



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DEC 17 2010

REPLY TO THE ATTENTION OF:

SM-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Doug Maska
Environmental Health & Safety Manager
Western Wisconsin Energy, LLC
N10185 370th Street
Boyceville, Wisconsin 54275

Re: Western Wisconsin Energy, LLC, Consent Agreement and Final Order.
Docket No. CAA-05-2011-0010

Dear Mr. Maska:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on December 17, 2010. Please pay the civil penalty in the amount of \$47,600 in the manner prescribed in paragraph(s) 35 thru 37 and reference your check with the number BD 2751103A009 and the docket number.

Please feel free to contact Bob Mayhugh at 312-886-5929 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert S. Guenther, Associate Regional Counsel at 312-886-0566. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Mark J. Horwitz". The signature is written in a cursive style with a large, sweeping flourish at the end.

Mark J. Horwitz, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

cc: Regional Hearing Clerk
U. S. EPA Region 5

Robert S. Guenther (w/enclosure)
Office of Regional Counsel
U.S. EPA Region 5 (C-14J)

Marcy Toney (w/enclosure)
Regional Judicial Officer
U. S. EPA, Region 5 (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
Western Wisconsin Energy, LLC,)
Boyceville, Wisconsin,)
)
EPA ID: _____)
)
RESPONDENT.)
_____)

DOCKET NO.: CAA-05-2011-0010
PROCEEDING TO ASSESS
A CIVIL PENALTY UNDER
SECTION 113(d) OF THE
CLEAN AIR ACT,
42 U.S.C. § 7413(d)

2010 DEC 17 PM 3:03
U.S. EPA REGION 5
COMMUNICATIONS SECTION

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d)(1), and sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules) as codified at 40 C.F.R. part 22, for violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r).
2. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
3. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
4. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

5. Respondent stipulates that the United States Environmental Protection Agency (EPA) has jurisdiction over the subject matter of this CAFO, and waives any jurisdictional objections it may have. Respondent neither admits nor denies Complainant's findings of fact and conclusions of law set forth in paragraphs 7 through 33 of this CAFO.

6. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

STATUTORY AND REGULATORY BACKGROUND

7. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator of EPA to issue regulations regarding the prevention and detection of accidental releases of designated chemicals. These regulations further require the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan to prevent or minimize risks of accidental releases of those designated substances.

8. Pursuant to section 112(r)(7)(A) and (B) of the CAA, 42 U.S.C. § 112(r)(7)(A) and (B), the Administrator of EPA promulgated the Chemical Accident Pollution Prevention rule on January 31, 1994. This rule is codified at 40 C.F.R. part 68 and has been modified from time to time since.

9. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.12(d), requires the owner and operator of a stationary source with a process subject to Program

3, as defined at 40 C.F.R. § 68.10(d), to develop and implement a management system as required by 40 C.F.R. § 68.10(d), conduct a hazard assessment pursuant to 40 C.F.R. §§ 68.20 to 68.42, implement the prevention requirements of 40 C.F.R. §§ 68.65 to 68.87, and develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 and 68.95. These requirements are collectively known as the “Risk Management Program.”

10. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.10(d), defines a Program 3 process as one which does not meet the requirements of a Program 1 process found at 40 C.F.R. § 68.10(b) and is subject to the process safety management standard at 29 U.S.C. § 1910.119.

11. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “stationary source” 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 Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “process” as “ ... any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of those activities. ... ”

13. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “regulated substance” as “ ... any substance listed pursuant to section 112(r)(3) of the Clean Air Act ... in [40 C.F.R.] § 68.130.”

14. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as “ ... any person who owns, leases, operates, controls or supervises a stationary source.”

15. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “threshold quantity” as “ ... the quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act ... , 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 Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.130, lists anhydrous ammonia as a regulated toxic substance with a threshold quantity of 10,000 pounds in Tables 1 and 2 and lists pentane as a regulated flammable substance also with a threshold quantity of 10,000 pounds in Tables 3 and 4.

17. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.150(b)(3), requires an owner or operator subject to the rule to submit its first Risk Management Program no later than the date on which a regulated substance is first present above a threshold quantity in a process.

18. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement imposed under section 112(r)(7), it is unlawful for any person to operate any stationary source in violation of such requirement.

19. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), provides that the Administrator of EPA may issue an administrative order against any person assessing civil penalties of up to \$25,000 per day of violation whenever the Administrator

finds that person has violated a requirement of subchapter I of the CAA, including a requirement of any rule promulgated under that subchapter.

20. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. part 19 increased the statutory maximum penalty under section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), to \$32,500 per day of violation effective March 15, 2004, through January 12, 2009, to a maximum of \$270,000, and \$37,500 per day of violation after January 12, 2009, to a maximum of \$295,000.

21. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), further limits the Administrator's authority to pursue administrative penalties to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator of EPA and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

GENERAL ALLEGATIONS

22. Complainant is, by lawful delegation, the Director of the Superfund Division, EPA Region 5.

23. Respondent is Western Wisconsin Energy, LLC, a limited liability corporation organized under the laws of the State of Wisconsin, and is thus a "person" according to section 302(e) of the CAA, 42 U.S.C. § 7602(e).

