

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	Docket. No. CAA-07-2016-0004
)	
KUGLER OIL COMPANY,)	COMPLAINT AND
)	CONSENT AGREEMENT
Respondent.)	AND FINAL ORDER
)	

PRELIMINARY STATEMENT

The United States Environmental Protection Agency, Region 7 (“EPA”), and Kugler Oil Company (“Respondent”) have agreed to a settlement of the alleged violations set forth in this Complaint and Consent Agreement/Final Order prior to the filing of a complaint. 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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

COMPLAINT

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, in which 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/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, 42 U.S.C. § 7412(r). 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 these violations.

Parties

3. The Complainant, by delegation from the Administrator of EPA and re-delegation from the Regional Administrator of EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Kugler Oil Company, which owns and operates the Culbertson Dealer Fertilizer and Retail Plant located at 71748 Rail Road Avenue, in Culbertson, Nebraska.

Statutory and Regulatory Background

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 that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical 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). This rule requires 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 provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 requirements if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(b), and it either falls under a specified North American Industry Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

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 Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), as amended by the Debt Collection Improvement Act of 1996, authorizes the Administrator to assess civil administrative penalties of not more than \$37,500 per day for each violation that occurs after December 6, 2013.

Definitions

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

12. 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.

13. 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.

14. 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.

15. 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

16. 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).

17. Respondent’s facility located at 71748 Rail Road Avenue, in Culbertson, Nebraska, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

18. On or about August 6, 2014, EPA conducted an inspection of Respondent's facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

19. Information gathered during the EPA inspection revealed that Respondent had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

20. 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.

21. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was 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 was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

22. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to Program 3 prevention program requirements because, pursuant to 40 C.F.R. § 68.10(d), the covered process at its facility did not meet the eligibility requirements of Program 1 and was subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

23. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was required under Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.12, to submit an RMP and to develop and implement a risk management program for its facility that includes a management system, a hazard assessment, a prevention program, and an emergency response program.

Allegations of Violation

24. The facts stated in Paragraphs 16 through 23 above are herein incorporated into Count I and Count II below.

25. Information collected during the inspection of Respondent's Culbertson Dealer Fertilizer and Retail Plant revealed that Respondent failed to develop and implement a risk management program that complied with the requirements of 40 C.F.R. Part 68.

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

COUNT I

27. The regulation at 40 C.F.R. § 68.12(a) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to submit a single RMP as provided in 40 C.F.R. §§ 68.150 to 68.185. Pursuant to 40 C.F.R. § 68.160, the owner or operator shall complete a single registration form that provides, *inter alia*, the Program level

of each covered process and whether the stationary source is subject to 29 C.F.R. § 1910.119. Additionally, pursuant 40 C.F.R. § 68.175(a), the owner or operator is required to provide the information identified at 40 C.F.R. § 68.175(b) through (p) for each Program 3 process.

28. The EPA's inspection revealed that Respondent timely filed an RMP that identified the storage and use of anhydrous ammonia at the Facility as a Program 2 process. Based on information gathered during the EPA's inspection, however, the EPA determined that the covered process at the Facility is subject to Program 3 requirements because the process did not meet the eligibility requirements of Program 1 and was subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119. As such, Respondent failed to submit an RMP for the covered process at the Facility pursuant to the requirements at 40 C.F.R. §§ 68.150 to 68.185, as required by 40 C.F.R. § 68.12(a). Specifically:

- a. Respondent failed to complete a registration form pursuant to 40 C.F.R. § 68.160(a) that includes the information required by 40 C.F.R. § 68.160(b), including the Program level of the process and whether the stationary source is subject to 29 C.F.R. § 1910.119; and
- b. Respondent failed to provide the Program 3 prevention information identified at 40 C.F.R. § 68.175(b) through (p), as required by 40 C.F.R. § 68.175(a).

29. Respondent's failure to comply with the RMP requirement of 40 C.F.R. Part 68, as described above, is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

COUNT II

30. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. §§ 68.65 through 68.87.

31. As stated above, Respondent filed as a Program 2 facility while the covered process at the Facility was, in fact, subject to Program 3 requirements. Therefore, the EPA's inspection revealed that Respondent failed to implement the Program 3 prevention requirements of 40 C.F.R. §§ 68.65 through 68.87, as required by 40 C.F.R. § 68.12(d)(3). Specifically:

- a. Respondent failed to compile written process safety information pertaining to the technology of the covered process, specifically an evaluation of the consequences of deviations, as required by 40 C.F.R. § 68.65(c)(1)(v);
- b. Respondent failed to compile written process safety information pertaining to the equipment in the covered process, as required by 40 C.F.R. § 68.65(d)(1);

