

RECEIVED
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

2011 MAY 13 PM 3:13

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:) **Docket No. CAA-05-2010-0058**
)
Lake's Farm Service LLC) **Proceeding to Assess a**
) **Civil Penalty under**
New Carlisle, Indiana,) **Section 113(d) of the**
) **Clean Air Act,**
) **42 U.S.C. § 7413(d)**
Respondent.

Amended Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(d).
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5, Chicago, Illinois.
3. Respondent is Lake's Farm Service LLC ("Lake's Farm" or "Respondent"), a company doing business in the State of Indiana.

Statutory and Regulatory Background

4. In accordance with Section 112(r) of the Act, 42 U.S.C. § 7412, on June 20, 1996, U.S. EPA promulgated regulations to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur. These regulations, known as the Risk Management Program regulations, are codified at 40 C.F.R. Part 68.
5. The Risk Management Program regulations apply to all stationary sources that have more than a threshold quantity of a regulated substance in a process. The List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention is codified at

40 C.F.R. § 68.130. Procedures to determine whether a threshold quantity of a regulated substance is present at a stationary source are codified at 40 C.F.R. § 68.115.

6. Anhydrous ammonia is a “regulated substance,” as that term is defined in Section 112(r)(3) of the Act and 40 C.F.R. § 68.3. 40 C.F.R. § 68.130, Table 1.

7. The “threshold quantity” (as that term is defined in 40 C.F.R. § 68.3) for Anhydrous Ammonia is 10,000 pounds per year. 40 C.F.R. § 68.130, Table 1.

8. “Process” means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such a substance. 40 C.F.R. § 68.3.

9. An owner or operator of a stationary source subject to the Risk Management Program shall comply with the requirements of 40 C.F.R. Part 68 by no later than the latest of the following dates: 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 in more than a threshold quantity in a process. 40 C.F.R. §§ 68.10(a), 68.150.

10. The Risk Management Program regulations require that the owner or operator of a facility subject to the regulations develop and implement a Risk Management Plan (“RMP”) for preventing accidental releases to the air and minimizing the consequences of releases that do occur. 40 C.F.R. §§ 68.12; 68.150-68.185.

11. Under 40 C.F.R. § 68.10, all subject processes are divided into three tiers of eligibility: Programs 1, 2, and 3.

12. Program 2 is set forth at 40 C.F.R. § 68.10(c) and applies to all processes which do not meet the requirements of Program 1 eligibility, as set forth at 40 C.F.R. §68.10(b), and do not meet the requirements of Program 3 eligibility, as set forth at 40 C.F.R. §68.10(d).

13. The owner or operator of a stationary source with a process subject to Program 2 requirements shall develop and implement a management system as set forth at 40 C.F.R. § 68.15.
14. The owner or operator of a stationary source with a process subject to Program 2 requirements shall conduct a hazard assessment as set forth at 40 C.F.R. Part 68, Subpart B, §§ 68.20 through 68.42.
15. The owner or operator of a stationary source with a process subject to Program 2 requirements shall implement the prevention requirements as set forth at 40 C.F.R. Part 68, Subpart C, §§ 68.48 through 68.60.
16. The owner or operator of a stationary source with a process subject to Program 2 requirements shall submit an RMP as set forth at 40 C.F.R. Part 68, Subpart G, §§ 68.150 through 68.190.
17. The owner or operator of a stationary source with a process subject to Program 2 requirements shall implement the emergency response requirements set forth at 40 C.F.R. Part 68, Subpart E, §§ 68.90 and 68.95
18. According to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 68, the Administrator of U.S. EPA (“the Administrator”) may assess a civil penalty of up to \$27,500 per day of violation, up to a total of \$220,000, for violations that occurred on or after January 31, 1997 and March 15, 2004, and 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 on and after March 15, 2004, but before January 13, 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 on and after January 13, 2009,

under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 13, 2004).

19. 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. 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 Complaint.

