

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

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BEFORE THE ADMINISTRATOR

| | | |
|---------------------|---|-----------------------------|
| IN THE MATTER OF |) | |
| |) | |
| EPCO CARBON DIOXIDE |) | Docket No. CAA-07-2013-0001 |
| PRODUCTS, INC. |) | |
| |) | |
| Respondent |) | |

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and EPCO Carbon Dioxide Products, 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), 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). 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 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this CAFO 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 EPCO Carbon Dioxide Products Incorporated, formerly located at 1220 Lincoln Avenue, Aurora, Nebraska. The primary activity at Respondent's facility is the sale of carbon dioxide to wholesale producers.

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)(1) to Title I of the CAA, 42 U.S.C. § 7412(r)(1), which requires the owners and operators of stationary sources to prevent the accidental release and to minimize the consequences of any release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3) or any other extremely hazardous substance.

6. Pursuant to Section 112(r)(1), the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may

result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

7. 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)(1). 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 now authorized.

Definitions

8. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C) defines “stationary source” as, inter alia, 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.

9. 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, as defined below, or other extremely hazardous substance into the ambient air from a stationary source.

10. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), defines “regulated substance” as a substance listed pursuant to Section 112(r)(3) of the CAA. The list of substances regulated under Section 112(r) of the CAA is set forth at 40 C.F.R. § 68.130.

11. As used herein, the term “day” shall mean calendar day.

Factual Background

12. Respondent is the owner and/or operator of a facility formerly located at 1220 Lincoln Avenue, Aurora, Nebraska (“facility”). The facility owned by Respondent collected carbon dioxide from an adjacent ethanol plant and sold carbon dioxide to wholesale producers.

13. At all times relevant to this Order, Respondent produced, processed, handled or stored between 4,000 and 6,000 pounds of anhydrous ammonia at its facility.

14. EPA inspected the facility on July 6-7, 2010, to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that the Respondent uses anhydrous ammonia in the process at its facility.

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). Respondent’s facility located at 1220 Lincoln Avenue, Aurora, Nebraska, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

16. Anhydrous Ammonia is a “regulated substance” as defined by Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and is listed at 40 C.F.R. § 68.130.

17. Pursuant to Section 112(r)(1) of the CAA, Respondent has a general duty in the same manner and to the same extent as 29 U.S.C. § 654, to: (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as

are necessary to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

Alleged Violations

18. Based on information available to EPA, including information gathered during the inspection performed by EPA at the Facility, EPA has determined that Respondent failed to satisfy the general duty referred to in Paragraph 17 above and therefore the provisions of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). EPA alleges Respondent:

- i. Failed to identify chemical or process hazards, which may result from accidental releases or explosions, specifically: the facility failed to conduct any type of hazard review, hazard analysis or source hazard siting regarding potential releases of anhydrous ammonia from the facility.
- ii. Failed to maintain design documentation, including design codes used, quality control procedures to ensure construction materials met design specifications, and documentation that the facility design has been updated to current codes and standards, specifically: rusted equipment, piping, vessel and oil leakage on process and non-process equipment; the facility's design documentation referenced ANSI and ASHME codes, but not which year or version; and the facility did not have fully documentation that equipment was fully updated to current codes and standards at the time of the facility's relocation in 1999.
- iii. Failed to implement or follow operating procedures, specifically: the facility did not have operating procedures for emergency shutdown or startup after emergency shutdown, operating procedures for receipt and transfer of anhydrous ammonia, upper and lower limits were not identified for operating parameters

such as pressure, flows, and volumes, consequences of deviation were not identified in the operating procedures, no documentation that procedures were reviewed or revised after incidents.

CONSENT AGREEMENT

19. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

20. 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 CAFO.

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

22. 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 CAFO.

23. 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.

24. This CAFO 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.

25. Respondent certifies by the signing of this CAFO 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.

26. The effect of settlement described in paragraph 24 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 25, above, of this CAFO.

27. 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.

28. 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.

29. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CAFO and to legally bind Respondent to it.

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 shall pay a civil penalty of Thirty-Two thousand and Twenty-Five Dollars (\$32,025), which shall be due within 30 days of entry of this Final Order. Payment shall be by cashiers or certified check made payable to the "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.

The payment shall reference docket number CAA-07-2013-0001

2. Copies of the checks should be sent to:

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

and to:


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

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date 10/31/12

By 
Becky Weber
Director
Air and Waste Management Division

Date 10/30/12

By 
Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
EPCO CARBON DIOXIDE PRODUCTS, INC.

By



Title

President

Date

October 23, 2012

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

Date 11/15/12 By Karina Borromeo
Karina Borromeo
Regional Judicial Officer

IN THE MATTER OF EPCO Carbon Dioxide, Respondent
Docket No. CAA-07-2013-0001

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

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

Copy by First Class Certified Mail to:

Travis M. Holley
Attorney, EPCO Carbon Dioxide Products
1302 Leavell Ave.
P.O. Box 590
Bastrop, Louisiana 71220

Dated: 11/19/12



Kathy Robinson
Hearing Clerk, Region 7