- c. Respondent failed to document that equipment in the covered process complies with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2);
- d. Respondent failed to perform an initial process hazard analysis appropriate to the complexity of the process, as required by 40 C.F.R. § 68.67(a);
- e. Respondent failed to develop and implement written operating procedures that address the steps for each operating phase of the covered process, specifically emergency shutdown and the conditions under which emergency shutdown is required by 40 C.F.R. § 68.69(a)(1)(iv);
- f. Respondent failed to develop and implement written operating procedures that address the operating limits of the covered process, including the consequences of deviation and the steps required to correct or avoid deviation, as required by 40 C.F.R. § 68.69(a)(2);
- g. Respondent failed to develop and implement written operating procedures that address the five safety and health considerations required under 40 C.F.R. § 68.69(a)(3);
- h. Respondent failed to develop and implement written operating procedures that address safety systems and their functions, as required by 40 C.F.R. § 68.69(a)(4);
- i. Respondent failed to certify annually that the operating procedures of the covered process are current and accurate, as required by 40 C.F.R. § 68.69(c);
- j. Respondent failed to maintain documentation that each employee involved in operating the covered process has received and understood the training required by 40 C.F.R. § 68.71(a) and (b), as provided under 40 C.F.R. § 68.71(c);
- k. Respondent failed to establish and implement written procedures to maintain the ongoing integrity of process equipment, as required by 40 C.F.R. § 68.73(b);
- l. Respondent failed to establish and implement written procedures to manage changes to the covered process, as required by 40 C.F.R. § 68.75(a);
- m. Respondent failed to perform a pre-startup safety review, as required by 40 C.F.R. § 68.77(a); and
- n. Respondent failed to perform and certify appropriate compliance audits at least every three years, as required by 40 C.F.R. § 68.79(a).

32. Each of Respondent's failures to comply with the Program 3 Prevention Requirements of 40 C.F.R. Part 68, as described above, is a violation Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

33. Respondent and Complainant 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.

34. Respondent admits the jurisdictional allegations of this CA/FO 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 set forth below.

35. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CA/FO.

36. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

37. Respondent and Complainant agree to resolve 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.

38. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

39. Respondent understands and agrees that this CA/FO 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.

40. Respondent certifies by signing this CA/FO that, to the best of its knowledge, Respondent is in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder; or, to the extent such compliance is not yet fully achieved, with the terms of the Administrative Order for Compliance on Consent issued by EPA on June 1, 2016, EPA Docket No. CWA-07-2016-0026.

Effect of Settlement and Reservation of Rights

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

42. The effect of settlement described in Paragraph 41 is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 40 of this CA/FO.

43. Nothing contained in this CA/FO shall be construed as a release from any other action under law and/or regulation administered by EPA, nor shall it alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

Payment of Penalty

44. Respondent agrees that in settlement of the claims alleged in this CA/FO, Respondent shall pay a civil penalty of One Hundred One Thousand Eight Hundred Eight Dollars (\$101,808) as set forth in Paragraph 1 of the Final Order portion of this CA/FO.

45. The penalty specified in the paragraph above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal, state, and local taxes.

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

General Provisions

47. Pursuant to 40 C.F.R. § 22.31(b), the effective date of this CA/FO shall be the date on which it is filed by the Regional Hearing Clerk for EPA, Region 7. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this CA/FO.

48. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

49. Respondent and Complainant agree that this CA/FO may be signed in part and counterpart.

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 One Hundred One Thousand Eight Hundred Eight Dollars (\$101,808) within thirty (30) days of the effective date of this Final Order.

2. Respondent shall pay the penalty by cashier's or certified check, by wire transfer, or online. The payment shall reference the Docket Number on the check or wire transfer.

If made by cashier's or certified check, the check shall be made payable to "United States Treasury" and remitted to:

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

Wire transfers shall be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

On-line payments are available through the Department of Treasury:

www.pay.gov
Enter "sfo 1.1" in the search field.
Open the form and complete required files.

3. A copy of the check, transfer, or online payment confirmation shall be simultaneously sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219;

and to:

Jared Pessetto
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

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

6. The effective date of this Final Order shall be the date on which it is filed by the Regional Hearing Clerk for EPA, Region 7.

**RESPONDENT:
KUGLER OIL COMPANY**

Date: 6/3/16

Signature 

Name J. KUGLER

Title CO-PRESIDENT

Date: 6/6/2016



Stephen D. Mossman
Mattson Ricketts Law Firm
134 South 13th Street, Suite 1200
Lincoln, Nebraska 68508


**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 6/15/2016



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

Date: 6/15/2016



Jared Pessetto
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

IT IS SO ORDERED. This Final Order shall become effective upon filing.

Date: June 20, 2016

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

IN THE MATTER Of Kugler Oil Company, Respondent
Docket No. CAA-07-2016-0004

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 emailed to Attorney for Complainant:

pessetto.jared@epa.gov

Copy by First Class Mail to Respondent:

Stephen D. Mossman
Mattson Ricketts Law Firm
134 South 13th Street, Suite 1200
Lincoln, Nebraska 68508

Dated: 6/20/16



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7