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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CAA-07-2015-0044
)	
F & F FEEDS, INC.,)	
)	
)	COMPLAINT AND
)	CONSENT AGREEMENT/
)	FINAL ORDER
Respondent,)	
)	
Proceeding under Section 113(d) of the)	
Clean Air Act, 42 U.S.C. § 7413(d))	
)	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (“EPA”) and F & F Feeds, Inc. (“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) and 22.18(b)(2).

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). 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, where 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 Complaint and Consent Agreement and Final Order (“CA/FO”) serves as notice that 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. 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 of EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. The Respondent is F & F Feeds, Inc. This action involves the company's facility located at 2700 W. South Avenue in Emporia, Kansas, which sells anhydrous ammonia to farmers for use as fertilizer. F & F Feeds, Inc. is a Kansas for-profit corporation.

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 Title I of 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), 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, 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). 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, 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 provision regulations apply to covered processes. A covered process is eligible for Program 2 if the process does not meet the requirements of Program 1 or Program 3.

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 the CAA referenced therein, including Section 112(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to 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. For each violation of Section 112(r) of the CAA that occurs after January 12, 2009, penalties of up to \$37,500 per day are authorized.

Definitions

11. 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.

12. 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.

13. 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.

14. 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

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 is the owner and/or operator of a facility that sells anhydrous ammonia to farmers for use as a fertilizer. The facility, located at 2700 W. South Avenue, in Emporia, Kansas, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

17. At all times relevant to this action, Respondent processed, handled and stored anhydrous ammonia at its facility.

18. 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.

19. On or about May 29, 2013, and April 29, 2014, EPA conducted inspections of Respondent’s facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68. Information collected as a result of these inspections revealed that Respondent had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

Violations

20. EPA alleges that Respondent has violated the CAA and federal regulations promulgated pursuant to the CAA, as follows:

21. 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 because it is an owner and operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

22. Respondent’s facility is subject to Program 2 of the risk management program requirements because, pursuant to 40 C.F.R. § 68.10(c), the covered process at its facility did not meet the requirements of Program 1 or Program 3.

23. Respondent is required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. §§ 68.12 and 68.150(a), to develop and implement a risk management program for each stationary source that includes a management system, a hazard assessment, a prevention program, and an emergency response program, and to submit a Risk Management Plan for all covered processes at the facility.

24. Information collected during the inspections referenced in Paragraph 19, above, revealed that Respondent failed to develop and implement a risk management program for its facility that complied with all the requirements of 40 C.F.R. Part 68. Specifically:

COUNT I

25. Respondent failed to develop a management system to oversee the risk management program elements, as required by 40 C.F.R. § 68.15(a).

COUNT II

26. Respondent failed to conduct a hazard assessment in accordance with 40 C.F.R. Part 68, Subpart B, as required by 40 C.F.R. § 68.12(c)(2), as follows:

- (a) Respondent failed to use the correct worst-case release quantity, which is the greatest amount of substance held in a single vessel, as required by 40 C.F.R. § 68.25(b)(1).
- (b) Respondent failed to estimate 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, as required by 40 C.F.R. § 68.30(a).
- (c) Respondent failed to review and update the offsite consequence analyses at least once every five years, as required by 40 C.F.R. § 68.36(a).

COUNT III

27. Respondent failed to implement prevention requirements of 40 C.F.R. §§ 68.48 through 68.60 as required by 40 C.F.R. § 68.12(c)(3), as follows:

- (a) Respondent failed to compile the safety information required by 40 C.F.R. § 68.48(a)(2)-(5);
- (b) 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);
- (c) Respondent failed to conduct a review of the hazards associated with the regulated substance, process, and procedures, as required by 40 C.F.R. § 68.50(a);
- (d) Respondent failed to prepare written operating procedures that address the information required by 40 C.F.R. § 68.52(b)(1) and (b)(3)-(8);
- (e) Respondent failed to certify that the owner or operator has evaluated compliance with the provisions of the Program 2 Prevention Program requirements at least every three years, as required by 40 C.F.R. § 68.58(a).

COUNT IV

28. Respondent failed to update and submit the Risk Management Plan at least once every five years, as required by 40 C.F.R. § 68.190.

29. Each of Respondent's failures to comply with the requirements of 40 C.F.R. Part 68, as set forth in Paragraphs 25 through 28 above, is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

30. Pursuant to Section 113(d)(1)(B) of the Clean Air Act, 42 U.S.C. § 7413(d)(1)(B), and based upon the facts stated in Paragraphs 15 through 24 above, it is proposed that a civil penalty of \$26,000 be assessed against Respondent for the violations identified above.

CONSENT AGREEMENT

31. 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.

32. 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.

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

34. 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.

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

36. This CA/FO addresses all civil and administrative claims for the CAA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA or other applicable law.

37. Respondent certifies by signing this CA/FO that, to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

38. The effect of settlement described in Paragraph 38 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 39 of this CA/FO.

39. 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.

40. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost

of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below 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 accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full.

41. 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 legally bind Respondent to it.

42. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

FINAL ORDER

Pursuant to the provisions of the CAA, 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 Twenty-Six Thousand Dollars (\$26,000) within thirty days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to "United States Treasury," and shall be remitted to:

United State Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

This payment shall reference docket number CAA-07-2015-0044.

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

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and:

Erin Weekley
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

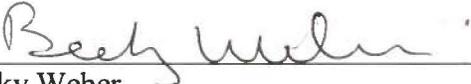
4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of the CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. This 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 CA/FO.

6. The effective date of this Consent Agreement/Final Order shall be the date on which it is filed.

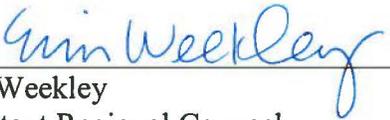
COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 10/23/2015



Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

Date 10-23-15



Erin Weekley
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

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RESPONDENT:
F & F FEEDS, INC.

Date 10-12-15

Harry Fowler
Name


Signature

owner
Title

IT IS SO ORDERED.

Date 10-27-15

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

CERTIFICATE OF SERVICE

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

Handmailed
Copy ~~hand delivered~~ to Attorney for Complainant:

Erin Weekley
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
11201 Renner Blvd.
Lenexa, Kansas 66219.

First Class Mail
Copy by ~~certified mail~~, return receipt requested to:

Harry Fowler
F & F Feeds, Inc.
1546 Road P
Emporia, Kansas 66801.

Dated: 10/28/15

By: *Kathy Robinson*
Kathy Robinson
Hearing Clerk
United States Environmental Protection Agency
Region 7