

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2015 MAR 25 AM 10:33
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:) EPA DOCKET NO. CAA-06-2015-3310
)
Rentech Nitrogen Pasadena, LLC)
)
Respondent) CONSENT AGREEMENT AND
) FINAL ORDER
)
Pasadena, Texas)

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Rentech Nitrogen Pasadena, LLC located in Pasadena, Texas (“Respondent” or “Rentech”), in the above referenced action, have agreed to simultaneously commence and resolve this matter, through issuance of this Consent Agreement and Final Order (“CAFO”).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended (“CAA” or the “Act”), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Respondent does not waive any rights or defenses which have been raised or could be raised in any state or local law proceeding. This CAFO may not be used in any proceeding except proceedings by EPA to enforce this CAFO.

6. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for the violations and facts alleged in the CAFO.

7. Respondent consents to the issuance of this CAFO and consents to the assessment and payment of the stated federal civil monetary penalty in the amount and by the method set out in this CAFO.

8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

9. Nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, and criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under federal, state, or local laws or regulations.

10. The undersigned represents that he or she is fully authorized by Respondent to enter into the terms and conditions of this Consent Agreement ("CA"), to execute this CA, and to legally bind the Respondent to the terms and conditions of this CA.

11. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

II. STATUTORY AND REGULATORY BACKGROUND

12. Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

13. Pursuant to CAA § 112(r)(7), 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements.

14. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Act.

15. Under 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process ("Covered Process"), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

16. Under 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan ("RMP") as provided in 40 C.F.R. Part 68 Subpart G (§§ 68.150-68.185) that reflects all covered processes at the stationary source.

17. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three “Programs” -- Program 1, Program 2, and Program 3.

18. Under 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the Part 68 regulations, as determined pursuant to 40 C.F.R. § 68.10(d), must comply with the chemical accident prevention requirements of 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program, at 40 C.F.R. §§ 68.65-68.87).

19. Pursuant to 40 C.F.R. § 68.69(a), an owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process.

20. Under Sections §§ 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B), whenever the EPA finds that any person has violated or is violating a requirement of the Clean Air Act including, but not limited to, a requirement or prohibition of any rule promulgated under the Clean Air Act, other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the Clean Air Act, 42 U.S.C. § 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A), the EPA may issue an order assessing a civil penalty.

21. As adjusted by the Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340, 75346), 40 C.F.R. § 19.4, the EPA may assess a civil penalty of up to \$37,500 per day of violation for a violation occurring after January 12, 2009.

22. “Covered process” is defined in 40 C.F.R. § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

23. "Person" is defined in Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), as including an 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.

24. "Process" is defined in 40 C.F.R. § 68.3 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.

25. "Regulated substance" is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the Clean Air Act as amended, in § 68.130.

26. "RMP" is defined in 40 C.F.R. § 68.3 as the risk management plan required under subpart G of 40 C.F.R. Part 68.

27. "Stationary source" is defined in Section 112(r)(2)(C) of the Clean Air Act and 40 C.F.R. § 68.3 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.

28. "Threshold quantity" is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Clean Air Act as amended, listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part.

29. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

30. Respondent is a limited liability company authorized to do business in the State of Texas.

31. Respondent is a “person” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. §7413(d).

32. At all times relevant to this CAFO, Respondent owned and operated a chemical manufacturing facility located at 2001 Jackson Road, Pasadena, Texas 77506 (“Facility”). The Facility was formerly owned and operated by Agrifos Fertilizer L.L.C..

33. At the Facility the Respondent produces synthetic granulated ammonium sulfate.

34. Respondent typically stores or handles up to a maximum of 13,500,000 pounds of anhydrous ammonia at the Facility at any time due to a policy to not exceed 90% of the maximum capacity of its anhydrous ammonia storage tank.

35. Anhydrous ammonia is identified at 40 C.F.R. § 68.130 as a regulated substance with a threshold quantity of 10,000 pounds.

36. Respondent stores or handles a regulated substance, anhydrous ammonia, in an amount over the threshold quantity of 10,000 pounds in a process unit.

