

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )

DAC Aerosol & Liquid Fill, Inc. )  
101 Industrial Park Dr. )  
Sullivan, Missouri 63080 )

Respondent )

Docket No. CAA-07-2010-0029

**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, DAC Aerosol & Liquid Fill, Inc. ("Respondent" or "DAC") 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, Subpart G and to take the specific compliance actions set forth below.

**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), 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), states that the Administrator may issue an administrative order against any person assessing a civil 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), 42 U.S.C. § 7412(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.

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. EPA inspected the DAC facility, located at 101 Industrial Park Dr. in Sullivan, Missouri, 63080 on July 14, 2010, to determine compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that the DAC facility had failed to implement a risk management program at its facility.

#### IV. Finding of Violation

11. DAC 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 DAC facility, located at 101 Industrial Park Dr., in Sullivan, Missouri 63080, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

13. Propane is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for propane, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

14. At the time of the inspection, DAC had greater than 10,000 pounds of propane in a process at its facility.

15. N-Butane is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for n-butane, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

16. At the time of the inspection, DAC had greater than 10,000 pounds of n-butane in a process at its facility.

17. Isobutane is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for isobutane, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

18. At the time of the inspection, DAC had greater than 10,000 pounds of isobutane in a process at its facility.

19. DAC 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 the owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

20. DAC is subject to the requirements of the Program 3 risk management program, 40 C.F.R. Part 68, Subpart D, because the process is subject to the Occupational Safety and Health Administration ("OSHA") safety management process standard, 29 C.F.R. § 1910.119, 40 C.F.R. § 68.10(d).

21. DAC failed to implement a risk management program and file a risk management plan at their facility, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and the requirements of 40 C.F.R. Part 68.

## V. Compliance Order

22. Based on the Findings of Fact and Findings 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, DAC is hereby ORDERED to take the actions described in Paragraph 24 Below.

23. Within 90 days of the effective date of this Order, EPA hereby ORDERS DAC 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, Subparts A-B, D-E, and G, including, but not limited to, completion of the following compliance actions:

- a. Develop a Risk Management Program at the facility complying with the Program 3 eligibility requirements, in accordance with 40 C.F.R. § 68.10, and maintain records supporting the implementation of the RMP in accordance with 40 C.F.R. § 68.200;  or
- b. Submit a statement, certified according to Paragraph 24 below, stating that the DAC facility is no longer subject to the requirement of developing a Risk Management Program and the submission of a RMP. With this certified statement, information must also be submitted stating why the DAC facility is no longer required to develop a Risk Management Program and submit a RMP.

24. The information required to be submitted to EPA by Respondent under Paragraph 22 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)

## VI. Potential Liability

25. 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), and the regulations promulgated pursuant thereto.

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:

- 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, 42 U.S.C. § 7413(c).

27. 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 DAC to comply with all federal, state and local statutes, regulations, and permits.

28. EPA may subsequently amend this Order in accordance with the authority of the CAA. 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.

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

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

Jodi Harper  
Chemical Risk Information Branch  
U.S. Environmental Protection Agency  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

31. Pursuant to 40 C.F.R §§ 2.201-2.311, DAC may assert a business confidentiality claim covering any portion of the submitted information which 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.

32. The terms of this Order shall be effective and enforceable against DAC upon its receipt.

10/5/10  
Date

John J. Smith  
for Becky Weber  
Director  
Air and Waste Management Division