

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

Carthage Water and Electric)
149 East 3rd Street)
Carthage, Missouri 64836)

Respondent)

) Docket No. CAA-07-2008-0031

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

This Administrative Compliance Order on Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency, Region VII (EPA) and by the Respondent, Carthage Water and Electric, pursuant to Section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. 7413(a)(3)(B), as amended. This Order requires Respondent, Carthage Water and Electric, to comply with the requirements of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Specifically, EPA Orders Respondent to enclose the ammonia storage area to be in compliance with the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). 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.

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)(1) to Title I of the CAA, 42 U.S.C. § 7412(r)(1), which requires the owners and operators of stationary sources to prevent the accidental release and to

minimize the consequences of any release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3) or any other extremely hazardous substance.

2. Pursuant to Section 112(r)(1), the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

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

II. Definitions

4. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C) defines “stationary source” as, inter alia, 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.

5. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance, as defined below, or other extremely hazardous substance into the ambient air from a stationary source.

6. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), defines “regulated substance” as a substance listed pursuant to Section 112(r)(3) of the CAA. The list of substances regulated under Section 112(r) of the CAA is set forth at 40 C.F.R. § 68.130.

7. As used herein, the term “day” shall mean calendar day.

III. Factual Background

8. Respondent is the owner and/or operator of a facility located at 149 East 3rd Street, Carthage, Missouri (“facility”). The facility owned by Respondent treats the public drinking water supply for the City of Carthage.

9. At all times relevant to this Order, Respondent produced, processed, handled or stored anhydrous ammonia at its facility.

10. EPA inspected the facility on March 20, 2007, to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that the Caruthersville Water Treatment Plant uses anhydrous ammonia in the process at its facilities.

IV. Conclusions of Law

11. 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).

12. Respondent’s facility located at 149 East 3rd Street, Carthage, Missouri, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

13. Anhydrous ammonia is a “regulated substance” as defined by Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), and is listed at 40 C.F.R. § 68.130.

14. Pursuant to Section 112(r)(1) of the CAA, Respondent has a general duty in the same manner and to the same extent as 29 U.S.C. § 654, to: (a) identify hazards which may result from

accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

V. Finding of Violation

15. Based on information available to EPA, including information gathered during the inspection performed by EPA at the Facilities, EPA has determined that Respondent failed to satisfy the general duty referred to in Paragraph 14 above, in that, among other things, Respondent has not identified hazards which may result from accidental releases of regulated substances and has not designed and maintained a safe facility, taking such steps as are necessary to prevent releases and minimize the impacts thereof. Therefore, Respondent violated the provisions of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

VI. Compliance Order

16. Based upon the foregoing Finding of Violation, it is hereby ordered and agreed that Respondent shall comply with the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Specifically, EPA and Respondent agree that Respondent shall, as expeditiously as possible, but in no event longer than 120 days of the effective date of this Order, enclose the ammonia storage area in compliance with accepted industry standards.

17. Respondent shall, upon completion of the ammonia storage area enclosure as described in paragraph 16, submit a Completion Report, within 130 days of the effective date of this Order which includes the following:

- a) photographs of the ammonia storage area;
- b) an itemization of the costs of completing the modifications of the ammonia storage area; and

- c) a verification, stating that Respondent has complied with each of the requirements of paragraph 20(a) of this Order.

18. All documents required to be submitted to EPA by this Order shall contain the following certification signed by an officer of the 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.

19. The submission required by paragraph 17 shall be made to:

Chris Muehlberger
Assistant Regional Counsel
United States Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101;

and

George Hess
Chemical Risk Information Branch
United States Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

20. 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 in accordance with applicable law.

VII. Potential Liability

21. Section 113(a)(3)(B) of the CAA grants EPA the authority to issue an Order to Comply to any person found in violation of Section 112(r) of the CAA 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, the Administrator is authorized to address such a violation as follows:

- a) Issue an administrative penalty order assessing a civil penalty not to exceed \$32,500 per day of violation;
- b) Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$32,500 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.

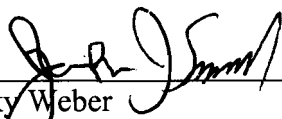
23. Issuance of this Order does not preclude the State of Missouri or EPA from assessing penalties or taking any other action authorized under the CAA. This Order does not affect the obligation of the Carthage Water and Electric to comply with all federal, state and local statutes, regulations and permits.

24. This Order shall become effective on the date that it is signed by the Director of the AWMD, EPA.

25. This Order shall terminate one year from the effective date of this Order.

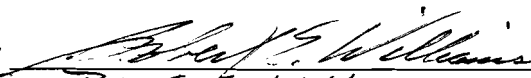
26. This Order is binding on the Parties signing below.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By 
for Becky Weber
Director
Air, RCRA and Toxics Division

Date: 7/8/08

RESPONDENT:
CARTHAGE WATER AND ELECTRIC

By 
Robert E. Williams

Title General Manager
General Manager

Date 7/1/2008

IN THE MATTER OF Carthage Water and Electric, Respondent
Docket No. CAA-07-2008-0031

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Administrative Compliance Order on Consent was sent this day in the following manner to the addressees:

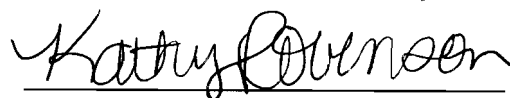
Copy hand delivered to
Attorney for Complainant:

Chris Muehlberger
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Bob Williams
General Manager
Carthage Water and Electric
149 E. 3rd Street
Carthage, Missouri 64836

Dated: 7/14/08



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7