U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Troy Elevator, Inc.,	)	**Docket No. CAA-07-2020-0129**
	)	
Respondent.	)	
	)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Troy Elevator, Inc. (Respondent) have agreed to a settlement of this action before the 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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve 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 the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 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 CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Enforcement and Compliance Assurance Division, EPA, Region 7.

4. Respondent is Troy Elevator, Inc., a corporation doing business in the state of Iowa.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the 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 that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

6. On June 20, 1996, the EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This rule requires 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 the EPA.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the 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. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(h), a covered process is subject to Program 2 requirements if the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(g) and (i), respectively.

10. Section 113(d) of the CAA, 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 Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to $48,192 for violations that occur after November 2, 2015, and are assessed after January 13, 2020.

Definitions

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

12. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines "accidental release" as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 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.

14. The regulations at 40 C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

15. 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 CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. 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.

General Factual Allegations

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

18. Respondent owns and operates an agricultural feed, fertilizer, chemical, and grain storage and supply business with facilities located at 30919 215th Street, Bloomfield, Iowa (Bloomfield Facility) and 104 East South Street, Blakesburg, Iowa (Blakesburg Facility). Respondent is the owner and operator of these facilities, which are each a "stationary source" pursuant to 40 C.F.R. § 68.3.

19. 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, is 10,000 pounds.

20. On March 7, 2016, an accidental release of anhydrous ammonia occurred at Respondent's Bloomfield Facility while an employee was replacing a pump near a supply vessel and resulted in injuries to the employee.

21. On or about May 22, 2019, representatives of the EPA conducted an inspection of the Bloomfield and Blakesburg Facilities to determine Respondent's compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

22. Information gathered during the EPA inspection revealed that Respondent had greater than 10,000 pounds of anhydrous ammonia in a process at the Bloomfield and Blakesburg Facilities.

23. From the time Respondent first had onsite at each Facility greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

24. From the time Respondent first had onsite at each Facility greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to Program 2 prevention requirements because pursuant to 40 C.F.R. § 68.10(g), the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(f) and (h), respectively.

25. From the time Respondent first had onsite at each Facility greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was required under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 2 requirements provided at 40 C.F.R. § 68.12(c) and detailed in Subpart C.

Allegations of Violation

26. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1

27. The facts stated in Paragraphs 17 through 25 above are herein incorporated.

28. The regulation at 40 C.F.R. § 68.12(c)(3) requires the owner or operator of a stationary source with a process subject to Program 2 to implement the Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60.

29. The EPA inspection revealed that Respondent did not implement the Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60, as required by 40 C.F.R. § 68.12(c)(3). Specifically:

(a) At both Facilities, Respondent failed to ensure that the process is designed in compliance with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.48(b), including incomplete information on emergency signage at both Facilities, inadequate clearance from the bottom of the vessel to the ground at the Bloomfield Facility, and inadequate bulkhead configuration, and nurse tanks located too close to occupied residences at the Blakesburg Facility.

(b) At the Bloomfield Facility, Respondent failed to implement procedures to maintain the ongoing mechanical integrity of the process equipment, as required by 40 C.F.R. § 68.56(a), by not following procedures for replacing ammonia pumps on March 7, 2016, which resulted in an accidental release of anhydrous ammonia and injury to an employee.

(c) At the Bloomfield Facility, Respondent failed to certify appropriate compliance audits at least every three years to verify that the procedures and practices developed under the rule are adequate and being followed, as required by 40 C.F.R. § 68.58(a).

30. Respondent's failures to comply with Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60, as required by 40 C.F.R. § 68.12(c)(3), violate Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2

31. The facts stated in Paragraphs 17 through 25 above are herein incorporated.

32. The regulation at 40 C.F.R. § 68.190(b)(1) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to revise and update the RMP submitted under 40 C.F.R. § 68.150 at least once every five years from the date of its initial submission or most recent required update, whichever is later.

33. The EPA inspection revealed that Respondent did not update the RMP for the Facilities at least once every five years, as required by 40 C.F.R. § 68.190(b)(1). An updated RMP for the Bloomfield and Blakesburg Facilities was due on or before March 4, 2018, but

Respondent did not submit updated RMPs until April 26, 2019, and April 30, 2019, respectively.

34. Respondent's failures to submit a revised and updated RMP for each Facility at least once every five years as required by 40 C.F.R. § 68.190(b)(1), violate Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3

35. The facts stated in Paragraphs 17 through 25 above are herein incorporated.

36. The regulation at 40 C.F.R. § 68.195 requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to correct the RMP as follows: (a) for any accidental release meeting the five-year accident history reporting criteria of 40 C.F.R. § 68.42, submit the data required under 40 C.F.R. §§ 68.180, 68.170(j) and 68.175(*l*) with respect to that accident within six months of the release or by the time the RMP is updated under 40 C.F.R. § 68.190, whichever is earlier; and (b) correct emergency contact information in the RMP within one month of any change in the name, title, telephone number, 24-hour telephone number, and the email address of the emergency contact for the covered process.

