

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR**

2017 MAY 17 AM 11:59

In the Matter of)
)
PB Leiner USA Corporation) **Docket No. CAA-07-2017-0153**
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA), and PB Leiner USA Corporation (Respondent or PB Leiner) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

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4. Respondent is PB Leiner USA Corporation, a corporation incorporated in the state of New York and in good standing under the laws of the state of Iowa, which owns and operates the PB Leiner USA gelatin production facility located at 7001 Brady Street in Davenport, Iowa (Respondent's Facility).

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of 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. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

6. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This rule requires owners and operators of stationary sources to develop and implement a risk management program 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 at each stationary source. The risk management program is described in a Risk Management Plan (RMP) that must be submitted to EPA.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

9. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 requirements if the process does not meet the eligibility requirements of Program 1, as described in 40 C.F.R. § 68.10(b), and it either falls under a specified North American Industry Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

10. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 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 Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the

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Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred from January 12, 2009 through November 2, 2015, and to \$45,268 for violations that occur after November 2, 2015.

Definitions

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

12. 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.

13. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

14. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 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.

15. The regulations at 40 C.F.R. § 68.3 define “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.

General Factual Allegations

16. 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).

17. Respondent’s Facility is a “stationary source” pursuant to 40 C.F.R. § 68.3.

18. Anhydrous ammonia is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for ammonia, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

19. On or about September 14, 2016, EPA conducted an inspection of Respondent’s Facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

20. Information gathered during the EPA inspection revealed that Respondent had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

21. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

22. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to Program 3 prevention program requirements because, pursuant to 40 C.F.R. § 68.10(d), the covered process at its facility did not meet the eligibility requirements of Program 1 and is in North American Industry Classification System code 311999.

23. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was required under Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 requirements provided at 40 C.F.R. § 68.12(d).

Allegations of Violation

24. The facts stated in Paragraphs 16 through 23 above are herein incorporated into Counts 1 through 3 below.

25. Information collected during the September 14, 2016 inspection of Respondent's Facility revealed that Respondent failed to develop and implement a risk management program that complied with the requirements of 40 C.F.R. Part 68.

26. EPA alleges that Respondent has violated the CAA and federal regulations promulgated pursuant to the CAA as follows:

Count 1

27. Respondent failed to update and revalidate its Process Hazard Analysis (PHA) once every five (5) years to assure that the PHA is consistent with the current process, as required by 40 C.F.R. §68.67(f). Specifically:

- a. Respondent last performed a PHA in June of 2011, such that Respondent was required by 40 C.F.R. §68.67(f) to update and revalidate its PHA by June of 2016.
- b. The September 14, 2016 inspection revealed that Respondent had just begun updating and revalidating its PHA using "what if" checklists dated September 13, 2016.
- c. Respondent updated and revalidated its PHA on October 26, 2016, which

was approximately four (4) months late of the requirement contained in 40 C.F.R. §68.67(f).

Count 2

28. Respondent failed to test or replace relief valves on the north side, high-pressure receiver at a frequency consistent with manufacturer's recommendations, as required by 40 C.F.R. §68.73(d)(3). Specifically:

- a. During the September 14, 2016 inspection, the inspector asked Respondent for documentation of tests and inspections of relief valves of the covered process.
- b. Respondent provided the inspector with a document that inventoried relief valves and their installation dates.
- c. The document revealed that one set of valves in the inventory, 502TK001 on the high-pressure receiver, was listed as "out of date."
- d. The inspector then asked Respondent for documentation indicating when this set of valves has last been replaced or inspected.
- e. At the time of the inspection, Respondent could not locate documentation of an installation or inspection date.
- f. Respondent's representative then advised the inspector that this set of valves was marked with a date of July 2011 and PB Leiner ordered them prior to the expiration date.
- g. During the inspection, PB Leiner contacted ACE Refrigeration (ACE) to inquire about the status of the subject valves and received an email from ACE indicating that the valves were scheduled for replacement. According to PB Leiner, a delay in timely replacing the value occurred apparently due to:(i) ACE mistakenly ordering the wrong valves; and (ii) the values needed to be specifically manufactured for PB Leiner.
- h. The subject valves were ultimately replaced on September 19, 2016, approximately two (2) months past the manufacturer's recommendation.

29. Each of Respondent's failures to comply with the requirements of 40 C.F.R. Part 68, as set forth above, is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

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CONSENT AGREEMENT

30. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits the jurisdictional allegations set forth herein;
- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

31. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

32. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

33. Respondent agrees that, in settlement of the claims alleged herein, Respondent pay a civil penalty of twenty-three thousand thirty-one dollars (\$23,031).

34. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

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35. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Britt Bieri, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

36. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

37. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for purposes of settlement to the payment of the civil penalty.

Effect of Settlement and Reservation of Rights

38. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

39. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph directly below.

40. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of Section 112(r) of the CAA and its implementing regulations to its knowledge.

41. Full payment of the penalty proposed in this Consent Agreement and Final Order shall resolve all civil and administrative claims for the CAA violations alleged herein. Complainant reserves the right to take enforcement action with respect to any other violation of

the CAA or other applicable law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

42. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

43. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

44. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

45. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

46. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT:
PB LEINER USA CORPORATION

Date: 4/28/2017

William M Griebel
Signature

WILLIAM M GRIEBEL
Name

PLANT MANAGER
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/15/17

Rebecca Weber
Rebecca Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency, Region 7

Date: 5/8/2017

Britt Bieri
for Britt Bieri
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

May 17, 2017
Date

CERTIFICATE OF SERVICE

I certify that on the date below, I hand delivered the original and one true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent by ~~certified mail, return receipt requested~~ *First class Mail* a true and correct copy of the original Consent Agreement and Final Order to the following:

Andrew Murdoch
Giles Verheecke
James Clevenger
William Griebel
PB Leiner USA Corporation
7001 Brady Street
Davenport, Iowa 52806

Dated this 17th day of May, 2017.

Kathy Robinson
Name