

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

In the Matter of:

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) Docket No. CAA-07-2017-0004
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)

Respondent)

ADMINISTRATIVE ORDER FOR COMPLIANCE

Pursuant to Section 113(a)(3)(B) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3)(B), as amended, Custom Alloy Sales 34P, LLC (“Respondent” or “Custom Alloy”), Prescott, Kansas, is hereby ordered by the United States Environmental Protection Agency (“EPA”) to comply with the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68, and to take the specific compliance actions set forth below.

Statutory and Regulatory Background

1. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(f) to the CAA, 42 U.S.C. § 7412(f), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7), 42 U.S.C. § 7412(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

2. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. These regulations require owners and operators of stationary sources to develop and implement a Risk Management Program that includes a hazard assessment, a prevention program, and an emergency response program.

3. 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 EPA.

4. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted for all covered processes, by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.
5. Section 113(d) of the CAA, 42 U.S.C. § 7413(d) grants the Administrator the authority to make finding of violation of a requirement or prohibition of Title I, and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition.
6. Respondent may seek federal judicial review of the Order pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).
7. Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), grants EPA the authority to issue an Order to any person found in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), or the regulations promulgated pursuant thereto.

Definitions

8. The regulations at 40 C.F.R. § 68.3 define “stationary source” 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.
9. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130, Tables 1, 2, 3, and 4, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.
10. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130, Tables 1, 2, 3, and 4.
11. 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 Background

12. Custom Alloy 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).

13. Custom Alloy's facility, located at 4008 Vernon Road in Prescott, Kansas is a "stationary source" pursuant to 40 C.F.R. § 68.3.

14. EPA inspected Custom Alloy's Prescott, Kansas facility on May 10-11, 2016, to determine compliance with Section 112(f) of the CAA, 42 U.S.C. § 7412(f), and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that Custom Alloy had failed to properly implement the risk management program at the facility.

15. Chlorine is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for chlorine, as listed in 40 C.F.R. § 68.130, Table 1, is 2,500 pounds.

16. At the time of the inspection, Custom Alloy had more than 2,500 pounds of chlorine in a process at the Prescott, Kansas facility.

Finding of Violation

17. The facts stated in Paragraphs 12 through 16, above, are herein incorporated.

18. Custom Alloy is subject to the requirements of Section 112(f) of the CAA, 42 U.S.C. § 7412(f), and 40 C.F.R. Part 68, because it is the owner and operator of a stationary source that had more than the threshold quantity of a regulated substance in a process.

19. Custom Alloy failed to comply with the requirements of 40 C.F.R. Part 68, as follows, in violation of Section 112(f) of the CAA, 42 U.S.C. § 7412(f):

- (i) Failure to follow the onsite consequence analysis parameters per 40 CFR §§ 68.22, 68.25, and 68.28 and failure to properly mark the presence of institutions per 40 CFR 68.30(b) on the RMP.
- (ii) Failure to address the Process Hazard Analysis team findings and recommendations in a timely manner and develop a written schedule for completing actions per 40 CFR § 68.67(e).
- (iii) Failure to conduct compliance audits at least once every three years per 40 CFR § 68.79(a).
- (iv) Failure to include steps required to correct or avoid deviations from operating limits per 40 CFR § 68.69(a)(2)(ii).
- (v) Failure to include its five-year accident history and address safety improvements in the Executive Summary in the RMP per 40 CFR §§ 68.42 and 68.155(d).
- (vi) Failure to include recommendation(s) in its August 4, 2014 incident

(vii) Failure to update the RMP with 6 months of an accident per 40 CFR § 68.195(a).

(viii) Failure to submit an RMP on the date the regulated substance was first present above a threshold quantity in a process per 40 CFR 68.150(b)(3).

Order for Compliance

20. Based on the Factual Background and Finding of Violation set forth above, and pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended, Custom Alloy, is hereby ORDERED to take the actions described below.

21. Within 90 days of the effective date of this Administrative Order for Compliance (“Order”), Custom Alloy must comply with the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68, including, but not limited to, completion of the following compliance actions:

(i) Develop a plan to address the April, 2015 Process Hazard Analysis findings with set target dates and assigned individuals for the findings in accordance with requirements in 40 CFR § 68.67(e).