24. At all times relevant to this Complaint, Respondent owned, operated, controlled and supervised a facility located at N10185 370th Street, Boyceville, Wisconsin (the facility), which includes buildings, structures, equipment and

installations, which belong to the same industrial group, are located on one or more contiguous properties and are under the control of Respondent, to produce fuel-grade ethanol from corn. Respondent's facility stores and uses anhydrous ammonia (CAS No. 7664-41-7) and pentane (CAS 109-66-0) in its production processes.

25. Respondent's facility in Boyceville is a "stationary source" as that term is defined in 40 C.F.R. § 68.3.

26. Respondent is an "owner or operator" as that term is used in 40 C.F.R. § 68.3.

27. Respondent's processes subject it to the Program 3 requirements because the distance to a public receptor, as defined at 40 C.F.R. § 68.30, is less than the distance to the flammable or toxic endpoint for a worst-case release assessment under 40 C.F.R. § 68.25, and because the process is subject to the process safety management standard at 29 U.S.C. § 1910.119.

28. By letter dated August 17, 2009, Respondent voluntarily notified EPA of violations of the CAA Chemical Accident Pollution Prevention Rule at its Boyceville, Wisconsin, facility.

29. On February 15, 2010, the Administrator and the Attorney General of the United States, each through their respective delegates, jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

SPECIFIC ALLEGATIONS OF LIABILITY

30. Beginning in September 2006, Respondent's facility had anhydrous ammonia and pentane in quantities exceeding 10,000 pounds during calendar years 2006

through 2009, and thus maintained hazardous substances in quantities exceeding threshold quantities under the Chemical Accident Pollution Prevention rule.

31. On August 17, 2009, Respondent had failed to develop, implement or submit a Risk Management Program, prepared pursuant to 40 C.F.R. § 68.12(d), governing potential releases of anhydrous ammonia and pentane for the facility.

32. Respondent's failure to develop and implement a complete Risk Management Program at the facility after exceeding threshold quantities for a regulated substance is a violation of the requirements of 40 C.F.R. § 68.150(b)(3).

33. Respondent's violation of 40 C.F.R. § 68.150(b)(3) constitutes the unlawful operation of a stationary source subject to a regulation or requirement promulgated under section 112(r) of the CAA, 42 U.S.C. § 7412(r).

CIVIL PENALTY

34. Based on and analysis of the factors specified in section 113(e) of the CAA, 44 U.S.C. § 7413(e), Respondent's voluntary disclosure of the violations, its cooperation in quickly resolving this matter and other factors as justice may require, Complainant has determined that an appropriate civil penalty to settle this action is \$47,600.

35. Within 30 days after the effective date of this CAFO, Respondent must pay the \$47,600 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

36. The check must note the following: the case caption, the docket number of this CAFO and the billing document number to be assigned by EPA upon filing of this CAFO.

37. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Bob Mayhugh (SM-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

38. This civil penalty is not deductible for federal tax purposes.

39. If Respondent does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. According to section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

40. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

GENERAL PROVISIONS

41. This CAFO resolves only Respondent's liability and any liability of Respondent's parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, servants, successors and assigns for federal civil penalties for the violations and facts alleged in the CAFO.

42. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

43. This CAFO does not affect Respondent's responsibility to comply with the CAA or other applicable federal, state and local laws or regulations.

44. This CAFO is a "final order" for purposes of EPA's enforcement response policy for section 112(r) of the CAA.

45. The terms of this CAFO bind Respondent, Respondent's parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, servants, successors and assigns.

46. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

47. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

48. This CAFO constitutes the entire agreement between the parties.

Western Wisconsin Energy, LLC, Respondent

12/6/10
Date

Steve A. Christman
Title: Gen. Mgr. / CEO
Western Wisconsin Energy, LLC

U.S. Environmental Protection Agency, Complainant

12/15/10
Date

Richard C. Karl, Jr.
Richard C. Karl
Director
Superfund Division

In the Matter of:
Western Wisconsin Energy, LLC,
Boyceville, Wisconsin
Docket No: CAA-05-2011-0010

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Western Wisconsin Energy, LLC,
Boyceville, Wisconsin
Docket No: CAA-05-2011-0010

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. **IT IS SO ORDERED.**

Date: 12/16/10

By: _____



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I certify that the original and one copy of the attached Administrative Complaint was filed this day with the Regional Hearing Clerk (R-19J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that a true copy was sent to the Respondent, along with the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits, 40 C.F.R. Part 22, Penalty Policy, and Audit Policy at the following address:

Mr. Doug Maska
Environmental Health & Safety Manager
Western Wisconsin Energy, LLC
N10185 370th Street
Boyceville, Wisconsin 54725

Date: 12/17/10

Bob M

Bob Mayhugh
Chemical Emergency
Preparedness and Prevention Section (SM-5J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

2010 DEC 17 PM 3:03

REGIONAL HEARING CLERK
U.S. EPA REGION 5