

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2015 MAR -2 AM 10: 58

IN THE MATTER OF: )  
)  
Western Operating Company Inc. )  
Wiggins Gas Plant )  
8993 North I-76 Frontage Road )  
Fort Morgan, Colorado 80701 )  
)  
Respondent )  
)

FILED  
EPA REGION VIII  
HEARING CLERK

ADMINISTRATIVE ORDER  
ON CONSENT

DOCKET NO.: CAA-08-2015-0008

PRELIMINARY STATEMENT

This Administrative Order On Consent (Order) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency by section 113(a)(3) and (4) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7413(a)(3) and (4).

1. Complainant is the United States Environmental Protection Agency, Region 8 (EPA or Complainant). On the EPA's behalf, the Acting Assistant Regional Administrator is delegated the authority to issue this Order under section 113(a) of the Act.
2. Respondent is Western Operating Company Inc.

STATUTORY AND REGULATORY BACKGROUND

3. 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 the EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances.
4. The CAA section 112(r)(7), 42 U.S.C. § 7412(r)(7), provides that 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.

5. 40 C.F.R. part 68 sets 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.

6. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term “person” to include in relevant part, an individual, corporation, or partnership.

#### FINDINGS

7. As a corporation in the state of Colorado, Respondent is a person and thus subject to regulation under the section 112(r) of the CAA, 42 U.S.C. § 7412(r).

8. Respondent is the owner and/or operator of the Wiggins Gas Plant, a stationary source, located at 8993 North I-76 Frontage Road, Fort Morgan (Facility).

9. The Facility uses, handles, and/or stores more than a threshold quantity of flammable mixtures, a regulated substance.

10. Pursuant to CAA section 112(r)(7), 42 U.S.C. § 7412(r)(7), Respondent is required to prepare and implement a risk management program to detect and prevent or minimize accidental releases of such substances.

11. The EPA conducted an inspection of the Facility on April 7, 2014, to assess compliance with section 112(r)(7) of the CAA.

12. During the inspection, the EPA representative observed alleged violations of the CAA section 112(r)(7). The alleged violations are described in paragraphs 13-19.

13. 40 C.F.R. § 68.15(c) provides that the names or positions of the people responsible for implementing individual requirements of the risk management program shall be documented and lines of authority defined through an organization chart or similar document. Respondent did not have a current and accurate management system that documented the names or positions of the people

responsible for implementing individual requirements of the risk management program. This is a violation of 40 C.F.R. § 68.15(c).

14. 40 C.F.R. § 68.50(c) provides that the owner or operator shall document the results of the hazard review and ensure that problems identified are resolved in a timely manner. ABSG Consulting conducted a hazard review in October of 2009 at the Facility. No documentation was available to demonstrate that the hazard review recommendations were resolved in a timely manner. This is a violation of 40 C.F.R. § 68.50(c).

15. 40 C.F.R. § 68.52(a) provides that the owner or operator shall prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process. Written operating procedures observed during the EPA inspection were inaccurate and not consistent with the safety information for equipment at the Facility. This is a violation of 40 C.F.R. § 68.52(a).

16. 40 C.F.R. § 68.56(a) provides that the owner or operator shall prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. Respondent's *Inspection, Testing and Preventative Maintenance Plan* states that a required task for piping (insulated) is nondestructive testing for corrosion under insulation (CUI) when suspected during external inspection of insulation. In 2011, Mistras Asset Protection Solutions (Mistras) inspected and tested process equipment at the Facility and inspection reports recommended, "remove insulation for CUI inspection". During the EPA inspection there was no record of CUI inspection for insulated piping. Respondent failed to implement procedures to maintain the on-going integrity of the process equipment. This is a violation of 40 C.F.R. § 68.56(a).

