

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS**

IN THE MATTER OF:	)	Docket. No. CAA-07-2016-0026
	)	
KUGLER OIL COMPANY,	)	ADMINISTRATIVE ORDER
	)	FOR COMPLIANCE
Respondent.	)	ON CONSENT
_____	)	

**PRELIMINARY STATEMENT**

1. This Administrative Order for Compliance on Consent (“Order”) is entered into voluntarily by the United States Environmental Protection Agency, Region 7 (“EPA”), and by Kugler Oil Company (“Respondent”), pursuant to Section 113(a)(3)(B) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3)(B), as amended.

2. This Order requires Respondent to comply with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68. Specifically, EPA orders Respondent to develop and implement a Risk Management Program and to submit a Risk Management Plan for the covered process at Respondent’s Culbertson Dealer Fertilizer and Retail Plant in Culbertson, Nebraska. 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.

3. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA’s authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein. Respondent also waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1), or under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

**STATUTORY AND REGULATORY BACKGROUND**

4. 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 accident

prevention regulations mandated by Section 112(r)(7), 42 U.S.C. § 7412(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.

5. 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). These regulations require 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.

6. 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.

7. 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.

8. 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 requirements of Program 1, as described in 40 C.F.R. § 68.10(b), and if it is in a specified North American Industrial Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. 1910.119.

9. Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), grants the Administrator the authority to make a finding of violation of a requirement or prohibition of Title I of the CAA (Subchapter I of 42 U.S.C. Chapter 85), and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition.

### **DEFINITIONS**

10. 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.

11. 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.

12. 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, Tables 1, 2, 3, and 4, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

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, Tables 1, 2, 3, and 4.

14. 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.

#### **FINDINGS OF FACT AND LAW**

15. 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).

16. Respondent’s facility, located at 71748 Rail Road Avenue in Culbertson, Nebraska (“Facility”), is a “stationary source” pursuant to 40 C.F.R. § 68.3.

17. EPA inspected Respondent’s Facility on August 6, 2014, to determine compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that Respondent had failed to properly implement the risk management program at the Facility.

18. At the time of the EPA inspection, Respondent had greater than 10,000 pounds of anhydrous ammonia in a process at the Facility.

19. Anhydrous ammonia is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

20. 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.

21. 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 the Facility did not meet the eligibility requirements of Program 1 and was subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

22. 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).

### **FINDINGS OF VIOLATION**

23. The facts stated in Paragraphs 15 through 22, above, are herein incorporated.

#### **Risk Management Plan**

24. The regulation at 40 C.F.R. § 68.12(a) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to submit a single RMP as provided in 40 C.F.R. §§ 68.150 to 68.185. Pursuant to 40 C.F.R. § 68.160, the owner or operator shall complete a single registration form that provides, *inter alia*, the Program level of each covered process and whether the stationary source is subject to 29 C.F.R. § 1910.119. Additionally, pursuant 40 C.F.R. § 68.175(a), the owner or operator is required to provide the information identified at 40 C.F.R. § 68.175(b) through (p) for each Program 3 process.

25. The EPA's inspection revealed that Respondent timely filed an RMP that identified the storage and use of anhydrous ammonia at the Facility as a Program 2 process. Based on information gathered during the EPA's inspection, however, the EPA determined that the covered process at the Facility is subject to Program 3 requirements because the process did not meet the eligibility requirements of Program 1 and was subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119. As such, Respondent failed to submit an RMP for the covered process at the Facility pursuant to the requirements at 40 C.F.R. §§ 68.150 to 68.185, as required by 40 C.F.R. § 68.12(a). Specifically:

- a. Respondent failed to complete a registration form pursuant to 40 C.F.R. § 68.160(a) that includes the information required by 40 C.F.R. § 68.160(b), including the Program level of the process and whether the stationary source is subject to 29 C.F.R. § 1910.119; and
- b. Respondent failed to provide the Program 3 prevention information identified at 40 C.F.R. § 68.175(b) through (p), as required by 40 C.F.R. § 68.175(a).