General Allegations

21. Respondent is a Delaware corporation with a farm supply facility located at 54300 Walnut Road, New Carlisle, Indiana ("the Facility").

22. At the Facility, Respondent stores and sells anhydrous ammonia for fertilizer.

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

24. The Facility is a "stationary source," as that term is defined at 40 C.F.R. § 68.3.

25. For purposes of the requirements at 40 C.F.R. Part 68, Respondent is the "owner or operator" of the Facility, as that term is defined at Section 112(a)(9) of the Act.

26. Respondent's ammonia storage process is a "process," as that term is defined at 40 C.F.R. § 68.3.

27. On July 17, 1999, Respondent submitted an RMP for the process. In its RMP submission, Respondent confirmed that the Facility is subject to the Program 2 eligibility requirements. On November 29, 2005, the Respondent resubmitted an RMP. This subsequent RMP also confirmed that the Facility was subject to program 2 requirements.

28. On September 10, 2008, an authorized representative of the U.S. EPA conducted an inspection (“Inspection”) of the Facility to determine Respondent’s compliance with the Risk Management Program regulations.

29. On November 25, 2009, U.S. EPA issued an Information Request to Respondent under Section 114(a) of the Act, 42 U.S.C. § 7414(a), seeking additional information regarding the Facility’s compliance status.

30. On January 14, 2010, Respondent sent a response to the Information Request (“Response”).

31. The Response verified that Respondent had present at the Facility an amount of anhydrous ammonia greater than the threshold quantity listed in 40 C.F.R. § 68.130, as determined in accordance with 40 C.F.R. § 68.115.

32. On February 17, 2010, U.S. EPA sent to Respondent a Notice of Intent to File a Civil Administrative Complaint (“Notice”). The Notice informed Respondent of U.S. EPA’s intent to file a civil administrative action for civil penalties, based upon listed allegations of violations of the Risk Management Program regulations. The letter also provided Respondent with an opportunity to present any information that it believed U.S. EPA should consider prior to filing an administrative action, including financial data bearing on Respondent’s ability to pay. To date, Respondent has not responded in writing to this letter.

Regulatory Requirements and Violations

33. The Risk Management Program regulations, at 40 C.F.R. § 68.15(a), require the owner or operator of a stationary source with processes subject to Program 2 to develop a management system to oversee the implementation of the Risk Management Program elements.

34. The Risk Management Program regulations, at 40 C.F.R. § 68.15(b) and (c), require the owner or operator to assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the Risk Management Program elements; and when responsibility for implementing individual requirements of this part is assigned to persons other than the person assigned overall responsibility, the names or positions of these people are to be documented and the lines of authority defined through an organization chart or similar document.

35. The Risk Management Program regulations, at 40 C.F.R. § 68.25(a), require the owner or operator to analyze and report in the RMP one worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint provided in appendix A of the Risk Management Program Regulations resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions as defined in 40 C.F.R. § 68.22.

36. The Risk Management Program regulations, at 40 CFR § 68.25(b) and (c), require the owner or operator to calculate the worse-case scenario for anhydrous ammonia using “the greatest amount held in a single vessel, taking into account administrative controls that limit

the maximum quantity” and to assume that the quantity in the vessel is released as a gas over 10 minutes.

37. The Risk Management Program Regulations, at 40 C.F.R. § 68.39, require the owner or operator to maintain the documentation used to calculate worst-case and alternate release scenarios.

38. The Risk Management Program Regulations, at 40 C.F.R. § 68.48(a), require the owner or operator to compile and maintain up-to-date safety information regarding: maximum intended inventory of equipment in which the regulated substances are stored or processed; safe upper and lower temperatures, pressures, flows, and compositions; equipment specifications; and codes and standards used to design, build, and operate the process.

39. The Risk Management Program Regulations, at 40 C.F.R. § 68.50(a), require the owner or operator to conduct a hazard review of its regulated process.

