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

2010 SEP 30 AM 11:45

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:	
Allied Energy **Allied Agronomy Facility** **302 East Front Street** **Gackle, North Dakota 58442-0216**	**COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING** DOCKET NO.: CAA-08-2010-0024
Respondent.	

INTRODUCTION (JURISDICTION)

1. This civil administrative enforcement action is authorized by § 113(d)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d)(1). The rules governing this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" (*Rules of Practice*), 40 C.F.R. part 22 (Enclosure 1).

2. 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).

3. Generally, and as set out and alleged specifically below, EPA alleges that Allied Energy, Inc. ("Respondent") violated rules promulgated under §112(r)7 of the CAA. Section 112(r)(7) of the CAA is codified at 42 U.S.C. § 7412(r)7, Accident Prevention. The rules implementing the Accident Prevention Program are codified at 40 C.F.R. part 68.

4. Generally, EPA alleges Respondent violated the CAA by failing to meet the requirements of 40 C.F.R. part 68 with respect to requirements of a risk management program that must be established and implemented at each affected stationary source. The CAA authorizes the assessment of a civil penalty for violations of § 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7) and any rule promulgated under this section. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

APPLICABLE REGULATIONS AND DEFINITIONS

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added § 112(r) to 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.

6. Pursuant to § 112(r)(7) of the CAA, 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.

7. 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.

8. 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 the 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.

9. 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 2 requirements, as per 40 C.F.R. § 68.10(c), if the process: a) does not meet the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b); and b) does not meet the Program 3 eligibility requirements set forth in 40 C.F.R. § 68.10(d).

10. 40 C.F.R. § 68.12(c) requires that the owner or operator of a stationary source with a Program 2 process undertake certain tasks in addition to the submission of an RMP, including, but not limited to, development and implementation of a management system (pursuant to 40 C.F.R. § 68.15), conduct a hazard assessment (pursuant to 40 C.F.R. §§ 68.20-68.42), and the development and implementation of a prevention program (pursuant to 40 C.F.R. §§ 68.48-68.60).

11. Section 113(d) of the CAA, 42 U.S.C. § 7413(d) and 40 C.F.R. part 19 state 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 CAA referenced therein, including § 112(r)(1) and/or § 112(r)7.

12. 40 C.F.R. § 68.3 defines "stationary source" in 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.

13. 40 C.F.R. § 68.3 defines "threshold quantity" as the quantity specified for regulated substances pursuant to § 112(r)(5) of the 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.

14. 40 C.F.R. § 68.3 defines "regulated substance" as any substance listed pursuant to § 112(r)(3) of the Act in 40 C.F.R. § 68.130.

15. 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.

16. 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.

GENERAL ALLEGATIONS

17. Respondent, Allied Energy,), is, and at all times referred to herein, was, a "person" within the meaning of § 302(e) of the Act, 42 U.S.C. § 7602(e).

18. Respondent is the owner and/or operator of a facility located at 302 East Front Street, Gackle, North Dakota (the "Facility").

19. The Facility is a "stationary source" as that term is defined at 40 C.F.R. § 68.3.

20. Respondent uses, handles, and/or stores, anhydrous ammonia, which listed at 40 C.F.R. § 68.130 as a regulated substance as defined in § 112(r)(2) and (3) of the Clean Air Act and 40 C.F.R. § 68.3, in a process at its Facility.

21. The threshold quantity for anhydrous ammonia is listed by EPA in 40 C.F.R. § 68.130, Table 1, as 10,000 pounds.

22. On June 22, 2004, an RMP was submitted for the Facility which specified that Respondent had 149,175 pounds of anhydrous ammonia in a process at the Facility, and which identified the anhydrous ammonia process as Program 2.

23. The Facility includes a Program 2 process as that term is described in 40 C.F.R. § 68.10(c), because the process: a) does not meet the requirements set forth in 40 C.F.R. § 68.10(b) for a Program 1 process; b) does not meet the requirements set forth in

40 C.F.R. § 68.10(d) for a Program 3 process; and c) is not subject to the OSHA process safety management standard set forth in 29 C.F.R. § 1910.119.

24. On May 11, 2010, a representative of EPA conducted an inspection at the Facility to determine compliance with § 112(r) of the CAA and 40 C.F.R. part 68.

COUNT 1

25. 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 developed and implemented a management system as required by 40 C.F.R. § 68.15;
- had not compiled and maintained up-to-date information, related to the regulated substances, processes, and equipment as required by 40 C.F.R. § 68.48(a);
- had not ensured that the process is designed in compliance with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.48(b);
- had not performed a Process Hazard Review as required by 40 C.F.R. § 68.50;
- had not prepared operating procedures in accordance with 40 C.F.R. § 68.52;
- had not certified that each employee presently operating a process, and each employee newly assigned to a covered process, have been trained or tested competent in the operating procedures provided in 40 C.F.R. § 68.52 that pertain to their duties as required by 40 C.F.R. § 68.54(a);
- had not implemented a maintenance program as required by 40 C.F.R. § 68.56;
- had not completed Compliance Audits as required by 40 C.F.R. § 68.58;
- had not included procedures for informing the public and local emergency response agencies about accidental releases in the facility emergency response plan as required by 40 C.F.R. § 68.95(a)(1)(i);
- had not included documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures to the covered chemical in the emergency response plan as required by 40 C.F.R. § 68.95(a)(1)(i); and
- had not performed a five-year update of the RMP as required by 40 C.F.R. § 68.190(b)(1).

