



## Region 7

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# **Tanco Kansas City, LLC, Kansas City, KS**

## **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In accordance with Section 311(b)(6)(C) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321 (b)(6)(C), and Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c) and 40 C.F.R. Part 22 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), the U.S. Environmental Protection Agency ("EPA") is providing notice of a proposed Administrative Penalty Assessment against Tanco Kansas City, LLC ("Respondent") for violations of the CWA and EPCRA. This penalty assessment is set forth in a Consent Agreement and Final Order ("Consent Agreement") negotiated between EPA and Respondent identified by Docket Nos. CWA-07-2010-0095 and EPCRA-07-2010-0003.

The SPCC and FRP violations cited in the Consent Agreement stem from an EPA inspection of the Respondent's facility on May 12, 2009. The purpose of EPA's inspection was to evaluate Respondent's compliance with the SPCC and FRP requirements of the CWA. The EPCRA violations cited in the Consent Agreement were discovered by EPA's review of the type of materials stored and managed at the facility. Tanco owns a facility addressed at 10520 Wolcott Drive, Kansas City, Kansas 66109 ("Facility") located directly adjacent to Island Creek and the Missouri River. The facility has a documented storage capacity of 7,424,320 gallons, including an estimated 6,100,000 gallons in tank capacity used for the storage of liquid asphalt, with the remaining capacity divided between storage of sulfuric acid and calcium chloride. Product released from a spill at the facility could reach Island Creek and the Missouri River.

First, Respondent failed to properly implement the requirements for Spill Prevention Control and Countermeasure Plans ("SPCC Plans") required by Section 311(j) and 40 C.F.R. Part 112. Specifically, Respondent's numerous violations of the SPCC requirements included the failure to have adequate secondary containment to contain a release from its largest storage tank (as required by 40 C.F.R. 112.8(c)(2), and 112.12(c)(2)), and to perform integrity testing for the tankage at the facility (as required by 40 C.F.R. 112.71(i) and 112.8(c)(6)).

Second, Respondent failed to comply with the requirements for "Facility Response Plan" or "FRP" set forth at Section 311(j)(5) of the CWA, Subparts A and D of 40 C.F.R. Part 112. Because discharges from Respondent's facility could cause significant and substantial harm to the environment, Respondent was required to submit its FRP to EPA for approval. Respondent's violations included the failure to have an approved FRP, amended and submitted to EPA for approval to reflect Tanco's ownership and operation of the facility, as required by 40 C.F.R. 112.20(d)(1). Respondent also failed to have documentation of effective contracts for Oil Spill Removal Organizations (OSRO), as required by 40 C.F.R. Part 112, Appendix E, Section 5.8. Respondent also failed to conduct annual spill response drills, as required by 40 C.F.R. 112.21.

Lastly, for the 2006, 2007, 2008, and 2009 calendar years, Respondent stored sulfuric acid at the facility in quantities that exceeded the minimum threshold level (1,000 pounds), as specified in 40 C.F. R. § 370.20. Respondent failed to file the required Tier II reports required for calendar years 2006, 2007, and 2008, by March 1 of the following year, as required by Section 312(a) of EPCRA and 40 C.F.R. §§ 370.20 and 370.25.

Under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6) and Section 325(c) of the EPCRA, 42 U.S.C. § 11045(c), EPA is authorized to issue orders assessing civil penalties for various violations of each statute. The penalty proposed by the Consent Agreement equals \$97,845, divided between a penalty of \$4,500 for the cited violations of EPCRA and \$93,345 (plus interest) for the violations of the CWA (paid over three installments). While public notice of the penalty for the EPCRA violations is not required, EPA is required to provide notice of the proposed assessment of a Class II CWA penalty pursuant to 33 U.S.C. § 1321 (b)(6)(C)(i). Class II proceedings are conducted under EPA's Consolidated Rules, 40 C.F.R. Part 22. This action is being simultaneously commenced and concluded in a Consent Agreement and Final Order pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

EPA will receive written comments on the proposed Administrative Penalty Assessment for a period of thirty (30) days from the date of publication of this notice. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. Persons wishing to receive a copy of EPA's Consolidated Rules, review the CAFO, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, 913-551-7567. Please reference Docket Nos. CWA-07-2010-0095 and EPCRA-07-2010-0003. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to forty (40) days from the date of this notice.

8/6/10  
Date

/s/ John J. Smith for  
Becky Weber  
Director, Air and Waste Management Division  
U.S. Environmental Protection Agency  
Region 7