40. The Risk Management Program Regulations, at 40 C.F.R. § 68.50(b), require the owner or operator conducting the hazard review, by inspecting all equipment, to determine whether the process is designed, fabricated, and operated in accordance with the applicable standards or rules.

41. The Risk Management Program Regulations, at 40 C.F.R. § 68.52, require the owner or operator to prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process.

42. The Risk Management Program Regulations, at 40 C.F.R. § 68.56(a), require the owner or operator to prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment.

43. The Risk Management Program Regulations, at 40 C.F.R. § 68.56(d), require the owner or operator to perform inspections and tests on process equipment. Inspection and testing procedures shall follow recognized and generally accepted good engineering practices

44. The Risk Management Program Regulations, at 40 C.F.R. § 68.58, require the owner or operator to certify that they have conducted a compliance audit with the prevention program at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

45. In its November 29, 2005 RMP submission to U.S. EPA, Respondent identified Kristin Boklund as the person with overall responsibility for the development, implementation, and integration of the Risk Management Program. At the time of the Inspection, Ms. Boklund was also identified as the person responsible for the Risk Management Program. Ms. Boklund's title was identified as the "Bookkeeper." In Respondent's January 14, 2010 response to the information request, Respondent identified Ms. Boklund as the person who prepares Respondent's annual reports "in keeping with the laws."

46. On January 25, 2010, U.S. EPA representatives conversed with Ms. Boklund by telephone. Ms. Boklund was asked her qualifications with regard to the Risk Management Program regulations. She responded that she has no training or experience in mechanical integrity issues, hazard identification, accident prevention, or emergency response. Thus, Respondent failed to assign a qualified person to be responsible for the development,

implementation, and integration of the Risk Management Program, in violation of 40 C.F.R. § 68.15

47. The largest vessel at the Facility containing anhydrous ammonia holds 120,000 pounds, taking into consideration the 80% administrative ceiling on tank capacity. When Respondent submitted its RMP in 2005, it reported a worse-case quantity of 71,500 pounds. The distance to toxic endpoint reported in the 2005 RMP is consistent with the amount 71,500 pounds.

Thus, Respondent failed to properly determine its worst-case release quantity and conduct its worst-case release scenario, in violation of 40 CFR § 68.25(b) and (c), respectively.

48. At the time of the Inspection, Respondent failed to provide the documentation used to calculate the worst-case scenario or the alternate release scenarios. On January 14, 2010, Respondent produced inadequate worst-case and alternate release scenario documentation dated December 31, 2009. These failures constitute violations of 40 C.F.R. § 68.39.

49. At the time of the Inspection, Respondent had not complied the process safety information required by the regulations, specifically: maximum intended inventory of equipment in which the anhydrous ammonia is stored; safe upper and lower temperatures, pressures, flows, and compositions; equipment specifications; or codes and standards used to design, build, and operate the process, in violation of 40 CFR § 68.48(a)(2) - (a)(5).

50. At the time of the Inspection, Respondent failed to provide documentation that it had performed a hazard review, as required by 40 CFR § 68.50(a). In addition, Respondent failed to provide a copy of a hazard review in response to U.S. EPA's Information Request. These failures constitute violations of 40 CFR § 68.50(a). These failures constitute violations of 40 C.F.R. § 68.50(a).

51. At the time of the Inspection, Respondent failed to document that all its equipment met industry standards or State design standards, in violation of 40 C.F.R. § 68.50(b).

52. At the time of Inspection, Respondent had no written operating procedures for safely conducting activities associated with handling anhydrous ammonia, in violation of 40 C.F.R. § 68.52.

53. At the time of the Inspection, Respondent did not have procedures to maintain the on-going mechanical integrity of the process equipment, in violation of 40 C.F.R. § 68.56(a).

54. At the time of the Inspection, Respondent had not performed inspections and tests on process equipment, in violation of 40 C.F.R. § 68.56(d).

