

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

IN THE MATTER OF)
)
)
NATIONAL COLD STORAGE, INC.) Docket No.: CAA-07-2016-0028
Bonner Springs, Kansas)
)
Respondent)
_____)

ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT

Preliminary Statement

1. This Administrative Compliance Order on Consent (“Order”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and by Respondent, National Cold Storage, Inc. (“NCS” or “Respondent”), pursuant to Section 113(a)(3)(B) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3)(B), as amended.

2. This Order requires NCS to comply with the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68. Specifically, EPA orders Respondent to properly develop and implement a Risk Management Program and submit an amended Risk Management Plan to address identified violations and deficiencies specified herein, if the facility will have present more than the threshold quantity of anhydrous ammonia; or, alternatively, utilize administrative or engineering controls to maintain the quantity of the toxic substance below the threshold. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion may be specified herein. With the exception of extension of deadlines for submittals or performance, the terms of this Order shall not be modified except by a subsequent written agreement between the parties.

3. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent also waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1), or under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Regulatory Background

4. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of 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). 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).

5. 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.

6. 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.

7. Pursuant to Section 112(r)(7) of the Clean Air Act, 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.

8. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), grants the Administrator the authority to make a 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.

Definitions

9. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

10. 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.

11. 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.

12. 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.

13. 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.

14. As used herein, the term “day” shall mean calendar day.

EPA’s Factual Background

15. Respondent is the owner and/or operator of a commercial refrigeration facility that utilizes compressed anhydrous ammonia as the refrigerant. The facility is located at 12755 Loring Drive, Bonner Springs, Kansas 66012.

16. At all times relevant to this Administrative Compliance Order on Consent, Respondent produced, processed, handled and/or stored anhydrous ammonia at its facility above the threshold quantity for anhydrous ammonia as specified at 40 C.F.R. § 68.115 and. § 68.130.

17. On or about January 28-29, 2015, EPA conducted an inspection at, and obtained information regarding the NCS facility located in Bonner Springs, Kansas and the facility’s compliance with Section 112(r)(7) of the CAA and the implementing regulations at 40 C.F.R. Part 68.

18. Multiple violations of the CAA 112(r)(7) requirements at NCS’ Bonner Springs facility were observed and documented during EPA’s inspection. These violations were set forth in an inspection report that was transmitted to NCS on April 17, 2015.

19. On or about April 29, 2015 and November 20, 2015, Respondent submitted information describing actions taken to attempt to address the violations identified by EPA’s inspection. On or about November 5, 2015, NCS met with EPA to discuss the facility’s attempt to come into compliance with Section 112(r)(7) of the CAA. Upon review of information submitted, EPA determined that a compliance order was appropriate to achieve compliance with Section 112(r) of the CAA.

EPA's Conclusions of Law

20. 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).

21. Respondent's facility is a "stationary source" pursuant to 40 C.F.R. § 68.3.

22. Anhydrous ammonia is a "regulated substance" pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

23. Respondent's process uses anhydrous ammonia to chill a brine solution which is then used to refrigerate freezers and coolers within a cave complex.

24. Information collected as a result of EPA's inspection and information provided by NCS referenced in Paragraphs 17 and 19, above, shows that Respondent had greater than 10,000 pounds of anhydrous ammonia in a process at the facility.

25. Respondent is subject to the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, because it is an owner and operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

EPA's Findings of Violation

26. Based on EPA's inspection and information provided by NCS, EPA hereby alleges and finds Respondent NCS' violations of the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r) and 40 C.F.R. Part 68, include, but are not limited to, the following::

- a. NCS failed to develop a management system to oversee the implementation of the risk management program elements, in violation of 40 C.F.R. 68.15.
- b. NCS failed to review and update the off-site consequence analyses at least once every five years, in violation of 40 C.F.R. 68.36(a).
- c. NCS failed to maintain records on the offsite consequences analyses, in violation of 40 C.F.R. 68.39(a-b, d-e).
- d. NCS failed to document that its process equipment complies with recognized and generally accepted good engineering practices, and for existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator failed to determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner, in violation of 40 C.F.R. 68.65(d)(2-3).

