

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

NOV 29 PM 2: 47

In the Matter of)
)
MGPI Processing, Inc.) Docket No. CAA-07-2020-0020
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and MGPI Processing, Inc. (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 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, 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, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Enforcement and Compliance Assurance Division, EPA, Region 7.

4. Respondent is MGPI Processing, Inc., a corporation doing business in the state of Kansas.

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 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 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 3 requirements if the process does not meet the eligibility requirements of Program 1, as described in 40 C.F.R. § 68.10(f), and it either falls under a specified North American Industry Classification System code or is subject to the OSHA process safety management standard at 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 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

\$47,357 per day of violation for violations that occur after November 2, 2015, and are assessed after February 6, 2019.

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)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

13. 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.

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 in 40 C.F.R. § 68.130.

15. 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 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.

16. 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.

Factual Allegations

17. Respondent owns and operates a gluten, starch, and alcohol production facility located at 1300 Main Street in Atchison, Kansas (the Facility).

18. 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).

19. Respondent’s Facility is a “stationary source” pursuant to Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3.

20. Propylene oxide is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for propylene oxide, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

21. On October 21, 2016, an accidental release of chlorine gas occurred at Respondent’s Facility in connection with a chemical reaction when a delivery of sulfuric acid was unloaded into a tank of sodium hypochlorite. Approximately 140 people sought medical attention and seven people were hospitalized due to the release.

22. On or about January 23, 2017, through January 26, 2017, 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.

23. Information gathered during the EPA inspection confirmed that Respondent had greater than 10,000 pounds of propylene oxide in a process at the Facility.

24. From the time Respondent first had onsite greater than 10,000 pounds of propylene oxide 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.

25. From the time Respondent first had onsite greater than 10,000 pounds of propylene oxide in a process, Respondent was subject to the Program 3 prevention program requirements because pursuant to 40 C.F.R. § 68.10(h), the covered process at the Facility did not meet the eligibility requirements of Program 1 and was subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

26. From the time Respondent first had onsite greater than 10,000 pounds of propylene oxide 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 3 requirements provided at 40 C.F.R. § 68.12(d) and detailed in Subpart D.

Allegations of Violation

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

Counts 1 through 6

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

29. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of Subpart D at 40 C.F.R. §§ 68.65 through 68.87.

30. The EPA inspection revealed that Respondent did not fully implement the Program 3 prevention requirements of Subpart D at 40 C.F.R. §§ 68.65 through 68.87, as required by 40 C.F.R. § 68.12(d)(3). Specifically:

- (a) Respondent failed to compile written process safety information pertaining to the technology of the covered process, including process chemistry, as required by 40 C.F.R. § 68.65(c)(1)(ii);
- (b) Respondent failed to compile written process safety information pertaining to the technology of the covered process, including the maximum intended inventory of propylene oxide piping, as required by 40 C.F.R. § 68.65(c)(1)(iii);
- (c) Respondent failed to document that equipment in the covered process complies with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2);
- (d) Respondent failed to develop a written schedule of when recommended actions identified during the process hazard analysis are to be completed to ensure all actions are completed in a timely manner, as required by 40 C.F.R. § 68.67(e);
- (e) Respondent failed to certify that it had evaluated compliance with the provisions of the Program 3 prevention requirements of Subpart D at least every three years to verify that developed practices and procedures are adequate and being followed, as required by 40 C.F.R. § 68.79(a); and
- (f) Respondent failed to document an appropriate response to each of the findings of the compliance audit and correction of the deficiencies identified through the audit, as required by 40 C.F.R. § 68.79(d);

31. Respondent's failures to comply with Program 3 prevention requirements of 40 C.F.R. §§ 68.65 through 68.87, as required by 40 C.F.R. § 68.12(d)(3), are each a separate violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Counts 7 and 8

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

33. The regulation at 40 C.F.R. § 68.12(a) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to submit a single RMP as provided in 40 C.F.R. §§ 68.150 to 68.185. Pursuant to 40 C.F.R. §§ 68.160 and 68.180, the owner or operator shall complete a single registration form that provides, *inter alia*, the Program level of each covered process and include information regarding the emergency response plan for the facility.

34. The EPA inspection revealed that Respondent did not submit a complete 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:

- (a) Respondent failed to complete a registration form pursuant to 40 C.F.R. § 68.160(a) that included the telephone number of the emergency contact for the Facility, as required by 40 C.F.R. § 68.160(b)(6); and
- (b) Respondent failed to provide correct emergency response procedures in the emergency response plan, specifically actions to be taken in response to an accidental release as a nonresponding Facility, as required by 40 C.F.R. § 68.180(b).

35. Respondent's failures to submit an RMP in accordance with the requirements of 40 C.F.R. §§ 68.150 to 68.185, as required by 40 C.F.R. § 68.12(a), are each a separate violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

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

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

37. 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.

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

Penalty Payment

39. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of \$251,468 as set forth below.

40. 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 979077
St. Louis, Missouri 63197-9000

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

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

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

Kasey Barton, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

42. 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

43. 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.

44. 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 paragraph directly below.

45. Respondent certifies by the signing of this Consent Agreement that to the best of its belief after reasonable inquiry it is presently in compliance with all requirements of the CAA and its implementing regulations.

46. 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.

47. This CAFO 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).

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

General Provisions

49. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

50. 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.

51. This Consent Agreement and Final Order is not intended to be, nor shall it be deemed, an admission of liability in any proceeding or litigation brought by a person or entity that is not party to this Consent Agreement and Final Order. Respondent neither admits nor denies the alleged violations of law stated herein.

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

53. 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:
MGPI PROCESSING, INC.

Date: October 25, 2019

Thomas J. Lynn
Signature

Thomas J. Lynn
Name

Vice President and General Counsel
Title


**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 10/29/19



David Cozad
Director
Enforcement and Compliance Assurance Division

Date: 10/29/19



Kasey Barton
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

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

Oct. 29, 2019
Date

CERTIFICATE OF SERVICE

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 Email to Complainant:

barton.kasey@epa.gov

Copy via Email to Attorney for Respondent:

abrought@spencerfane.com

AND

Copy via Certified Mail, Return Receipt Requested to Respondent:

Mr. Randy Simmons
Corporate Director of Environmental, Health, Safety & Security
MGPI Processing, Inc.
1300 Main Street
Atchison, Kansas 66002-0130

Dated this 29th day of October, 2019.

Edie Stone Buck
Signed
for Lisa Haugen
Region 7
Hearing Clerk