37. The Respondent’s storage and handling of anhydrous ammonia, including barge unloading operations and filling of the associated storage tank at the Facility, is a covered process subject to RMP Program 3 requirements.

38. The Program 3 requirements include, but are not limited to, the development and implementation of written operating procedures that provide clear instructions for safely conducting activities involved in each covered process.

39. On April 20, 2014, a release of anhydrous ammonia occurred during ammonia barge unloading and tank filling activities.

40. The Respondent's ammonia barge unloading procedure used for unloading ammonia barges into the ammonia storage tank states that the measurement of the starting level in the ammonia storage tank must come from the distributed control system ("DCS") readout in the control room. This reading should not be above 68% and it should be checked against the circle chart readout and the DCS and circle chart readings should agree within 5% before starting to unload an ammonia barge.

41. On April 20, 2014, both the circle chart and the DCS readings matched at 32%; however, they both use the same pneumatic transmitter which was later found to have failed. These readings were reportedly not trusted by certain Facility operators as being an accurate determination of how much ammonia was in the tank before the barge began unloading. The high level alarm on the tank also utilized the same transmitter and thus did not alert operators to the overfilling taking place during tank loading operations.

42. The tank level indication from the digital readout (which uses an electronic transmitter) showed a 26% difference between it and the DCS and circle chart at 58%.

43. The electronic transmitter needed recalibration at the time of the incident.

44. The Respondent failed to develop and implement written operating procedures that provided clear instructions for safely conducting activities involved in the ammonia barge unloading and tank filling process since there was no indication in the procedures on what to do in the event of knowledge that the level indicators were inaccurate.

45. The Respondent failed to correct known deficiencies in the ammonia storage tank level transmitter that caused a release of ammonia.

46. The Respondent failed to establish preventative maintenance work orders in the maintenance system for the ammonia storage tank level transmitters and failed to determine when tests/calibrations were needed on this equipment when they had prior knowledge that the data was inaccurate.

47. The Houston Ship Channel in the vicinity of the Facility was closed for one hour and 55 minutes as a precautionary measure by the U.S. Coast Guard.

48. An estimated 10.8 tons of anhydrous ammonia was released during the incident. An estimated 8.1 tons of this amount was recovered through use of existing suppression and containment systems at the Facility.

IV. VIOLATIONS

49. Respondent failed to develop and implement written operating procedures that provided clear instructions for safely conducting activities involved in the ammonia barge unloading and tank filling process in violation of 40 C.F.R. § 68.69(a) since there was no indication in the procedures on what to do in the event of knowledge that the level indicators were inaccurate.

50. Respondent failed to correct known deficiencies in the ammonia storage tank level transmitter that caused a release of ammonia in violation of 40 C.F.R. § 68.73(e).

51. Respondent failed to establish preventative maintenance work orders in the maintenance system for the ammonia storage tank level transmitters and failed to determine when tests/calibrations were needed on this equipment when they had prior knowledge that the data was inaccurate in violation of 40 C.F.R. § 68.73(b).

V. CIVIL PENALTY AND TERMS OF SETTLEMENT

52. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), which authorizes EPA to assess a civil penalty of up to twenty-five thousand dollars (\$25,000) per day for each violation of the CAA.¹

53. Upon consideration of the entire record herein and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, specific facts and equities, litigation risks, and other factors as justice may require, the parties agree that \$99,900 is an appropriate penalty to resolve this matter.

54. Within thirty (30) days of the effective date of this fully executed CAFO, Respondent shall pay \$99,900 by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of five (5) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving US currency; or On Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

¹ The Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701 provides for increases in the statutory penalty provisions (\$25,000) cited in the Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991 ("CAA Penalty Policy"). It provides for up to \$25,000 per day of violation for violations occurring on or before January 30, 1997; up to \$27,500 per day for each violation occurring after January 30, 1997 through March 15, 2004; up to \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009.

