

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

In the Matter of:

New Horizon FS, Inc.	)	Docket No. CAA-07-2007-0013
625 First Street	)	CLEAN AIR ACT
DeWitt, Iowa 52742	)	42 U.S.C. § 7412(r)

ADMINISTRATIVE ORDER

Pursuant to Section 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(B), as amended, New Horizon FS, Inc. is hereby ordered by the United States Environmental Protection Agency (EPA) to comply with the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r). Specifically, EPA Orders New Horizon FS, Inc., to prevent the accidental release and minimize the consequences of accidental releases of anhydrous ammonia.

I. Statutory and Regulatory Background

1. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Section 112(r) to the Clean Air Act, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, prevent the accidental release and to minimize the consequences of any release of any substance listed pursuant to Section 112(r)(3) of the Clean Air Act, 42 U.S.C. § 7412(r)(3) or any other extremely hazardous substance.

2. The owners and operators of stationary sources producing, processing, handling or storing substances listed under the Clean Air Act have a general duty to identify hazards which may result from releases 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. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator of EPA may commence a civil action for civil penalties for violations of the Clean Air Act, not to exceed \$25,000 per day of violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, civil penalties of up to \$27,500 per day per violation may be assessed for violations occurring on or after January 30, 1997 through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004. The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$32,500 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 Clean Air Act referenced therein, including Section 112(r).

## II. Definitions

4. 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.

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

6. The regulations at 40 C.F.R. § 68.3 define regulated substance as any substance listed pursuant to Section 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130, Tables 1, 2, 3 and 4.

## III. Factual Background

7. Information collected by EPA revealed that New Horizon FS, Inc., located at 625 First Street, DeWitt, Iowa, released approximately 400 pounds of anhydrous ammonia on April 19, 2006.

8. Information collected by EPA revealed that the release resulted when employees failed to remove an improperly installed hydrostatic relief valve. The valve failed and caused the release of anhydrous ammonia.

## IV. Finding of Violation

9. New Horizon FS, Inc., 625 First Street, DeWitt, Iowa, is, and at all times referred to herein, was a person as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

10. The New Horizon FS, Inc. facility, located at 625 First Street, DeWitt, Iowa, is a stationary source pursuant to 40 C.F.R. § 68.3.

11. Anhydrous ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3.

12. On or about April 19, 2006, New Horizon FS, Inc. stored anhydrous ammonia at its facility.

13. On or about April 19, 2006, New Horizon FS, Inc. released approximately 400 pounds of anhydrous ammonia the air, water and land.

14. The New Horizon FS, Inc. facility is regulated under Clean Air Act Section 112(r) under Program 2.

15. Pursuant to Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and the implementing regulations, including 40 C.F.R. § 68.48(b), New Horizon FS, Inc. is required to ensure that the process is designed in compliance with recognized and generally accepted good engineering practices.

16. EPA finds that New Horizon FS, Inc. failed to ensure that the process is designed in compliance with recognized and generally accepted good engineering practices and therefore failed to prevent or minimize the accidental release of anhydrous ammonia. Therefore, New Horizon FS, Inc. violated Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

#### V. Compliance Order

17. EPA orders New Horizon FS, Inc. to prevent and minimize accidental releases of anhydrous ammonia by complying with the applicable industry standards for maintenance and operation of systems that contain anhydrous ammonia.

#### VI. Potential Liability

18. Section 113(a)(3)(B) of the Clean Air Act grants EPA the authority to issue an order to any person found in violation of Section 112(r) of the Clean Air Act and the regulations promulgated pursuant thereto.

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

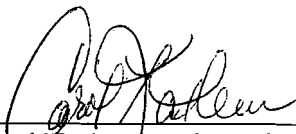
- a. Issue an administrative penalty order assessing a civil penalty not to exceed \$32,500 per day of violation;
- b. Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$32,500 per day of violation, or both; or
- c. Request the Attorney General to commence a criminal action pursuant to Section 113(c) of the Clean Air Act.

20. Issuance of this Order does not preclude the State of Iowa or EPA from assessing penalties or taking any other action authorized under the Act. This Order does not affect the obligation of New Horizon FS, Inc. to comply with all federal, state and local statutes, regulations and permits.

21. This Order shall become effective immediately upon receipt unless, within five (5) business days of receipt hereof, New Horizon FS, Inc. requests a conference with EPA. In such event, the effective date of the Order shall be extended until the date of such conference or to a time established by EPA. To request such a conference, contact Julie M. Van Horn, Attorney, Office of Regional Counsel, EPA Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101, telephone 913-551-7889.

22. All information and documents submitted by New Horizon FS, Inc. to EPA pursuant to this Order shall be subject to public inspection unless identified as confidential by New Horizon FS, Inc. in accordance with the requirements of 40 C.F.R. Part 2. Information and documents so identified will be disclosed only in accordance with the provisions of 40 C.F.R. Part 2.

10/25/04  
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Date

  
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Carol Kather, Acting Director  
Air, RCRA, and Toxics Division