

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

Received by
EPA Region 7
Hearing Clerk

In the Matter of:)
)
BCP INGREDIENTS, INC.,) Docket No. CAA-07-2022-0111
)
)
Respondent.)

AMENDED ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT

Preliminary Statement

1. This Amended Administrative Order for Compliance on Consent (“Order”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) and by BCP Ingredients, Inc. (“Respondent” or “BCP”), pursuant to Section 113(a)(3)(B) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3)(B), as amended.

2. This Order requires Respondent to comply with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68. Specifically, and as described in more detail herein, EPA orders BCP to review and update the hazard assessment; conduct a ventilation study; update the process safety information; perform a process hazard analysis on certain processes; update all standard operating procedures; implement and submit a Mechanical Integrity Program. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion may be specified herein. The terms of this Order shall not be modified except by a subsequent written agreement between the parties.

3. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA’s authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, (3) consents to personal service by electronic mail at brittany.barrientos@stinson.com, and (4) consents to be bound by the requirements set forth herein. Respondent also waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1), or under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

Statutory and Regulatory Background

4. 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 accident prevention regulations mandated by Section 112(r)(7), 42 U.S.C. § 7412(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.

5. 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). 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.

6. 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.

7. 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 covered 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 covered process.

8. 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(i), a covered process is subject to Program 3 requirements as provided in 40 C.F.R. § 68.12(d) if the process does not meet the requirements of Program 1, as described in 40 C.F.R. § 68.10(g), and if it is in a specified North American Industrial Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

9. Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), grants the Administrator the authority to make a finding of violation of a requirement or prohibition of Title I of the CAA (Subchapter I of 42 U.S.C. Chapter 85), and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition.

10. Except as provided in Paragraph 3, Respondent neither admits nor denies the findings and alleged violations in the EPA’s Findings of Fact and Law and EPA’s Findings of Violations sections of this Order and reserves its rights to dispute the findings and alleged violation in any future proceeding.

Definitions

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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 covered process.

17. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), and 40 C.F.R. § 68.3 define “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

18. As used herein, “Day” shall mean calendar day.

EPA’s Findings of Fact and Law

19. 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).

20. Respondent is the owner or operator of the Facility.

21. Respondent’s facility, located at 299 Extension Street in Verona, Missouri (“Facility”), is a “stationary source” pursuant to 40 C.F.R. § 68.3.

22. EPA inspected Respondent’s Facility on June 7-9, 2022, 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 Respondent had failed to properly implement certain aspects of the risk management program at the Facility.

23. At the time of the EPA inspection, Respondent had greater than 10,000 pounds of ethylene oxide in a covered process at the Facility.

24. At the time of the EPA inspection, Respondent had greater than 10,000 pounds of trimethylamine in a covered process at the Facility.

25. Ethylene Oxide is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for Ethylene Oxide, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

26. Trimethylamine is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for Trimethylamine, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

27. From the time Respondent first had onsite greater than 10,000 pounds of ethylene oxide and/or trimethylamine 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 covered process.

28. From the time Respondent first had onsite greater than 10,000 pounds of ethylene oxide and/or trimethylamine in a process, Respondent was subject to Program 3 prevention program requirements because pursuant to 40 C.F.R. § 68.10(i), 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.

29. From the time Respondent first had onsite greater than 10,000 pounds of ethylene oxide and/or trimethylamine in a process, Respondent was required under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 requirements provided at 40 C.F.R. § 68.12(d).

EPAs Findings of Violation

30. The facts stated in Paragraphs 19 through 29, above, are herein incorporated.

Hazard Assessment

31. 40 C.F.R. § 68.12(d)(2) requires the owner or operator of a stationary source with a process subject to Program 3 to conduct a hazard assessment as provided in §§ 68.20 through 68.42.

32. 40 C.F.R. § 68.36(a) requires the owner or operator of a facility to review and update the offsite consequence analyses at least once every five years.

33. The EPA’s inspection revealed that Respondent had not updated the offsite consequence analyses since October 22, 2004.

