

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

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U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF REGIONAL COUNSELOR

IN THE MATTER OF:)
)
SUMCO PHOENIX CORPORATION) DOCKET NO. CAA-06-2015-3505
)
RESPONDENT)
_____)

ADMINISTRATIVE ORDER ON CONSENT

The Director of the Superfund Division of the United States Environmental Protection Agency, Region 6 (EPA) and SUMCO Phoenix Corporation (Respondent) in the above-referenced proceeding, hereby enter into this Administrative Order on Consent (Order).

I. INTRODUCTION AND JURISDICTION

1. This Order is issued by EPA pursuant to Section 113(a)(3) and (4) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3) and (4), which authorizes EPA to issue compliance orders for violations of the CAA, including violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated at 40 C.F.R. Part 68. The Director, Superfund Division, EPA Region 6, is the person to whom the authority has been delegated to issue compliance orders in the States of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

2. This Order is issued for the Respondent's failure to comply with the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 regarding the Respondent's facility located at 9401 San Mateo Boulevard, N.E., Albuquerque, New Mexico 87113.

3. This Order is entered into upon mutual agreement of the parties. Accordingly, the Respondent agrees to undertake all actions required by it by the terms and conditions of this Order. The Respondent consents to and agrees not to contest the authority or jurisdiction of EPA

to issue or enforce this Order, and also agrees not to contest the validity or terms of this Order in any action to enforce its provisions.

4. This Order shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, successors and assigns. No change in ownership or corporate or partnership status of the Respondent will in any way alter the status of the Respondent or its responsibilities under this Order.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

5. SUMCO Phoenix Corporation (Respondent) is a Delaware corporation authorized to do business in the State of New Mexico.

6. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency of the United States and any officer, agent, or employee thereof."

7. The Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

8. The Respondent operates a silicon wafer manufacturing facility located at 9401 San Mateo Boulevard, N.E., Albuquerque, New Mexico 87113.

9. "Stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning: 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.

10. The Respondent's facility identified in Paragraph 8 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

11. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 8.

12. Hydrogen chloride (anhydrous) [hydrochloric acid] is a "regulated substance", as set forth in 40 C.F.R. § 68.130.

13. "Process" is defined in 40 C.F.R. § 68.3 as meaning "any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose 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."

14. The Respondent has a HCl tube trailer and gas supply system process at the stationary source identified in Paragraph 8.

15. The Respondent has exceeded the threshold quantity for hydrogen chloride (anhydrous) [hydrochloric acid] at the HCl tube trailer and gas supply system.

16. "Covered process" is defined in 40 C.F.R. § 68.3 as meaning "a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115."

17. The process identified in Paragraphs 14 and 15 is a "covered process" as that that term is defined by 40 C.F.R. § 68.3.

18. The covered process identified in Paragraphs 14, 15, and 17 is subject to the "Program 3" requirements of the RMP regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

19. On or about March 13, 2014, a representative of EPA conducted an inspection of the Respondent's facility.

B. VIOLATION – FAILURE TO CONDUCT COMPLIANCE AUDIT

20. 40 C.F.R. § 68.79(a) provides that the owner or operator shall certify that they have evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart D at least every three years to verify that procedures and practices developed under 40 C.F.R. Part 68, Subpart D are adequate and are being followed.

21. The Respondent conducted a compliance audit in 2006.

22. As of the March 13, 2014 EPA inspection, the Respondent failed to conduct a compliance audit since 2006.

23. Therefore, the Respondent violated 40 C.F.R. § 68.79(a) by failing to conduct two compliance audits since 2006.

III. ORDER

24. Based on the foregoing Findings of Fact and Conclusions of Law, and other information available to EPA, it is hereby **Ordered and Agreed** that the Respondent shall comply with the requirements set forth below:

A. The Respondent shall determine and document an appropriate response to each of the twenty-four (24) findings of the Compliance Audit entitled "A 2014 Compliance Audit of the Process Safety Management and Risk Management Programs at SUMCO USA's Plant in Albuquerque, New Mexico" dated January 2015 (Compliance Audit), and document that the deficiencies have been corrected, as set forth below.

