

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of:

Cloud Manufacturing, LLC
#10 Williams Drive
Union, Missouri 63084

) Docket No. CAA-07-2009-0020
) CLEAN AIR ACT
) 42 U.S.C. § 7412(r)

ADMINISTRATIVE ORDER

Pursuant to Section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. 7413(a)(3)(B), as amended, Cloud Manufacturing, LLC (Cloud) is hereby ordered by the United States Environmental Protection Agency, Region 7 (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, Subpart G. Specifically, EPA Orders Cloud to implement a Risk Management Program and to submit a Risk Management Plan (RMP) for the propane, butane, and other flammable substances stored at its facility and used in its processes pursuant to 40 C.F.R. §§ 68.150, 68.190.

I. Statutory and Regulatory Background

1. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to 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).

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 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), as amended by the Debt Collection Improvement Act of 1996, states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$37,500 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 CAA referenced therein, including Section 112(r)(7).

II. Definitions

6. 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. A stationary source includes transportation containers that are no longer under active shipping papers and transportation containers that are connected to equipment at the stationary source for the purposes of temporary storage, loading or unloading. The term stationary source does not apply to transportation, including the storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this Part, provided that such transportation is regulated under 49 C.F.R. Parts 192, 193 or 195. Properties shall not be considered contiguous solely because of railroad or gas pipeline right-of-way.

7. 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.

8. 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.

9. 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.

III. Factual Background

10. An EPA representative visited the Cloud Manufacturing facility at #10 Williams Drive, Union, Missouri, on April 1, 2009, and again on May 14 and 15, 2009. Information collected during these visits revealed that Cloud had propellant mixtures greater than 10,000 pounds, which were composed of propane, butane, and other flammable substances and which Cloud uses in its manufacturing process, in storage at its facility.

IV. Finding of Violation

11. Cloud Manufacturing, LLC 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).

12. The Cloud facility, located at #10 Williams Drive, Union, Missouri, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

13. Propane and butane are regulated substances pursuant to 40 C.F.R. § 68.3. The threshold quantity for propane and butane, as listed in 40 C.F.R. § 68.130, Table 3, is 10,000 pounds.

14. In July 2008, in October 2008, and in May 2009, Cloud had greater than 10,000 pounds of propane and butane in a process at its facility.

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

16. Cloud has never submitted an RMP as required by 40 C.F.R. §§ 68.150 and 68.190. Cloud's failure to comply with 40 C.F.R. §§ 68.150 and 68.190 is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

V. Compliance Order

17. Within sixty (60) days of the effective date of this Order, EPA orders Cloud Manufacturing, LLC, Union, Missouri to:

- a. Submit a RMP to EPA that complies with 40 CFR Part 68, Subpart G with respect to the regulated process materials at the facility.
- b. The RMP shall be sent by regular mail to:
RMP Reporting Center
P.O. Box 1515
Lanham-Seabrook, Maryland, 20703-1515

or via certified mail, courier or overnight mail (e.g., Fed Ex, UPS, etc.), to:

RMP Reporting Center
c/o Computer Sciences Corporation
8400 Corporate Drive, Suite 150
Landover, Maryland 20785-2294.

or electronically thru the internet thru EPA's Control Data Exchange, CDX,
Using RMP eSubmit

- c. Submit a copy of the RMP to:

U.S. EPA Region 7
Attention: George Hess
Chemical Risk Information Branch,
901 North 5th Street
Kansas City, Kansas 66101.

- d. Submit a copy of the RMP to:

Mike Fink, Union Fire Inspector
Union Fire Protection District
P.O. Box 463
Union, Missouri 63084.

VI. Potential Liability

18. Section 113(a)(3)(B) of the CAA grants EPA the authority to issue an Order to Comply to any person found in violation of Section 112(r) of the CAA and the regulations promulgated pursuant thereto.

19. 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, as amended by the Debt Collection Improvement Act of 1996, 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.

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

21. This Order shall become effective immediately upon receipt unless, within five (5) business days of receipt hereof, Cloud requests a conference with EPA. In such event, the effective date of the Order shall be extended until the date of such conference or to a time established by EPA. To request such a conference, contact Belinda Holmes, Senior Counsel, Office of Regional Counsel, EPA Region 7, 901 North 5th Street, Kansas City, Kansas 66101, telephone 913-551-7714.

22. All information and documents submitted by Cloud to EPA pursuant to this Order shall be subject to public inspection unless identified as confidential by Cloud in accordance with the requirements of 40 C.F.R. Part 2. Information and documents so identified will be disclosed only in accordance with the provisions of 40 C.F.R. Part 2.

7/1/09
Date

Becky Weber
Becky Weber
Director
Air and Waste Management Division