



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

**MAY 18 2015**

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article Number: 7014 1200 0000 6123

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Mr. Gary Vandiver  
General Manager  
Orrick Farm Service Inc.  
208 East North Front Street  
PO Box 79  
Orrick, Missouri 64077

Dear Mr. Vandiver:

Enclosed for your files is a copy of the Expedited Settlement Agreement In the Matter of Orrick Farm Service Inc.; CAA-07-2015-0012. The order has been filed with the Regional Hearing Clerk.

Regarding safety information 40 CFR 68.48(a)(2), the owner or operator failed to compile and maintain an up-to-date maximum intended inventory of equipment in which the regulated substances are stored or processed. Your response received on 04/23/15 indicates that you don't believe that the capacity of a railcar should be included since it is used to fill the storage tank and nurse tanks whose capacities are already accounted for in the maximum intended inventory. The EPA maintains that this interpretation is incorrect. Maximum inventory should include all storage or processing vessels including transportation containers disconnected from mode of power that delivered it to the site. You should update your maximum intended inventory accordingly.

The EPA's interpretation that a railroad tank car containing a regulated substance could be considered a stationary source or part of a stationary source and is subject to threshold determination once it is disconnected from the mode of power that delivered it to the site can be found in the Federal Register, Vol. 63, No 3, Tuesday, January 6, 1998 (See enclosure).

The General Guidance on Risk Management Programs for Chemical Accident Prevention (EPA 555-B-04-001) gives detailed information of determining the threshold quantity in a process. Section 1.5 states "to determine if you have the threshold quantity of a regulated substance in a vessel involved in a single process, you need to consider the maximum quantity in that vessel at any one time." "At any one time" means you need to consider the largest quantity that you ever have in the vessel. If you fill a tank with 50,000 pounds and immediately begin using the substance and depleting the contents, your maximum is 50,000 pounds." Your assertion that the railcar should not be included because it is used to fill storage



and nurse tanks does not eliminate the requirement to include the capacity of the railcar in your maximum intended inventory. Your worst case scenario is a release from a railcar of 160,000 pounds of anhydrous ammonia. The 160,000 pounds is a portion of the process and therefore part of the maximum intended inventory. The Introduction of this guidance defines “process” as “any equipment, including storage vessels, and activities, such as loading, that involve a regulated substance and could lead to accidental release.” Section 6.2 Safety Information states that you must document the maximum intended inventory of any vessel in which you store or process a regulated substance above its threshold quantity. This guidance is available online by chapter at <http://www2.epa.gov/rmp/guidance-facilities-risk-management-programs-rmp>. The RMP in 1.17c.3 is to include this maximum amount (See RMP eSubmit User’s Manual, page 40).

Regarding safety information 40 CFR 68.48(b), the owner or operator failed to ensure that the process is designed in compliance with recognized and generally accepted good engineering practices specifically that the anhydrous ammonia storage vessels were located within 100’ of an active mainline. Your response indicates that the recent Hazard Review specifically addresses this issue. A review of this document does not show that this has been taken into consideration. Specifically, page 4 and 8 of the Hazard Review dated 12/12/13 indicates that the storage tanks and piping are not located in close proximity to movement of railcars. The storage tanks’ proximity to the active railroad should be a finding on the Hazard Review. The finding needs to be addressed on how the Facility is going to reduce this hazard.

Should you have any questions, please contact Amber Whisnant at (913) 551-7212, or by email at [whisnant.amber@epa.gov](mailto:whisnant.amber@epa.gov).

Sincerely,



Kent Johnson  
Assistant Regional Counsel  
Office of Regional Counsel

Enclosure

Right-to-Know Act (EPCRA) regulations under parts 355 and 370. EPA disagrees that suitability for transportation should be the criterion for determining whether a container should be considered part of the stationary source. For example, EPA believes that a railroad tank car containing a regulated substance could be considered a stationary source or part of a stationary source, even though the tank car is "suitable for transportation." Such a tank car could remain at one location for a long period of time, serving as a storage container, and could pose a hazard to the community. EPA considers a container to be in transportation as long as it is attached to the motive power that delivered it to the site (e.g., a truck or locomotive). If a container remains attached to the motive power that delivered it to the site, even if a facility accepts delivery, it would be in transportation, and the contents would not be subject to threshold determination. As stated earlier, EPA will continue to work with DOT to avoid regulatory confusion.

