

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Midwest Service Company)
P.O. Box 149)
Tekamah, Nebraska 69210)

Docket No. CAA-07-2008-0001

Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and Midwest Service Company (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of 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), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the first date of alleged violation occurred more than 12

months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirement to implement a Risk Management Plan as required by 40 C.F.R. Part 68 and Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director, Air and Waste Management Division, EPA, Region VII.

4. The Respondent is Midwest Service Company, located at 613 South 13th Street, Tekamah, Nebraska 69210, is a company authorized to conduct business in the State of Nebraska. The Respondent's facility engages in the storage of anhydrous ammonia for sale.

Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Section 112(r) to the Clean Air Act, 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). 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).

6. 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 Clean Air Act. 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.

7. 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.

8. Pursuant to Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted 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.

9. Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 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 Clean Air Act referenced therein, including Section 112(r)(7). Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996,

authorizes the United States assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurs after March 15, 2004.

Definitions

10. The regulations at 40 C.F.R. § 68.3 define “stationary source” in part, 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.

11. 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 Clean Air Act, as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

12. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130.

13. 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.

Alleged Violations

14. EPA alleges that Respondent has violated the Clean Air Act and federal regulations, promulgated pursuant to the Clean Air Act, as follows:

15. Respondent is, and at all times referred to herein, was a "person" as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

16. Respondent's facility located at 613 South 13th Street, Tekamah, Nebraska 69210, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

17. 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.

18. On or about May 9, 2006, EPA conducted an inspection of Respondent's facility to determine compliance with Section 112(r) of the Clean Air Act and 40 C.F.R. Part 68.

19. Records collected during the inspection showed that Respondent has exceeded the threshold quantity for anhydrous ammonia.

20. Respondent is subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

21. Respondent was required under Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

22. Records collected during the inspection showed that Respondent failed to implement a risk management program that included all the requirements of a prevention program. Specifically, Respondent failed to implement a prevention program by failing to: (1) develop a

management system to oversee the implementation of the risk management program elements as required by 40 C.F.R. § 68.15; (2) review and update the off-site consequence analysis at least once every five years as required by 40 C.F.R. § 68.36; (3) certify that they have evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart C at least every three years as required by 40 C.F.R. § 68.58; and (4) revise and update the risk management plan within five years of the initial submission as required by 40 C.F.R. § 68.190.

23. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth above are all violations of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

24. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

25. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.

26. Respondent neither admits nor denies the factual allegations set forth above.

27. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

28. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

29. This Consent Agreement and Final Order addresses all civil and administrative claims for the Clean Air Act violations identified above, existing through the effective date of this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of the Clean Air Act or other applicable law.

30. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

31. The effect of settlement described in paragraph 29 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 30, above, of this Consent Agreement and Final Order.

32. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

33. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

34. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the Consent Agreement and Final Order and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of the Clean Air Act, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

*In the Matter of
Midwest Service Company
Consent Agreement and Final Order*

1. Respondent shall pay a civil penalty Three Thousand Two Hundred Dollars (\$3,200), within thirty (30) days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

This payment shall reference docket number CAA-07-2008-0001.

2. A copy of the check should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

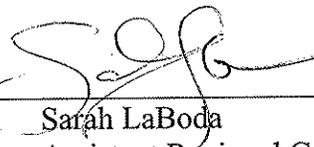
and to:

Sarah LaBoda
Assistant Regional Counsel
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By



Sarah LaBoda
Assistant Regional Counsel

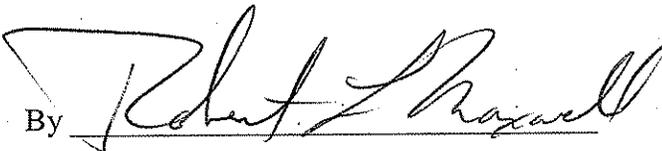
Date 11/20/07

In the Matter of
Midwest Service Company
Consent Agreement and Final Order

By 
Becky Weber
Director
Air and Waste Management Division

Date: 11/20/07

RESPONDENT:
MIDWEST SERVICE COMPANY

By 

Title pres.

Date 11/15/07

*In the Matter of
Midwest Service Company
Consent Agreement and Final Order*

IT IS SO ORDERED. This Final Order shall become effective immediately.

By Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Date Nov. 29, 2007

IN THE MATTER OF Midwest Service Company, Respondent
Docket No. CAA-07-2008-0001

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Sarah Laboda
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Bob Maxwell
Midwest Service Company
P.O. Box 149
Tekamah, Nebraska 68061

Dated: 11/29/07


Kathy Robinson
Hearing Clerk, Region 7