- e. NCS failed to conduct a Process Hazard Analysis (“PHA”) at least every five years and retain all PHAs for the life of the process, in violation of 40 C.F.R. 68.67(f-g).
- f. NCS failed to develop and implement written operating procedures that address safety and health considerations, specifically properties of, and hazards presented by the chemicals used in the process, in violation of 40 C.F.R. 68.69(a)(3)(i).
- g. NCS failed to certify annually that the operating procedures are current and accurate, in violation of 40 C.F.R. 68.69(c).
- h. NCS failed to conduct an initial or refresher training and document the training, in violation of 40 C.F.R. 68.71.
- i. NCS failed to have inspection and testing procedures that follow recognized and generally accepted good engineering practices; failed to conduct inspections at a frequency consistent with good engineering practices; and failed to identify the date of the inspection or test and the and the name of the person who performed the inspection or test, in violation of 40 C.F.R. 68.73(d).
- j. NCS failed to correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation, in violation of 40 C.F.R. 68.73(e).
- k. NCS failed to certify that it has evaluated compliance with the provisions of Subpart D at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed and failed to retain the two most recent compliance audit reports, in violation of 40 C.F.R. 68.79.
- l. NCS failed to consult employees on the conduct and development of PHAs and on the development of the other elements of process safety management and failed to provide employees access to all information required by 40 C.F.R. 68, in violation of 40 C.F.R. 68.83(b-c).
- m. NCS failed to obtain and evaluate information regarding contractor's safety performance and programs and failed to periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in 40 C.F.R. 68.87(c), in violation of 40 C.F.R. 68.87(b)(1),(5).
- n. NCS failed to submit a RMP that correctly included the required information regarding the emergency response program (Section 9 of the RMP) per 40 C.F.R. 68.180.

- o. NCS failed to revise and update the RMP at least once every five years, in violation of 40 C.F.R. 68.190(b)(1).
- p. NCS failed to submit a correction of the RMP within one month of any change in the emergency contact information, in violation of 40 C.F.R. 68.195(b).

27. Respondent NCS's failures to comply with the regulations cited in Paragraph 26 above are each a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r).

Compliance Order

28. Based upon the foregoing Findings of Violation by EPA, it is hereby ordered and agreed that Respondent shall comply with the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68. Specifically, EPA and Respondent agree that Respondent shall, as expeditiously as possible, but in no event later than 90 days after the effective date of this Order, complete the following initial compliance actions:

- a. If the Bonner Springs, Kansas. facility will, from the effective date of this Order, limit the presence of anhydrous ammonia to less than the threshold quantity, within 30 days of the Effective date of this Order, Respondent must do the following:
 - (1) Submit a plan for EPA approval that utilizes administrative or engineering controls to maintain the quantity of anhydrous ammonia below the threshold quantity. The plan must include a description, basis for design, implementation schedule and a statement, certified according to Paragraph 31 below, stating that the facility is no longer subject to the requirements of developing a Risk Management Program and submitting an RMP based on recognized and generally accepted good engineering practices. EPA will have 45 days to approve or reject the plan. If the plan is rejected, Respondent will have an additional 45 days to revise the plan according to EPA's comments. Upon approval, Respondent shall implement the plan immediately.
 - (2) Submit a statement for EPA approval describing how the facility intends to comply with the obligations of CAA § 112(r)(1)'s General Duty Clause. The statement must specifically identify hazards which could result from a release of the chemicals used at the facility and specify the hazard assessment technique(s) used to identify those hazards; describe how facility is designed and maintained to be safe, including the measures the facility takes to prevent releases; and describe the measures the facility takes to minimize the consequences of accidental releases which do occur.
- b. Alternatively, if the Bonner Springs, Kansas facility will, from the effective date of this Order, continue to have present more than the threshold quantity of

anhydrous ammonia, within 30 days of the effective date of this Order, Respondent 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:

