

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

DeBruce Grain, Inc.)

d/b/a DeBruce Ag Service, Inc.)

1968 207th Street)

Percival, Iowa 51648)

Respondent)

Docket No. CAA-07-2008-0019

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA or Complainant) and DeBruce Grain Inc. d/b/a DeBruce Ag Service, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded 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), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the first date of alleged violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order (CA/FO) serves as notice that EPA has reason to believe that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirement to implement a Risk Management Plan (RMP) as required by 40 C.F.R. Part 68 and Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this CA/FO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of EPA, and the Regional Administrator, EPA, Region VII, is the Director, Air and Waste Management Division, EPA, Region VII.

4. The Respondent, DeBruce Grain, Inc. d/b/a DeBruce Ag Service Inc., located at 1968 207th Street in Percival, Iowa 51648 (Percival Facility), is a company registered and authorized to do business in the State of Iowa. The Respondent engaged in the storage of anhydrous ammonia for sale at the Percival Facility.

Statutory and Regulatory Requirements

5. 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 EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires

the Administrator to promulgate regulations that address release prevention, detection and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

6. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. These regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

7. The regulations at 40 C.F.R. Part 68, set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a RMP that must be submitted to EPA.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999; or the date on which a regulated substance is first present above the threshold quantity in a process.

9. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 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 CAA referenced therein, including Section 112(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of not more than \$27,500 per day for each

violation that occurs after January 30, 1997 through March 15, 2004 and \$32,500 per day for each violation that occurs after March 15, 2004.

Definitions

10. The regulations at 40 C.F.R. § 68.3 define “stationary source” in 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.

11. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

12. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

13. The regulations at 40 C.F.R. § 68.3 define “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.

Factual Allegations

14. Respondent is, and at all times referred to herein, was a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

15. Respondent’s Percival Facility is a “stationary source” pursuant to 40 C.F.R. § 68.3.

16. Anhydrous ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

17. On or about February 23, 2007, EPA conducted an inspection of Respondent's facility (EPA inspection) to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

VIOLATIONS

18. EPA alleges that Respondent has violated the CAA and federal regulations, promulgated pursuant to the CAA, as follows:

19. Records collected during the inspection referenced in Paragraph 17 above showed that Respondent had exceeded the threshold quantity for anhydrous ammonia on or about November 8, 2006.

20. Respondent is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, 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.

21. Respondent was required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

22. The EPA inspection revealed that Respondent had failed to implement a prevention program as required by 40 C.F.R. Part 68. Specifically, Respondent failed to ensure that the process was designed in compliance with recognized and generally accepted good engineering practices, as required by 40 C.F.R. Part 68.48(b).

23. Records collected during the EPA inspection revealed that Respondent had failed to submit a risk management plan on the date on which a regulated substance is first present above a threshold quantity in a process, as required by 40 C.F.R. § 68.10(a)(3).

24. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth above, are all violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

25. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of this CA/FO.

26. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO.

27. Respondent neither admits nor denies the factual allegations set forth in this CA/FO.

28. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal this CA/FO.

29. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

30. This CA/FO addresses all civil and administrative claims for the CAA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA or other applicable law.

31. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

32. The effect of settlement described in Paragraph 30 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 31, above, of this CA/FO.

33. Respondent consents to the issuance of the CA/FO and consents to the payment of the civil penalty as set forth in the Final Order.

34. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

35. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CA/FO and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Eleven Thousand Four Hundred Sixty-Six Dollars (\$11,466), within thirty (30) calendar days of the effective date of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

This payment shall reference docket number CAA-07-2008-0019.

2. A copy of the check should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101

and to:

Jonathan Meyer
Assistant Regional Counsel
United States Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By Jonathan W. Meyer
Jonathan Meyer
Assistant Regional Counsel

Date 7-29-08

By Becky Weber
Becky Weber
Director
Air and Waste Management Division

Date: 8/1/08

RESPONDENT:
DEBRUCE GRAIN INC.
D/B/A DEBRUCE AG SERVICE, INC.

By 

Title v.p.

Date 7/28/08

IT IS SO ORDERED. This Final Order shall become effective immediately.

By Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Date Aug. 5, 2008

IN THE MATTER OF DeBruce Grain, Inc. D/b/a DeBruce Ag Service, Inc., Respondent
Docket No. CAA-07-2008-0019

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Jonathan Meyer
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Edward Hunt
DeBruce Grain Inc. d/b/a DeBruce Ag Service, Inc.
200 E. Central Ave.
Nebraska City, Nebraska 68410

Dated: 8/5/08


Kathy Robinson
Hearing Clerk, Region 7