

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

2008 JAN -7 AM 10:27

IN THE MATTER OF:)

Montana Silversmiths, Inc.)

Respondent)

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

Docket No. CAA-08-2008-0003

ADMINISTRATIVE ORDER

EPA REGION VIII
HEARING OFFICE

ADMINISTRATIVE ORDER

This Administrative Order ("Order") is issued to Montana Silversmiths, Inc. ("Respondent") pursuant to Title I, section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. §7413 (a)(3)(B). Section 113(a)(3)(B) grants to the Administrator of the U.S. Environmental Protection Agency ("EPA") 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.

BACKGROUND

1. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added section 112(r) to the Clean Air Act, 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.
2. Pursuant to the general duty clause ("GDC") found at section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to section 112(r)(3) of the Clean Air Act, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to: (a) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) to design and maintain a safe facility taking such steps as are necessary to prevent releases; and, (c) to minimize the consequences of accidental releases which do occur.
3. Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$32,500 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the Clean Air Act referenced therein, including section 112(r)(1).

4. 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.

5. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to section 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130, Tables 1, 2, 3 and 4.

6. 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.

FINDING OF FACT

7. Respondent is, and at all times referred to herein was, a “person” as defined by section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

8. The Facility is a “stationary source” pursuant to section 112(r)(2)(C) of the Clean Air Act and 40 C.F.R. § 68.3.

9. Respondent is the owner and/or operator of a plating company located at 1 Sterling Lane, Columbus, Montana (the “Facility”). The Facility is located adjacent to a residential area and produces ornamental silver and gold products.

10. At its Facility, Respondent handles, and/or stores, anhydrous ammonia, a regulated substance pursuant to section 112(r)(2) and (3) of the Clean Air Act, which is listed at 40 C.F.R. § 68.130.

11. EPA inspector, David Cobb, conducted an inspection of the Facility on August 15, 2006, to determine compliance with section 112(r) of the Clean Air Act.

12. EPA's inspection of the Facility revealed a number of safety concerns including the physical location of the anhydrous ammonia tanks, the hazard assessment of these tanks, the standard operating procedures used to maintain the tanks, and the incident response policy used to respond to accidental releases.

13. On September 29, 2006, the EPA issued an Administrative Order which required the Respondent to comply with the requirements of section 112(r) of the Clean Air Act. Since that Order was issued, the Facility has been researching the possibility of removing anhydrous ammonia from the process. However, the Facility is still not in full compliance with the GDC requirements. For this reason, EPA and Respondent have agreed to the issuance of a second Order containing mutually agreed upon terms thereby addressing the potential elimination of the anhydrous ammonia at the Facility.

FINDING OF VIOLATIONS

General Duty Clause

14. Pursuant to section 112(r)(1) of the Clean Air Act, Respondent has a general duty, in the same manner and to the same extent as 29 U.S.C § 654, to: (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and, (c) minimize the consequences of accidental releases which do occur.

15. Based on information available to EPA, including information gathered during the inspection performed by EPA at the Facility and the FINDING OF FACT set forth above, EPA has determined that Respondent failed to satisfy the general duty referred to in Paragraph 14 above, in that, among other things, Respondent has not designed and maintained a safe facility taking such steps as are necessary to prevent releases of a regulated substance and minimize the consequences of accidental releases that do occur. Therefore, Respondent violated the provisions of section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1).

COMPLIANCE ORDER

16. Based upon the foregoing Finding of Fact, Finding of Violations, other information available to EPA, and pursuant to section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7413 (a)(3)(B), Respondent is hereby ORDERED as follows:

- a. To comply with the Clean Air Act and its implementing regulations including, but not limited to, those requirements set forth in section 112(r)(1) and those requirements specifically required in this Compliance Order. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

- b. Respondent shall take the following steps to comply with the General Duty Clause requirements of the Clean Air Act:
- i. During the timeframe of December 2007 – March 2008, Respondent will complete the steps necessary to determine if the anhydrous ammonia can be removed from its production process. These steps include testing new solder on different products, furnaces, and conducting product durability tests. Respondent will provide informal updates (emails, phone calls) to EPA on the solder and durability test results.
 - ii. **By March 17, 2007**, Respondent will provide a written status report to EPA on the outcome of the solder and durability tests. If the Respondent requests an extension of time to complete additional testing, EPA may grant such extensions in its sole discretion. However, no extension will be granted beyond May 1, 2008.
 - iii. By May 1, 2008, Respondent shall notify the EPA in writing of its decision to either remove or not remove anhydrous ammonia from the Facility. All correspondence shall be mailed to the following address:

U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Attn: David Cobb, ENF-AT

- iv. If Respondent decides to remove the ammonia from the premises, all four anhydrous ammonia tanks shall be removed from this location within thirty (30) days of the receipt of the written final decision described in paragraph 16(b)(ii). Certification of the removal shall be sent to this office at the address listed above within ten (10) days of completion of the removal. The certification letter shall contain the following paragraph:

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.