EPA agrees with commenters who stated that active shipping papers may not be a suitable criterion for determining whether a container is in transportation. EPA is aware that shipping papers are not always generated, nor are they required under DOT rules. Therefore, EPA has modified the definition of stationary source to remove the reference to active shipping papers. EPA also has modified the definition to remove the reference to temporary storage. This reference may have been confused with storage incident to transportation.

EPA has received questions regarding the statement in the stationary source definition that properties shall not be considered contiguous solely because of a railroad or gas pipeline right-of-way. In response to these questions, EPA is clarifying this statement by deleting the word "gas." EPA always intended that neither a railroad right-of-way nor any pipeline right-of-way should cause properties to be considered contiguous.

#### *E. Applicability to Outer Continental Shelf*

EPA is providing an applicability exception for sources on the outer continental shelf (OCS sources) to clarify that Part 68 does not apply to these sources. This exception is consistent with CAA section 328, which precludes the applicability of EPA CAA rules to such sources when such rules are not related to attaining or maintaining ambient air quality standards or to the "prevention of significant deterioration" provisions of

the CAA. Eleven commenters supported this exception, and no one opposed it.

#### **III. Summary of Revisions to the Rule**

EPA is amending several sections of part 68 of title 40 of the Code of Federal Regulations.

In § 68.3, the definition of stationary source is revised. The revised definition specifically states that naturally occurring hydrocarbon reservoirs are not stationary sources or parts of stationary sources. The definition states that exempt transportation includes, but is not limited to, transportation activities subject to oversight or regulation under 49 CFR parts 192, 193, or 195, as well as transportation subject to natural gas or hazardous liquid programs for which a state has in effect a certification under 49 U.S.C. section 60105. In addition, the agency has made non-substantive wording changes to improve the clarity of this definition.

Several new definitions are added for § 68.3, for condensate, crude oil, field gas, natural gas processing plant, petroleum refining process unit, and produced water.

Section 68.10 is amended to clarify that part 68 does not apply to OCS sources.

Several revisions are made to § 68.115 on threshold determination. Section 68.115(b)(2) is modified to state that the entire weight of the mixture containing a regulated flammable substance shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture does not have an NFPA flammability hazard rating of 4. Another modification to § 68.115(b)(2) exempts from threshold determination regulated flammable substances in gasoline used as fuel in internal combustion engines. Regulated substances in naturally occurring hydrocarbon mixtures (including condensate, crude oil, field gas, and produced water), prior to entry into a natural gas processing plant or a petroleum refining process unit, also are exempt from threshold determination. Section 68.115(b)(3), on concentrations of a regulated explosive substance in a mixture, is deleted, and §§ 68.115(b)(4), 68.115(b)(5), and 68.115(b)(6) are redesignated as §§ 68.115(b)(3), 68.115(b)(4), and 68.115(b)(5), respectively.

Section 68.130 is modified by the deletion of (a), explosives listed by DOT as Division 1.1. Section 68.130(b) is redesignated as §§ 68.130(a), and §§ 68.130(c) as 68.130(b).

#### **IV. Judicial Review**

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the

actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

#### **V. Required Analyses**

##### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must judge whether the regulatory action is "significant," and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, is not subject to OMB review.

##### *B. Regulatory Flexibility*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant negative economic impact on a substantial number of small entities. This final rule will not have a significant negative impact on a substantial number of small entities because it reduces the number of substances that would be used to identify stationary sources for regulation and provides exemptions that will reduce the number of stationary sources subject to the accidental release prevention requirements.

