



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-AT

FEB 09 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Beth Eisenmann, Environmental Coordinator
ConocoPhillips La Junta Terminal
36101 East Highway 50
La Junta, Colorado 81050

Re: In the Matter of ConocoPhillips La Junta Terminal
Administrative Order

Dear Ms. Eisenmann:

Enclosed is an Administrative Order ("Order"), that the United States Environmental Protection Agency, Region 8 (EPA) is issuing under the authority of § 113(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3)(B). In the Order, EPA finds the ConocoPhillips La Junta Terminal (CLJT) in violation of § 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7) and regulations set forth in 40 C.F.R. part 68, pertaining to compliance with the Risk Management Program, Chemical Accident Prevention Provisions.

On May 26, 2010, EPA and the United States Department of Transportation (DOT) conducted a joint inspection at the La Junta Terminal. Based on the inspection and subsequent discussions with DOT, EPA concluded that CLJT is required to submit a risk management plan (RMP) and is therefore in violation of the risk management program requirements outlined in CAA § 112(r)(7). EPA is issuing the enclosed Administrative Order, which specifies the nature of the violation and describes action necessary for compliance with CAA § 112(r)(7).

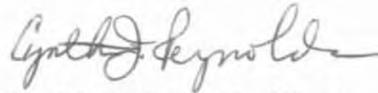
The Order requires CLJT to correct the violation described in the preceding paragraph. Please be advised that the issuance of this Order does not preclude the initiation of any action authorized under law for failure to comply with the Order, including the assessment of an administrative penalty and the filing of civil or criminal actions in the U.S. District Court. Failure to comply with the requirements of the Order is a violation of the Order. Please also be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or civil or criminal actions in the U.S. District Court for the violations cited in the Order or for any other violations that the CLJT may have committed prior to or may commit after the issuance of the enclosed Order.

Below is a summary of EPA, DOT, and CLJT communications:

- 6/23/09: CLJT's RMP five year resubmission was due. CLJT did not resubmit.
- 12/1/09: EPA issued a letter to CLJT regarding the facility's current RMP status.
- 12/11/09: Based on a CLJT internal audit, CLJT concluded that the facility would be covered by DOT and not EPA. This position was conveyed to EPA.
- 2/18/10: After communicating with the DOT Regional Office, EPA sent a letter to CLJT stating that DOT informed EPA that they did not cover the tanks at the facility. (If DOT does not cover the tanks, then EPA would.)
- The EPA advised CLJT that the facility had 15 days to come into compliance with the RMP requirements. The 15 day deadline for RMP compliance was not met by CLJT.
- 3/12/10: CLJT sent a letter to EPA stating disagreement with both positions of DOT and EPA and stated the tanks are covered by DOT.
- 5/26/10: EPA and DOT conducted an on-site inspection at CLJT.
- 10/22/10: DOT Regional Office issued a letter to CLJT stating that the tanks are not covered by DOT.

Please review the Order carefully. If you have any questions on technical issues, please contact Greg Bazley at (303) 312-6255. For legal issues, contact David Rochlin, Enforcement Attorney, at (303) 312-6892.

Sincerely,



Cynthia J. Reynolds, Director
Air & Toxics Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Enclosure

cc: David Rochlin, 8ENF-L
David Cobb, 8ENF-AT
Terrence Larson, DOT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

2011 FEB -8 PM 1:03

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
ConocoPhillips La Junta Terminal)
36101 East Highway 50)
La Junta, Colorado 81050)
)
Respondent.)
_____)

ADMINISTRATIVE ORDER

DOCKET NO. : CAA-08-2011-0005

INTRODUCTION (JURISDICTION)

1. This Administrative Order ("Order") is issued to the ConocoPhillips La Junta Terminal (Respondent) pursuant to Title I, § 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7413 (a)(3)(B). Section 113(a)(3)(B) grants to the Administrator of the U.S. Environmental Protection Agency (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. This authority was delegated by the Administrator to the Regional Administrators on December 20, 1996 by EPA Delegation 7-6-A, and within Region 8, was redelegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice (ECEJ).
2. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added § 112(r) to the Clean Air Act, 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.
3. Pursuant to § 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), the owners and operators of stationary sources are required to develop and implement a risk management plan ("RMP") that includes a hazard assessment, a prevention program and an emergency response program.
4. The regulations at 40 C.F.R. part 68 set forth the requirements of a risk management program that must be established and implemented at a stationary source that has more than a threshold quantity of a regulated substance in a process. Pursuant to 40 C.F.R. part 68, subparts A and G, the risk management program is to be described in a RMP that must be submitted to EPA.