*Re: IN THE MATTER OF RENTECH NITROGEN PASADENA, LLC
EPA DOCKET NUMBER CAA-06-2015-3310*

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

For overnight mail (non-U.S. Postal Service, e.g. FedEx), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties 1005
Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33 33
Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read: "D
68010727 Environmental Protection Agency"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 — checking
Physical location of U.S. Treasury facility: 5700
Rivertech Court
Riverdale, MD 20737

Contact — Jesse White (301) 887-6548

*Re: IN THE MATTER OF RENTECH NITROGEN PASADENA, LLC
EPA DOCKET NUMBER CAA-06-2015-3310*

For On Line Payment:

WWW.PAY.GOV

Enter sfo 1,1 in search field

Open form and complete required fields.

PLEASE
NOTE:

The docket number CAA 06-2015-3310 shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Marie Stucky
Enforcement Officer (6EN-AS)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue Suite 1200
Dallas, Texas 75202-273 3;

Lorena Vaughn
Region 6 Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite
1200 Dallas, TX 75202-2733

55. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

56. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that

is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

57. EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

58. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorney's 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 (10) percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

59. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed

to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

60. This document constitutes a “Final Order” as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of “prior such violations.”

VI. RETENTION OF ENFORCEMENT RIGHTS

61. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or state laws, regulations, statutes, or permitting programs.

62. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

63. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or regulated or other extremely hazardous substances at, on, or from the Respondent’s Facility. This CAFO shall not constitute or be construed as a release of any liability that the Respondent or any other person has under any law. Nothing in this CAFO shall be construed to prevent or limit EPA’s civil, injunctive, or criminal authorities, or that of Federal, state, or local agencies or departments to obtain penalties or injunctive relief under Federal, state, or local laws, regulations, or subpart thereof; however, Respondent’s federal civil monetary liabilities for the violations and facts alleged in this CAFO are resolved.

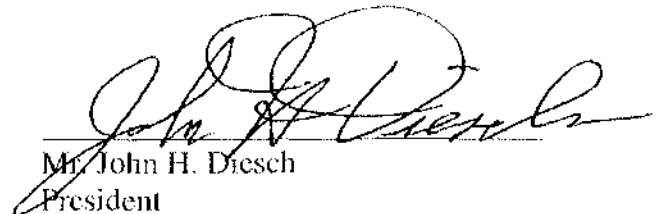
VII. COSTS

64. Each party shall bear its own costs and attorney's fees.

IT IS SO AGREED:

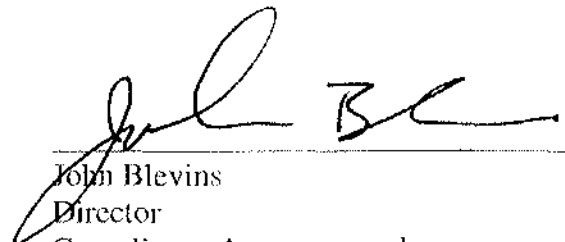
FOR THE RESPONDENT:

Date: 3/17/15


Mr. John H. Diesch
President
Rentech Nitrogen Pasadena, LLC

FOR THE COMPLAINANT:

Date: 3.25.15


John Blevins
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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 shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement, including the assessment of civil penalties. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 3-25-15



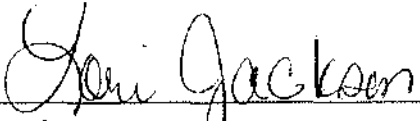
Thomas Rucki
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 26 day of March, 2015, the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED and ELECTRONIC COPY

Peter K. Wahl
Jackson Walker L.L.P.
Bank of America Plaza
901 Main Street
Suite 6000
Dallas, Texas 75202



Paralegal
U.S. EPA Region 6, Dallas, Texas

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

In the Matter of:

Rentech Nitrogen Pasadena, LLC,

Respondent.

Proceeding under Section 113 of the Clean
Air Act, 42 U.S.C. § 7413.

