

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2013 MAY 22 AM 9:45

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Reddy Ice Corporation)
Reddy Ice – Denver Facility)
2101 31st Street)
Denver, Colorado 80216)

Respondent)

COMBINED COMPLAINT AND
CONSENT AGREEMENT

DOCKET NO. : CAA-08-2013-0010

1. This civil administrative enforcement action is issued to the Reddy Ice Corporation (Respondent) pursuant to section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(B), for alleged violations of the implementing regulations associated with the “Prevention of Accidental Releases” requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r). This proceeding is subject to EPA’s *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Rules of Practice), 40 C.F.R. part 22. Pursuant to Section 113(d)(1)(C) of the CAA, 42 U.S.C. § 7413(d)(1)(C), the Department of Justice and the EPA have jointly determined that this matter is appropriate for handling as an administrative penalty action.
2. The undersigned EPA official has been properly delegated the authority to issue this action.
3. 40 C.F.R. § 22.13(b) provides that 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 Combined Complaint and Consent Agreement (CCCA).

4. The parties agree that the settling of this action and refraining from the adjudication of any issue of fact or law, with regard to the issues herein, is in their interest and in the public interest.

5. Respondent consents to the terms of this CCCA, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

6. Respondent admits the jurisdictional allegations in this CCCA and neither admits nor denies all remaining allegations herein.

7. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

STATUTORY AND REGULATORY FRAMEWORK

8. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorizes the Administrator to promulgate regulations regarding the prevention and detection of accidental releases of designated chemicals. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires 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 (RMP) to prevent or minimize risks of accidental releases of those designated substances. The regulations, promulgated by EPA pursuant to CAA § 112(r)(7), are set forth in 40 C.F.R. part 68.

9. Under 40 C.F.R. § 68.3, the following definitions apply:
 - a. “Stationary source” means “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.”
 - b. “Regulated substance” means “any substance (listed pursuant to section 112(r)(3) of the Clean Air Act) in 40 C.F.R. § 68.130.” Threshold quantities for the regulated substances are included in 40 C.F.R. § 68.130.
10. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term “person” to include in relevant part, an individual, corporation, or partnership.
11. Respondent is a corporation and therefore a person, and thus subject to regulation under section 112(r) of the CAA, 42 U.S.C. § 7412(r)(7).
12. Respondent is the owner and/or operator of the Reddy Ice Facility, a stationary source which manufactures ice, located at 2101 31st Street in Denver, Colorado (the Facility).
13. Anhydrous ammonia (CAS # 7664-41-7) is a regulated substance and is present at the Facility in amounts greater than the threshold quantity.
14. Pursuant to section 112(r)(7) of the CAA, 42 U.S.C. §7412(r)(7), the Respondent is required to prepare and implement a risk management program (RMP) to detect and prevent or minimize accidental releases of such substances.

SPECIFIC ALLEGATIONS

15. On December 5, 2010, an authorized representative of the EPA conducted an inspection (EPA inspection) of the Facility, with the consent of the Respondent, to determine compliance with CAA § 112(r)(7). During the inspection, the EPA representative observed alleged violations of the CAA § 112(r)(7). The alleged violations are described in paragraphs 16-21.

16. 40 C.F.R. § 68.65(d)(1)(i) provides that information pertaining to the equipment in the process shall include materials of construction. Process safety information for thirteen process vessels did not include materials of construction. Respondent identified these process vessels as: V-2, V-4, V-6, V-8, V-9, V-10, V-11, V-12, V-13, V-14, V-15, V-16 and V-18. This is a violation of 40 C.F.R. § 68.65(d)(1)(i).

17. 40 C.F.R. § 68.65(d)(1)(vi) provides that information pertaining to the equipment in the process shall include design codes and standards employed. Process safety information did not include design codes and standards employed for thirteen process vessels. These process vessels are listed in paragraph 16. This is a violation of 40 C.F.R. § 68.65(d)(1)(vi).

18. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices (RAGAGEP). Respondent did not document that thirteen process vessels, listed in paragraph 16, comply with RAGAGEP. This is a violation of 40 C.F.R. § 68.65(d)(2).

19. 40 C.F.R. § 68.65(d)(3) provides that for existing equipment designed and constructed in accordance with codes and standards, or practices that are no longer in general use, the owner or operator shall determine and document that the equipment is

designed, maintained, inspected, tested, and operating in a safe manner. Respondent did not determine and document that thirteen process vessels, listed in paragraph 16, were designed in a safe manner. This is a violation of 40 C.F.R. § 68.65(d)(3).