17. 40 C.F.R. § 68.56(a) provides that the owner or operator shall prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. Respondent did not have a

system in place to track maintenance recommendations once a deficiency is identified. In 2011, Mistras' inspection report stated, "Western Operating Company should define if they plan on using PCMS or maintenance work order system". Respondent failed to implement procedures to maintain the on-going integrity of the process equipment. This is a violation of 40 C.F.R. § 68.56(a).

18. 40 C.F.R. § 68.56(d) provides that the frequency of inspection and tests of process equipment shall be consistent with applicable manufacturers' recommendations, industry standards or codes, good engineering practices, and prior operating experience. All gas detection equipment at the Facility had not been calibrated or tested since its installation in 2011. The frequency of inspection and tests of the gas detection equipment was not consistent with manufacturers' recommendations. This is a violation of 40 C.F.R. § 68.56(d).

19. 40 C.F.R. § 68.58(a) provides that the owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed. At the time of the EPA inspection the most recent compliance audit was conducted in February of 2010. Respondent did not conduct a compliance audit at least every three years. This is a violation of 40 C.F.R. § 68.58(a).

#### **ORDER**

20. Respondent consents and agrees to conduct the compliance measures described in this section of this Order.

21. The Facility shall take at least the following steps to come into compliance with section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), and the regulations promulgated at 40 C.F.R. part 68. All the violations alleged in paragraphs 13-19 shall be corrected on or before April 30, 2015, as stated below.

- a) A management system shall be developed in accordance with 40 C.F.R. § 68.15.
- b) All recommendations from the 2009 Hazard Review shall be resolved and the results documented in accordance with 40 C.F.R. § 68.50.
- c) Operating procedures at the Facility shall be current and consistent with process safety information in accordance with 40 C.F.R. § 68.52.
- d) Written procedures to maintain the on-going mechanical integrity of process equipment shall be implemented in accordance with 40 C.F.R. § 68.56.
- e) A compliance audit shall be conducted in accordance with 40 C.F.R. § 68.58.

22. Within 15 days of completion of all actions identified in paragraph 21, Respondent shall provide the EPA with a notification that the actions have been completed. All correspondence shall be mailed or emailed to the following address:

U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Attn: Greg Bazley, ENF-AT  
(Email address: [bazley.greg@epa.gov](mailto:bazley.greg@epa.gov))

#### **OTHER TERMS AND CONDITIONS**

- 23. Respondent admits the jurisdictional allegations contained in this Order.
- 24. Respondent neither admits nor denies the findings in the Findings section of this Order.

#### **GENERAL PROVISIONS**

25. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in section 113(c) of the Act,

42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

26. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or other federal, state or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

27. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present imminent and substantial endangerment to the public health, welfare, or the environment.

28. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the effective date of this Order until the termination date as set out in paragraph 35 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Wiggins Gas Plant. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

29. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent

does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

30. Each undersigned representative certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally Respondent and Complainant to this document.

#### **EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE**

31. Pursuant to section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

#### **JUDICIAL REVIEW**

32. Respondent 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 any right of judicial review under section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

#### **TERMINATION**

33. This Order shall terminate on the earlier of the following at which point Respondent shall operate in compliance with the Act:


- a. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this Order; or,

- b. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY, REGION 8,  
Office of Enforcement, Compliance and  
Environmental Justice

Complainant

Date: 2/27/15

By:   
Suzanne J. Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Western Operating Company Inc.

Respondent

Date: 2-13-15

By:   
President  
Title



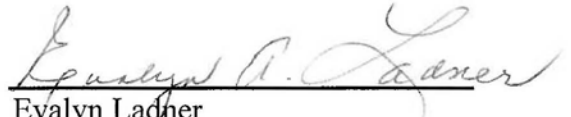
In the Matter of:  
Western Operating Company Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE ORDER ON CONSENT 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:

Kevin J. O'Toole  
Bookhardt & O'Toole  
999 18<sup>th</sup> Street  
Suite 2500  
Denver, CO 80202

3/2/15  
Date

  
Evalyn Lader