

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

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)

New Horizon, FS, Inc.)
Miles, Iowa)

Respondent)

Docket Nos.

CAA-07-2006-0108

EPCRA-07-2006-0108

CERCLA-07-2006-0108

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and New Horizon, FS, Inc., Miles, Iowa (Respondent) have agreed to a settlement of this action before filing 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 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609; Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045; Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the Clean Air Act, 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 serves as notice that EPA has reason to believe that Respondent has violated Section 103 of CERCLA, 42 U.S.C. § 9603, and the regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and codified at 40 C.F.R. Part 302; Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 355; and 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 Clean Air Act, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the Act, 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 VII, is the Director, Air, RCRA and Toxics Division, EPA, Region VII.

4. The Respondent is the New Horizon, FS, Inc., located at 50071 Highway 64, Miles, Iowa. Respondent stores and blends fertilizer for sale to farmers. Respondent is incorporated in the State of Iowa and registered to do business in the State of Iowa. Respondent stores

anhydrous ammonia at its facility.

Statutory and Regulatory Requirements

5. Section 103(a) of CERCLA and the regulation set forth at 40 C.F.R. § 302.6, require any person in charge of a vessel or an onshore or offshore facility, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than the reportable quantity established pursuant to Section 102 of CERCLA, to immediately notify the National Response Center of such release.

6. Section 304(a) of EPCRA and the regulation set forth at 40 C.F.R. § 355.40, require the owner or operator of a facility at which a hazardous chemical is produced, used, or stored and at which there is a release of a reportable quantity of any EPCRA extremely hazardous substance or CERCLA hazardous substance to immediately notify the State Emergency Response Commission of any State likely to be affected by the release and the emergency coordinator for the Local Emergency Planning Committee for any area likely to be affected by the release.

7. Section 112(r)(7) of Clean Air Act and the regulation set forth at 40 C.F.R. Part 68 subparts A through H, Chemical Accident Prevention Program, require owners and operators of stationary to develop and implement a risk management plan that includes a hazard assessment, a prevention program and an emergency response program. The risk management plan (RMP) must be submitted to EPA. 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.

8. Section 109(b)(1) of CERCLA authorizes a civil penalty of not more than \$25,000 per day for each day during which a violation continues for any violation of the requirements of Section 103(a) of CERCLA. Section 109(b)(1) of CERCLA, 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.

9. Section 325(b)(2) of EPCRA authorizes a civil penalty for violations of the requirements of Section 304 of EPCRA of not more than \$25,000 per day for each day during which the violation continues. Section 325(b)(2) of EPCRA, 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.

10. Section 113(b)(2) of the Clean Air Act, 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 Clean Air Act that occurs before January 30, 1997. Section 113(b)(2) of the Clean Air Act, 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

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 Clean Air Act, 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 Clean Air Act, 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.

Alleged Violations

15. EPA alleges that Respondent has violated CERCLA Section 103, EPCRA Section

304 and Section 112(r) the Clean Air Act and federal regulations, promulgated pursuant to the Clean Air Act, as follows:

16. Respondent is, and at all times referred to herein, was a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21); Section 329(7) of EPCRA, 42 U.S.C. § 11049(7); and Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

17. At all times relevant hereto, Respondent owned and operated and was in charge of New Horizon, FS, Inc., located at 50071 Highway 64, Miles, Iowa (Respondent's facility).

CERCLA Section 103 and EPCRA Section 304

18. Respondent's facility is a facility as defined by Section 101(9) of CERCLA and Section 329(4) of EPCRA.

19. Anhydrous ammonia is a hazardous substance as defined by Section 101(14) of CERCLA, with a reportable quantity of 100 pounds, as designated by 40 C.F.R. § 302.4. Anhydrous ammonia is an extremely hazardous substance, as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3) and as designated pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a) and listed in 40 C.F.R. Part 355, Appendix A.

20. At all times relevant hereto, hazardous chemicals as defined by Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), were produced, used, or stored by Respondent's facility.

21. In late November and early December of 2003, there was a release of anhydrous ammonia from Respondent's facility in excess of the reportable quantity designated by 40 C.F.R. § 302.4. Respondent discovered the release on or about December 4, 2003.