Docket No. CAA-06-2015-3309

ADMINISTRATIVE ORDER ON CONSENT

I. INTRODUCTION AND JURISDICTION

1. The parties to this Administrative Order on Consent ("AOC" or "Order") are Rentech Nitrogen Pasadena, LLC ("Respondent") and the U.S. Environmental Protection Agency ("EPA").
2. The Findings herein are made and this AOC is issued pursuant to Section 113(a)(3) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(a)(3), for Respondent's failure to comply with Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, regarding Respondent's chemical manufacturing facility ("Facility") located at 2001 Jackson Road, Pasadena, Texas 77506.
3. At all times relevant to this AOC, Respondent and its predecessor, Agrifos Fertilizer L.L.C., owned and operated the Facility.
4. This AOC is entered into upon mutual agreement by EPA and Respondent. Accordingly, Respondent agrees to undertake all actions required of it by the terms and conditions of this Order. Respondent consents to and agrees not to contest the authority or jurisdiction of the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 to issue or enforce this Order and also agrees not to contest the validity or terms of this Order in any action to enforce its provisions.
5. This Order shall apply to and be binding upon Respondent and its officers, agents, servants, employees, successors, assigns, and upon all persons, firms, corporations, contractors, and consultants acting under, through, or for Respondent. No change in ownership or corporate or partnership status of Respondent will in any way alter the status of Respondent or its responsibilities under this Order.

II. STATUTORY AND REGULATORY AUTHORITY

6. Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), authorizes the EPA to promulgate release prevention, detection, and correction requirements regarding regulated substances in order to prevent accidental releases of regulated substances. EPA promulgated the regulations at 40 C.F.R. Part 68 in order to implement Section 112(r)(7) of the Act. These regulations set forth the requirements of risk management programs that must be established and implemented at affected stationary sources. The regulations at 40 C.F.R. Part 68, Subparts A through G, require owners and operators of stationary sources to, among other things, develop and implement: (1) a management system to oversee the implementation of the risk management program elements; and (2) a risk management program that includes, but is not limited to, a hazard assessment, a prevention program, and an emergency response program. Pursuant to 40 C.F.R. Part 68, Subparts A and G, the risk management program for a stationary source that is subject to these requirements is to be described in a risk management plan (“RMP”) that must be submitted to EPA.
7. Sections 112(r)(3) and (5) of the Act, 42 U.S.C. §§ 7412(r)(3) and (5), require the EPA to promulgate a list of regulated substances with threshold quantities. EPA promulgated a regulation known as the List Rule, at 40 C.F.R. Part 68, Subpart F, which implements Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), and which lists the regulated substances, including anhydrous ammonia, and their threshold quantities.
8. Pursuant to Section 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, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process 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 such regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which the regulated substance is first present in a process at a stationary source above the threshold quantity, whichever is latest.
9. 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,” which contain specific requirements for owners and operators of stationary sources with processes that fall within the respective programs. A covered process is subject to Program 3 requirements, as per 40 C.F.R. § 68.10(d), if the process does not meet one or more of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b), and is (a) listed in one of the specific North American Industry Classification System (“NAICS”) codes found at 40 C.F.R. § 68.10(d)(1) or (b) is subject to the United States Occupational Safety and Health Administration (“OSHA”) process safety management (“PSM”) standard set forth in 29 C.F.R. § 1910.119.
10. 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, including, but not limited to, development and implementation of a management system (as provided in 40 C.F.R. § 68.15), the implementation of prevention program requirements, which include mechanical integrity

(as provided in 40 C.F.R. §§ 68.65-68.87), the development and implementation of an emergency response program (pursuant to 40 C.F.R. §§ 68.90-68.95), and the submission of data in an RMP on prevention program elements for Program 3 processes (as provided in 40 C.F.R. § 68.175).

11. 40 C.F.R. § 68.190(a) requires that the owner or operator of a stationary source shall review and update the RMP as specified under 40 C.F.R. § 68.190(b) and submit it to EPA. 40 C.F.R. § 68.190(b)(1) requires that the owner or operator of a stationary source shall revise and update the RMP submitted under 40 C.F.R. § 68.150, within five years of its initial submission or most recent update required by 40 C.F.R. Section 68.190(b)(2) through (b)(7), whichever is later.
12. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes EPA to issue orders for violations of the CAA, including violations of Section 112(r), 42 U.S.C. §7412(r).
13. The authority to issue orders pursuant to Section 113(a)(3) of the CAA has been delegated to EPA Region 6's Regional Administrator, and has been re-delegated to EPA Region 6's Division Director of the Compliance Assurance and Enforcement Division.