26. Respondent's failure to fully comply with the requirements of 40 C.F.R. § 68.12(c) constitutes violations of § 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7). Respondent is therefore subject to the assessment of penalties under § 113(d) of the Act, 42 U.S.C. § 7413(d).

PROPOSED CIVIL PENALTY ASSESSMENT

27. The proposed civil penalty has been determined in accordance with § 113(d) of the CAA, 42 U.S.C. § 7413(d). This section and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to $25,000 per day for each violation occurring on or before January 30, 1997; $27,000 per day for each violation occurring between January 31, 1997, and March 15, 2004; $32,500 per day for each violation occurring between March 16, 2004, and January 12, 2009;

and $37,500 per day for each violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, § 4, 104 Stat. 890 (1990), 28 U.S.C. § 2461 (as amended) for each violation of the implementing regulations associated with the Accident Prevention Program codified at 40 C.F.R. part 68.

28. In determining the amount of any penalty to be assessed, § 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e), requires EPA to take into consideration the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violations.

29. Based upon the facts alleged in this Complaint and upon the statutory factors enumerated above, as known to the Complainant at this time, Complainant proposed that Respondent be assessed a penalty of $54,600 for the violation alleged in this Complaint. The Combined Enforcement Policy for CAA § 112(r) Risk Management Program, dated August 15, 2001, and Complainant's Penalty Calculation Worksheet are enclosed (Enclosures 2 and 3).

NOTICE OF OPPORTUNITY FOR A HEARING

30. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

31. To disagree with the complaint, and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street; Denver, Colorado 80202-1129) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. See § 22.15 of the Rules of Practice for a complete description of what must be in your answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.

QUICK RESOLUTION

32. Respondent may resolve this proceeding at any time by paying the specific penalty of $54,600, proposed in this complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See § 22.18 of the Rules of Practice for a full explanation of the quick resolution process. This 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:

Regular Mail:

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

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
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:

U.S. 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:

This payment option can be accessed from the information below:
www.pay.gov
Enter sfo1.1 in the search field
Open form and complete required fields

A copy of the check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent to both:

David Cobb, 8ENF-AT
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

Tina Artemis 8RC
Regional Hearing Clerk
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

SETTLEMENT NEGOTIATIONS

33. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you would like to pursue the possibility of settling this matter, or if you have any other legal questions, contact Marc Weiner, Esq., at 303-312-6913; weiner.marc@epa.gov; or, at the address below:

Marc Weiner, ENF-L
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.

In the Matter of:
Allied Energy
Allied Agronomy Facility

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8,
Complainant.

Date: 4/30/2018

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

In the Matter of:
Allied Energy, Inc.
Allied Agronomy Facility

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING 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:

Allied Energy, Inc.
109 Industrial Park
Edgeley, North Dakota 58433-7143

and

Allied Agronomy Gackle
302 East Front Street
Gackle, North Dakota 58422-0216
Attn: Andrew Gegelman, Manager

9/30/2010
Date

Judith McTernan
Judith McTernan

1ST Page Only

approve or disapprove the State issued statement, in accordance with the requirements of § 21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with § 21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in § 21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§ 21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

Subpart B—Parties and Appearances

Subpart C—Prehearing Procedures

Subpart D—Hearing Procedures

Subpart E—Initial Decision and Motion to Reopen a Hearing

1st page mlg

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

AUG 15 2001

SUBJECT: Combined Enforcement Policy for CAA Section 112(r) Risk Management Program

FROM: Eric V. Schaeffer, Director
Office of Regulatory Enforcement

TO: Regional Counsels, Regions I - X
Regional Enforcement Coordinators, Regions I - X
Regional Enforcement Division Directors, Regions I, II, IV, VI, VIII

Over the past year, the Office of Regulatory Enforcement and Regional offices have developed the attached Combined Enforcement Policy for violations of the Clean Air Act Section 112(r)(7) Risk Management Program. The attached Combined Enforcement Policy combines two policies, a penalty policy and enforcement response policy, that will govern civil enforcement actions for violations of the risk management program as found in 40 CFR Part 68. This Combined Enforcement Policy enumerates enforcement responses for violations of Part 68, provides a basis to calculate penalty figures for internal negotiation for civil judicial enforcement actions and for pleading administrative cases alleging violations of Part 68. The Combined Enforcement Policy is effective immediately, but may be evaluated after one year to determine if any modifications are needed.

Thank you for your assistance in developing the Combined Enforcement Policy. If you have any questions please contact Leslie Oif in the RCRA Enforcement Division at (202) 564-2291.

