UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
MURPHY'S LLC	)	Docket No. CAA-07-2012-0018
	)	
Respondent	)	
	)	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Murphy's LLC (Respondent) have agreed to a settlement of this action before filing 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), 22.18(b)(2).

FACTUAL 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 first date of alleged violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirement to properly implement a Risk Management Plan (RMP) as required by 40 C.F.R. Part 68 and 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 CAFO 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 EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Murphy's LLC, located at 107 North Pine Street, Lebo, Kansas, 66745.

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 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) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

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), 42 U.S.C. § 7412(r)(7), of the CAA. 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 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, the RMP must be submitted by an 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. 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 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 now authorized.

Definitions

10. 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.

11. 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.

12. 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.

13. 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.

Alleged Violations

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

15. 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).

16. Respondent's facility, located at 107 North Pine Street in Lebo, Kansas, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

17. 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, Table 1, is 10,000 pounds.

18. On or about October 7, 2010, 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.

19. Records collected during the inspection showed that Respondent has exceeded the threshold quantity for anhydrous ammonia.

20. 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, Subpart G, 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.

21. Respondent was required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a Risk Management Program that includes a hazard assessment, a prevention program, and an emergency response program.

22. Records collected during the inspection showed that Respondent failed to comply with all the requirements of 40 C.F.R. Part 68, specifically Respondent:

(i) Failed to maintain records of the offsite consequence analysis for the Hazard Assessment as required by 40 C.F.R. 68.22 and 40 C.F.R. 68.39;

(ii) Failed to compile and maintain up-to-date safety information related to the processes and equipment as required by 40 C.F.R. 68.48(a)(3)(4)(5);

(iii) Failed to follow generally accepted and good engineering practices as required by 40 C.F.R. 68.48(b);

(iv) Failed to review and update a hazard review at least once every five years as required by 40 C.F.R. 68.50(d);

(v) Failed to prepare written operating procedures addressing temporary operations, consequences of deviations, and equipment inspections as required by 40 C.F.R. 68.52(b)(3)(7)(8);

(vi) Failed to prepare and implement procedures for ensuring mechanical integrity, train employees for process maintenance, and inspect and test process equipment following good engineering practices at an interval consistent with manufacturer or industry recommendations, codes or standards as required by 40 C.F.R. 68.56; and

(vii) Failed to conduct Compliance Audit or reports of the two most recent audits as required by 40 C.F.R. 68.58;

(viii) Failed to insure the facility was included in the community response plan as required by 40 C.F.R. 68.90(b)(1);

(ix) Failed to address planned changes to improve safety in the Executive Summary as required by 40 C.F.R. 68.155(f);

(x) Failed to update the RMP every five years as required by 40 C.F.R. 68.190; and

(xi) Failed to develop a management system to oversee the implementation of the risk management program elements as required by 40 C.F.R. 68.15.

23. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth above are all violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

24. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

25. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

26. Respondent neither admits nor denies the factual allegations set forth above.

27. 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 the Final Order portion of this CAFO.

28. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

29. This CAFO addresses all civil and administrative claims for the CAA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA or other applicable law.

30. Respondent certifies by the signing of this CAFO 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.

31. The effect of settlement described in paragraph 29 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 30, above, of this CAFO.

32. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

33. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

34. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CAFO and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401 *et seq*, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Sixteen Thousand Two Hundred and Six Dollars ($16,206). The first payment of $10,000 shall be paid, without interest, within 30 days of entry of this Final Order. The second payment of Six Thousand Two Hundred and Six Dollars ($6,206) shall be made within 180 days of entry of this Final Order, which includes interest assessed. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

United State Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

The payments shall reference docket number CAA-07-2012-0018

2. Copies of the checks should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101

and to:

Kristen Nazar
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

PLEASE NOTE THAT REGION 7 IS RELOCATING

Region 7 EPA will be relocating its office from the current Kansas City, Kansas, location to Lenexa, Kansas. Please mail correspondence to the following address after October 15, 2012:

EPA - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date 10/31/12 By _____
Becky Weber
Director
Air and Waste Management Division

Date 10/26/2012 By _____
Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
MURPHY'S LLC

By _____

Title managing partner

Date 10/03/12

IT IS SO ORDERED. This Final Order shall become effective immediately.

Date Nov. 15, 2012 By Karina Borromeo

Karina Borromeo
Regional Judicial Officer

IN THE MATTER OF Murphy's LLC, Respondent
Docket No. CAA-07-2012-0018

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Kristen Nazar
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
11201 Renner Blvd.
Lenexa, Kansas 66219

Copy by First Class Certified Mail to:

Dennis Murphy
Manager, Murphy's LLC
PO Box 54
Lebo, Kansas 66856

Dated: 11/19/12

Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7