5. Pursuant to § 112(r)(7) of the Act, 42 U.S.C. §7412(r)(7), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, the RMP must be submitted to EPA for all covered processes, by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process shall comply with the requirements of 40 C.F.R. part 68 (including, but not limited to, submission of an RMP to EPA), no later than June 21, 1999, or three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which a regulated substance is first present in a process above the threshold quantity, whichever is latest.

6. The regulations at 40 C.F.R. part 68 separate the covered processes into three categories, designated as Program 1, Program 2, and Program 3. A covered process is subject to Program 1 requirements, as per 40 C.F.R. § 68.10(b), if the process meets all of the following requirements: 1) For the five years prior to the submission of an RMP, the process has not had an accidental release of a regulated substance where exposure to the substance, its reaction products, over-pressure generated by an explosion involving the substance, or radiant heat generated by a fire involving the substance led to off-site death injury or response or restoration activities for an exposure of an environmental receptor; 2) The distance to a toxic or flammable endpoint for a worst-case release assessment conducted under subpart B and § 68.25 is less than the distance to and public receptor, as defined in 68.25 is less than the distance to and public receptor, as defined in § 68.30; and 3) Emergency response procedures have been coordinated between the stationary source and the local emergency planning and response organizations.

7. 40 C.F.R. § 68.12(b) requires that the owner or operator of a stationary source with a Program 1 process undertake certain tasks in addition to the submission of an RMP, including, but not limited to, analyzing the worst-case release scenario (pursuant to 40 C.F.R. § 68.25), documenting that the nearest public receptor is beyond the distance to a toxic or flammable endpoint as defined in § 68.22(a), submitting in the RMP the worst-case release scenario as provided in § 68.165, and completing a five-year accident history.

8. Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d) and 40 C.F.R. part 19, states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$37,500 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 § 112(r)(1) and/or § 112(r)7.

DEFINITIONS

9. 40 C.F.R. § 68.3 defines “stationary source” in the relevant 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.

10. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to § 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130.

11. 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to § 112(r)(5) of the Clean Air Act, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

12. 40 C.F.R. § 68.3 defines “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.

13. 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

FINDINGS OF FACT

14. Respondent is the owner and/or operator of the ConocoPhillips La Junta Terminal located at 36101 East Highway 50, La Junta, Colorado (the “Facility”).

15. The Facility uses, handles, and/or stores, propane, a regulated substance pursuant to § 112(r)(2) and (3) of the Clean Air Act and 40 C.F.R. § 68.3, which is listed at 40 C.F.R. § 68.130. The threshold quantity requiring the submittal of an RMP for propane, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

16. On June 24, 2004, an RMP was submitted for the Facility which specified that Respondent had 2,400,000 pounds of propane in a process at the Facility, and which identified the propane process as Program 1.

17. EPA, in coordination with the Department of Transportation (DOT), conducted an inspection of the Facility on May 26, 2010, to assess applicability and compliance with § 112(r) of the Clean Air Act.

18. Information collected during the May 26, 2010 inspection confirmed that the Facility had greater than 10,000 pounds of propane in a process at the Facility.

19. At the time of EPA’s inspection, Respondent had not met the requirements of 40 C.F.R. part 68. Specifically, on the day of EPA’s inspection, Respondent:

- had not revised and updated the RMP submitted under § 68.150 at least once every five years as required by 40 C.F.R. § 68.190(b)(1).

CONCLUSIONS OF LAW

20. Respondent is, and at all times referred to herein was, a “person” as defined by § 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).
21. The Facility is a “stationary source” pursuant to § 112(r)(2)(C) of the Clean Air Act and 40 C.F.R. § 68.3.
22. Facility is subject to the requirements of § 112(r)7 of the Clean Air Act, 42 U.S.C. § 7412(r)7, and 40 C.F.R. part 68, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.
23. Based on information available to EPA, including information gathered during the inspection performed by EPA at the Facility and the Findings of Fact set forth above, EPA has determined that Respondent failed to satisfy the requirement outlined in 19 above. Therefore, Respondent violated a requirement of § 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7).

