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August 20, 2025

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**U.S. EPA REGION 7
HEARING CLERK**

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

IN THE MATTER OF:

ELY'S INC.,

Respondent.

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Docket No. CAA-07-2024-0145

ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT

Preliminary Statement

1. This Administrative Order for Compliance on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and by Ely's Inc. ("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 Respondent to comply with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68. Specifically, and as described in more detail herein, EPA orders Respondent to update and implement a Risk Management Plan if the facility will have present more than the threshold quantity of anhydrous ammonia, and to establish and implement a Mechanical Integrity Program to maintain the ongoing integrity of process equipment. 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. 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, (3) consents to personal service by electronic mail at *elysinc@windstream.net*, and (4) 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 that 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.

Statutory and Regulatory Background

4. On November 15, 1990, the President signed into law the CAA 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 that the Administrator 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), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

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) of the CAA, 42 U.S.C. § 7412(r)(7). 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 CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the 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. The regulations at 40 C.F.R. § 68.10 set forth how the chemical accident prevention provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(k), a covered process is subject to Program 2 requirements if the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(j) and (l), respectively.

9. Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), grants the Administrator the authority to make a finding of violation of a requirement or prohibition of Title I of the CAA (Subchapter I of 42 U.S.C. Chapter 85), and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition.

Definitions

10. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and 40 C.F.R. § 68.3 define “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

Findings of Fact and Law

17. 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).

18. Respondent’s facility, located at 101 University Street in Guide Rock, Nebraska (“Facility”), is a “stationary source” pursuant to 40 C.F.R. § 68.3.

19. Respondent is the owner or operator of the Facility.

20. On September 26, 2023, a representative of the EPA conducted an inspection of Respondent’s Facility to determine compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

21. Information collected as a result of this inspection revealed that Respondent had failed to properly implement the Risk Management Program at the Facility.

22. At the time of the EPA inspection, Respondent had greater than 10,000 pounds of anhydrous ammonia in a process at the Facility.

23. 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.

24. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

25. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to Program 2 prevention program requirements because, pursuant to 40 C.F.R. § 68.10(k), the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(j) and (l), respectively.

26. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was required under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 2 requirements provided at 40 C.F.R. § 68.12(c).

Findings of Violation

27. The facts stated in Paragraphs 17 through 26, above, are herein incorporated.

Risk Management Program

28. The regulation at 40 C.F.R. Part 68 requires owners and operators of stationary sources with a process subject to Program 2 to develop and implement a Risk Management Program that includes a hazard assessment, a prevention program, and an emergency response program, as provided in § 68.12(c).

29. The EPA inspection revealed that Respondent failed to conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42, as required by 40 C.F.R. § 68.12(c)(2). Specifically:

- (a) Respondent failed to produce documentation that Respondent had prepared a worst-case release scenario analysis as provided in 40 C.F.R. § 68.25 of this part, completed the five-year accident history as provided in 40 C.F.R. § 68.42, and completed all sections in this subpart for its processes.

30. On February 8, 2024, Respondent submitted a hazard assessment that includes a worst-case release scenario analysis and at least one alternative release scenario in accordance with 40 C.F.R. Subpart B.

31. The EPA inspection revealed that Respondent failed to implement the Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60, as required by 40 C.F.R. § 68.12(c)(3). Specifically:

- (a) Respondent failed to document maximum inventory, safe upper and lower limits, pressures, flows and compositions, equipment specifications or codes and standards for the process, as required by 40 C.F.R. § 68.48(a)(2) through (5).
- (b) Respondent failed to document anhydrous ammonia-related operating procedures, as required by 40 C.F.R. § 68.52(a) and (b).

32. The EPA inspection revealed that Respondent failed to develop and implement an emergency response program, and conduct exercises, as required by §§ 68.90 to 68.96, as required by 40 C.F.R. § 68.12(c)(5). Specifically:

- (a) Respondent failed to submit its emergency action plan (EAP) to the local emergency planning committee (LEPC), as required by 40 C.F.R. § 68.93(b).
- (b) Respondent failed to document coordination activities with local authorities, as required by 40 C.F.R. § 68.93(c).
- (c) Respondent failed to include in the emergency action plan (EAP) procedures for anhydrous ammonia emergencies, including those informing the public about accidental releases, addressing accidental human exposures, or specifying emergency response, as required by 40 C.F.R. § 68.95(a)(1).