37. The EPA inspection revealed that Respondent did not correct the emergency contact listed in the RMP for the Bloomfield and Blakesburg Facilities for over one year prior to Respondent's updated RMP submissions in April 2019.

38. The EPA inspection revealed that Respondent did not correct the RMP for the Bloomfield Facility to include new accident history information within six months of the March 7, 2016 accidental release of anhydrous ammonia described in Paragraph 20, above.

39. Respondent's failures to submit a corrected RMP within one month of changes to emergency contact information for covered processes and within six months of an accidental release as required by 40 C.F.R. § 68.195, violate Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4

40. The facts stated in Paragraphs 17 and 25 above are herein incorporated.

41. The regulation at 40 C.F.R. § 68.20 requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to prepare a hazard assessment. As part of this assessment, Respondent must define offsite impacts to the population by estimating in the RMP the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in 40 C.F.R. § 68.22(a), as required by 40 C.F.R. § 68.30(a).

42. The EPA inspection revelated that Respondent used an incorrect latitude and longitude for the location of the point of release for the Bloomfield Facility when determining offsite impacts to the population.

43. Respondent's failure to define offsite impacts to the population by estimating in the RMP the population within a circle with its center at the point of release and a radius determined by the distance to the endpoint defined in 40 C.F.R. § 68.22(a), as required by 40 C.F.R. § 68.30(a), violate Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 5

44. The facts stated in Paragraphs 17 and 25 above are herein incorporated.

45. The regulation at 40 C.F.R. § 68.168 requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to submit in the RMP the information provided in 40 C.F.R. § 68.42(b) on each accident covered by 40 C.F.R. § 68.42(a). In turn, the regulation at 40 C.F.R. §§ 68.42(a) and (b) require the owner or operator to include in the RMP a five-year accident history of all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, and lists specific information that must be included about the accidental release.

46. The regulation at 40 C.F.R. § 68.155(d) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to provide in the RMP an executive summary that includes a brief description of the five-year accident history.

47. The EPA inspection revealed that Respondent did not update the five-year history in the RMP for the Bloomfield Facility to include the March 7, 2016 accidental release of anhydrous ammonia that resulted in injury to an employee described in Paragraph 20, above. Respondent did not include required information about the March 7, 2016 accidental release in the revised RMP or executive summary submitted on April 26, 2019.

48. Respondent's failures to include in the RMP and executive summary a five-year accident history of all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, as required by 40 C.F.R. §§ 68.168 and 68.155(d), violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

49. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

(a) admits the jurisdictional allegations set forth herein;

(b) neither admits nor denies the specific factual allegations stated herein;

(c) consents to the assessment of a civil penalty, as stated herein;

(d) consents to the issuance of any specified compliance or corrective action order;

(e) consents to any conditions specified herein;

(f) consents to any stated Permit Action;

(g) waives any right to contest the allegations set forth herein; and

(h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

50. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

51. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

52. EPA has considered the appropriateness of the penalty pursuant to Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), and has determined that based on substantiated ability to pay information, the appropriate penalty for the violations is $37,063 to be paid in monthly installments. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of $37,063, plus interest of two percent over a period of 13 months for a total payment of $37,356.18. The first payment of $10,000 must be received within thirty (30) days of the effective date of the Final Order. The subsequent eleven payments of $2,279.68, with the final twelfth payment of $2,279.70, shall be paid within thirty (30) days of the previous payment for the following twelve months. Each penalty payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at *http://www.epa.gov/financial/makepayment*.

53. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Lisa Haugen, Regional Hearing Clerk
haugen.lisa@epa.gov; and

Kasey Barton, Attorney
barton.kasey@epa.gov.

54. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

55. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

56. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

57. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

58. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

59. This Consent Agreement and Final Order constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Combined Enforcement Response Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

60. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

61. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

62. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

63. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

64. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

65. EPA and Respondent agree to electronic service of this Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.6, by e-mail to the following addresses:

To EPA: *barton.kasey@epa.gov*

To Respondent: *rnewton@troyelevatorinc.com*
jbatterson@troyelevatorinc.com

RESPONDENT:
TROY ELEVATOR, INC.

Date: 4-21-2020

Signature

Robert Newton
Name

President
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: ___________________ ____________________________________
David Cozad
Director
Enforcement and Compliance Assurance Division

Date: ___________________ ______________________________________
Kasey Barton
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

______________________________ ________________

Karina Borromeo Date
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that 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 via Email to Complainant:

barton.kasey@epa.gov
hensely.dave@epa.gov

Copy via Email to Respondent:

rnewton@troyelevatorinc.com
jbatterson@troyelevatorinc.com

Dated this ______ day of ___________________, ________.

____
Signed