55. At the time of the Inspection, Respondent had not conducted an audit of the prevention program, in violation of 40 C.F.R. § 68.58.

Proposed Civil Penalty

56. The Administrator must consider the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), when assessing an administrative penalty under Section 113(d), 42 U.S.C. § 7413(d).

57. Based upon an evaluation of the facts alleged in this Complaint and the factors in Section 113(e) of the Act, 42 U.S.C. § 7413(e), Complainant proposes that the Administrator assess a civil penalty of \$76,000.00 against the Respondent. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Combined Enforcement Policy for § 112(r) of the Clean Air Act, dated August 15, 2001.

58. Complainant developed the proposed penalty based on the best information available to Complainant at the time of the issuance of this Complaint. Complainant may adjust the proposed penalty if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriateness of the proposed penalty.

Rules Governing This Proceeding

59. The “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“the Consolidated Rules”), codified at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with this Complaint is a copy of the Consolidated Rules.

Filing and Service of Documents

60. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to submit as part of the record in this proceeding. The Regional Hearing Clerk’s address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

61. Respondent must also serve a copy of each document filed in this proceeding on each party pursuant to 40 C.F.R. § 22.5. Complainant has authorized Louise Gross, Associate Counsel, to receive any answer and subsequent legal documents that Respondent serves in this

proceeding. You may telephone Ms. Gross at (312)886-6844 or contact her by email at gross.louise@epa.gov. Ms. Gross' address is:

Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

62. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the Complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed below.

Answer

63. Respondent must file a written Answer to this Complaint if it contests any material fact of the Complaint, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law. To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above and must serve copies of the written Answer on the other parties to this Complaint.

64. If Respondent chooses to file a written Answer to the Complaint, it must do so within thirty (30) calendar days after receiving the Complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturday, Sunday, and federal legal holidays are counted. If

the 30-day time period expires on Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

65. Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint, or must state clearly that Respondent has no knowledge of a particular factual allegation. When Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

66. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

67. Respondent's Answer must also state:

1. the circumstances or arguments which Respondent alleges constitute grounds of defense;
2. the facts which Respondent disputes;
3. the basis for opposing the proposed penalty; and
4. whether Respondent requests a hearing, as discussed above.

68. If Respondent does not file a written Answer within thirty (30) calendar days of receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules, 40 C.F.R. § 22.17(c). Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. As provided by 40 C.F.R. § 22.17(d), Respondent must pay any penalty assessed in a default order without further proceedings thirty (30) days after the default order becomes the final order of the Administrator of U.S. EPA pursuant to 40 C.F.R. § 22.27(c).

Settlement Conference

2011 MAY 13 PM 3: 14

69. Whether or not Respondent requests a hearing, it may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Louise Gross at the address or phone number specified above.

70. Respondent's request for an informal settlement conference does not extend the thirty (30) calendar day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligations to Comply

71. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligations to comply with the Act and any other applicable federal, state, or local law.

5-13-11
Date

for Lawrence Schmitt
Richard C. Karl, Director
Superfund Division

re: Lake's Farm Service LLC
New Carlisle, Indiana

2011 MAY 13 PM 3:14

In the Matter of Lake's Farm Service, LLP

Docket No. CAA-05-2010-0058

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2011, I filed the original and one copy of Complainant's First Amended Administrative Complaint with the Regional Hearing Clerk, U.S. EPA, Region 5, and placed for pickup to be delivered by UPS a copy of First Amended Administrative Complaint to:

Honorable Barbara Gunning
Administrative Law Judge
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-2001

Stephen A. Studer , Esquire
Michael J. Schmidt, Esquire
Krieg De Vault LLP
4101 Edison Lakes Parkway, Suite 100
Mishawaka, Indiana 46545-3441



Michelle Ketchum
Office Automation Clerk
U.S. EPA, Region 5, ORC
77 W. Jackson Blvd. (C-14J)
Chicago, IL 60604
(312) 886-7947