34. Respondent's failure to comply with the hazard assessment requirements of 40 C.F.R. Part 68, as described above, violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Process Safety Information

35. 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 prevention requirements of §§ 68.65 through 68.87.

36. 40 C.F.R. § 68.65(a) requires the owner or operator of a Program 3 facility to complete a compilation of written process safety information before conducting any process required by the rule. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

37. 40 C.F.R. § 68.65(d)(1)(v) states that the written compilation shall include information pertaining to the equipment in the covered process, including ventilation system design.

38. The EPA's inspection revealed that Respondent did not include required safety information related to the ventilation design system.

39. 40 C.F.R. § 68.65(d)(1)(viii) states that the written compilation shall include information pertaining to the equipment in the covered process, including safety systems (e.g., interlocks, detection, or suppression systems).

40. The EPA's inspection revealed that Respondent did not include required safety information related to the process safety systems.

41. 40 C.F.R. § 68.65(c)(1)(v) states that the written compilation shall include information pertaining to the technology of the covered process, including an evaluation of the consequences of deviation.

42. The EPA's inspection revealed that Respondent did not include required documentation regarding the consequences of deviation.

43. Respondent's failures to comply with requirements for process safety information in 40 C.F.R. Part 68, as described above, violate Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Process Hazard Analysis

44. 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 prevention requirements of §§ 68.65 through 68.87.

45. 40 C.F.R. § 68.67 requires an owner or operator to perform an initial process hazard analysis (“PHA”) on covered processes. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator shall determine and document the priority order for conducting process hazard analyses based on a rationale which includes such considerations as extent of the process hazards, number of potentially affected employees, age of the process, and operating history of the process. The process hazard analysis shall be conducted as soon as possible, but not later than June 21, 1999. Process hazards analyses completed to comply with 29 C.F.R. § 1910.119(e) are acceptable as initial process hazards analyses. These process hazard analyses shall be updated and revalidated, based on their completion date.

46. The Facility’s Risk Management Plan lists process 100114872, EO Drum Truck Storage. This process involves the two truck parking spaces where 400-pound containers of ethylene oxide are stored until shipping. This process has a total capacity of 120,000 pounds of ethylene oxide.

47. The Facility RMP lists the date the PHA was completed as March 20, 2019, but there was no documentation of the PHA performed on the EO Drum Truck Storage process.

48. The EPA’s inspection revealed that Respondent did not perform a PHA on process 1000114872, EO Drum Truck Storage.

49. 40 C.F.R. § 68.12(d)(6) requires the owner or operator of a stationary source with a process subject to submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in § 68.175.

50. 40 C.F.R. § 68.175(a) states that for each Program 3 process, the owner or operator shall provide the information in paragraphs (b) through (p) of this section. If the same information applies to more than one covered process, the owner or operator may provide the information only once but shall indicate to which processes the information applies.

51. 40 C.F.R. § 68.175(e) states that the information shall include the date of completion of the most recent PHA or update and the technique used.

52. The EPA’s inspection revealed that Respondent incorrectly identified the technique used to conduct the PHA.

53. Respondent’s failure to comply with requirements for process hazard analysis in 40 C.F.R. Part 68, as described above, violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Operating Procedures

54. 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 prevention requirements of §§ 68.65 through 68.87.

55. 40 C.F.R. § 68.69(a) requires the owner or operator to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements:

- (1) Steps for each operating phase:
 - (i) Initial startup;
 - (ii) Normal operations;
 - (iii) Temporary operations;
 - (iv) Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.
 - (v) Emergency operations;
 - (vi) Normal shutdown; and,
 - (vii) Startup following a turnaround, or after an emergency shutdown.

56. The EPA inspection revealed that Respondent's Standard Operating Procedures ("SOPs") did not have the required portions that address temporary and emergency operations, or emergency shutdown and startup following a turnaround or after an emergency shutdown.