22. Respondent did not immediately notify the National Response Center of the release

as soon as it had knowledge of the release.

23. Respondent's failure to notify the National Response Center of the release as soon as it had knowledge of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603, and of the requirements of 40 C.F.R. § 302.6.

24. Respondent did not immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release.

25. Respondent's failure to immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release is a violation of Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and of the requirements of 40 C.F.R. § 355.40(b).

Clean Air Act Section 112(r)

26. Respondent's facility located at 50071 Highway 64, Miles, Iowa, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

27. 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.

28. On September 21, 2004, EPA conducted an inspection of Respondent's facility to determine compliance with Section 112(r) of the Clean Air Act and 40 C.F.R. Part 68.

29. Records collected during the inspection showed Respondent had exceeded the threshold quantity for anhydrous ammonia. Respondent filed an RMP on July, 2002.

30. Respondent is subject to the requirements of Section 112(r) of the Clean Air Act, 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.

31. Respondent is required under Section 112(r) of the Clean Air Act, 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.

32. Records collected during the inspection showed that Respondent failed to implement a risk management program that included all the requirements of a management system, and a prevention program. Respondent also failed to (1) perform a comprehensive hazard review as required by 40 C.F.R. § 68.50(a)(2); (2) compile and maintain the following up-to-date safety information related to the regulated substances, processes, and equipment: Material Safety Data Sheets that meet the requirements of 29 C.F.R. 1910.1200(G) as required by 40 C.F.R. § 68.48(a)(1); (3) prepare written operating procedures that provide clear instructions as required by 40 C.F.R. § 68.52.(a); (4) address the consequences of deviations or steps required to correct or avoid deviations as required by 40 C.F.R. § 68.52 (b) (7); (5) certify that they have evaluated compliance with Part 68 at least every three years as required by 40 C.F.R. § 68.58 (a); and (6) prepare a summary at the conclusion of the incident investigation which includes any recommendations resulting from the investigation as required by 40 C.F.R. § 68.60 (c)(5).

34. 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 Clean Air Act, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

35. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

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

37. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.

38. 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.

39. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth below.

40. 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.

41. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is presently in compliance with all requirements of Section 103 of CERCLA, 42 U.S.C. § 9603; Section 304 of EPCRA, 42 U.S.C. § 11004; and Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

FINAL ORDER

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

1. Respondent shall pay a civil penalty of Thirteen Thousand Three Hundred Dollars (\$13,300), within thirty days of entry of this Final Order. Payment shall be by cashier's or

*In the matter of
New Horizon, FS, Inc.*

certified check made payable to the "United States Treasury" and shall be remitted to:

US EPA-Region VII
Post Office Box 371099M
Pittsburgh, Pennsylvania 15251.

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

Julie M. Van Horn
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101.

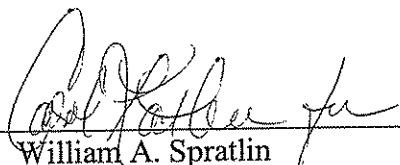
3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

In the matter of
New Horizon, FS, Inc.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By 
Julie M. Van Horn
Senior Assistant Regional Counsel

Date 27 March 2006

By 
William A. Spratlin
Director
Air, RCRA and Toxics Division
EPA Region VII

Date: 3/27/06

*In the matter of
New Horizon, FS, Inc.*

RESPONDENT:
NEW HORIZON, FS, INC.
MILES, IOWA

By David A. Kudose

Title Operations Manager

Date 3/23/06

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New Horizon, FS, Inc.*

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

By Karina Borrromeo
Karina Borrromeo
Regional Judicial Officer

Date April 19, 2006

IN THE MATTER OF New Horizon, FS, Inc., Respondent
Docket Nos. CAA-07-2006-0108; EPCRA-07-2006-0108; and CERCLA-07-2006-0108

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:

Julie M. Van Horn
Senior Assistant Regional Counsel
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. Todd Simmons
New Horizons FS, Inc.
48770 17th Street
Miles, Iowa 52064

4/25/06
Dated


Kathy Rowner
Regional Hearing Clerk