



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

AUG 15 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Tyrone Pearson
Plant Manager
Bluewater Thermal Processing, LLC
75 East Lake Street
Northlake, Illinois 60164

Re: Bluewater Thermal Processing, LLC, Northlake, Illinois, Consent Agreement and
Final Order
Docket No. **CAA-05-2012-0044**

Dear Mr. Pearson:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on AUG 15 2012. Please pay the civil penalty in the amount of \$ 72,310 in the manner prescribed in paragraphs 31-33 and reference your check with the number BD 2751203A045 and the docket number CAA-05-2012-0044.

Please feel free to contact Silvia Palomo at (312)353-2172 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jose C. de Leon at (312)353-7456. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Hans", followed by a horizontal line.

Michael E. Hans, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

RECEIVED

AUG 15 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)
)
Bluewater Thermal Processing, LLC)
D/B/A Bluewater Thermal Solutions)
(owner of former Hi-Temp, Incorporated)
facility) Northlake, Illinois)
)
)
)
Respondent.)
_____)

Docket No. CAA-05-2012-0044

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. §§ 22.1(a)(2), 22.13(b), 22.18(b)(2), and (3).

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Bluewater Thermal Processing, LLC d/b/a Bluewater Thermal Solutions (Bluewater), a corporation doing business in Illinois. Bluewater is the current owner of the facility formerly owned and operated by Hi Temp, Incorporated and located in Northlake, Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint and without the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO; however, Respondent neither admits nor denies the factual allegations or the alleged violations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Pursuant to § 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate release prevention, detection, and correction requirements to prevent accidental releases of regulated substances.

10. On June 20, 1996, the U.S. 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 Act, 42 U.S.C. § 7412(r)(7). These regulations require owners and operators of stationary sources that have more than a threshold quantity of a regulated substance in a process to develop and implement a Risk Management Program to detect and prevent or minimize accidental releases of regulated substances from a stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

11. Pursuant to 40 C.F.R. § 60.12, the owner or operator of a stationary source subject

to 40 C.F.R. Part 68 must submit a single Risk Management Plan (RMP) to U. S. EPA.

12. Pursuant to Section 112(r)(7) of the Act, 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, three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which a regulated substance is first present above the threshold quantity in a process.

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

14. "Stationary source" shall mean any buildings, structures, equipment, installations, or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur. 42 U.S.C. § 7412(r)(2)(c). The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 C.F.R. parts 192, 193, or 195, or a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. § 60105. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way as specified in 40 C.F.R. § 68.3.

15. "Threshold quantity" shall mean the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Act, as amended, 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.

16. "Regulated substance" shall mean any substance listed pursuant to section 112(r)(3) of the Act as amended. 40 C.F.R. § 68.3.

17. "Process" shall mean 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. 40 C.F.R. § 68.3.

18. Complainant has authority under Section 113 of the Act to pursue civil penalties for violations of the Section 112(r)(7) regulations found at 40 C.F.R. Part 68.

19. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 through January 12, 2009; and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000, for violations that occurred after January 12, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

21. The Administrator and the Attorney General of the United States, each through their

respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

22. Respondent is a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

23. Respondent owns and operates a facility, located at 75 East Lake Street, Northlake, Illinois 60164, which consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person (Facility). Bluewater purchased the Facility from Gibraltar Steel, in 2006, after the RMP submittal deadline of June 21, 1999.

24. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed anhydrous ammonia (CAS No. 7664-41-7) as a substance regulated under Section 112(r) of the Act, 42 U.S.C. § 7412(r), identifying 10,000 lbs. as the threshold quantity. 40 C.F.R. § 68.130, Table 1.

25. On September 10, 2008, a representative of U.S. EPA conducted a Risk Management Program inspection of the facility.

26. Based on the inspection, U.S. EPA found that the Respondent had more than 10,000 lbs. of anhydrous ammonia and used such anhydrous ammonia at the Facility.

27. Based on the inspection, it was noted that the Respondent (or Respondent's predecessor) failed to:

- a. Compile and maintain the safety information on the anhydrous ammonia tanks, and dissociators, as required under 40 C.F.R. § 68.65(a).
- b. Conduct a process hazard analysis, as required under 40 C.F.R. § 68.67(a).

- c. Develop written emergency shutdown procedures, including the conditions under which emergency shutdown is required, and the person(s) assigned with this responsibility, as required under 40 C.F.R. § 68.69(a)(iv).
- d. Provide refresher training to the operators on the operating procedures, as required under 40 C.F.R. § 68.71(b).
- e. Prepare and implement procedures to maintain the on-going mechanical integrity of the anhydrous ammonia storage tanks, ammonia heaters; pressure relief valves, and connecting piping, as required under 40 C.F.R. § 68.73(a).
- f. Conduct inspections and tests on the process equipment, as required under 40 C.F.R. § 68.73(d).
- g. Establish written management of change procedures, as required under 40 C.F.R. § 68.75(a).
- h. Conduct compliance audits, as required under 40 C.F.R. § 68.79(a).
- i. Evaluate contractors' safety performance and programs before selecting the contractor for performing maintenance on the process, as required under 40 C.F.R. § 68.87(b).

28. The above-described violations of the RMP regulations are violations of Section 112(r)(7)(E) of the Act.

29. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

30. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Civil Penalty

31. Complainant has determined that an appropriate civil penalty to settle this action is \$72,310. In determining the penalty amount, Complainant has considered the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and prompt return to compliance by Respondent. Complainant has also considered U.S. EPA's Combined Enforcement Policy for Section 112(r) of the Clean Air Act, dated August 15, 2001.

32. Within 30 days after the effective date of this CAFO, Respondent must pay the \$72,310 civil penalty for violations of the Act by:

[for checks sent by regular U.S. Postal Service mail] sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

[for checks sent by express mail] sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note "Bluewater Thermal Processing, LLC", the docket number of this CAFO, and the billing document number.

[for electronic funds transfer] electronic fund transfer, payable to "Treasurer, United States of America," to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic fund transfer, state Respondent's name, the docket number of this CAFO and the billing document number.

33. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and/or transmittal letter to:

Attn: Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Silvia Palomo (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Jose C. de Leon (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

34. This civil penalty is not deductible for federal tax purposes.

35. If Respondent does not pay timely the civil penalty under paragraph 31 above, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling

charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

36. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

37. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

38. The CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

39. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 36 above, compliance with this CAFO will not be a defense to any violations occurring after the date of this CAFO pursuant to federal laws administered by Complainant.

40. Respondent certifies that it is complying fully with Section 112(r) of the Act, 42 U.S.C. § 7412(r), and its implementing regulations codified at 40 C.F.R. Part 68.

41. Each violation listed in paragraph 27 of this CAFO constitutes a "prior violation"

as that term is used in U.S. EPA's *Combined Enforcement Policy for Section 112(r) of the Clean Air Act* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

42. The terms of this CAFO bind Respondent, its successors, and assigns.

43. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and attorneys' fees in this action.

45. This CAFO constitutes the entire agreement between the parties.

Bluewater Thermal Processing, LLC, Respondent

7-17-12
Date

Michael Wellham
Mike Wellham
President & Chief Executive Officer

United States Environmental Protection Agency, Complainant

8/7/12
Date

for Richard C. Karl
for
Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of:

Bluewater Thermal Processing, LLC

Docket No. CAA-05-2012-0044

RECEIVED

AUG 15 2012

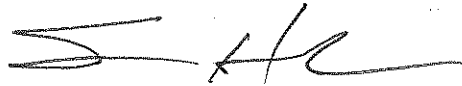
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8-14-12

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5