

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

2010 SEP 30 PM 2:09

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Farmers Union Oil Company, Inc.)
Kenaston Anhydrous Plant)
Country Road 1)
Kenmare, North Dakota 58746)
)
Respondent.)
)

ADMINISTRATIVE ORDER

DOCKET NO. : CAA-08-2010-0027

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 RMP must be submitted to EPA 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 shall comply with the requirements of 40 C.F.R. part 68 (including, but not limited to, submission of an RMP to EPA), 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, states 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 Kenaston Anhydrous Plant located on County Road 1 in Kenmare, 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.

16. On March 23, 2010, an RMP was submitted for the Facility which specified that Respondent had 133,360 pounds of anhydrous ammonia in a process at the Facility, and which identified the anhydrous ammonia process as Program 2.

17. EPA conducted an inspection of the Facility on May 13, 2010, to assess compliance with § 112(r) of the Clean Air Act.

18. Information collected during the May 13, 2010 inspection confirmed that the Facility had greater than 10,000 pounds of anhydrous ammonia in a process at the Facility.

19. At the time of EPA’s inspection, Respondent had not met the requirements of 40 C.F.R. part 68. Specifically, on the day of EPA’s inspection, 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

20. 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).

21. The Facility is a “stationary source” pursuant to § 112(r)(2)(C) of the Clean Air Act and 40 C.F.R. § 68.3.

22. 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.

23. Based on information available to EPA, including information gathered during the inspection performed by EPA at the Facility and the Findings of Fact set forth above, 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

24. 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

25. 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

26. 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 26.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

27. 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.

28. 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.

29. 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

30. 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.

31. 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.

32. 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

33. 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.

34. 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.

35. 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:

Michael D. Diener

Date: 4/30/2010

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

To: Farmers Union Oil Company, Inc.
Kenaston Anhydrous Plant
P.O. Box 726
Kenmare, ND 58746
Attn: Greg Westlake, General Manager

In the Matter of:
Kenaston 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:

Kenaston Anhydrous Plant Facility
PO Box 726
Kenmare, ND 58746
Attn: Greg Westwood, General Manager

and

Farmers Union Oil Company
PO Box 726
Kenmare, ND 58746

9/30/10
Date


Evalyn Ladner