

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

08 AUG 14 AM 9:35

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

Rush Beekman)

d/b/a Wymore Fertilizer Co.)

4th and G Street)

Wymore, Nebraska 64466)

Respondent)

Docket No. CAA-07-2008-0026

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

This Administrative Compliance Order on Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency, Region VII (EPA) and by the Respondent, Rush Beekman, pursuant to Section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C.

7413(a)(3)(B), as amended. This Order requires Respondent, Rush Beekman, 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 C and G.

Specifically, EPA Orders Respondent to modify the ammonia storage area to be in compliance with recognized and generally accepted engineering practices, as required by 40 C.F.R. § 68.48(b). 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.

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

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.

10. As used herein, the term “day” shall mean calendar day.

III. Factual Background

11. Respondent is the owner and/or operator of a facility located at 4th and G Street, Wymore, Nebraska (“facility”). The facility owned by Respondent is a cooperative functioning primarily for the storage and sale of fertilizer.

12. At all times relevant to this Order, Respondent produced, processed, handled or stored anhydrous ammonia at its facility.

13. EPA inspected the facility on January 24, 2008, to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that the Respondent had greater than 10,000 pounds of anhydrous ammonia contained at its facility.

IV. Conclusions of Law

14. 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).

15. Respondent's facility located at 4th and G Street, Wymore, Nebraska, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

16. 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.

17. On or about January 24, 2008, EPA conducted an inspection of Respondent's facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

18. Respondent 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, Subparts C and 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.

V. Finding of Violation

19. Respondent failed to ensure that the process is designed in compliance with recognized and generally accepted good engineering practices, as required by 40 C.F.R.

§ 68.48(b). Respondent's failure to comply with 40 C.F.R. § 68.48(b), is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

VI. Compliance Order

20. Based upon the foregoing Finding of Violation, it is hereby ordered and agreed that Respondent shall 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 and Respondent agree that Respondent shall, as expeditiously as possible, but in no event longer than 30 days of the effective date of this Order, modify the ammonia storage area with the necessary interim measures; and as expeditiously as possible, but in no event longer than 120 days of the effective date of this Order, modify the ammonia storage area with the necessary permanent measures, to be in compliance with recognized and generally accepted engineering practices, as required by 40 C.F.R. § 68.48(b).

- a) Within 30 days, complete necessary interim modifications to the ammonia storage area, including, but not limited to removal of combustible materials within 10 feet of any ammonia storage tank.
- b) Within 120 days, complete necessary permanent modifications to the ammonia storage area, including, but not limited to:
 - (i) Elevation of ammonia storage tanks on a foundation with the lowest point of the tank at least 18 inches above the ground;
 - (ii) Installation of barriers to adequately protect storage tanks and piping from physical damage by vehicular traffic; and
 - (iii) Painting of ammonia storage tanks to create a reflective surface.

21. Every 30 days, from the effective date of this Order until the termination of this Order, Respondent shall provide a progress report to EPA detailing actions Respondent has taken in furtherance of its obligations under this Order. Upon completion of each milestone detailed in paragraph 20 of this Order, Respondent shall provide verification in the monthly progress report

that the requirement has been satisfied. The first progress report shall be due no later than 30 days after the effective date of this Order. Each subsequent progress report shall be due every 30 days thereafter.

22. Respondent shall, upon completion of the implementation of the interim measures to the ammonia storage area as described in paragraph 20(a), submit a Completion Report, within 130 days of the effective date of this Order which includes the following:

- a) photographs of the ammonia storage area;
- b) an itemization of the costs of completing the modifications of the ammonia storage area; and
- c) a verification, stating that Respondent has complied with each of the requirements of paragraph 20(a) of this Order.

23. All documents required to be submitted to EPA by this Order 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.

24. The submissions required by paragraph 21 and 22 shall be made to:

Chris Muehlberger
Assistant Regional Counsel
United States Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101;

and

George Hess
Chemical Risk Information Branch
United States Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

25. 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.

VII. Stipulated Penalties

26. Respondent shall be liable for stipulated penalties in the amounts set forth in subparagraphs (a) and (b) for failure to comply with the requirements of this Order.

- a) The following stipulated penalties shall accrue per violation per day for failure to comply with the requirements of paragraph 20(a) (Interim Measures) of this Order:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 30th day
\$250	31st day and beyond

- b) The following stipulated penalties shall accrue per violation per day for failure to comply with the requirements of paragraph 20(b) (permanent steps) of this Order:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 30th day
\$250	31st day and beyond

- c) The following stipulated penalties shall accrue per day for failure to submit the completion report as required by paragraph 21 and 22 (Completion and Progress Reports) of this Order:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$50	1st through 30th day
\$100	31st day and beyond

27. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity.

28. The payment of penalties shall not alter in any way Respondent's obligation to comply with the provisions of this Order.

29. All penalties accruing under this section shall be due and payable to the United States within 30 days of Respondent's receipt from EPA of a demand for payment of penalties. All payments to the United States under this section shall be paid by certified or cashier's check made payable to "Treasurer, United States of America" and remitted to:

EPA-Region VII
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

30. Failure to pay any portion of the stipulated penalties on the date upon which they are due will result in the accrual of interest on the unpaid portion of the stipulated penalties at the rate of two percent (2%) per annum.

VIII. Potential Liability

31. 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.

32. 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, the Administrator is authorized to address such a violation as follows:

- a) Issue an administrative penalty order assessing a civil penalty not to exceed \$32,500 per day of violation;
- b) Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$32,500 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.

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

34. This Order shall become effective on the date that it is signed by the EPA Director of the Air, RCRA and Toxics Division (ARTD).

35. This Order shall terminate one year from the effective date of this Order.

36. This Order is binding on the Parties signing below.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By Becky Weber
Becky Weber
Director
Air, RCRA and Toxics Division

Date: 8-6-08

RESPONDENT:
RUSH BEEKMAN

By Rush Beekman

Title Owner.

Date 7-24-08

IN THE MATTER OF Rush Beekman d/b/a Wymore Fertilizer Co., Respondent
Docket No. CAA-07-2008-0026

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Chris Muehlberger
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Rush Beekman
d/b/a Wymore Fertilizer Co.
4th & G Street
Wymore, Nebraska 64466

Dated: 8/14/08



Kathy Robinson
Hearing Clerk, Region 7