



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

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FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2016-0005

IN THE MATTER OF:

CANARY DRILLING SERVICES, LLC
410 17th Street, Suite 1320
Denver, Colorado 80202

FINAL ORDER

RESPONDENT

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 29th DAY OF August, 2016.

Elyana Sutin
Regional Judicial Officer

7. Respondent consents to the terms of this CCCA, including the assessment of the civil penalty specified below.

III. STATUTORY AND REGULATORY FRAMEWORK

8. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorizes the Administrator of the EPA to promulgate regulations regarding the prevention and detection of accidental releases of designated chemicals. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan (RMP) to prevent or minimize risks of accidental releases of those designated substances. The regulations, promulgated by the EPA pursuant to CAA § 112(r)(7), are set forth in 40 C.F.R. part 68.
9. Under 40 C.F.R. § 68.3, the following definitions apply:
 - a. "Stationary source" means "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."
 - b. "Regulated substance" means "any substance (listed pursuant to section 112(r)(3) of the CAA) in 40 C.F.R. § 68.130." Threshold quantities for the regulated substances are included in 40 C.F.R. § 68.130.
10. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term "person" to include in relevant part, an individual, corporation, or partnership.
11. 40 C.F.R. § 68.12 provides that the owner or operator of a stationary source subject to 40 C.F.R. part 68 shall submit a single RMP as provided in §§ 68.150 to 68.185.
12. 40 C.F.R. § 68.150 provides that the owner or operator shall submit the first RMP no later than the date on which a regulated substance is first present above a threshold quantity in a process.

IV. SPECIFIC ALLEGATIONS

13. Respondent is a limited liability company, and therefore a person, and thus subject to regulation under section 112 of the CAA, 42 U.S.C. § 7412.
14. Respondent is the owner and/or operator of a facility located at 2438 Highway 85 North, Watford City, North Dakota (Facility), which is a stationary source.
15. On July 9, 2015, an authorized EPA inspector entered the Facility to inspect it for compliance with section 112(r) of the CAA, 42 U.S.C. § 7412(r).
16. Based on the inspection and subsequent communications with Respondent, the EPA determined that the Facility exceeded a threshold quantity of propane (CAS #: 74-98-6), a regulated substance, in a process between August 1, 2015, and October 1, 2015.

17. Respondent did not file a RMP prior to, or at any time during which propane was present above a threshold quantity at the Facility.

V. FINDINGS OF VIOLATION

18. The Facility exceeded a threshold quantity of a regulated substance in a process from August 1, 2015, until October 1, 2015, and did not file the required RMP. Therefore, the Facility was in violation of section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. §§ 68.12 and 68.150, from August 1, 2015, until October 1, 2015.

VI. CIVIL PENALTY

19. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each violation of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of 42 U.S.C. § 7412(r). To determine the amount of the civil penalty to be assessed pursuant to section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), the EPA took into account, in addition to such other factors as justice may require, 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 as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.
20. Respondent consents and agrees to pay a civil penalty in the amount of fifteen thousand and eight hundred dollars (\$15,800.00) in the manner described below:
- a. Payment shall be in four installments. The first installment is due no later than 30 calendar days from the date of the Final Order issued by the Regional Judicial Officer. The remaining installments are due 30, 60, and 90 days, respectively, after the due date for the first installment. The first three installments shall be in the amount of \$3,958.35 each. The last installment shall be in the amount of \$3,944.90. The amount of \$19.95 constitutes interest on an agreed-upon settlement of \$15,800.00.
 - b. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - c. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in the preceding paragraph, and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox No. 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

Contact: Craig Steffen, 513-487-2091, steffen.craig@epa.gov

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: US Environmental Protection Agency

If remitted through the Automated Clearing House (ACH) for receiving US currency:

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, Maryland 20737
Contacts: REX (Remittance Express): 866-234-5681

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via WWW.PAY.GOV, entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

Copies of the check or record of payment shall be sent to:

Greg Bazley
U.S. Environmental Protection Agency (8ENF-AT)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)

1595 Wynkoop Street
Denver, Colorado 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

21. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1st late day, 30 days of interest will have accrued).
22. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.
23. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.


VII. GENERAL PROVISIONS

24. This CCCA contains all terms of the settlement agreed to by the Parties.
25. This CCCA, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.
26. Nothing in the CCCA shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.
27. Failure of Respondent to comply with any terms of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
28. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.
29. Nothing in the CCCA shall be construed as a waiver by the United States of its authority to seek costs or any appropriate civil penalty associated with any action instituted in the appropriate U.S. District Court as a result of Respondent's failure to perform pursuant to the terms of this CCCA.
30. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into and legally bind Respondent to the terms and conditions of the CCCA.

- 31. The Parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
- 32. Each Party shall bear its own costs and attorney's fees in connection with this administrative matter.
- 33. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the Parties, shall be a complete and full civil settlement of the EPA's civil penalty claims against Respondent for the specific violation alleged in this CCCA.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, REGION 8,

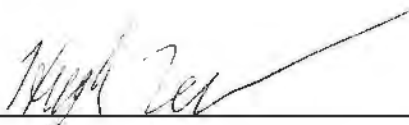
Date: 8/26/16

By: 
Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Complainant

CANARY DRILLING SERVICES, LLC

Date: 8/17/16

By: 
GC

Title

Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **CANARY DRILLING SERVICES, LLC; DOCKET NO.: CAA-08-2016-0004** was filed with the Regional Hearing Clerk on August 29, 2016.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Abigail Dean, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on August 29, 2016, to:

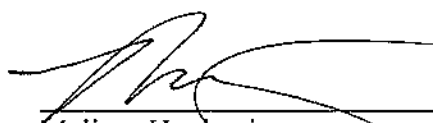
Respondent

Hugh Lehr, General Counsel
Canary Drilling Services, LLC
410 17th Street, Suite 1320
Denver, CO 80202

And emailed to:

Jessica Farmer
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

August 29, 2016


Melissa Haniewicz
Regional Hearing Clerk

