



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

MAY 26 2011

Ref: 8ENF-AT

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Greg Westlake, General Manager
Powers Lake Anhydrous Plant
PO Box 406
Powers Lake, North Dakota 58773

Re: In the Matter of Farmers Union Oil Company, Inc. –
Powers Lake Anhydrous Plant – Administrative Order

Dear Mr. Westlake:

Enclosed is an Administrative Order ("Order"), that the United States Environmental Protection Agency, Region 8 ("EPA") is issuing under the authority of § 113(a)(3)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(3)(B). In the Order, EPA finds Farmers Union Oil Company, Inc. (FUOC) in violation of 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7) and regulations set forth in 40 C.F.R. part 68, pertaining to compliance with the risk management program. This Order addresses compliance at the Powers Lake Anhydrous Plant located on Highway 50 in Powers Lake, North Dakota.

EPA is issuing the enclosed Administrative Order, which specifies the nature of the violations and describes actions necessary for compliance with CAA § 112(r)(7). The Order requires the FUOC to correct deficiencies in the facility's Risk Management Plan (RMP) and to provide documentation to this office certifying that the deficiencies have been corrected.

In accordance with § 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), the Order will not take effect until FUOC has had the opportunity to confer with EPA concerning the findings set forth in the Order. If FUOC would like an opportunity to confer with EPA regarding this Order, please contact this office within **ten (10) business days** of your receipt of this letter. Such request must be also be made in writing following the procedures set out in the Order. If the conference is not requested, the Order shall become effective eleven (11) days after Respondent's receipt of the Order. A request for such a conference does not extend the time period set for meeting the deadline specified in the Order. FUOC has the right to be represented by counsel at the conference but it is not required.

Please be advised that the issuance of this Order does not preclude the initiation of any action authorized under law for failure to comply with the Order, including the assessment of an administrative penalty and the filing of civil or criminal actions in the U.S. District Court. Failure to comply with the requirements of the Order is a violation of the Order. Please also be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or civil or criminal actions in the U.S. District Court for the violations cited in the Order or for any other violations that the FUOC may have committed prior to or may commit after the issuance of the enclosed Order.

Please review the Order carefully. If you have any questions on technical issues, please contact David Cobb at (303) 312-6592. For legal issues, contact Marc Weiner, Enforcement Attorney, at (303) 312-6913.

Sincerely,



Cynthia J. Reynolds, Director
Air & Toxics Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Enclosure: Administrative Order

cc: Marc Weiner, 8ENF-L
David Cobb, 8ENF-AT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

2011 MAY 26 PM 1:28

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Farmers Union Oil Company, Inc.)
Powers Lake Anhydrous Plant)
P.O. Box 406)
Powers Lake, North Dakota 58773)

Respondent.)

ADMINISTRATIVE ORDER

DOCKET NO.: CAA-08-2011-0009

INTRODUCTION (JURISDICTION)

1. This Administrative Order ("Order") is issued to the Farmers Union Oil Company, Inc. (FUOC) (Respondent) pursuant to Title I, § 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7413 (a)(3)(B). Section 113(a)(3)(B) grants to the Administrator of the U.S. Environmental Protection Agency (EPA) 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. This authority was delegated by the Administrator to the Regional Administrators on December 20, 1996 by EPA Delegation 7-6-A, and within Region 8, was redelegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice (ECEJ).
2. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added § 112(r) to the Clean Air Act, 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.
3. Pursuant to § 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), the owners and operators of stationary sources are required to develop and implement a risk management plan (RMP) that includes a hazard assessment, a prevention program and an emergency response program.
4. The regulations at 40 C.F.R. part 68 set forth the requirements of a risk management program that must be established and implemented at a stationary source that has more than a threshold quantity of a regulated substance in a process. Pursuant to 40 C.F.R. part 68, subparts A and G, the risk management program is to be described in a RMP that must be submitted to EPA.

5. Pursuant to § 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process shall comply with the requirements of 40 C.F.R. part 68. The requirements include, but are not limited to, submission of an RMP to EPA for each covered process, no later than June 21, 1999, or three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which a regulated substance is first present in a process above the threshold quantity, whichever is latest.

6. The regulations at 40 C.F.R. part 68 separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3. A covered process is subject to Program 2 requirements, as per 40 C.F.R. § 68.10(c), if the process: a) does not meet the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b); and b) does not meet the Program 3 eligibility requirements set forth in 40 C.F.R. § 68.10(d).

