



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

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FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2015-0009

IN THE MATTER OF:

WESTERN OPERATING COMPANY, INC.

WIGGINS GAS PLANT

8993 North I-76 Frontage Road

Ft. Morgan, CO 80701

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 2nd DAY OF March, 2015.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF:)
)
Western Operating Company Inc.)
Wiggins Gas Plant)
8993 North I-76 Frontage Road)
Fort Morgan, Colorado 80701)
)
Respondent)
)

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

DOCKET NO.: CAA-08-2015-0009

Complainant, the United States Environmental Protection Agency, Region 8 (EPA or Complainant), and Respondent, Western Operating Company Inc. (Respondent) (together, the Parties), hereby consent and agree as follows:

1. This Combined Complaint and Consent Agreement (CCCA) is entered into by the Parties pursuant to sections 113(a)(3)(A) and 113(d) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(3)(A) and 7413(d), for alleged violations of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r). This proceeding is subject to EPA's *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Rules of Practice), 40 C.F.R. part 22.
2. The undersigned EPA official has been properly delegated the authority to enter into this CCCA.
3. 40 C.F.R. § 22.13(b) provides that where the Parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a CCCA.
4. The Parties agree that the settling of this action and refraining from the adjudication of any issue of fact or law, with regard to the issues herein, is in their interest and in the public interest.
5. Respondent consents to the terms of this CCCA, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

6. Respondent admits the jurisdictional allegations in this CCCA and neither admits nor denies all remaining allegations, terms and conditions contained herein.
7. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
8. The Department of Justice has granted a blanket waiver under CAA section 113(d), 42 U.S.C. § 7413(d), for violation(s) of 40 C.F.R. part 68 that have occurred more than one year before the initiation of an administrative action by the EPA.

STATUTORY AND REGULATORY FRAMEWORK

9. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorizes the Administrator to promulgate regulations regarding the prevention and detection of accidental releases of designated chemicals. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan (RMP) to prevent or minimize risks of accidental releases of those designated substances. The regulations, promulgated by the EPA pursuant to CAA section 112(r)(7), are set forth in 40 C.F.R. part 68.
10. Under 40 C.F.R. § 68.3, the following definitions apply:
 - a. "Stationary source" means "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."

b. "Regulated substance" means "any substance (listed pursuant to section 112(r)(3) of the Clean Air Act) in 40 C.F.R. § 68.130." Threshold quantities for the regulated substances are included in 40 C.F.R. § 68.130.

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term "person" to include in relevant part, an individual, corporation, or partnership.

SPECIFIC ALLEGATIONS

12. Respondent is a corporation, and therefore a person, and thus subject to regulation under section 112 of the CAA, 42 U.S.C. § 7412.

13. Respondent is the owner and/or operator of the natural gas processing plant, a stationary source, located at 8993 North I-76 Frontage Road, Fort Morgan, Colorado (Facility).

14. The Facility uses, handles, and/or stores more than a threshold quantity of flammable mixtures, which is a regulated substance.

15. Pursuant to section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), Respondent is required to prepare and implement a RMP to detect and prevent or minimize accidental releases of such substances.

16. On April 7, 2014, an authorized representative of the EPA conducted an inspection (EPA inspection) of the Facility, with the consent of Respondent, to determine compliance with CAA section 112(r)(7). During the inspection, the EPA representative observed alleged violations of the CAA section 112(r)(7). The alleged violations are described in paragraphs 17-23.

17. 40 C.F.R. § 68.15(c) provides that the names or positions of the people responsible for implementing individual requirements of the risk management program shall be documented and lines of authority defined through an organization chart or similar document. Respondent did not have a current and accurate management system that documented the names or positions of the people responsible for implementing individual requirements of the risk management program. This is a violation of 40 C.F.R. § 68.15(c).

18. 40 C.F.R. § 68.50(c) provides that the owner or operator shall document the results of the hazard review and ensure that problems identified are resolved in a timely manner. ABSG Consulting conducted a hazard review in October of 2009 at the Facility. No documentation was available to demonstrate that the hazard review recommendations were resolved in a timely manner. This is a violation of 40 C.F.R. § 68.50(c).

19. 40 C.F.R. § 68.52(a) provides that the owner or operator shall prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process. Written operating procedures observed during the EPA inspection were inaccurate and not consistent with the safety information for equipment at the Facility. This is a violation of 40 C.F.R. § 68.52(a).