ORDER

24. Based upon the foregoing Findings of Fact, Findings of Violations, other information available to EPA, it is hereby ordered that Respondent comply with the requirements set forth below. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

PARTIES BOUND

25. The provisions of this Order shall apply to Respondent and its officers, agents, servants, employees, and successors and to all persons, firms and corporations acting under, through or for Respondent.

WORK TO BE PERFORMED

26. The Facility shall take at least the following steps to come into compliance with 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), and the regulations promulgated at 40 C.F.R. part 68:
- a. Within 20 days of receipt of this Order, Respondent shall perform the following activity:
 - i. revise and update the RMP submitted under § 68.150 as required by 40 C.F.R. § 68.190(b)(1).

27. Respondent shall provide EPA and its representatives, including contractors, with access to the Facility for the purpose of assessing Respondent's compliance with this Order and with the Clean Air Act. Respondent shall also provide EPA and its representatives, including contractors, with access to all records relating to Respondent's implementation of this Order.

28. Respondent shall preserve all documents and information relating to the activities carried out pursuant to this Order, for six years after completion of the work required by this Order. At the end of the six-year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information.

29. 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 CFR part 2, subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

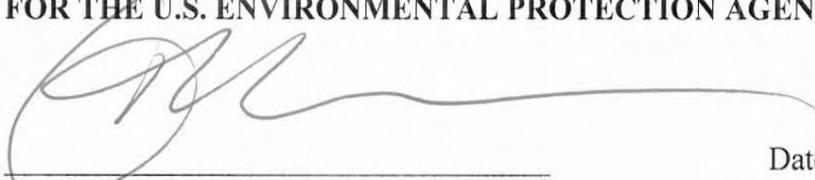
ENFORCEMENT

30. Section 113(a)(3) of the Clean Air Act provides that upon failure to comply with an order issued under § 113(a)(3)(B), the EPA Administrator may, inter alia: issue an administrative penalty order pursuant to § 113(d) for civil administrative penalties of up to \$25,000 per day of violation; or bring a civil action pursuant to § 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Civil Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009), this penalty maximum was increased to \$37,500 per day. In addition, Respondent may be subject to an administrative or civil action for similar penalties and/or injunctive relief, pursuant to §§ 113(b) and (d) of the Clean Air Act, based on the violation addressed by this Order. Furthermore, for any person who knowingly violates the provisions of the Clean Air Act as set forth in § 113(c) of the Clean Air Act, § 113(c) provides for criminal penalties or imprisonment, or both.

31. This Order shall not relieve Respondent of its obligation to comply with all applicable federal, State, and local laws, regulations and other legal requirements, including but not limited to § 112(r) of the Clean Air Act, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit.

32. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, other extremely hazardous substance, or other substance on, at, or from the Facility. EPA reserves the right to bring an action against Respondent assessing or seeking penalties and/or other relief for any violations, including, without limitation, the violations referred to in the Findings of Fact and Conclusions of Law set forth above. This Order shall not constitute or be construed as a release of any liability that the Respondent or any other person has under the Clean Air Act or any other law. EPA also reserves all of its rights to obtain access to the Facility and require Respondent's submission of information to EPA.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



Date: February 7, 2011

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

To: ConocoPhillips La Junta Terminal
36101 East Highway 50
La Junta, Colorado 81050
Attn: Beth Eisenmann, Environmental Coordinator

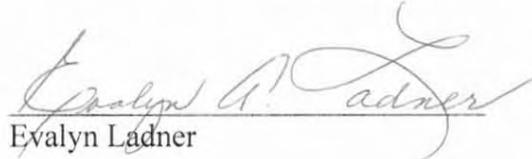
**In the Matter of:
ConocoPhillips La Junta Terminal**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE ORDER were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail, Postage Pre-Paid, to:

ConocoPhillips La Junta Terminal
36101 East Highway 50
La Junta, Colorado 81050
Attn: Beth Eisenmann, Environmental Coordinator

2/9/11
Date


Evalyn Ladner