7. 40 C.F.R. § 68.12(c) requires that the owner or operator of a stationary source with a Program 2 process undertake certain tasks in addition to the submission of an RMP, including, but not limited to, development and implementation of a management system (pursuant to 40 C.F.R. § 68.15), conduct a hazard assessment (pursuant to 40 C.F.R. §§ 68.20-68.42), and the development and implementation of a prevention program (pursuant to 40 C.F.R. §§ 68.48-68.60).

8. Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d) and 40 C.F.R. part 19, state 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 Clean Air Act referenced therein, including § 112(r)(1) and/or § 112(r)7.

DEFINITIONS

9. 40 C.F.R. § 68.3 defines “stationary source” in the relevant part, 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.

10. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to § 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130.

11. 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to § 112(r)(5) of the Clean Air Act, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

12. 40 C.F.R. § 68.3 defines “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.

13. 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

FINDINGS OF FACT

14. Respondent is the owner and/or operator of the Powers Lake Anhydrous Plant located on Highway 50 in Powers Lake, North Dakota (the “Facility”).

15. The Facility uses, handles, and/or stores, anhydrous ammonia, a regulated substance pursuant to § 112(r)(2) and (3) of the Clean Air Act and 40 C.F.R. § 68.3, which is listed at 40 C.F.R. § 68.130. The threshold quantity requiring the submittal of an RMP for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds. The RMP for the Powers Lake Anhydrous Plant states that the anhydrous ammonia is a Program 2 covered process.

16. EPA has discovered that Respondent has not met the requirements of 40 C.F.R. part 68. Specifically, Respondent:

- had not developed and implemented a management system as required by 40 C.F.R. § 68.15;
- had not compiled and maintained up-to-date information, related to the regulated substances, processes, and equipment as required by 40 C.F.R. § 68.48(a);
- had not ensured 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);
- had not performed a Process Hazard Review as required by 40 C.F.R. § 68.50;
- had not prepared operating procedures in accordance with 40 C.F.R. § 68.52;
- had not provided refresher training at least every three years, or more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process in accordance with 40 C.F.R. § 68.54(b);
- had not implemented a maintenance program as required by 40 C.F.R. § 68.56;
- had not completed Compliance Audits as required by 40 C.F.R. § 68.58;
- had not included procedures for informing the public and local emergency response agencies about accidental releases in the facility emergency response plan as required by 40 C.F.R. § 68.95(a)(1)(i); and
- had not included documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures to the covered chemical in the emergency response plan as required by 40 C.F.R. § 68.95(a)(1)(ii).

CONCLUSIONS OF LAW

17. Respondent is, and at all times referred to herein was, a “person” as defined by § 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).
18. The Facility is a “stationary source” pursuant to § 112(r)(2)(C) of the Clean Air Act and 40 C.F.R. § 68.3.
19. Facility is subject to the requirements of § 112(r)7 of the Clean Air Act, 42 U.S.C. § 7412(r)7, and 40 C.F.R. part 68, 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.
20. Based on available information, EPA has determined that Respondent failed to satisfy the requirements outlined in 19 above. Therefore, Respondent violated the provisions of § 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7).

ORDER

21. Based upon the foregoing Findings of Fact, Findings of Violations, other information available to EPA, it is hereby ordered that Respondent comply with the requirements set forth below. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

PARTIES BOUND

22. The provisions of this Order shall apply to Respondent and its officers, agents, servants, employees, and successors and to all persons, firms and corporations acting under, through or for Respondent.

WORK TO BE PERFORMED

23. The Facility shall take at least the following steps to come into compliance with 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), and the regulations promulgated at 40 C.F.R. part 68:
- a. Within 60 days of the effective date of this Order, Respondent shall perform the following activities:
 - i. Develop and implement a management system as required by 40 C.F.R. § 68.15.

- ii. Compile and maintain the most current information related to the regulated substances, processes, and equipment as required by 40 C.F.R. § 68.48. Specifically, compile information for safe upper and lower temperatures, pressures, flows and compositions [C.F.R. § 68.48(a)(3)]; equipment specifications for ammonia tank [C.F.R. § 68.48(a)(4)]; and codes and standards used to design, build and operate the process [C.F.R. § 68.48(a)(5)].
 - iii. Ensure that the ammonia process is designed in compliance with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.48(b).
 - iv. Perform a Process Hazard Review as required by 40 C.F.R. § 68.50.
 - v. Ensure that operating procedures are in accordance with 40 C.F.R. § 68.52.
 - vi. Provide refresher training at least every three years, or more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process in accordance with 40 C.F.R. § 68.54(b);
 - vii. Implement and maintain a maintenance program as required by 40 C.F.R. § 68.56.
 - viii. Evaluate compliance with the RMP program every three years as required in 40 C.F.R. § 68.58. Document the findings of the audit including an appropriate response to each finding. Document that each deficiency found during the audit has been corrected.
 - ix. Ensure that the facility emergency response includes procedures for informing the public and local emergency response agencies about accidental releases as required by 40 C.F.R. § 68.95(a)(1)(i).
 - x. Ensure that the facility emergency response plan includes documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures to the covered chemical as required by 40 C.F.R. § 68.95(a)(1)(ii).
- b. EPA will review the reports and schedules submitted pursuant to subparagraph a. above, and will either approve them or direct Respondent to make changes or make further assessments, and resubmit the document(s).

