or theft of product when the Facility is unattended. The 18,000-gallon ammonia storage tank lacked the required supports until corrected by Respondent on or about July 10, 2020. The ammonia storage tanks lacked required protection from vehicle damage until Respondent placed suitable barriers around the tanks on or about October 2, 2019. The shutoff valves on the ammonia storage tanks were not secured and protected by suitable means against tampering or theft until Respondent installed anti-tamper lock devices on the storage tanks on or about October 21, 2019.

3.27. Respondent therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.48.

Violation of Hazard Review Requirements

3.28. Under 40 C.F.R. § 68.50, the owner or operator of a subject stationary source with processes subject to Program 2 must conduct a review of the hazards associated with the regulated substances, process, and procedures to identify the safeguards used or needed to control the hazards or prevent equipment malfunction or human error, as provided in 40 C.F.R. § 68.50(a)(3), and must document the results of a hazard review and ensure that problems identified are resolved in a timely manner, as provided in 40 C.F.R. § 68.50(c).

3.29. Respondent failed to review the hazards of an accidental anhydrous ammonia leak during loading and unloading operations and failed to identify the safeguards used or needed to control an accidental ammonia leak during loading and unloading of the ammonia storage tanks. The hazard review Respondent performed at the Facility in 2012 did not identify a remote

emergency shut-off system for the loading and unloading operations of both ammonia storage tanks, a safeguard used or needed to control an accidental ammonia leak during loading and unloading operations. On or about October 21, 2019, Respondent performed a hazard review addressing the hazards of an accidental ammonia leak during loading and unloading operations, as required by 40 C.F.R. § 68.50(a)(3) and installed a remote emergency shutoff system for the loading and unloading operations of the ammonia storage tanks.

3.30. Respondent's 2012 hazard review identified the following problems at the Facility: aging equipment was rusted and/or in need of maintenance and repair, and safety relief valves were out of date and showed visible signs of aging and disrepair. These problems were ongoing at the time of EPA's inspection on or about April 26, 2018, constituting a failure to ensure that problems identified in a hazard review are resolved in a timely manner as required by 40 C.F.R. § 68.50(c).

3.31. Respondent therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.50.

Violation of Operating Procedure Requirements

3.32. Under 40 C.F.R. § 68.52, the owner or operator of a subject stationary source with processes subject to Program 2 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.

3.33. As of the EPA inspection on or about April 26, 2018, Respondent had failed to: provide written site-specific instructions for emergency shutdown and operation of the Facility Process; describe in writing the consequences of deviating from loading and unloading procedures and the steps required to correct or avoid such deviations; provide written procedures

for the inspection of Facility Process equipment, including piping, hoses, pumps, valves, and safety valves.

3.34. Respondent therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.52.

Violation of Training Requirements

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

3.36. As of April 26, 2018, Respondent had not ensured that its seven operators were trained or had tested competent in the operating procedures related to the handling of anhydrous ammonia.

3.37. Respondent therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.54.

Violation of Maintenance Requirements

3.38. Under 40 C.F.R. § 68.56(a), the owner or operator of a subject stationary source with processes subject to Program 2 must prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. The owner or operator may use procedures or instructions provided by covered process equipment vendors or procedures in federal or state regulations or industry codes as the basis for stationary source maintenance procedures.

3.39. Applicable industry standards, as well as information from the manufacturer of the safety relief valves on Respondent's ammonia storage tanks, provide that the relief valves not be used longer than five years from the date of installation. Respondent operated, as part of its

Process, two safety relief valves that were due for replacement in April and October 2013 but were not replaced until April 29, 2018.

3.40. Respondent therefore failed to prepare and implement procedures to maintain the on-going mechanical integrity of the safety relief valves on the ammonia storage tanks, in violation of 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.56(a).

Violation of Compliance Audit Requirements

3.41. Under 40 C.F.R. § 68.58(a), the owner or operator of a subject stationary source with processes subject to Program 2 must certify that they have evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart C for each covered process, at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

3.42. Respondent performed a compliance audit of the Facility Process in August 2012 but failed to complete the next compliance audit of the Facility Process until May 2019.

3.43. Respondent's failure to evaluate the Facility Process for compliance with the provisions of 40 C.F.R. Part 68, Subpart C at least every three years is a violation of 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.58(a).

ENFORCEMENT AUTHORITY

3.44. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$48,192 per day of violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering these factors, EPA determined and Respondent agrees that an appropriate penalty to settle this action is \$146,000 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
R10_RHC@epa.gov

Javier Morales
U.S. Environmental Protection Agency
morales.javier@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

Aug 20, 2020

FOR RESPONDENT:

Robert L. Faria
ROBERT FARIA, President
Sherman County Farm Chemical &
Fertilizer Co.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance
Division, EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2020-0110
)	
SHERMAN COUNTY FARM CHEMICAL)	FINAL ORDER
& FERTILIZER CO.,)	
)	
Wasco, Oregon,)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2020.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Sherman County Farm Chemical & Fertilizer Co., Docket No.: CAA-10-2020-0110**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered electronically to:

Danielle Meinhardt
U.S. Environmental Protection Agency, Region 10
meinhardt.danielle@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered via certified mail to:

Robert Faria
President
Sherman County Farm Chemical & Fertilizer Co.
P.O. Box 367
Wasco, Oregon 97065

DATED this ____ day of _____ 2020.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10