

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FEB 20 AM 9:28

IN THE MATTER OF:)
)
K2D, Inc.)
DBA Colorado Premium Cold Storage)
2035 2nd Avenue)
Greeley, CO 80631)
)
Respondent)
_____)

EPA REGION VIII
HEARING CLERK
**ADMINISTRATIVE COMPLIANCE
ORDER ON CONSENT**
Docket No: CAA-08-2020-0004

PRELIMINARY STATEMENT

This Administrative Compliance Order On Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and by K2D, Inc., doing business as Colorado Premium Cold Storage (Respondent), and is issued under the authority vested in the Administrator of the EPA by section 113(a)(3) and (4) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7413(a)(3) and (4).

1. The Director for the EPA Region 8's Environmental Compliance and Assurance Division is delegated the authority to issue this Order under section 113(a) of the Act, 42 U.S.C.

§ 7413(a).

2. This Order requires Respondent to comply with the requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. part 68. All activities specified and ordered below shall be initiated and completed as soon as possible even though maximum time periods or specific dates for their completion may be detailed herein. With the exception of extensions or deadlines for submittals or performance, the terms of this Order shall not be modified except by a subsequent written agreement between the EPA and Respondent.

3. By entering into this Order, Respondent (1) consents and agrees not to contest the EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein.

STATUTORY AND REGULATORY BACKGROUND

4. On November 15, 1990, the CAA Amendments of 1990 were signed into law. The Amendments added section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the EPA to, among other things, promulgate regulations to prevent accidental releases of certain regulated substances.

5. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), provides that the owners and operators of stationary sources are required to develop and implement a risk management plan (RMP) that includes a hazard assessment, a prevention program and an emergency response program.

6. 40 C.F.R. part 68 sets forth the requirements of a risk management program that must be established and implemented at a stationary source that has more than a threshold quantity of a regulated substance in a process.

7. 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.

FINDINGS

8. Respondent is a Colorado corporation and is authorized to do business in the state of Colorado and is therefore a "person" as that term is defined under the section 302(e) of the CAA, 42 U.S.C. § 7602(e).

9. Respondent is the owner and operator of the Colorado Premium Cold Storage Facility (Facility), a stationary source, located at 5120 Race Court, Denver, Colorado 80216.

10. The Facility uses, handles, and stores more than a threshold quantity of anhydrous ammonia, a regulated substance, as specified at 40 C.F.R. §§ 68.115 and 68.130, as part of an ammonia refrigeration system.

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

12. The EPA conducted an inspection of the Facility on August 27, 2018, to assess compliance with section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. part 68.

13. During the inspection, the EPA representative observed alleged violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. part 68. The outstanding alleged violations identified in the inspection are described in Paragraphs 14-16, below.

14. 40 C.F.R. § 68.65(d)(1)(iv) provides that the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule, and shall keep process safety information up-to-date. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process. Information pertaining to the equipment in the process shall include relief system design and design basis. Respondent's process safety information did not contain appropriate relief system design and design basis for the ammonia refrigeration system at the Facility. By failing to include appropriate relief system design and design basis for the ammonia

refrigeration system at the Facility in the process safety information, Respondent violated 40 C.F.R. § 68.65(d)(1)(iv).

15. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices. Respondent's structural supports for foundations, piping, tubing, and equipment for the ammonia refrigeration system at the Facility did not meet the noncombustible criteria in accordance with Section 5.11.2 of ANSI/IIAR 2-2014, Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems. By not meeting the noncombustible criteria for the structural supports for foundations, piping, tubing, and equipment for the ammonia refrigeration system at the Facility per ANSI/IIAR 2-2014, Respondent did not comply with recognized and generally accepted good engineering practices and violated 40 C.F.R. § 68.65(d)(2).

16. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices. Respondent's access to valves for the ammonia refrigeration system at the Facility did not meet the criteria in accordance with Section 6.3.3 of ANSI/IIAR 2-2014, Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems. By not meeting the criteria for access to valves for the ammonia refrigeration system at the Facility per ANSI/IIAR 2-2014, Respondent did not comply with recognized and generally accepted good engineering practices and violated 40 C.F.R. § 68.65(d)(2).

COMPLIANCE ORDER

17. Based upon the foregoing Findings by the EPA, it is hereby ordered and agreed that Respondent shall comply with the requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. part 68. Specifically, the EPA and Respondent agree that Respondent shall, as expeditiously as possible,

but in no event later than November 30, 2020, certify that it is in compliance with the legal requirements governing the alleged violations identified in Paragraphs 14-16.

18. Within 15 days of completion of all actions identified in Paragraph 17, Respondent shall provide the EPA with a notification that the actions have been completed. On January 30, 2020, Respondent emailed EPA with the notification of completion at the email address provided at Paragraph 20 herein. The notification of completion states that such actions were completed on January 22, 2020. The EPA will review the final inspection report and will follow-up as necessary to ensure compliance. Termination of this Order shall follow the provisions of Paragraph 32.

19. The notification of completion required by Paragraph 18 of this Order also contains the following certification signed by an officer of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based upon my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment. (Signature and date)

20. All submissions and correspondence shall be mailed or emailed to the following address:

U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Attn: Steven A. Ramirez, 8ENF-AT-P
(Email address: ramirez.stevena@epa.gov)

OTHER TERMS AND CONDITIONS

21. Respondent admits the jurisdictional allegations contained in this Order.
22. Respondent neither admits nor denies the findings in the Findings section of this Order.

GENERAL PROVISIONS

23. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$99,681 per day per violation, or both, as provided in section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as adjusted for inflation, 40 C.F.R. part 19, 84 Fed. Reg. at 2059, as well as criminal sanctions as provided in section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

24. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or other federal, state or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

25. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present imminent and substantial endangerment to the public health, welfare, or the environment.

26. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the effective date of this Order until the termination date as set out in Paragraph 32 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

27. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. part 2, subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. part 2, subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

28. Each undersigned representative certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally Respondent and Complainant to this document.

29. Deadlines for submittals or performance may be extended by the EPA, at its sole discretion, without further amendment to this Order. The EPA will provide Respondent written confirmation and documentation of any such extensions of time.

EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE

30. Pursuant to section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

JUDICIAL REVIEW

31. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).


TERMINATION

32. This Order shall terminate on the date of a determination by the EPA that Respondent has achieved compliance with all terms of this Order.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, REGION 8,

Complainant

Date: 2/12/2020

By: 
Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division

K2D, Inc. DBA Colorado Premium Cold Storage
Respondent

Date: 2/6/20

By: 

E.V.P. OPERATIONS
Title

**In the Matter of:
K2D, Inc. DBA Colorado Premium Cold Storage**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE ORDER ON CONSENT were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail, Postage Pre-Paid, to:

K2D, Inc.
DBA Colorado Premium Cold Storage
2035 2nd Avenue
Greeley, CO 80631
Attn: Name, Title

February 20, 2020
Date

Joan Detty
Joan Detty