- c. Upon receipt of approval by EPA of the reports and schedules submitted pursuant to subparagraph a., above, including any with modifications if necessary, Respondent shall proceed to make the repairs and take the other actions needed pursuant to such reports in accordance with the approved schedules.
- d. Within 60 days of completion of the repairs and other activities required pursuant to subparagraphs a. through c. above, Respondent shall submit a report to EPA, detailing the repairs and other activities conducted at the Facility. The report shall include a verification statement confirming that Respondent has complied with each of the requirements of subparagraphs 26.a. through c. above. The verification shall include the following certification, signed by an officer 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, I believe that 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.

- e. The submissions required by the above subparagraphs shall be made to:

David Cobb, 8ENF-AT
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

24. Respondent shall provide EPA and its representatives, including contractors, with access to the Facility for the purpose of assessing Respondent's compliance with this Order and with the Clean Air Act. Respondent shall also provide EPA and its representatives, including contractors, with access to all records relating to Respondent's implementation of this Order.

25. Respondent shall preserve all documents and information relating to the activities carried out pursuant to this Order, for six years after completion of the work required by this Order. At the end of the six-year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information.

26. 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 CFR part 2, subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

ENFORCEMENT

27. Section 113(a)(3) of the Clean Air Act provides that upon failure to comply with an order issued under § 113(a)(3)(B), the EPA Administrator may, inter alia: issue an administrative penalty order pursuant to § 113(d) for civil administrative penalties of up to \$25,000 per day of violation; or bring a civil action pursuant to § 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and the Civil Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009), this penalty maximum was increased to \$37,500 per day. In addition, Respondent may be subject to an administrative or civil action for similar penalties and/or injunctive relief, pursuant to §§ 113(b) and (d) of the Clean Air Act, based on the violations addressed by this Order. Furthermore, for any person who knowingly violates the provisions of the Clean Air Act as set forth in § 113(c) of the Clean Air Act, § 113(c) provides for criminal penalties or imprisonment, or both.

28. This Order shall not relieve Respondent of its obligation to comply with all applicable federal, State, and local laws, regulations and other legal requirements, including but not limited to § 112(r)(1) of the Clean Air Act, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit.

29. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, other extremely hazardous substance, or other substance on, at, or from the Facility. EPA reserves the right to bring an action against Respondent assessing or seeking penalties and/or other relief for any violations, including, without limitation, the violations referred to in the Findings of Fact and Conclusions of Law set forth above. This Order shall not constitute or be construed as a release of any liability that the Respondent or any other person has under the Clean Air Act or any other law. EPA also reserves all of its rights to obtain access to the Facility and require Respondent's submission of information to EPA.

EFFECTIVE DATE; OPPORTUNITY FOR CONFERENCE

30. Respondent may request a conference with EPA concerning the violations alleged in, and the requirements of, this Order. Respondent has the right to be represented by counsel at such a conference. If a conference is held, this Order shall become effective the day after the conference, unless the effective date is extended by EPA. If a conference is not timely requested, the Order shall become effective eleven (11) days after Respondent's receipt of the Order.

31. A request for a conference must be made in writing in time for EPA's receipt no later than ten (10) days after Respondent's receipt of this Order. The written request for a conference may be sent by fax or mail. The conference may be conducted in person or by telephone.

32. The request for a conference and other inquiries concerning this Order should be addressed to:

U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Attn: David Cobb, ENF-AT
Email: cobb.david@epa.gov
Phone: (303) 312-6592
Fax: (303) 312-6409

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



Date: 5-26-11

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

To: Farmers Union Oil Company, Inc.
Powers Lake Anhydrous Plant
P.O. Box 406
Powers Lake, ND 58773
Attn: Greg Westlake, General Manager

**In the Matter of:
Powers Lake Anhydrous Plant**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE ORDER were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail, Postage Pre-Paid, to:

Powers Lake Anhydrous Plant
PO Box 406
Powers Lake, ND 58773
Attn: Greg Westlake, General Manager

5/27/11
Date

Andrea Reed
Andrea Reed