33. Respondent's failures to comply with Program 2 Risk Management Program requirements of 40 C.F.R. § 68.12(c), violate Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Mechanical Integrity

34. The regulation at 40 C.F.R. § 68.12(c)(3) requires the owner or operator of a stationary source with a process subject to Program 2 to implement the Program 2 prevention steps provided in §§ 68.48 through 68.60.

35. The regulation at 40 C.F.R. § 68.48(b) requires the owner or operator to ensure and document that the process is designed in compliance with recognized and generally accepted good engineering practices. G-2.1-2023 CGA is the current standard used by anhydrous ammonia retailers.

36. The EPA inspection revealed that Respondent had failed to ensure and document that the process is designed in compliance with recognized and generally accepted good engineering practices of 40 C.F.R. § 68.48(b), as evidenced by:

- (a) Photograph 14 of the inspection report shows two 70,000-pound bulk storage tanks (“bulk tanks”) that appear closer than the recommended distance. G-2.1-2023 CGA, Section 6.4.6, states that the horizontal distance between aboveground and underground containers of over 1200-gal (4.5 m³) capacity shall be at least 5 ft (1.5 m). After the inspection, Respondent acknowledged that the bulk anhydrous ammonia tanks were less than 5 feet apart.
- (b) Photographs 12 and 14 of the inspection report feature views of the side and end of the bulk tanks that show missing barrier protection for the bulk tanks. G-2.1-2023 CGA, Section 6.7.1, states that containers and appurtenances shall be located or protected by suitable barriers to avoid damage by trucks or other vehicles. After the inspection, Respondent acknowledged that the tanks are vulnerable to trucks and other vehicles.
- (c) Photographs 1, 2, 4, and 10 of the inspection report feature the piping for the bulk tanks. G-2.1-2023 CGA, Section 5.6.13, states that if color is used as the only identification to indicate whether piping contains liquid or vapor ammonia, a legend sign shall be displayed. The bulk tank piping does not indicate whether it contains liquid or vapor ammonia. G-2.1-2023 CGA, Section 5.6.13, states that if color is used as the only identification to indicate whether piping contains liquid or vapor ammonia, a legend sign shall be displayed.

37. The EPA inspection revealed that Respondent had failed to establish and implement a written mechanical integrity plan that met all requirements of 40 C.F.R. Part 68. Respondent could not produce its plan during or after the inspection.

38. Respondent’s failure to comply with the requirements for mechanical integrity in 40 C.F.R. Part 68, as described above, violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Order for Compliance

39. Based upon the Findings of Fact and Law, 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), it is hereby ordered and agreed that Respondent shall comply with the requirements of Section 112(r) 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 180 days after the effective date of this Order, complete the following compliance actions:

- (a) Compile and maintain up-to-date safety information related to the regulated substances, processes, and equipment, in accordance with 40 C.F.R. § 68.48, as follows:
 - (i) Safety Data Sheets (SDS);
 - (ii) Maximum intended inventory of equipment in which the regulated substances are stored or processed;
 - (iii) Safe upper and lower temperatures, pressures, flows, and compositions;

- (iv) Equipment specifications;
 - (v) Codes and standards used to design, build, and operate the process; and
 - (vi) Documentation that demonstrates that the process is designed in compliance with recognized and generally accepted good engineering practices.
- (b) prepare written operating procedures for safe operation of the equipment in accordance with 40 C.F.R. § 68.52, that address the following:
- (i) Initial startup;
 - (ii) Normal operations;
 - (iii) Temporary operations;
 - (iv) Emergency shutdown and operations;
 - (v) Normal shutdown;
 - (vi) Startup following a normal or emergency shutdown or a major change that requires a hazard review;
 - (vii) Consequences of deviations and steps required to correct or avoid deviations;
 - (viii) Equipment inspections; and
 - (ix) Documentation when monitoring equipment associated with prevention and detection of accidental releases from covered processes is removed due to safety concerns from imminent natural hazards.
- (c) develop written procedures to maintain the on-going mechanical integrity of the process equipment, such as maintenance procedures or instructions provide by covered process equipment vendors or procedures in Federal or state regulations or industry codes, in accordance with 40 C.F.R. § 68.56(a);
- (d) submit emergency action plan to the local emergency planning committee and document coordination activities in accordance with 40 C.F.R. § 68.93(b)&(c);
- (e) update emergency action plan to include procedures for anhydrous ammonia emergencies, informing the public about accidental releases, and addressing accidental exposures, in accordance with 40 C.F.R. § 68.95(a)(1), that contains at least the following elements:
- (i) Procedures for informing the public and the appropriate Federal, State, and local emergency response agencies about accidental releases, including partnering with these response agencies to ensure that a community notification system is in place to warn the public within the area potentially threatened by the accidental release. Documentation of the partnership shall be maintained in accordance with § 68.93(c);
 - (ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and
 - (iii) Procedures and measures for emergency response after an accidental release of a regulated substance.