III. DEFINITIONS

14. Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C), and the regulations at 40 C.F.R. § 68.3 define "stationary source" as, *inter alia*, 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.
15. Section 112(r)(2)(A) of the Act, 42 U.S.C. § 7412(r)(2)(B), defines "accidental release" as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.
16. Section 112(r)(2)(B) of the Act, 42 U.S.C. § 7412(r)(2)(B), defines "regulated substance" as a substance listed pursuant to Section 112(r)(3) of the Act. The list of substances regulated under Section 112(r) of the Act is set forth at 40 C.F.R. § 68.130.
17. 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 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.
18. 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. 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 are considered a single process.

19. The regulations at 40 C.F.R. § 68.3 define “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.
20. As used herein, the term “day” shall mean calendar day.
21. All terms not defined herein shall have their ordinary meanings.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

22. Respondent is a limited liability company that was organized under the laws of the State of Delaware and is authorized to do business in the State of Texas.
23. 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).
24. Respondent is the owner and/or operator of the Facility located at 2001 Jackson Road, Pasadena, Texas, 77506.
25. The Facility, which produces synthetic granulated ammonium sulfate, includes tanks, equipment, and structures from which an accidental release of a regulated substance could and did occur.
26. The Facility is a “stationary source” pursuant to Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3.
27. Anhydrous ammonia is a regulated substance pursuant to Section 112(r)(3) of the CAA and 40 C.F.R. § 68.130.
28. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.
29. Respondent stores more than 10,000 pounds of anhydrous ammonia in a tank at the Facility.
30. Respondent handles and stores, and has handled and stored, anhydrous ammonia in a covered process at the Facility.
31. Respondent’s covered anhydrous ammonia process is subject to the Chemical Accident Prevention Provisions requirements of Section 112(r)(7) of the CAA.
32. Respondent’s covered anhydrous ammonia process does not meet one or more of the Program I eligibility requirements set forth in 40 C.F.R. § 68.10(b).

33. Respondent's covered anhydrous ammonia process is listed as one of the specific NAICS codes found at 40 C.F.R. § 68.10(d)(1) and is subject to the OSHA PSM requirements as set forth in 29 C.F.R. § 1910.119.
34. On April 20, 2014, a release of anhydrous ammonia occurred during barge unloading and storage tank filling activities.
35. Barge unloading of the regulated substance to a storage tank is part of the covered anhydrous ammonia process.
36. The covered anhydrous ammonia process at Respondent's Facility is subject to Program 3 requirements, and the Facility should have complied with the requirements of 40 C.F.R. § 68.12(d) regarding this process.
37. EPA identified violations of the following requirements due to the incident on April 20, 2014:
 - Respondent failed to develop and implement written operating procedures that provided clear instructions for safely conducting activities involved in the ammonia barge unloading and tank filling process in violation of 40 C.F.R. § 68.69(a) since there was no indication in the procedures on what to do in the event of knowledge that the level indicators were inaccurate.
 - Respondent failed to correct known deficiencies in an ammonia storage tank level transmitter that caused a release of ammonia in violation of 40 C.F.R. § 68.73(e).
 - Respondent failed to establish preventative maintenance work orders in the maintenance system for the ammonia storage tank level transmitters and failed to determine when tests/calibrations were needed on this equipment when they had prior knowledge that the data was inaccurate in violation 40 C.F.R. § 68.73(b).
38. Based on information available to EPA, EPA has determined that Respondent failed to comply with certain requirements of 40 C.F.R. Part 68 and that Respondent's failures to comply with these requirements of 40 C.F.R. Part 68 described above constitute violations of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