(ii) Update the electronic RMP with the required information as follows:

(iii) Update the worst case offsite consequence analysis in section 2 of the RMP. Worst-case analysis must follow:

1. Parameters described in 40 CFR § 68.22(b – g) and required in 40 CFR § 68.25(g).
2. Passive mitigation requirements in 40 CFR § 68.25(h)
3. Duration parameters described in 40 CFR § 68.25(c).
4. Quantity parameter described in 40 CFR § 68.25(b).
5. Update population, and environmental impacts as appropriate per 40 CFR §§ 68.30 and 68.33.

(iv) Update the alternative case offsite consequence analysis in section 3 of the RMP. Alternative-case analysis must follow:

1. Parameters described in 40 CFR § 68.22(b – g) and required in 40 CFR § 68.28(c).
2. Passive or active mitigation requirements in 40 CFR § 68.28(d)
3. Address multiple scenarios which are most likely to occur, and determine if any have the potential to reach an endpoint offsite per 40 CFR § 68.28 (b).
4. Update population, and environmental impacts as

- (v) Update the five-year accident history in section 6 of the RMP to include accidental releases which resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage in accordance with 40 CFR § 68.42.
- (vi) Update the executive summary in the RMP in accordance with 40 CFR § 68.155(d) to include five-year accident history.
- (vii) Update section 7 of the RMP to reflect accurate dates for compliance audit and incident investigation information per 40 CFR §§ 68.175(k) and 68.175(l).
- (viii) Conduct a compliance audit in accordance with 40 CFR § 68.79.
- (ix) Update the operating procedures to include normal operating limits for the chlorine process, document what can happen if the operating limits are deviated from, and steps to take if the process is exceeding these normal operating limits per 40 CFR § 68.69(a)(2).
- (x) Identify steps the facility has taken to eliminate or reduce occurrence of the chlorine leaks on C-furnace due to loose tubing in accordance with 40 CFR § 68.81(e).

All such actions/work shall be completed as expeditiously as possible, but no later than 90 days of the effective date of this order. EPA will review and may provide comments on the actions and schedule to comply with industry standards.

22. Custom Alloy must provide documentation of completion of these tasks to EPA within 90 days of the effective date of this Order. All documentation shall be submitted in accordance with Paragraphs 23 and 24 of this Order.

Submissions

23. All submissions to EPA required by this Order shall contain the following certification signed by an authorized representative of Custom Alloy:

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, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility

24. All submissions to EPA required by this Order shall be sent to:

Laura I. Brewer
Chemical Risk Information Branch
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

25. Pursuant to 40 C.F.R §§ 2.201-2.311, Custom Alloy may assert a business confidentiality claim covering any portion of the submitted information that is entitled to confidential treatment. For any such claim, describe the basis of the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, “Confidential Business Information.” Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the submitted information to the public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations.

General Provisions

Potential Liability

26. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. Under Section 113(a) of the CAA, 42 U.S.C. § 7413(a), the Administrator is authorized to address such a violation as follows:

- (i) issue an administrative penalty order assessing a civil penalty not to exceed \$45,268 per day of violation;
- (ii) bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$45,268 per day of violation, or both; or
- (iii) request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA, 42 U.S.C. § 7413(c).

27. Issuance of this Order does not preclude the State of Iowa or EPA from assessing penalties or taking any other action authorized under the CAA. This Order does not affect the obligation of Custom Alloy to comply with all federal, state, and local statutes, regulations, and permits.

Amendment of Order

28. EPA may subsequently amend this Order, in writing, in accordance with the authority of the CAA. Any amendment will be transmitted to Respondent. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order.

Access and Requests for Information

29. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect the Custom Alloy facility, and/or to request additional information from Custom Alloy Sales 34P, LLC pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414.

Effective Date

30. The terms of this Order shall be effective and enforceable against Custom Alloy upon its receipt of the Order.

2/9/17
Date


Becky Weber
Director
Air and Waste Management Division

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of Kansas Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Rhett King
General Manager
Custom Alloy Sales 34P, LLC
4008 Verron Road
Prescott, Kansas 66767

5/12/17

Signature 