

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
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)

Rush Beekman)
d/b/a Wymore Fertilizer)
4th and G Street)
Wymore, Nebraska 64466)

Docket No. CAA-07-2008-0042

Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Rush Beekman (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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 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 (CAA), 42 U.S.C. § 7413(d).

2. This Consent Agreement and Final Order (CA/FO) 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 program as required by 40 C.F.R. Part 68 and 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 CA/FO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 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 7, is the Director, Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Rush Beekman. Respondent's facility is located at 4th and G Street, Wymore, Nebraska, is owned by Respondent and is a cooperative functioning primarily for the storage and sale of fertilizer.

Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to the CAA, 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 CAA. 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 CAA, 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(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), authorizes the United States to commence an action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil 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 CAA, 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 CAA, 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 CAA and federal regulations, promulgated pursuant to the CAA, as follows:

15. 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).

16. Respondent’s facility located at 4th and G Street, Wymore, Nebraska, 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 January 24, 2008, EPA conducted an inspection of Respondent’s facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

19. Records collected during and following 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 CAA, 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 CAA, 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 EPA inspection showed that Respondent failed to fully implement a risk management program that included all the requirements of a prevention program as required by 40 C.F.R. Part 68. Specifically, Respondent failed to: (1) review and update its Offsite Consequence Analysis as required by 40 C.F.R. § 68.36; (2) conduct a five year update of its Hazard Review as required by 40 C.F.R. § 68.50; (3) conduct its Compliance Audit by August 2005 as required by 40 C.F.R. § 68.58; and (4) submit its five year update by August 2007 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 CAA, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

24. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

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 CA/FO.

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 CA/FO.

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 CA/FO addresses all civil and administrative claims for the CAA violations identified above, existing through the effective date of this CA/FO. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or other applicable law.

30. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent's facility is presently in compliance with all requirements of Section 112(r) of the CAA, 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 CA/FO.

32. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

33. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$6,304.38 as set forth in paragraph 1 of the Final Order

34. The penalty specified in paragraph 33, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

35. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in paragraph 33 above.

36. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

37. Pursuant to 31 U.S.C. §3717, EPA is entitled to assess interest and penalties on debts owed to the United States and charge to cover the costs of processing and handling delinquent claims. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the debt collection, including processing and handling costs and administrative costs. In addition, 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. Any such non-payment penalty charge on the debt will accrue from the date the penalty becomes due and is not paid, 31 C.F.R. §§ 901.9(c) and (d).

38. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

39. This Final Order portion of this CA/FO 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 CA/FO.

FINAL ORDER

Payment Procedures

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

1. Respondent shall pay a civil penalty of Six Thousand dollars (\$6,000.00) plus interest of Three Hundred and Four dollars and Thirty Eight cents (\$304.38) over a period of two (2)

years for a total payment of Six Thousand Three Hundred and Four dollars and Thirty Eight cents (\$6,304.38). The total civil penalty of \$6,304.38 shall be paid in three installments. The first payment of \$2,101.46 is due within thirty (30) days of the effective date of this CA/FO. Respondent shall make the second payment of \$2,101.46 no later than January 12, 2010 and the third payment of \$2,101.46 no later than March 12, 2010.

2. Pursuant to 40 C.F.R. § 13.18, failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. Interest on any late payment will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest.

3. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. EPA Region 7
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

The payment shall reference docket number CAA-07-2008-0042.

Copies of the checks shall be mailed to:

Chris Muehlberger
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

General Provisions

5. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO by initiating a judicial or administrative action pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and to seek penalties against Respondent or to seek any other remedy allowed by law.

6. EPA reserves the right to take enforcement action against Respondent for any future violations of the CAA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

7. Respondent and Complainant shall bear their respective costs and attorney's fees.

8. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

For the Respondent:



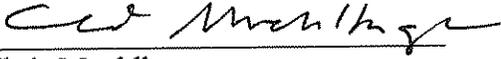
Ruth Beekman

12-29-08.
Date

Title:

OWKEM

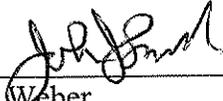
For the Complainant:
The United States Environmental Protection Agency



Chris Muehlberger
Assistant Regional Counsel

12.29.08

Date


for Becky Weber
Director
Air, RCRA and Toxics Division

12/29/08

Date

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

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Sept. 3, 2009
Date

IN THE MATTER OF Rush Beekman d/b/a Wymore Fertilizer, Respondent
Docket No. CAA-07-2008-0042

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:

Christopher Muehlberger
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:

Rush Beekman
d/b/a Wymore Fertilizer
4th and G Street
Wymore, Nebraska 64466

Dated: 9/3/09



Kathy Robinson
Hearing Clerk, Region 7