

§ 7413. The RR is issued under the authority of Section 114 of the CAA, 42 U.S.C. § 7414.

Section 113(a)(3) of the Act provides that EPA may issue an order requiring compliance with the requirements or prohibitions of Subchapter I of the Act (which, among other things, includes the requirements of Section 112(r)). Section 114(a) (1) of the CAA gives EPA the authority to require a company to submit such information as EPA may reasonably require to determine its compliance with the CAA.

### **STATUTORY AND REGULATORY AUTHORITY**

3. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty to (a) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the CAA is referred to as “the General Duty Clause.”

4. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), also authorizes EPA to promulgate regulations and programs to prevent, and minimize the consequences of, the accidental release of certain regulated substances. In particular, Section 112(r)(3), 42 U.S.C. § 7412(r)(3), requires EPA to promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released, and Section 112(r)(5), 42 U.S.C. § 7412(r)(5), requires EPA to establish for

or subject to the OSHA process safety management standard at 29 C.F.R.

§ 1910.119. Under 40 C.F.R. § 68.10(c), a covered process meeting neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

9. Under Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), it is unlawful for any person to operate any stationary source subject to regulations promulgated pursuant to Section 112(r) in violation of such regulation or requirement.

10. Section 113(a)(3) of the CAA, 42 U.S.C. §§ 7413(a)(3), authorizes EPA to issue compliance orders for violations of the Act, including violations of Section 112(r), 42 U.S.C. § 7412(r).

#### **GENERAL ALLEGATIONS**

11. H. Krevet & Company, Inc. (“Krevet”) is the owner and operator of a chemical manufacturing and distribution company (the “Facility”) located at 73 Welton Street, New Haven, Connecticut.

12. Krevet is a corporation organized under the laws of the State of Connecticut. As a corporation, Krevet is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 302(e), to whom a compliance order may be issued under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

13. The Facility is a “stationary source,” as that term is defined at 40 C.F.R. § 68.3.

14. Krevet formulates bleach; repackages bulk chemicals, including hydrochloric acid, sulfuric acid, nitric acid, and sodium hydroxide; and resells prepackaged water treatment chemicals, such as calcium chlorate, sodium carbonate and bicarbonate, aluminum sulfate, and

21. As the owner and operator of a stationary source that had more than the threshold amount of a regulated substance in a covered process, Krevit was subject to Part 68. In particular, Krevit's storage and processing of hydrochloric acid 38% was subject to the requirements of Program 2, in accordance with the requirements found in 40 C.F.R. § 68.10(a)-(d). The covered process is subject to Program 2 because (1) the distance to a toxic or flammable endpoint for a worst case release of hydrochloric acid is more than the distance to a public receptor, making the process ineligible for Program 1, but (2) the process is not eligible for Program 3 because the hydrochloric acid process is not subject to OSHA's process safety management standard, and the hydrochloric acid repackaging process is not in the listed delineated NAICs codes.

22. EPA inspectors observed several examples of deficient chemical management practices at the Facility including, but not limited to, the following:

a. *Co-location of incompatible chemicals.* Inspectors observed several examples of incompatible chemicals stored sufficiently close together such that a spill or release of one chemical could result in a chemical reaction with other chemicals, creating toxic gases and/or causing a fire or explosion.

i. In Building 1 (the main building), EPA's inspectors observed containers of nitric acid stored next to sodium hydroxide pellets and a drum of the RMP chemical, hydrochloric acid 38%. The chemical reaction resulting from a mixture of hydrochloric acid, nitric acid and sodium hydroxide pellets could generate an exothermic reaction with releases of highly toxic by-products.

ii. In another part of Building 1, EPA's inspectors saw a tank of sodium hydroxide in

- vi. Outside, the inspectors observed co-located containers of nitric acid and hypochlorite solution. These chemicals can react to create a fire or explosion, liberating toxic and corrosive fumes and generating corrosive liquids.

b. ***Lack of adequate secondary containment:*** Inspectors observed several containers of chemicals that did not have adequate secondary containment, creating the danger of a chemical release if the primary container leaked or ruptured.

- i. Near Building 1, inspectors observed a large tank of sodium hydroxide without adequate secondary containment. If the tank fails or leaks, the existing berm around the tank may not contain the liquid because (a) the tank is placed directly on soil and thus leaks could flow right into the ground, (b) within the bermed area are open holes where piping leads into Building 1, and (c) a rainwater spout from the roof is directed right into this bermed area, which could raise the liquid level beyond the berm walls and result in an incompatible reaction between water and sodium hydroxide.
- ii. In Building 1, inspectors observed 20,000-gallon tanks of sodium hydroxide that did not have adequate secondary containment because the bermed area contained sumps that, at the time of inspection, were full of water. Sodium hydroxide can react negatively with water.
- iii. Outside, the inspectors observed that the sodium hypochlorite in the bulk refilling area could be released outside of the secondary containment area during truck transfers. Releases in this area could flow down a sloped driveway to storm drains located in the street.

processes. Pursuant to C.F.R. §§ 68.50 and 68.67, the owner or operator must identify and evaluate the hazards of the process being analyzed; control the hazards identified; update the process hazard analysis every five years (and when a major change in the process occurs); and comply with the documentation requirements of 40 C.F.R. §§ 68.50 and 68.67.

25. 40 C.F.R. § 68.10(a) requires the hazard evaluation to be completed no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

26. Pursuant to the General Duty Clause of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances also have a general duty to identify hazards which may result from accidental releases of such substances and to maintain a safe facility, taking the appropriate steps to prevent releases.