20. 40 C.F.R. § 68.56(a) provides that the owner or operator shall prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. Respondent's *Inspection, Testing and Preventative Maintenance Plan* states that a required task for piping (insulated) is nondestructive testing for corrosion under insulation (CUI) when suspected during external inspection of insulation. In 2011, Mistras Asset Protection Solutions (Mistras) inspected and tested process equipment at the Facility and inspection reports recommended, "remove insulation for CUI inspection". During the EPA inspection there was no record of CUI inspection for insulated piping. Respondent failed to implement procedures to maintain the on-going integrity of the process equipment. This is a violation of 40 C.F.R. § 68.56(a).

21. 40 C.F.R. § 68.56(a) provides that the owner or operator shall prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. Respondent did not have a system in place to track maintenance recommendations once a deficiency is identified. In 2011, Mistras' inspection report stated, "Western Operating Company should define if they plan on using PCMS or maintenance work order system". Respondent failed to implement procedures to maintain the on-going integrity of the process equipment. This is a violation of 40 C.F.R. § 68.56(a).

22. 40 C.F.R. § 68.56(d) provides that the frequency of inspection and tests of process equipment shall be consistent with applicable manufacturers' recommendations, industry standards or codes, good engineering practices, and prior operating experience. All gas detection equipment at the Facility had not been calibrated or tested since the time of installation in 2011. The frequency of inspection and tests of the gas detection equipment was not consistent with manufacturers' recommendations. This is a violation of 40 C.F.R. § 68.56(d).

23. 40 C.F.R. § 68.58(a) provides that the owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed. At the time of the EPA inspection the most recent compliance audit was conducted in February of 2010. Respondent did not conduct a compliance audit at least every three years. This is a violation of 40 C.F.R. § 68.58(a).

PENALTY

24. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each violation of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of 42 U.S.C. § 7412(r). To determine the amount of the civil penalty to be assessed pursuant to section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), the EPA took into account, in addition to such other factors as justice may require, 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 violations as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.

25. Respondent consents and agrees to pay a civil penalty in the amount of one hundred two thousand dollars (\$102,000).

26. Attachment A (Collection Information) to this CCCA, provides terms for payment including the assessment of fees and interest charges for late payments.

OTHER TERMS

27. This CCCA contains all terms of the settlement agreed to by the Parties.

28. This CCCA, upon incorporation into a final order, applies to and is binding upon the EPA, Respondent, and Respondent's successors or assigns.

29. Nothing in the CCCA shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.

30. Failure of Respondent to comply with any terms of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.

31. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

32. Nothing in the CCCA shall be construed as a waiver by the United States of its authority to seek costs or any appropriate civil penalty associated with any action instituted in the appropriate U.S. District Court as a result of Respondent's failure to perform pursuant to the terms of this CCCA.

33. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into and legally bind Respondent to the terms and conditions of the CCCA.

34. The Parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.

35. Each Party shall bear its own costs and attorney fees in connection with this administrative matter.

36. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

37. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full payment of the penalty agreed to in paragraph 25 herein, shall resolve Respondent's liability for civil penalties for the alleged violations in this CCCA.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, REGION 8,
Office of Enforcement, Compliance and
Environmental Justice

Complainant

Date: 2/27/15

By: 
Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Western Operating Company Inc.

Respondent

Date: 2-13-15

By: 
President
Title

COLLECTION INFORMATION

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

CHECK PAYMENTS- U.S. Postal Service:

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

Contact: Craig Steffen, 513-487-2091

OVERNIGHT MAIL (Federal Express, Airborne, or other commercial carrier):

US Bank
Cincinnati Finance Center Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

WIRE TRANSFERS (FEDWIRE):

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the "Search Public Forms" field

Open form and complete required fields then click "Submit Data".

AUTOMATED CLEARINGHOUSE (VENDOR EXPRESS)

Automated clearinghouse payments can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Physical location of US Treasury Facility:

5700 Rivertech Court

Riverdale, MD 20737

US Treasury Contact Information:

John Schmid: 202-874-7026

Remittance Express (REX): 1-866-234-5681

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **WESTERN OPERATING COMPANY, INC., WIGGINS GAS PLANT; DOCKET NO.: CAA-08-2015-0009** was filed with the Regional Hearing Clerk on March 2, 2015.

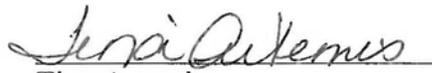
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were resent and placed in the United States mail certified/return receipt on March 2, 2015 to:

Kevin J. O'Toole
Bookhardt & O'Toole
999 Eighteenth Street, Suite 2500
Denver, CO 80202

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

March 2, 2015


Tina Artemis
Paralegal/Regional Hearing Clerk