B. The Respondent shall submit Reports to EPA which sets forth a response to each of the twenty-four (24) Compliance Audit findings. The Report shall include status of each finding

and describe in detail how each finding was addressed or is being addressed and how each deficiency has been corrected or is being corrected. The Reports shall be submitted according to the following schedule:

1. Within 90 days of the effective date of the Order;
2. Within 180 days of the effective date of the Order; and
3. Within 270 days of the effective date of the Order.

C. The Respondent shall submit a Final Report to EPA describing in detail how each finding has been addressed, and how each deficiency has been corrected. The Final Report shall be submitted no later than one year from the effective date of this Order.

D. All Reports must be accompanied by the following certification:

"I certify under penalty of law to the best of my knowledge and belief, that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The Reports must be certified on behalf of the Respondent by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11. The Respondent shall submit a copy of the Reports and certifications to the following:

Elizabeth Rogers
RMP Enforcement Officer
Superfund Prevention and Response Branch (6SF-PC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

IV. GENERAL PROVISIONS

25. The Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in this Order.

26. This Order shall not relieve the Respondent of its obligation to comply with all applicable federal, State, and local laws, regulations and other legal requirements, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit.

27. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to the Respondent's failure to comply with any of the requirements of this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any other statutory, regulatory, or common law authority of the United States.

28. This Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Order, nor does it limit the rights of the United States to obtain penalties or injunctive relief under the CAA or other applicable federal law or regulation.

29. This Order is not intended to be, nor shall it be construed to be, a permit. Further, the Parties acknowledge and agree that EPA's approval of this Order does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of Section 112(r) of the CAA. Compliance by the Respondent with the terms of this Order shall not relieve the Respondent of its obligations to comply with the CAA or any other applicable local, State, or federal laws and regulations.

30. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, extremely hazardous substance, or other substance on, at, or from the Facility. This Order shall not

constitute or be construed as a release of any liability that the Respondent or any other person has under the CAA or any other law.

31. Nothing herein shall be construed as an extension of time for complying with any statutory or regulatory requirement under the CAA or any other law.

32. The Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that the 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 CAA, 42 U.S.C. § 7607(b)(1).

33. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive or other appropriate relief relating to the Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppels, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been raised in the present matter.

34. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondent or its employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Order. Nor shall EPA or the United States be held as a party to any contract entered into by Respondent or by its employees, agents, contractors, or consultants.

35. The Parties shall bear their own costs and fees in this action, including attorney fees.

36. Each undersigned representative of the parties to this Order certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Order and to execute and legally bind that party to it.

37. This Order shall terminate upon EPA's notice to the Respondent that it has received a copy of the Respondent's Certification that the deficiencies noticed in the Compliance Audit have been corrected, or within one year from the effective date of this Order, whichever is earlier.

38. Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), 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, the Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, the effective date of this Order shall be the date of signature by EPA.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS ADMINISTRATIVE ORDER ON CONSENT

FOR THE RESPONDENT:

Date: 4/2/15


SUMCO Phoenix Corporation

FOR EPA:

Date: 4/22/15

A handwritten signature in black ink, appearing to read 'C. Edlund', written over a horizontal dotted line.

Carl Edlund, P.E.
Director
Superfund Division
EPA – Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of April, 2015, the original and one copy of the foregoing Administrative Order on Consent was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the Administrative Order on Consent was sent to the following by certified mail, return receipt requested 7007 3020 0002 5102 1875:

Don "Quatro" Baker IV
EHS Manager
SUMCO Phoenix Corporation
SUMCO Albuquerque
9401 San Mateo Boulevard, NE
Albuquerque, NM 87113