20. 40 C.F.R. § 68.73(e) provides that the owner or operator shall correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation. Deficiencies identified during a 2007 independent inspection were not corrected in a safe and timely manner. For example, V-2, a high-pressure receiver, had eight identified deficiencies that had not been corrected at the time of EPA's inspection. Four of the eight deficiencies had a risk ranking of 1, which indicates the highest priority. The deficiencies included, "The tubular sight glass is located at the end of the vessel near a door opening. This is a potential catastrophic release point." and "There is no over pressurization for the V-2 pressure receiver." Failure to correct the deficiencies is a violation of 40 C.F.R. § 68.73(e).

21. 40 C.F.R. § 68.79(d) provides 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 the deficiencies have been corrected. The PSM/RMP Compliance Audit Recommendation Tracking Log did not document that audit questions 6.26 and 18.3 had been corrected. The audit questions pertain to the documentation of equipment design codes and process safety information, respectively. This is a violation of 40 C.F.R. § 68.79(d).

PENALTY

22. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each

violation of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of 42 U.S.C. § 7412(r). To determine the amount of the civil penalty to be assessed pursuant to section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), EPA took into account, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.

23. Respondent consents and agrees to pay a civil penalty in the amount of **sixty-one thousand five hundred dollars (\$61,500)**.

24. Attachment A (Collection Information) provides terms for payment including the assessment of fees and interest charges for late payments.

CERTIFICATION OF COMPLIANCE

25. On or before sixty (60) days after the date of the Final Order approving this CCCA, Respondent shall submit to EPA a Certification of Compliance, establishing Respondent's completion of the items described in subparagraphs a-e below. In the Certification of Compliance, Respondent shall demonstrate:

- a. Materials of construction have been determined and documented for all process vessels at the Facility.
- b. All equipment, including process vessels listed in paragraph 16, complies with RAGAGEP.

- c. Thirteen process vessels, listed in paragraph 16, are designed in a safe and acceptable manner, in accordance with design codes and standards.
- d. All deficiencies identified in mechanical integrity inspections from 2001, 2002, and 2007 have been corrected.
- e. An appropriate response to all findings from previous compliance audits has been documented.

26. The Certification of Compliance shall contain the date, printed name, and the signature of the Respondent's representative, as well as the following statement:

I certify that I am authorized to verify the completion of work on behalf of Reddy Ice Corporation. I certify under penalty of perjury that the foregoing is true and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

27. The Certification of Compliance shall be mailed or emailed to the following contact and address:

U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
ATTN: Greg Bazley, 8ENF-AT
E-mail: bazley.greg@epa.gov

28. Should any delays arise in the work to be performed, as described in paragraph 25, Respondent shall submit a request for extension on or before forty-five (45) days after the date of the Final Order approving this CCCA.

29. The request for extension shall be mailed or emailed to the contact and address identified in paragraph 27.

30. The EPA will review the request for extension submitted pursuant to paragraph 28 and will either approve or deny the extension.

OTHER TERMS

31. This CCCA contains all terms of the settlement agreed to by the parties.
32. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA, Respondent, and Respondent's successors or assigns.
33. Nothing in the CCCA shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.
34. Failure of Respondent to comply with any terms of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
35. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.
36. Nothing in the CCCA shall be construed as a waiver by the United States of its authority to seek costs or any appropriate penalty associated with any action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.
37. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into and legally bind Respondent to the terms and conditions of the CCCA.
38. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
39. Each party shall bear its own costs and attorney fees in connection with this administrative matter.

40. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

41. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in this CCCA.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Complainant

Date: May 15 2013

By: Eddie A. Sierra
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

REDDY ICE CORPORATION

Respondent

Date: 05/02/13

By: Jonathan D. Judy

Title: Risk Compliance Manager

COLLECTION INFORMATION

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

CHECK PAYMENTS:

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

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

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

OVERNIGHT MAIL:

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT AND FINAL ORDER** in the matter of **REDDY ICE CORPORATION; REDDY ICE – DENVER FACILITY; DOCKET NO.: CAA-08-2013-0010** was filed with the Regional Hearing Clerk on May 22, 2013.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail on May 22, 2013, to:

Joey Tasher, Plant Manager
Reddy Ice – Denver Facility
2101 31st Street
Denver, CO 80216

E-mailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

May 22, 2013


Tina Artemis
Paralegal/Regional Hearing Clerk