(f) maintain records supporting the implementation of the Risk Management Program in accordance with 40 C.F.R. § 68.200;

40. Respondent shall develop a narrative description of the actions to be taken to comply with the following industry standards, as well as a schedule for their implementation:

- (i) G-2.1-2023 CGA, Section 6.4.6, which states that the horizontal distance between aboveground and underground containers of over 1200-gal (4.5 m³) capacity shall be at least 5 ft (1.5 m).
- (ii) G-2.1-2023 CGA, Section 6.7.1, which states that containers and appurtenances shall be located or protected by suitable barriers to avoid damage by trucks or other vehicles.
- (iii) Piping should indicate whether piping contains liquid or vapor ammonia and if color is used as the only identification to indicate whether piping contains liquid or vapor ammonia, a legend sign shall be displayed in accordance with G-2.1-2023 CGA, Section 5.6.13.

41. In lieu of completing the actions required by Paragraph 40, within 60 days of the effective date of this Order, Respondent shall submit a letter from a professional engineer certifying that the process equipment at the Facility is in compliance with the industry standards listed in Paragraph 40 or does not need to be modified in order to comply with those standards along with justification in support of this conclusion. If the professional engineer's letter does not certify that the Facility is in compliance with all applicable standards specified in Paragraph 40, Respondent shall address those remaining standards in accordance with the requirements of Paragraph 40.

Submissions

42. Within 60 days of the effective date of this Order, Respondent shall submit a schedule for completion of the compliance actions in Paragraph 39.

43. Within 60 days of the effective date of this Order, Respondent shall either submit a narrative description of the actions to be taken to comply with the industry standards specified in Paragraph 40, or submit a letter from a professional engineer as specified in Paragraph 41.

44. Respondent must provide documentation of completion of these tasks to EPA within 180 days of the effective date of this Order.

45. All submissions to EPA required by this Order shall contain the following certification signed by an authorized representative of 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.

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

Diana Chaney
chaney.diana@epa.gov
Air Branch, Chemical Accident Prevention Section
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

47. 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.

General Provisions

Potential Liability

48. 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)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator may:

(a) issue an administrative penalty order assessing a civil penalty not to exceed \$57,617 per day of violation, pursuant to Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B);

(b) bring a civil action for permanent or temporary injunction, or to assess and recover a civil penalty not to exceed \$121,275 per day of violation, or both, pursuant to Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2); 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).

49. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), 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.

Taxpayer Identification Number

50. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines,

Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at weidner.lori@epa.gov within 30 days after the Effective Date of this Order, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall notify EPA of this fact within 30 days after the Effective Date of this Order, and email EPA with Respondent’s TIN within 5 days of Respondent’s issuance and receipt of the TIN.

Amendment of Order

51. EPA may subsequently amend this Order, in writing, in accordance with the authority of the CAA. Any amendment will be transmitted to Respondent. 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.

52. If any provision or authority of the Order or the application of the Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of the Order shall remain in full force and effect and shall not be affected by such a holding.

Access and Requests for Information

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

Effective Date

54. This Order shall become effective on the date that it is signed by the authorized EPA representative.

55. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

Termination

56. This Order shall terminate one year after the Effective Date of this Order, or at the time that EPA determines that Respondent has achieved compliance with all the terms of this Order, whichever is earlier.

Notice to the State

57. Pursuant to Section 113(a)(4), 42 U.S.C. § 7413(a)(4), the State of Nebraska has been provided notice of this action.

For the U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

For RESPONDENT:

ELY'S INC.

By: John Ely

Title: President

Date: 7-28-25

CERTIFICATE OF SERVICE

(to be completed by EPA)

I certify that that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy via E-mail to Complainant:

Jonathan Meyer, *meyer.jonathan@epa.gov*

Diana Chaney, *chaney.diana@epa.gov*

Dave Hensley, *hensley.david@epa.gov*

Copy via E-mail to Respondent:

John Ely
President, Ely's Inc.
101 University Street
Guide Rock, NE 68942
elysinc@windstream.net

Dated this _____ day of _____, _____.

Signed