



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

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BY HAND

September 27, 2012

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: In the Matter of: The City of Woonsocket, Rhode Island,
Docket No. CAA-01-2012-0114

Dear Ms. Santiago:

Enclosed please find the original and one copy of the Administrative Complaint and Notice of Opportunity to Request a Hearing in the above-referenced case.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Schlang".

Steven Schlang
Senior Enforcement Counsel

Enclosures

cc: The Honorable Leo T. Fontaine, Woonsocket, RI

RECEIVED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY SEP 27 2012

EPA ORC 125
Office of Regional Hearing Clerk

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| In the Matter of |) | Docket No. CAA-01-2012-0114 |
| |) | |
| The City of Woonsocket, Rhode Island |) | ADMINISTRATIVE COMPLAINT and |
| Respondent |) | NOTICE OF OPPORTUNITY TO |
| |) | REQUEST A HEARING |
| |) | |
| Proceeding under Section 113(d) of the |) | |
| Clean Air Act, 42 U.S.C. § 7413(d). |) | |
| |) | |

I. STATEMENT OF AUTHORITY

1. This Administrative Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“the Act”), 42 U.S.C. § 7413(d) , and 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 of Practice”), 40 C.F.R. Part 22. Complainant is the Director of the Office of Environmental Stewardship, U.S. Environmental Protection Agency (“EPA”), Region 1. Respondent is the City of Woonsocket, Rhode Island (“Respondent”).

II. NATURE OF THE ACTION

2. This Complaint alleges that Respondent failed to maintain an adequate risk management program for the storage, handling and processing of chlorine at the Facility by failing to develop and properly implement an adequate emergency response plan (“ERP”) and properly train

employees in emergency response at its Charles Hamman Water Treatment Plant in Woonsocket, Rhode Island facility (the “Facility”).

3. Respondent is hereby notified of Complainant’s determination that Respondent has violated Section 112(r)(7), 42 U.S.C. § 7412(r)(7) and its implementing regulations found at 40 C.F.R. Part 68. Complainant seeks civil penalties pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

III. STATUTORY AND REGULATORY AUTHORITY

4. Section 112(r) of the Act, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs to prevent and minimize the consequences of accidental releases 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. Section 112(r)(5), 42 U.S.C. § 7412(r)(5), requires EPA to establish for each such substance a threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of certain regulated substances, including a requirement that an owner or operator of certain stationary sources prepare and implement a risk management plan (“RMP”).

5. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), EPA promulgated 40 C.F.R. §§ 68.1-68.220 (“Part 68”).

6. Forty C.F.R. § 68.130 lists the substances, and their associated threshold quantities,

regulated under Part 68.

7. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by June 21, 1999. In particular, each process in which a regulated substance is present in more than a threshold quantity (“covered process”) is subject to one of three programs.

Under 40 C.F.R. § 68.12(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is less than the distance to any public receptor. Under 40 C.F.R. § 68.12(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in certain NAICS codes 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.

8. Under Section 112(r)(7)(E) of the Act, 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.

9. Sections 113(a) and (d) of the Act, 42 U.S.C. §§ 7413(a) and (d), provide for the assessment of civil administrative penalties for violations of the Act, including violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r).

IV. GENERAL ALLEGATIONS

10. Woonsocket is the owner and operator of a water treatment facility (the “Facility”) located at 1500 Manville Road, Woonsocket, Rhode Island 02895 (the “Facility”).

11. Woonsocket was incorporated as a city in Rhode Island in 1888.

12. As a municipal corporation, Woonsocket is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
13. At the Facility, Woonsocket processes, handles and stores chlorine, which is an extremely hazardous toxic substance listed under 40 C.F.R. § 68.130.
14. Chlorine is a toxic substance that is normally shipped and stored as a liquefied compressed gas. Chlorine is a heavier-than-air gas, is non-flammable, and is a strong oxidizer. Chlorine causes respiratory distress and may burn skin, eyes, and lungs. Effects of inhalation range from headaches, nausea, and lung irritation to severe eye, nose, and respiratory distress. Inhaling high concentrations of chlorine gas can be lethal. The substance is highly reactive and will readily mix with other substances causing further hazards. In the presence of moisture, chlorine becomes highly corrosive.
15. Pursuant to 40 C.F.R. § 68.130, any facility storing more than 2,500 pounds is subject to the RMP regulations of 40 C.F.R. Part 68.
16. The Facility is a “stationary source,” as that term is defined in 40 C.F.R. § 68.3.
17. Woonsocket is the “owner or operator,” as that term is defined by Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.
18. On or about August 29, 2008, there was a release of chlorine from a 150-lb cylinder at the Facility (“Release”).
19. The Release occurred while workers at the Facility encountered difficulties with a faulty valve on a new cylinder of chlorine that was being installed to replace a spent cylinder.
20. When the cylinders started to leak, the Facility was evacuated except for two facility personnel, who donned self-contained breathing apparatuses and attempted to remedy the situation

by carrying the leaking cylinders outside.