27. As discussed in paragraph 22(a)(i) and (ii) above, EPA inspectors observed deficient chemical storage practices that constitute a failure to identify and control hazards associated with the Program 2 hydrochloric acid 38% process. For example, the storage of hydrochloric acid 38% in close proximity with nitric acid and sodium hydroxide pellets, without adequate separation, could result in a release of toxic gas to the environment, potentially harming employees, first responders, area residents, infrastructure, and private property.

28. As discussed in paragraph 22(e) above, EPA inspectors were informed that the chlorine scrubber on the sodium hypochlorite container-filling process was broken. The operation of this process without a functioning chlorine scrubber constitutes a failure to identify and control hazards associated with the Program 3 chlorine process.

29. As discussed in paragraph 22(a)-(d) above, EPA's inspectors observed deficient storage practices associated with several chemicals which, although not RMP chemicals, are "extremely

hydrochloric acid, implement the Program 2 prevention requirements or develop and implement an emergency response program.

34. By failing to submit a RMP for hydrochloric acid 38%, Krevit was in violation of 40 C.F.R. §§ 68.10(a) and 68.12(a) and Section 112(r)(7)(e) of the Act, 42 U.S.C. § 7412(r)(7)(e).

#### **FAILURE TO CONDUCT A COMPLIANCE AUDIT OF CHLORINE PROCESS**

35. Forty C.F.R. § 68.79 requires Program 3 facilities to audit their compliance with the Program 3 requirements every three years to verify that the procedures and practices developed pursuant to the RMP are being followed.

36. The Program 3 chlorine RMP update, submitted on June 22, 2004, indicates that the last audit date was on June 21, 1999. Audits should have been completed in 2002, 2005, and 2008.

37. Accordingly, Krevit failed to perform at least one of the required audits, in violation of 40 C.F.R. § 68.79.

#### **ADMINISTRATIVE ORDER**

38. **As soon as possible, but within no later than 10 days of the effective date of this order,** Krevit shall:

(a) submit resumes of all qualified persons for the work to be performed pursuant to paragraph 42 below. EPA will approve or disapprove of the qualified person(s) in writing.

Krevit shall submit the resume of a new qualified person within seven days of receipt of EPA's written disapproval; and

(b) fix the chlorine gas scrubber on the sodium hypochlorite container-filling process and submit documentation proving that this task has been completed.

39. **As soon as possible, but within no later than 30 days from the effective date of this**

assessment of (a) the chemical storage/management practices discussed above in paragraph 22; (b) adequacy and compatibility of Krevit's fire protection systems; and (c) compliance with applicable building and fire codes.<sup>1</sup>

(iii) recommendations and a schedule for addressing any findings.

(d) if the compliance audits of the chlorine process, required pursuant to 40 C.F.R. § 68.79 are not up to date, conduct a compliance audit and submit documentation proving that this task is complete;

(e) mail a copy of the documentation and schedule required by paragraph 39(b)-(d) to the people referenced in paragraph 44.

40. If Krevit currently stores or plans to store hydrochloric acid 38% at the Facility in amounts that exceed the regulatory threshold, **as soon as possible but within no later than 60 days** from the effective date of this order, Krevit shall:

(a) comply with all of the Program 3 risk management planning requirements found in 40 C.F.R. Part 68 including, but not limited to, 40 C.F.R. §§ 68.15 (Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment); 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program);

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<sup>1</sup>Guidelines and standards that may be useful in conducting this assessment include, among others, EPA's *Guidance for Implementation of the General Duty Clause, Clean Air Act Section 112(r)(1)*, EDIC 2000-01 (May 2000); NFPA Chapter 30, IFC Chapters 27 and 34, Material Safety Data Sheets, local fire and building codes, and several American Institute of Chemical Engineers (AIChE) publications, including *Guidelines for Hazards Evaluation Procedures*, *Guidelines for Engineering Design for Process Safety*, *Guidelines for Safe Storage and Handling of Reactive Materials*, and *Guidelines for Safe Warehousing of Chemicals*.

- b. Provide EPA with an estimate of the cost savings realized, if any, by failing to comply with the Program 2 RMP requirements for hydrochloric acid from June 30, 2004 to the present. Provide EPA with the dates when any RMP expenditures took place and the actual costs of complying with the Program 2 requirements, including, but not limited to completion of a RMP.
- c. Provide EPA with an estimate of the cost savings realized, if any, by operating the sodium hypochlorite container-filling process without fixing the broken chlorine scrubber.
- d. Describe how much chlorine gas was released from the sodium hypochlorite container-filling operation on a daily basis as a result of having the chlorine scrubber out of order, and provide any supporting documentation.

### **ENFORCEMENT**

43. At any time after the issuance of this AO, EPA may take any or all of the following actions: issue a further order requiring compliance with the Act; issue an administrative penalty order for up to \$37,500 per day for each violation; or bring a civil or criminal action seeking an injunction and penalties. See Sections 113(a), (b), (c), and (d) of the Act, 42 U.S.C. §§ 7413(a), (b), (c), and (d); 40 C.F.R Part 19; and 73 Fed. Reg. 75340-75346 (December 11, 2008) (Clean Air Act penalties raised from \$25,000 to \$32,500 for violations occurring between March 15, 2004 and January 12, 2009, and to \$37,500 for violations occurring after January 12, 2009). Be advised that Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2), contains provisions that affect



EPA within five days of issuance of this NOV/AO/RR by contacting Len Wallace or

Catherine Smith at the phone numbers listed above.

Susan Studlien

06/30/09

Susan Studlien, Director

Date

Office of Environmental Stewardship

U.S. Environmental Protection Agency

Region I – New England