57. During the inspection, EPA asked to see the SOP detailing the railcar unloading procedures. The SOP required stated that valve lineup and connections should be verified by another qualified employee and another employee should be present during the hook-up of the railcar until after pumping begins and no problems are observed. The SOP also stated that the unloading must be monitored at all times either in person or by camera.

58. During the inspection, Respondent informed EPA that its root cause evaluation of the April 8, 2022, incident, determined that the facility failed to fully implement the written operating procedures which required two employees to be present for the railcar unloading. Only one employee was present during the railcar unloading. Further, the spill on April 8, 2022, was not appropriately monitored in person or by camera.

59. Respondent's root cause evaluation was shared with EPA on May 21, 2022.

60. Respondent's failure to comply with requirements for operating procedures in 40 C.F.R. Part 68, as described above, violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Mechanical Integrity

61. 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 prevention requirements of §§ 68.65 through 68.87.

62. 40 C.F.R. § 68.73(e) states that the owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

63. 40 C.F.R. § 68.73(b) requires the owner or operator to establish and implement written procedures to maintain the ongoing integrity of process equipment.

64. During the inspection, Respondent informed EPA that its root cause evaluation of the April 8, 2022, incident, Respondent determined that the audible alarms in the unloading area were damaged by a flood in May 2021 and were not repaired.

65. The EPA inspection revealed that the Facility did not establish and implement a written mechanical integrity plan that met all requirements of 40 C.F.R. Part 68.

66. Respondent's failure to comply with requirements for mechanical integrity in 40 C.F.R. Part 68, as described above, violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Compliance Audit

67. 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 prevention requirements of §§ 68.65 through 68.87.

68. 40 C.F.R. § 68.79(a) requires the owner or operator to certify that they have evaluated compliance with the provisions of Subpart D, the Program 3 Prevention Program provisions, at least every three years to verify that the procedures and practices developed under Subpart D are adequate and are being followed.

69. 40 C.F.R. § 68.79(d) states that the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

70. The EPA inspection revealed that the compliance audits did not contain a certification of compliance and were not completed every three years.

71. The EPA inspection revealed that the Facility failed to determine or document an appropriate response to each of the findings of the compliance audit and document that the deficiencies have been corrected.

72. Respondent's failure to comply with requirements for compliance audits in 40 C.F.R. Part 68, as described above, violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Emergency Response

73. 40 C.F.R. § 68.12(d)(5) requires the owner or operator of a stationary source with a process subject to Program 3 to develop and implement an emergency response program, and conduct exercises, as provided in §§ 68.90 to 68.96.

74. 40 C.F.R. § 68.93 requires the owner or operator of a stationary source to coordinate response needs with local emergency planning and response organizations to determine how the stationary source is addressed in the community emergency response plan and to ensure that local response organizations are aware of the regulated substances at the stationary source, their quantities, the risks presented by covered processes, and the resources and capabilities at the stationary source to respond to an accidental release of a regulated substance.

75. 40 C.F.R. § 68.93(a) states that the coordination shall occur at least annually, and more frequently, if necessary, to address changes: at the stationary source; in the stationary source's emergency response and/or emergency action plan; and/or in the community emergency response plan.

76. 40 C.F.R. § 68.93(c) states that the owner or operator shall document coordination with local authorities, including: the names of individuals involved and their contact information (phone number, email address, and organizational affiliations); dates of coordination activities; and nature of coordination activities.

77. The EPA inspection revealed that BCP had not conducted emergency response coordination activities in the last year and there was no documentation of any emergency response coordination activities.

78. The EPA inspection revealed that BCP did not document emergency response coordination activities.

79. Respondent's failure to comply with requirements for emergency response coordination activities in 40 C.F.R. Part 68, as described above, violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Risk Management Plan

80. 40 C.F.R. § 68.12(a) requires the owner or operator of a stationary source to submit a single RMP, as provided in §§ 68.150 to 68.185. The RMP shall include a registration that reflects all covered processes.