21. The local fire department was notified and subsequently arrived on the scene. The two facility personnel involved in the incident reported chlorine exposure symptoms, including breathing difficulties, and were sent to a hospital for assessment.

22. On March 17, 2011, EPA and EPA contractors from Weston Solutions, Inc., conducted an investigation (“EPA Investigation”) regarding the Release at the Facility. The purpose of the EPA Investigation was to identify the cause and contributory factors of the Release and the Facility’s compliance with various federal statutes and regulations, including the Clean Air Act.

23. The investigation consisted of, among other things, a review of facility documentation regarding the Release, facility procedures and records, a tour of the Facility and meetings with Respondent’s representatives.

24. According to Respondent’s 1999 Program 2 RMP plan, up to thirty-five cylinders of chlorine (5,200 pounds) may be in the Facility’s chlorine room at any one time. The 2004 and 2009 RMP plans also indicated that there were up to 5,200 pounds of chlorine present at any one time.

25. The use, storage, manufacturing, handling or on-site movement of a regulated substance, in this instance chlorine, in one room at the Facility is a “process,” as defined by 40 C.F.R. § 68.3.

26. As the owner and operator of a stationary source that has more than the threshold amount of a regulated substance in a covered process, Respondent is subject to the RMP provisions of Part 68.

27. In particular, Respondent’s storage and handling of chlorine is subject to the requirements of Program 2, in accordance with the requirements found in 40 C.F.R. § 68.10(c) because: a) the

process has had an accidental release of a regulated substance where exposure to the substance has led to injury, and the distance to a toxic or flammable endpoint for a worst-case release of chlorine is greater than the distance to a public receptor, making the process ineligible for Program 1; and (b) the process is not subject to OSHA's process safety management standard at 29 C.F.R. § 1910.119, making the process ineligible for Program 3. Likewise, at the time of the Release, the chlorine process was subject to Program 2.

28. Respondent had prepared and submitted a Program 2 RMP prior to the Release. Respondent was unable, however, to produce an emergency response plan.

V. VIOLATION

COUNT 1: FAILURE TO COMPLY WITH EMERGENCY RESPONSE REQUIREMENTS

29. Allegations in paragraphs 9 to 28 are hereby incorporated by reference.

30. In accordance with 40 C.F.R. § 68.90(a) and (b), the owner or operator of a stationary source with Program 2 and Program 3 processes, whose employees will respond to accidental releases, shall comply with the emergency response program requirements of 40 C.F.R. § 68.95.

31. Forty C.F.R. § 68.95 requires the owner or operator of a Program 2 facility to develop and implement an emergency response program. Pursuant to 40 C.F.R. § 68.95(a), an emergency response plan ("ERP") must be maintained at the stationary source and must include the following elements: (1) procedures for informing the public and local emergency response agencies about accidental releases; (2) documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures and (3) procedures and measures for emergency response after an accidental release of a regulated substance. The emergency response program

must also have procedures for the use of emergency response equipment and for its inspection, testing, and maintenance; training for all employees in relevant procedures and procedures to review and update, as appropriate, the ERP to reflect changes at the stationary source and ensure that employees are informed of changes.

32. Pursuant to 40 C.F.R. § 68.95(c), an ERP developed under the provisions of 40 C.F.R. § 68.95(a) must be coordinated with the community emergency response plan developed under 42 U.S.C. § 11003.

33. Pursuant to 40 C.F.R. § 68.95(b), a written plan that complies with other Federal contingency plan regulations or is consistent with the approach in the National Response Team's Integrated Contingency Plan Guidance that includes the elements found in Paragraph 31 above satisfies the requirements of the regulation if the owner or operator of the stationary source also complies with the provisions of paragraph 32 above.

34. Pursuant to 40 C.F.R. § 68.200, the owner or operator of a stationary source subject to the RMP requirements shall maintain records supporting the implementation of Part 68 for five years.

35. As alleged above, Respondent stored greater than the threshold amount of chlorine in a Program 2 process at its Facility.

