

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

In the Matter of: )

Old Monroe Elevator & Supply Co. )  
263 North Main Street )  
Old Monroe, Missouri 63369 )

) Docket No. CAA-07-2010-0022  
) CAA  
) 42 U.C.C. § 7412(r)  
)

ADMINISTRATIVE ORDER

Pursuant to Section 113(a)(3)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(3)(B), as amended, Old Monroe Elevator & Supply Co. ("Old Monroe") is hereby ordered by the United States Environmental Protection Agency (EPA) to comply with the requirement of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68, Subpart G. Specifically, EPA orders Old Monroe to review and update its Risk Management Plan (RMP) to submit the five year update; provide documentation of safety information; provide documentation of operating procedures; provide hazard review documentation; provide documentation for conducting compliance audits; notify the RMP Report Center of the change in emergency contact; and to maintain all required RMP records pursuant to 40 C.F.R. Part 68, Subparts G and H.

I. Statutory and Regulatory Background

1. 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), 42 U.S.C. § 7412(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).

2. 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.

3. 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 Risk Management Plan (RMP) that must be submitted to EPA.

4. 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 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 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.

5. 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 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 CAA referenced therein, including Section 112(r)(7), 42 U.S.C. § 7412(r)(7).

## II. Definitions

6. The regulations at 40 C.F.R. § 68.3 “stationary source” 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.

7. 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, Tables 1, 2, 3, and 4, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

8. 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, Tables 1, 2, 3, and 4.

9. 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.

### III. Factual Background

10. EPA inspected the Old Monroe facility, located at 263 N. Main Street, Old Monroe, MO, on February 22, 2010, to determine compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that the Old Monroe facility had failed to properly implement the risk management program at its facility.

### IV. Finding of Violation

11. Old Monroe Elevator & Supply Co., 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).

12. The Old Monroe facility, located at 263 N. Main Street, Old Monroe, Missouri, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

13. 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.

14. At the time of the inspection, Old Monroe had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

15. Old Monroe 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 the owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

16. Old Monroe is subject to the requirements of the Program 3 risk management program, 40 C.F.R. Part 68, Subpart D, because the process is subject to OSHA safety management process standard, 29 C.F.R. § 1910.119. 40 C.F.R. § 68.10(d).

17. Old Monroe failed to submit the five year update to the RMP as required by 40 C.F.R. § 68.190(b)(1); failed to provide documentation for safety information as required by 40 C.F.R. § 68.48 (a-c); failed to provide hazard review documentation as required by 40 C.F.R. § 68.50(a-d); failed to provide operating procedures documentation as required by 40 C.F.R. § 68.52(a-c); failed to provide documentation verifying that compliance audits for June 2005 and June 2008 had been conducted as required by 40 C.F.R. § 68.58 (a-e); failed to notify the RMP Reporting Center of the change in emergency contact as required by 40 C.F.R. § 68.195(b); and failed to have the records required by 40 C.F.R. § 68.200. Further, there were several areas of the facility that were not operated in a safe manner including: lack of protection of the ammonia tank from a vehicular accident; failure to maintain good condition of tank and piping; failure to uncover underground piping to test for leakage; and failure to maintain an adequate dip tank.

## V. Compliance Order

18. Within 120 days of the effective date of this Order, EPA hereby ORDERS Old Monroe Elevator & Supply Co. to complete the following tasks and provide documentation of completion of these tasks in accordance with Paragraph 24 of this Order:

- a. Conduct a Process Hazard Analysis in accordance with 40 C.F.R. § 68.67(a-g).
- b. Develop and implement written Operating Procedures in accordance with 40 C.F.R. § 68.69(a-d).
- c. Submit a 5-Year Risk Management Plan update in accordance with 40 C.F.R. § 68.190(b)(1), electronically through the Central Data Exchange System. The update should include currently emergency contact information in accordance with 40 C.F.R. § 68.195(b).
- d. Correct the following safety issues in accordance with generally accepted good engineering practices, American National Standards Institute K61.1-1999, and provide documentation of completion of these corrections in accordance with 40 C.F.R. §68.65(d)(2) and (3):
  - i. Install barriers in front of the storage tanks to protect vehicular traffic; and
  - ii. Provide an emergency water dip tank with capacity greater than or equal to one hundred and fifty (150) gallons.
- e. Develop and implement mechanical integrity procedures as required in 40 C.F.R. §68.73(a-f). Provide documentation of completion of the following:
  - i. Sandblast and repaint the 18,000 gallon anhydrous ammonia tank; and
  - ii. Uncover 70-80 feet of the buried anhydrous ammonia piping to determine whether any damage has occurred and repair any damage as necessary.
- f. Conduct a Compliance Audit in accordance with 40 C.F.R. § 68.79(a-e).

## VI. Potential Liability

19. Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), grants EPA the authority to issue an Order to Comply to any person found in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated pursuant thereto.

20. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. Under Section 113(a) of the CAA, 42 U.S.C. § 7413(a), the Administrator is authorized to address such a violation as follows:

- a. Issue an administrative penalty order assessing a civil penalty not to exceed \$37,500 per day of violation;
- b. Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$37,500 per day of violation, or both; or
- c. Request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA, 42 U.S.C. § 7413(c).

21. Issuance of this Order does not preclude the State of Missouri or EPA from assessing penalties or taking any other action authorized under the CAA. This Order does not affect the obligation of Old Monroe to comply with all federal, state and local statutes, regulations, and permits.

22. EPA may subsequently amend this Order in accordance with the authority of the CAA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order.

23. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect Respondent's facility and/or to request additional information from Respondent pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414.

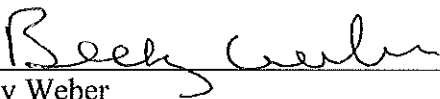
24. All submissions to the EPA required by this Order shall be sent to:

Patricia Reitz  
Chemical Risk Information Branch  
U.S. Environmental Protection Agency  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

25. Pursuant to 40 C.F.R §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment. For any such claim, describe the basis of the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the submitted information to the public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations.

26. The terms of this Order shall be effective and enforceable against Respondent upon its receipt.

4-29-10  
Date

  
Becky Weber  
Director  
Air and Waste Management Division