V. ORDER

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

- a. Within thirty (30) days of the effective date of this Order, Respondent shall submit a schedule to EPA indicating when Respondent anticipates performing the following activities at the Facility:
 - i. Respondent shall resolve the alleged violations and concerns identified in the Findings of Fact and Conclusions of Law.
 - ii. Respondent shall identify and engage a third-party firm to perform a hazard analysis assessing Respondent's anhydrous ammonia barge unloading and tank filling activities. The firm shall have the necessary expertise and qualifications expected to adequately perform such a hazard analysis. The firm shall prepare a written report analyzing the barge unloading and tank loading activities currently in place at Respondent's Facility.
 - iii. The third-party report required in paragraph a.ii. of this section shall also identify applicable industry standards, if any, associated with anhydrous ammonia barge unloading and tank filling activities similar to that of Respondent and the manner in which other parties in the industry have implemented practices to satisfy those standards. Included in this report shall be an analysis of the potential for the automatic valve outlined in paragraph a.viii. of this section. If the Facility is found to be deficient when compared to any of these industry standards, the firm shall make recommendations for how Respondent could improve the Facility to become consistent with industry standards in such a way that improves the safety of barge unloading and tank filling operations and minimizes the possibility of accidental releases during these operations. The requirements of paragraphs a.ii. and a.iii. of this section shall be completed and the final report submitted to Respondent within 150 days of the effective date of this Administrative Order.
 - iv. Respondent will provide a copy of the third-party report and recommendations, as required by paragraphs a.ii. and a.iii. of this section, to EPA within 14 days after the Respondent receives the final report.
 - v. The Respondent will provide to EPA within 30 days after Respondent receives the final third-party report a plan (such as revisions to Standard Operating Procedures) that shows how practices recommended in the third-party report will be implemented by the Respondent. If Respondent chooses not to implement one or more of the third-party report's recommendations, then Respondent must explain in writing why it has chosen to not implement the recommendation(s).
 - vi. The plan required in paragraph a.v. of this section shall detail the actions to be conducted at the Facility pursuant to this Order. The plan shall

include the following certification, signed by a duly authorized 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.

- vii. Respondent will implement and finalize a system for encouraging employees to identify and communicate safety and other matters related to Respondent's compliance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68 to the management of the Respondent. This system shall include a method for tracking identified issues and ensuring that review and, if needed, changes are implemented. Respondent will provide EPA, as part of the plan required in paragraph a.v. of this section, with documentation showing final implementation of the system.
- viii. Respondent will research and evaluate the potential for an automatic valve on the anhydrous ammonia storage tank overflow line as a possible means to prevent releases, such as the one that occurred April 20, 2014, from reoccurring in the future. As part of the plan Respondent is required to submit in paragraph a.v. of this section, Respondent will provide EPA with information about the options they evaluated, criteria used in the evaluation, and a discussion of those results, including the feasibility and reasonableness of the evaluated options. If one is identified, Respondent shall select a feasible and reasonable option for adding an automatic valve to prevent releases of anhydrous ammonia from the storage tank.
- ix. Respondent will install additional ammonia detectors and alarms ("Alarms"), both visual and audible, at the Facility, which will be situated to enhance detection of ammonia from the ammonia storage tank. At least two additional Alarms will be added to the current system.
- x. Respondent will connect current, and future, audible and visual ammonia Alarms at the Facility to a centralized control room or other location to ensure that these alarms will quickly identify that a release is occurring at the Facility and communicate that information to Facility operators.
- xi. EPA acknowledges that Respondent may have already instituted some of the activities that may be required by this AOC.

- xii. All work and certifications required under this AOC must be completed within the durations specified in this AOC and not later than 180 days after the effective date of this AOC.
40. Respondent shall provide EPA and its representatives with access to the Facility for the purpose of assessing Respondent's compliance with this Order and with the CAA. Respondent shall also provide EPA and its representatives with access to all records relating to Respondent's implementation of this Order.
41. Respondent shall preserve all documents and information relating to the activities carried out pursuant to this Order for at least five years after completion of the work required by this Order. At the end of the five-year period Respondent shall notify EPA at least 30 days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information.
42. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law, or otherwise determined by EPA to be confidential or subject to restricted access under applicable law.