Attachment

US EPA CAA 112(r) Penalty Calculation Worksheet
DETERMINATION OF THE GRAVITY COMPONENT
Allied Energy, Inc
(Allied Agronomy, LLC)

On May 11, 2010, an CAA 112r(7) an EPA inspection was conducted at the Allied Energy, Inc. (AEI) facility in Gackle, North Dakota. Potential violations were discovered and a penalty was calculated using the Combined Enforcement Policy (CEP) for Clean Air Act (CAA) § 112(r)(7) and 40 C.F.R. part 68, Chemical Accident Prevention Provisions (August 15, 2001) and adjusted per the Civil Monetary Penalty Inflation Adjustment Rule for violations occurring after January 12, 2009.

The following is an overview of the proposed penalty amount. As per the CEP, the proposed penalty is the result of the following formula:

Penalty = [Economic Benefit ± adjustment factors] + [Gravity Component ± adjustment factors]. The calculated penalty is then rounded to the nearest $100.

PENALTY CALCULATION

A. Economic Benefit:

Due to the variable cost of implementing the elements of the Risk Management Program at this facility (internal cost vs. contractor costs, etc) economic benefit was not calculated.

B. Gravity Component = Seriousness + Duration + Size

I. Seriousness of Violation:

Table 1
Part 68 Penalty Assessment Matrix for Violations which occurred after June 22, 1999

		Type of Facility		
		Program 3	**Program 2**	**Program 1**
Extent of Deviation	**Major**	Not less than $38,500	$76,900 to $32,010	$107,800 to $44,010
	Moderate	$44,000 to $23,010	$32,000 to $15,410	$18,700 to $7,700
	Minor	$23,000 to $9,900	$15,400 to $6,600	$7,700 to $2,500

Extent of Deviation: **Moderate** Type of Facility: **Program 2**

Moderate: Cumulatively, the violations have a significant effect on the ability of the facility to prevent or respond to releases through the development and implementation of the RMP.

Based on relevant factors and circumstances, the mid-point of the Moderate-Program 2 cell is used as a base number for Seriousness of Violation.

Penalty	**$23,705**

Adjustment:

Gravity Adjustment #1: Environmental Consequences
Moderate Impact: A release would likely have an effect on the surrounding, non-sensitive ecosystem. Upward adjustment of up to 25% (based on worst-case)*.

Adjusted Penalty #1	$23,705 x 1.25 = **$29,631**

*Note: Upward adjustments up to 50% are allowable for a Major Impact in terms of potential environmental consequences of the worst-case release

II. Duration of Violation

Table II	
Duration of Violation	
Months	**Penalty**
0-12	$500/month
13-24	$1,000/month
25-36	$1,500/month
37+	$2,000/month

Duration: 10 months x $500/month = $5,000
Prior owners (Gackle Grain Co-op) submitted the previous Risk Management Plan. New submission by Allied Energy, Inc. was due on June 18, 2009 although Respondent purchased the facility prior to this date. EPA estimates the violations have occurred at the facility at least since June 18, 2009. From June 18, 2009 to the inspection date of May 11, 2010 = 10 months.

Penalty w/Duration	$29,631 + $5,000 = **$34,631**

III. Size of Violator

Size: Size of Violator = $20,000

Allied Energy, Inc. was formerly known as Farmers Union Oil Company of Edgeley (FUOCE). In Dun and Bradstreet, recent annual sales for FUOCE are listed as $10,100,000. The recent annual sales figures will be applied to Allied Energy, Inc. since the ownership change was recent. Annual sales were applied to Table III below.

The size of the violator is determined from an individual's or company's net worth. In the case of a company with more than one facility, the size of the violator is determined based on the company's entire operation, not just the violating facility. If the Region is unable to determine a company's net worth, it may determine the size of the violator based on gross revenues from all revenue sources during the prior calendar year.

Table III Size of Violator Component	
Net Worth	**Size Adjustment**
Under $1,000,000	$0
$1,000,000 – $5,000,000	$10,000
$5,000,001 – $20,000,000	$20,000
$20,000,001 – $40,000,000	$35,000
$40,000,001 – $70,000,000	$50,000
$70,000,001 – $100,000,000	$70,000
Over $100,000,001	$70,000 + $25,000 for every additional $30,000,000

*Where the size of the violator figure (as determined in Table III) represents over 50% of the total penalty, the litigation team may, but need not, reduce the size of the violator figure to an amount equal to the rest of the penalty without the size of the violator figure included.

Penalty w/Size of Violator	$34,631 + $20,000 = **$54,631**

C. Final Adjustments to the Gravity Component

Degree of Cooperation (To be determined)

Mitigation based on this factor is limited to no more than 30% of the gravity component.

Considerations:

- Cooperation during the EPA's pre-filing investigation of the source's compliance status;
- Willingness of the violator to settle within 30 days: The gravity component may be mitigated in the event that the violator agrees to, and does in fact, resolve the matter within 30 days. The Region may, but need not, extend this period by an additional 30 days if additional time is needed to negotiate the terms of a Supplemental Environmental Project.

SUMMARY OF POTENTIAL VIOLATIONS:

Failure to Implement a Risk Management P Plan as required by 40 CFR Part 68	**$54,600**