

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

10 JUL 30 AM 10:53

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

Southwest Iowa Renewable Energy, LLC)
10976 189th Street)
Council Bluffs, IA 51503)

Respondent)

Docket No. CAA-07-2010-0026

ADMINISTRATIVE ORDER FOR COMPLIANCE

Pursuant to Section 113(a)(3)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(3)(B), as amended, Southwest Iowa Renewable Energy, LLC ("Respondent" or "Southwest Iowa Renewable Energy") is hereby ordered by the United States Environmental Protection Agency ("EPA") to comply with the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68, Subpart G and to take the specific compliance actions set forth below.

I. Statutory and Regulatory Background

1. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to 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), 42 U.S.C. § 7412(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

2. 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), 42 U.S.C. § 7412(r)(7), of the CAA. 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.

3. 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.

4. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted for all covered processes, 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.

5. 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 penalty of up to \$37,500 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), 42 U.S.C. § 7412(r)(7).

II. Definitions

6. The regulations at 40 C.F.R. § 68.3 define “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.

7. 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, Tables 1, 2, 3, and 4, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

8. 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, Tables 1, 2, 3, and 4.

9. 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.

III. Factual Background

10. EPA inspected the Southwest Iowa Renewable Energy facility, located at 10976 189th Street, in Council Bluffs, IA 51503, on January 27, 2010, to determine compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that the Southwest Iowa Renewable Energy facility had failed to implement a risk management program at its facility.

IV. Finding of Violation

11. Southwest Iowa Renewable Energy, 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).

12. The Southwest Iowa Renewable Energy facility, located at 10976 189th Street in Council Bluffs, Iowa, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

13. 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.

14. At the time of the inspection, Southwest Iowa Renewable Energy had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

15. Southwest Iowa Renewable Energy 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, Subpart G, because it is the owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

16. Southwest Iowa Renewable Energy is subject to the requirements of the Program 3 risk management program, 40 C.F.R. Part 68, Subpart D, because the process is subject to the Occupational Safety and Health Administration (“OSHA”) safety management process standard, 29 C.F.R. § 1910.119, 40 C.F.R. § 68.10(d).

17. Southwest Iowa Renewable Energy failed to implement and file a Risk Management Program at their facility, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and the requirements of 40 C.F.R. Part 68.

V. Compliance Order

18. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. 7413(a)(3)(B), as amended, Southwest Iowa Renewable Energy is hereby ORDERED to take the actions described in Paragraphs 19 and 20.

19. Within 90 days of the effective date of this Order, EPA hereby ORDERS Southwest Iowa Renewable Energy to comply with the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68, Subpart G, including, but not limited to, completion of the following compliance actions:

- a. Comply with the Program 3 eligibility requirements in accordance with 40 C.F.R. § 68.10;
- b. Maintain records supporting the implementation of the RMP for in accordance with 40 C.F.R. § 68.200; and
- c. Submit a RMP reflecting the changes listed above.

20. Southwest Iowa Renewable Energy must provide documentation of completion of these tasks to EPA within 120 days of the effect date of this Order. All documentation shall be submitted to in accordance with Paragraph 26 of this Order.

VI. Potential Liability

21. Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), grants EPA the authority to issue an Order to any person found in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated pursuant thereto.

22. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. Under Section 113(a) of the CAA, 42 U.S.C. § 7413(a), the Administrator is authorized to address such a violation as follows:

- a. Issue an administrative penalty order assessing a civil penalty not to exceed \$37,500 per day of violation;
- b. Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$37,500 per day of violation, or both; or
- c. Request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA, 42 U.S.C. § 7413(c).

23. Issuance of this Order does not preclude the State of Iowa or EPA from assessing penalties or taking any other action authorized under the CAA. This Order does not affect the obligation of Southwest Iowa Renewable Energy to comply with all federal, state and local statutes, regulations, and permits.

24. EPA may subsequently amend this Order in accordance with the authority of the CAA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order.

25. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect Southwest Iowa Renewable Energy's facility and/or to request additional information from Southwest Iowa Renewable Energy pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414.

26. All submissions to the EPA required by this Order shall be sent to:

Christine Hoard
Chemical Risk Information Branch
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

27. Pursuant to 40 C.F.R §§ 2.201-2.311, Southwest Iowa Renewable Energy may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment. For any such claim, describe the basis of the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the submitted information to the public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations.

28. The terms of this Order shall be effective and enforceable against Southwest Iowa Renewable Energy upon its receipt.

7/28/10
Date

Becky Weber
Becky Weber
Director
Air and Waste Management Division