VI. WRITTEN NOTICES

43. Information required to be submitted to EPA pursuant to this Order shall be sent to:

*Marie Stucky
US EPA Region 6
1445 Ross Avenue (6EN-AS)
Dallas, Texas 75202*

with an electronic copy to:

clay.jeffrey@epa.gov and stucky.marie@epa.gov

Information to be submitted to the Respondent pursuant to this Order shall be sent to:

*Peter K. Wahl
Jackson Walker L.L.P.
901 Main Street
Suite 6000
Dallas, Texas 75202*

with an electronic copy to:

rjohnson@rnp.net and pwahl@jw.com.

VII. EFFECT OF SETTLEMENT
RESERVATION OF RIGHTS, AND JUDICIAL REVIEW


44. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in this Order.
45. This Order shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, regulations and other legal requirements, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
46. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any other statutory, regulatory, or common law authority of the United States.
47. This Order does not resolve any civil monetary penalties or criminal claims of the United States for the violations alleged in this Order, nor does it limit the rights of the United States to obtain civil, criminal penalties or injunctive relief under the CAA or other applicable federal law or regulation.
48. This Order is not intended to be, nor shall it be construed to be, a permit. Further, the parties to this Order acknowledge and agree that EPA's approval of this Order does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of Section 112(r) of the CAA. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with the CAA or any other applicable local, state, or federal laws and regulations.
49. 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, 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 any law.
50. Nothing herein shall be construed as an extension of time for complying with any statutory or regulatory requirement under the CAA or any other law.

51. Respondent waives any rights to judicial review of this Order.
52. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been raised in the present matter.
53. Neither EPA, nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondent or its employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Order. Nor shall EPA or the United States, by issuance of this Order, be held to it as a party to a contract entered into by Respondent or by its employees, agents, contractors, or consultants.
54. The parties to this Order shall bear their own costs and fees in this action, including attorney fees.
55. Each undersigned representative of the parties to this Order certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Order and to execute and legally bind that party to it.
56. The effective date of this Order ("Effective Date") shall be the date of signature by EPA after an executed counterpart has been signed by Respondent and returned to EPA.

*IN THE MATTER OF RENTECH NITROGEN PASADENA, LLC
EPA DOCKET NUMBER CAA-06-2015-3309*

In the Matter of Rentech Nitrogen Pasadena, LLC
Docket Number: CAA-06-2015-3309

For Respondent:



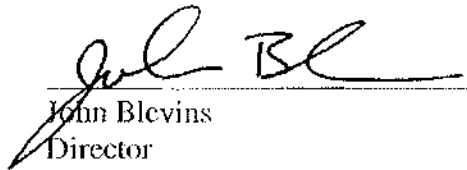
Mr. John H. Diesch
President
Rentech Nitrogen Pasadena, LLC

Date: 3/17/15

*IN THE MATTER OF RENTECH NITROGEN PASADENA, LLC
EPA DOCKET NUMBER CAA-06-2015-3309*

In the Matter of Rentech Nitrogen Pasadena, LLC
Docket Number: CAA-06-2015-3309

For U.S. Environmental Protection Agency:


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John Blevins
Director
Compliance Assurance and
Enforcement Division

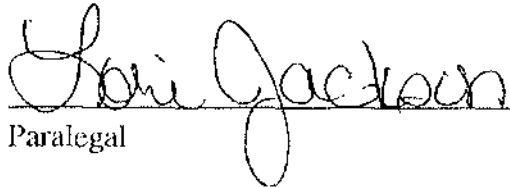
Date: 3.24.15

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of March, 2015, a copy of the foregoing Administrative Order on Consent was mailed to the following individual by the method indicated below:

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED and ELECTRONIC COPY

Peter K. Wahl
Jackson walker, LLP
Bank of America Plaza
901 Main Street
Suite 6000
Dallas, Texas 75202



Paralegal

3/26/2015

Date