81. 40 C.F.R. § 68.190(b)(1) states that the owner or operator of a stationary source shall revise and update the RMP submitted under § 68.150 at least once every five years from the date of its initial submission or most recent update required by paragraphs (b)(2) through (b)(7) of this section, whichever is later. For purposes of determining the date of initial submissions, RMPs submitted before June 21, 1999, are considered to have been submitted on that date.

82. The EPA inspection revealed that BCP submitted the current RMP 28 days late.

83. Respondent's failure to comply with requirements for risk management plans in 40 C.F.R. Part 68, as described above, violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Order for Compliance

84. Based upon EPA's Findings of Fact and Law, and EPA's 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), it is hereby ordered and agreed that Respondent shall comply with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68. Specifically, EPA and Respondent agree that Respondent shall, as expeditiously as possible, but in no event later than the following:

(a) Within 30 days after the Effective Date of this Order:

- 1) Perform a PHA on the Drum Truck Storage Process and correct the RMP to reflect the correct techniques used for all PHAs.
- 2) Develop and provide to EPA for review and comment a list of SOPs to be updated or verified, as appropriate, to comply with 40 C.F.R. § 68.69(a). The list will separate the SOPs into groups and provide prioritized timelines for revising the SOPs in each group. Prioritization shall be based on potential risk and the frequency of use of the applicable SOP. All listed SOPs are to be revised within 180 days of the Effective Date of this Order.

(b) Within 60 days after the Effective Date of this Order:

- 1) Review and update the Hazard Assessment to include an updated offsite consequences analysis.
- 2) Develop a formal (written) mechanical integrity program (to satisfy the requirements detailed in 40 C.F.R. § 68.73), including an implementation timeline with inspection and maintenance activities for all applicable equipment. Per 40 C.F.R. § 68.73(e), if deficiencies in equipment outside acceptable limits are identified, before further use or in a safe and timely manner when necessary, means will be taken to assure safe operation. The implementation timeline will set forth a schedule of activities, specifying complete dates within 150 days after the Effective Date of this Order, except for inspection of the tanks which will be conducted in accordance with Paragraphs 84(b)(3) through (5), below.
- 3) The Facility will inspect its six (6) ethanol tanks as soon as possible but no later than March 31, 2023. The tank inspection reports shall be provided to EPA no later than April 30, 2023.

4) The Facility will inspect the trimethylamine tank as soon as possible, but no later than April 30, 2023. The tank inspection report shall be provided to EPA no later than May 30, 2023.

5) The Facility will inspect the ethylene oxide tank as soon as possible, but no later than June 30, 2023. The tank inspection report shall be provided to EPA no later than July 31, 2023.

(c) Within 90 days after the Effective Date of this Order:

1) Develop and implement a written unit-specific emergency shutdown procedure.

2) Update Process Safety Information to include safety systems and consequences of deviation.

3) Conduct a ventilation study for building V-10, V-25 and the building V-8 control room to ensure design is protective of human health and the environment.

(d) Within 150 days after the Effective Date of this Order:

1) Conduct a ventilation study for buildings V-8 and V-14 to ensure design is protective of human health and the environment.

85. Every 30 days, from the Effective Date of this Order until the termination of this Order, Respondent shall provide electronically a monthly progress report to EPA detailing the actions Respondent has taken in furtherance of its obligations under this Order. The first progress report shall be due no later than 30 days after the Effective Date of this Order. Each subsequent progress report shall be due every 30 days thereafter.

Submissions

86. Respondent must provide documentation of completion of these compliance actions, including copies of each document generated pursuant to Paragraph 84, to EPA within 15 days of the completion of each item required by this Order via electronic mail or a secure dropbox or website.

87. All submissions to EPA required by this Order shall contain the following certification signed by an authorized representative of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete.

I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

88. All submissions to EPA required by this Order which are not confidential business information shall be sent to:

Lorenzo Sena
sena.lorenzo@epa.gov
Chemical and Oil Release Prevention Branch
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

89. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information (“CBI”) in accordance with applicable law.

90. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

91. EPA prefers electronic submission of all documents, including documents containing CBI, and EPA shall provide BCP with a secure means of providing CBI to EPA electronically under this order.

STIPULATED PENALTIES

92. Respondent shall be liable for stipulated penalties to the United States in the amounts set forth below for failure to comply with the requirements of Paragraphs 84-85 of this Consent Agreement. The following stipulated penalties shall accrue per violation per day:

- (a) For failure to complete the tank inspections at the referenced source as required by Paragraphs 84(b)(3), (4), and (5):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,500	1st through 15th day
\$ 3,000	15th day and beyond

- (b) For failure to submit the tank inspection reports to EPA as required by

Paragraphs 84(b)(3), (4) and (5):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 15th day
\$ 500	15th day and beyond

93. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation of a Consent Agreement deadline or other Consent Agreement requirement occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Agreement.

94. The payment of stipulated penalties under this Consent Agreement shall not alter in any way Respondent's obligations to comply with the provisions of this Consent Agreement.

95. Respondent shall pay stipulated penalties not more than thirty (30) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions set forth in Paragraph 97 of this Consent Agreement.

96. The stipulated penalties provided for in this Consent Agreement shall be in addition to any other rights, remedies, or sanctions available to the EPA for Respondent's violation of this Consent Agreement or applicable law. Where a violation of this Consent Agreement is also a violation of statutory or regulatory requirements, Respondent shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

97. Payment of any stipulated penalties shall identify Respondent by name and docket number [CAA 07-2021-0012] and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at
<http://www.epa.gov/financial/makepayment>.

- (a) A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
Email: R7_hearing_clerk_filings@epa.gov, and to

Lorenzo Sena
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219
Email: [Sena. Lorenzo@epa.gov](mailto:Sena.Lorenzo@epa.gov)

98. If Respondent fails to timely pay any portion of the EPA penalty assessed under this Agreement, the EPA may:

- (a) Request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) Refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- (c) Collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- (d) Suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

General Provisions

Potential Liability

99. 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)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator may:

- (a) issue an administrative penalty order assessing a civil penalty not to exceed \$51,796 per day of violation, pursuant to Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B);
- (b) bring a civil action for permanent or temporary injunction, or to assess and recover a civil penalty not to exceed \$109,024 per day of violation, or both, pursuant to Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2); 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).

100. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), issuance of this Order does not preclude EPA from assessing penalties or taking any other action authorized under the CAA. This Order does not affect the obligation of Respondent to comply with all federal, state, and local statutes, regulations, and permits.

Amendment of Order

101. EPA may subsequently amend this Order, in writing, in accordance with the authority of the CAA. Any amendment will be transmitted to Respondent. 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.

102. If any provision or authority of the Order or the application of the Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of the Order shall remain in full force and effect and shall not be affected by such a holding.

Access and Requests for Information

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

104. Deadlines for submittals or performance may be extended by EPA Region 7 at its sole discretion, without further amendment to this Order. EPA will provide Respondent with written confirmation and documentation of any such extensions of time within five days of any such request.

Effective Date

105. Upon signature by the authorized EPA representative, this Order shall have an Effective Date of September 20, 2022.

106. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

Termination

107. This Order shall terminate one year after the Effective Date of this Order, or at the time that EPA determine that Respondent has achieved compliance with all the terms of this Order, whichever is earlier.

Notice to the State

108. Pursuant to Section 113(a)(4), 42 U.S.C. § 7413(a)(4), the State of Missouri has been provided notice of this action.

For the **U.S. ENVIRONMENTAL PROTECTION AGENCY:**

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

For RESPONDENT:

BCP INGREDIENTS, INC.

By: 

Hatsuki Miyata
Title: Vice President and Secretary

Date: January 13, 2023

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Docket Clerk, United States Environmental Protection Agency, 11201 Renner Blvd, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by electronic mail, return receipt requested, to:

Brittany Barrientos
Stinson LLP
brittany.barrientos@stinson.com

Date

Signed