- v. If Respondent decides to continue to use ammonia at the Facility, the Respondent must meet its general duty obligations by resolving Findings 1-12 listed in the December 2006 hazard assessment titled, “Ammonia

Storage and Supply System Hazard Assessment", conducted by Tetra Tech, Inc. These findings, which are listed below, must be resolved in full by **July 30, 2008**:

1. Tanks must be placed on reinforced concrete foundations extending below the frost line (ANSI K61.1-1999, section 6.4.1).
2. Tanks must be positioned at least 18 inches above the ground (ANSI K61.1-1999, section 6.4.1).
3. Horizontal distance between the tanks must meet the recommended minimum of 5 feet (ANSI K61.1-1999, section 6.4.6.)
4. Fencing enclosure must provide adequate protection of the tanks from impact. Concrete ballards or removable guardrails should be installed around the enclosure (ANSI K61.1-1999, section 6.7.1).
5. Tanks must be located at least 25 feet from the adjacent residential property line (ANSI K61.1-1999, section 5.3.4, Table 3). Tanks should be located no less than 10 feet from any combustible material (including buildings). (ANSI K61.1-1999, section 5.3.6).
6. Signage must be present and visible that contains name, address, and telephone number of the nearest representative/agent/owner of the storage system (ANSI K61.1-1999, section 6.8).
7. There must be readily-available tank history/specification information and safety system information such as emergency shutoff valves, pressure relief valves, excess flow valves, ambient ammonia sensors and alarms.
8. All tanks must have legible name plate information containing all of the following data:
 - a. National Board of Boiler and Pressure Vessel Inspectors stamping indicating registration
 - b. Notation as to whether system was designed for aboveground or underground installation or both
 - c. Minimum and maximum temperatures for which the tank was designed
 - d. Official Code "U" symbol

- e. Name of manufacturer
 - f. Manufacturer's serial number
 - g. Maximum allowable working pressure (MAWP) psi at °F
 - h. Year built
 - i. Type of construction symbol (e.g. "W" for arc or gas welded) positioned directly under the "U" Code symbol
 - j. Whether and to what degree welded joints were radiographed (x-rayed)
 - k. Whether and to what degree welded joints were post-weld heat treated (HT for complete post-weld heat treated; PHT for part of tank that was post-weld heat treated)
9. All associated hoses must be documented "fit for service" according to manufacturers' recommendations for design and replacement (ANSI K61.1-1999, section 5.6.1).
10. All excess flow valves catalog numbers must be legible (ANSI K61.1-1999, section 5.5.10).
11. All pressure relief valves must be positioned for visual verification of marking requirements (ANSI K61.1-1999, section 5.8.9).
12. Install remotely activated manual emergency shut-off valve (ANSI K61.1-1999, section 5.10.8.2).

17. Within ten (10) days of completion of all steps listed in paragraph 16(b)(iv), the Respondent will provide written certification to the address listed above in paragraph 16(b)(ii).

PENALTY PROVISIONS

18. Pursuant to section 113 of the Clean Air Act, 42 U.S.C. § 7413, failure to comply with any of the provisions of the fully executed Order may subject Respondent to penalties of up to \$27,500 per day for each violation occurring before March 15, 2004. Violations occurring after March 15, 2004, are subject to penalties of up to \$32,500 per day for each violation.

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

EFFECTIVE DATE


20. Respondent may request a conference with EPA concerning the violations alleged in, and the requirements of, this Order. Such request must be made in writing and be received by EPA **no later than ten (10) days after Respondent's receipt of this Order**. The written request for a conference may be sent by **fax or mail**. Respondent has the right to be represented by counsel at the conference but it is not required.
21. If no conference with EPA is requested, the Respondent shall sign and date the Order **no later than twenty (20) days after Respondent's receipt of this Order**. The signed Order shall be sent by mail to the address listed in paragraph 22.
22. If the Respondent does not return the signed Order to the EPA Region 8 office at the above address in correct form by the 20th day after Respondent's receipt of the Order, the Order will become effective unilaterally and the EPA may file a penalty order for the violations identified herein and/or in the Order issued on September 29, 2006.
23. Letters sent pursuant to paragraphs 19 and 20 shall be addressed to:

U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Attn: David Cobb, ENF-AT
Phone: (303) 312-6592
Fax: (303) 312-6409

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

12/25/07

Date

By: 

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

12/19/07
Date

By: Michael T. Risner
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program

MONTANA SILVERSMITHS, INC.

12/21/07
Date

By: Dennis W. Potzman
Dennis Potzman, President and CEO
Montana Silversmiths, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE ORDER was hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was mailed by certified mail to:

Dennis Potzman, President and CEO
Montana Silversmiths, Inc.
1 Sterling Lane
P.O. Box 839
Columbus, MT 59019

11/7/2008

Date

Cheryl A. Turco

Signature