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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CAA-07-2015-0024
)	
WESTERN INTERNATIONAL)	
GAS & CYLINDERS, INC.)	
)	
)	COMPLAINT AND
)	CONSENT AGREEMENT/
)	FINAL ORDER
Respondent,)	
)	
Proceeding under Section 113(d) of the CAA,)	
42 U.S.C. § 7413(d))	
)	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (“EPA”) and Western International Gas & Cylinders, Inc. (“Respondent”) have agreed to a settlement of this action before 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted 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, where the violations involved failure to file a Risk Management Plan, was appropriate for administrative penalty action.

2. This Complaint and Consent Agreement and Final Order (“CA/FO”) serves as notice that 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. Furthermore, this CA/FO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator of EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Western International Gas & Cylinders, Inc., a division of Matheson Tri-Gas, Inc. This action involves the company's facility located at 1101 Commercial Avenue, Oakland, Nebraska, 68045, which is owned and/or operated by Respondent.

Statutory and Regulatory Requirements

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 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 the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the 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, 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). These regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

7. The regulations at 40 C.F.R. Part 68 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 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 provision regulations apply to covered processes. A covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1 and if it is in a specified NAICS code or is subject to OSHA's process safety management standard, 29 C.F.R. 1910.119.

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 the CAA referenced therein, including Section 112(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004, and \$32,500 per day for each violation that occurs after March 15, 2004. For each violation of Section 112(r) of the CAA that occurs after January 12, 2009, penalties of up to \$37,500 per day are authorized.

Definitions

11. 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.

12. 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, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

13. The regulations at 40 C.F.R. § 68.115(b)(2) define how "concentrations of a regulated flammable substance in a mixture" shall be treated for purposes of determining whether a threshold quantity is present at the stationary source. Pursuant to 40 C.F.R. § 68.115(b)(2), the entire weight of a mixture shall be treated as a regulated substance unless the owner or operator can demonstrate that the mixture itself does not have a National Fire Protection Association ("NFPA") rating of 4.

14. 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.

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. At all times relevant to this action, Respondent’s facility located at 1101 Commercial Avenue, in Oakland, Nebraska, was a “stationary sources” pursuant to 40 C.F.R. § 68.3.

18. Acetylene is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for acetylene, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

19. On or about November 5-6, 2014, 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. On February 9, 2015, EPA requested additional information from Respondent regarding its compliance with Section 112(r) of the CAA. On or about March 10, 2015, Respondent submitted information including, *inter alia*, the quantities of acetylene manufactured and dissolved in acetone for each daily order for specific dates.

21. Respondent’s process involves dissolving acetylene in a solvent called acetone in order to suspend the acetylene in a stable condition for transport and use. The mixture of acetylene and acetone contains greater than one percent of acetylene and has a NFPA rating of 4, and is therefore a flammable mixture as specified in 40 C.F.R. § 68.115(b)(2). As a result, the entire weight of the mixture is treated as a regulated substance for purposes of determining whether the threshold quantity of the regulated substance is present.

22. Information collected as a result of the inspection and information request referenced in Paragraphs 19 and 20, above, revealed that on at least 180 days between January 1, 2012, and January 30, 2015, Respondent had greater than 10,000 pounds of the flammable mixture of acetylene and acetone in a process at the facility.

Violations

23. EPA alleges that Respondent has violated the CAA and federal regulations promulgated pursuant to the CAA, as follows:

24. Respondent is 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 is an owner and operator of stationary sources that had more than a threshold quantity of a regulated substance in a process.

25. Respondent is subject to Program 3 of the risk management program requirements because, pursuant to 40 C.F.R. § 68.10(d), the covered process at its facility did not meet the requirements of Program 1 and the process is subject to the OSHA process safety management standard.

26. Respondent was required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. 68.12, to develop and implement a risk management program for its facility that includes a management system, a hazard assessment, a prevention program and an emergency response program, and to submit an RMP.

27. Information collected during the inspection of Respondent's facility and in response to EPA's information request revealed that Respondent failed to submit an RMP for its Oakland, Neb., facility, as required by 40 C.F.R. §§ 68.12(a) and 68.150(a). Respondent's failure to comply with these regulations is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

28. Respondent and EPA agree to the terms of this Consent Agreement/Final Order.

29. Respondent admits the jurisdictional allegations set forth in this Complaint and Consent Agreement/Final Order, and agrees not to contest EPA's jurisdiction in this proceeding or in any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

30. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Complaint and Consent Agreement/Final Order.

31. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal this Consent Agreement/Final Order.

32. Respondent and EPA agree to resolve the matters set forth in this Complaint and Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

33. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

34. Respondent understands and agrees that this Consent Agreement/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/Final Order.

35. Respondent certifies by signing this Consent Agreement/Final Order that, to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

Penalty Payment

36. Respondent agrees that, in settlement of the claims alleged in this Complaint and Consent Agreement/Final Order, Respondent shall pay a civil penalty of Fifty-Five Thousand Dollars (\$55,000) within thirty calendar days of the effective date of this Final Order.

37. Respondent shall pay the penalty by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number CAA-07-2015-0024 to:

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

Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219,

and to:

Erin Weekley
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

38. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

39. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the

United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of the debt collection, including processing and handling costs and attorneys' fees. In addition, 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. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

40. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

Effect of Settlement and Reservation of Rights

41. This CA/FO resolves all civil and administrative claims for the CAA violations alleged in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA or other applicable law.

42. The effect of settlement described in Paragraph 41 is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 35 of this Consent Agreement/Final Order.

43. Nothing in this Consent Agreement/Final Order shall be construed as a release from any other action under law and/or regulation administered by EPA, nor shall it alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

44. The executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

45. Pursuant to 40 C.F.R. § 22.31(b), the effective date of this Consent Agreement/Final Order shall be the date on which it is filed. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

46. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

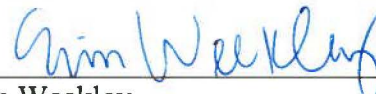
47. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 11/30/15


Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

Date 11-30-15


Erin Weekley
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

RESPONDENT:
WESTERN INTERNATIONAL GAS & CYLINDERS, INC.

Date November 16, 2015

Denise C. Haugen
Name

Denise C. Haugen
Signature

Corporate Counsel
Title

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
Karina Borromeo
Regional Judicial Officer

12/2/2015
Date

CERTIFICATE OF SERVICE

I certify that on the date below, I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint and Consent Agreement/Final Order to the following:

Denise C. Haugen
Corporate Counsel
Western International Gas & Cylinders, Inc.
P.O. Box 668
7173 Hwy 159 E.
Bellville, Texas 77418.

In addition, I certify that I sent by first class mail a true and correct copy of the original Complaint and Consent Agreement/Final Order to:

Kathy McKenzie
Safety and Compliance Director
Western International Gas & Cylinders, Inc.
P.O. Box 668
7173 Hwy. 159 E.
Bellville, TX 77418-0668,

and

David R. Pierce
Lindabury, McCormick, Estabrook & Cooper, P.C.
53 Cardinal Drive
P.O. Box 2369
Westfield, NJ 07091-2369.

Dated this 2nd th day of December, 2015.


Name