36. As alleged above, Facility employees participated actively in the response to Release, and thus the Facility was subject to the emergency response program requirements of 40 C.F.R. § 68.95.

37. Likewise, Respondent's 1999 and 2009 RMP plans indicated that the Facility had its own emergency response program.

38. Respondent was not able to provide to EPA any documentation of its emergency response

program or training records when asked.

39. A proper emergency response program and emergency response training could have prevented the injuries caused to the employees and the threat to the public associated with bringing the leaking cylinders outside.

40. Accordingly, Respondent violated 40 C.F.R. §§ 68.90(a), 68.95, and 68.200, and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), because it failed to have an adequate ERP, train its employees in safe emergency response, or keep records of such.

VI. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY

41. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes the assessment of a civil administrative penalty of up to \$25,000 per day for each violation. The Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19, as mandated by the Debt Collection Improvement Act, 31 U.S.C. § 3701, authorizes the assessment of civil administrative penalties of up to \$32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009 and up to \$37,500 per day for each violation that occurs after January 12, 2009.

42. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), prescribes a penalty limit and a twelve month duration limitation on EPA's authority to initiate an Administrative Penalty Order. However, one or both of these limitations may be waived when EPA and the Department of Justice jointly determine that a waiver is appropriate. EPA and the Department of Justice have jointly determined to waive the twelve-month duration limitation but not the penalty limit, which, for violations occurring prior to January 13, 2009, is \$270,000.

43. Based on the foregoing allegations and pursuant to the authority of Section 113(d) of the

Act, 42 U.S.C. § 7413(d), Complainant seeks to assess civil penalties against Respondent of up to \$32,500 per day for its violation of Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and its implementing regulations found at 40 C.F.R. Part 68, up to a maximum of \$270,000. Specifically, EPA seeks (a) up to 11 months and eight days of violation for Respondent's violation of 40 C.F.R. §§ 68.90, 68.95, and 68.200 from at least September 30, 2007 to September 8, 2008. However, the CAA penalty shall not exceed \$270,000, in accordance with Section 113(d) of the CAA, 42 U.S.C. §7413(d), the DCIA, 31 U.S.C. § 3701, and the terms of the waiver. This violation is significant for the reasons explained in paragraph 39 above.

44. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty and explaining how the proposed penalty was calculated, as required by 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; Final Rule," 40 C.F.R. Part 22 (the "Consolidated Rules of Practice"), a copy of which is enclosed with this Complaint.

45. In determining the amount of the CAA penalty to be assessed, EPA will take into account the statutory factors listed in Section 113(e) of the CAA, 42 U.S.C. § 7413(e). These factors include the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require. An appropriate penalty will be derived in accordance with the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40

C.F.R. Part 68” (June 2012). This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case.

46. Neither assessment nor payment of a civil penalty shall affect Respondent's continuing obligation to comply with the Act, the regulations promulgated thereunder, or any other applicable Federal, State or local law. Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2), contains provisions that affect the burden of proof with respect to violations that continue following issuance of a notice of violation.

VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

47. Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22. Any request for a hearing must be included in Respondent's written Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within 30 days of receipt of this Complaint.

48. Under Section 22.15 of the Consolidated Rules of Practice, in its Answer, Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondent intends to place at issue.

49. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (ORA18-1)
Boston, MA 02109-3912

50. Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action, to Steven Schlang, the attorney assigned to represent EPA and who is designated to receive service in this matter at:

Steven Schlang
Office of Environmental Stewardship
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES04-4)
Boston, MA 02109-3912
Tel: (617) 918-1773

51. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing. Default constitutes, for purposes of this action only, an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to a hearing on factual allegations contained therein.

Informal Settlement Conference

52. Whether or not Respondent requests a hearing, Respondent may request an informal conference concerning the facts of this case, or the amount of the proposed penalty, and the possibility of settlement. Respondent's attorney is encouraged to contact Steven Schlang to discuss the legal matters relating to this Complaint or to arrange an informal settlement

conference. **Please note that a request for an informal settlement conference does not enlarge the thirty-day period within which a written Answer must be submitted to avoid default.**

Date: 09/26/12

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

In the Matter of the City of Woonsocket, RI
EPA Docket No. CAA-01-2012-0114

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity to Request a Hearing was transmitted to the following persons, in the manner specified, on the date below:

Original and one copy
hand-delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy by certified mail,
return receipt requested:

The Honorable Leo T. Fontaine
Mayor of Woonsocket
169 Main Street
Woonsocket, RI 02895

Dated: 9/27/12


Steven Schlang
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Phone: (617) 918-1773
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