- (1) All necessary actions to achieve compliance for the violations identified in Paragraph 26, above;
- (2) Proper implementation of a risk management program that includes the elements required by 68.15 through 68.195, as required by 40 C.F.R. 68.10 through 68.12; and
- (3) Documentation that equipment at the facility complies with and inspection and testing procedures follow recognized and generally accepted good engineering practices in accordance with 40 C.F.R. § 68.65(d)(2-3) and § 68.73(d-e). This includes but is not limited to certification that the process high pressure receiver is “fit for service” by a licensed professional in accordance the applicable industry standards. Industry standards should include, but are not limited to, the Compressed Gas Association (“CGA”) and the American National Standards Institute (“ANSI”) industry standard titled ANSI/CGA G-2.1-2014 “Requirements for the Storage and Handling of Anhydrous Ammonia” and the American Petroleum Institute (“API”) publication API 510 “Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration.” In the event that the “fitness for service” test requires replacement and/or repair of the high pressure receiver, Respondent shall complete the replacement of the receiver within 90 days of receipt of the testing results documenting the need for replacement and/or repair;

29. Any construction or facility modifications required to be implemented under Paragraph 28(a) shall be completed within six months.

30. Respondent shall submit documentation showing completion of the actions required by Paragraph 28 as follows:

- a. Respondent shall submit a Completion Report to EPA within 30 days of completing the actions required by Paragraph 28(a). For facilities utilizing administrative controls to stay below the threshold quantity of the anhydrous ammonia, the Report shall include a copy of the administrative control(s) used at those facilities. For facilities utilizing engineered controls, the Report shall include relevant documentation of the engineering controls, including the date of completion, total construction costs, contractor invoices, and photos of the completed projects.

- b. Until such time as Respondent NCS reduces the quantity of anhydrous ammonia at the facility below the threshold level (See Paragraph 28(a)), Respondent shall submit Monthly Reports to EPA documenting the ongoing compliance actions required by Paragraph 28(b). Each month, from the effective date of this Order until the termination of this Order, Respondent shall provide a progress report to EPA detailing the actions Respondent has taken in furtherance of its obligations under this Order. Upon completion of each milestone detailed in Paragraph 28(b) of this Order, Respondent shall provide verification in the monthly progress report that the requirement is being satisfied. The first progress report shall be due no later than 30 days after the effective date of this Order. Each subsequent progress report shall be due every 30 days thereafter.

31. All documents required to be submitted to EPA by this Order shall contain the following certification signed by an officer of the 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, 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. (Signature)

32. The submissions required by Paragraphs 28, 30, and 31 shall be made to:

Howard C. Bunch
Sr. Assistant Regional Counsel
United States Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219;

and to

Amber Whisnant
Chemical & Oil Release Prevention Branch
Enforcement, Inspection, & Compliance Section
United States Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

33. 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.

Potential Liability

34. 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, the Administrator is authorized to address such a violation as follows:

- a. Issue an administrative penalty order assessing a civil penalty not to exceed \$37,500 per day of violation;
- b. Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$37,500 per day of violation, or both; or
- c. Request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA.

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

General Provisions

36. This Order shall become effective on the date that it is signed by the EPA Region 7 Director of the Air and Waste Management Division.

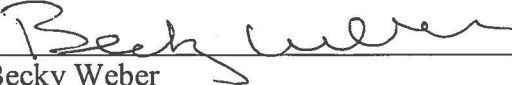
37. Deadlines for submittals or performance may be extended by EPA, at its sole discretion, without further amendment to this Order. EPA will provide Respondent written confirmation and documentation of any such extensions of time.

38. This Order shall terminate one year from the effective date of this Order.

39. This Order is binding on the Parties signing below.

COMPLAINANT:

U. S. ENVIRONMENTAL PROTECTION AGENCY



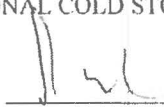
Becky Weber
Director
Air and Waste Management Division

6/1/16

Date

RESPONDENT:

NATIONAL COLD STORAGE, INC.

By 
AMIR MINDOFOR

Title MANAGER

Date 5-26-2016

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Docket Clerk, United States Environmental Protection Agency, Region 7, 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 on Consent by first class certified mail, return receipt requested, to:

National Cold Storage, Inc.
Attention: John Taylor, Plant Manager
12755 Loring Drive
Bonner Springs, Kansas 66012

June 1, 2016
Date

Anna M. Rook