26. Respondent's failure to comply with the RMP requirement of 40 C.F.R. Part 68, as described above, is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Program 3 Prevention Requirements

27. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. §§ 68.65 through 68.87.

28. As stated above, Respondent filed as a Program 2 facility while the covered process at the Facility was, in fact, subject to Program 3 requirements. Therefore, the EPA's inspection revealed that Respondent failed to implement the Program 3 prevention requirements of 40 C.F.R. §§ 68.65 through 68.87, as required by 40 C.F.R. § 68.12(d)(3). Specifically:

- a. Respondent failed to compile written process safety information pertaining to the technology of the covered process, specifically an evaluation of the consequences of deviations, as required by 40 C.F.R. § 68.65(c)(1)(v);
- b. Respondent failed to compile written process safety information pertaining to the equipment in the covered process, as required by 40 C.F.R. § 68.65(d)(1);
- c. Respondent failed to document that equipment in the covered process complies with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2);
- d. Respondent failed to perform an initial process hazard analysis appropriate to the complexity of the process, as required by 40 C.F.R. § 68.67(a);
- e. Respondent failed to develop and implement written operating procedures that address the steps for each operating phase of the covered process, specifically emergency shutdown and the conditions under which emergency shutdown is required by 40 C.F.R. § 68.69(a)(1)(iv);
- f. Respondent failed to develop and implement written operating procedures that address the operating limits of the covered process, including the consequences of deviation and the steps required to correct or avoid deviation, as required by 40 C.F.R. § 68.69(a)(2);
- g. Respondent failed to develop and implement written operating procedures that address the five safety and health considerations required under 40 C.F.R. § 68.69(a)(3);
- h. Respondent failed to develop and implement written operating procedures that address safety systems and their functions, as required by 40 C.F.R. § 68.69(a)(4);
- i. Respondent failed to certify annually that the operating procedures of the covered process are current and accurate, as required by 40 C.F.R. § 68.69(c);

- j. Respondent failed to maintain documentation that each employee involved in operating the covered process has received and understood the training required by 40 C.F.R. § 68.71(a) and (b), as provided under 40 C.F.R. § 68.71(c);
- k. Respondent failed to establish and implement written procedures to maintain the ongoing integrity of process equipment, as required by 40 C.F.R. § 68.73(b);
- l. Respondent failed to establish and implement written procedures to manage changes to the covered process, as required by 40 C.F.R. § 68.75(a);
- m. Respondent failed to perform a pre-startup safety review, as required by 40 C.F.R. § 68.77(a); and
- n. Respondent failed to perform and certify appropriate compliance audits at least every three years, as required by 40 C.F.R. § 68.79(a).

29. Each of Respondent's failures to comply with the Program 3 Prevention Requirements of 40 C.F.R. Part 68, as described above, is a violation Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

### **ORDER FOR COMPLIANCE**

30. Based upon the Findings of Fact and Law and Findings of Violation set forth above, and pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), it is hereby ordered and agreed that Respondent shall comply with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68. Specifically, EPA and Respondent agree that Respondent shall complete the following compliance actions:

- a. If the Facility will, from the effective date of this Order, continue to have present more than the threshold quantity of anhydrous ammonia, Respondent must develop as expeditiously as possible, but in no event later than December 31, 2016, a Risk Management Program that complies with the appropriate program level, as set out in the eligibility requirements in 40 C.F.R. § 68.10, and must maintain records supporting the implementation of the Risk Management Program in accordance with 40 C.F.R. § 68.200.
- b. If the Facility will, from the effective date of this Order, limit the presence of anhydrous ammonia to less than the threshold quantity, Respondent must complete the following within 30 days of the effective date of this Order:
  - (i) Submit a plan to EPA that utilizes administrative or engineering controls to maintain the quantity of anhydrous ammonia below the threshold quantity. The plan must include a description, basis for design, implementation schedule and a statement, certified according to Paragraph 32 below, stating that the facility

is no longer subject to the requirements of developing a Risk Management Program and submitting an RMP based on recognized and generally accepted good engineering practices. EPA will review and may comment on the plan.

(ii) Submit a statement describing how the facility intends to comply with the obligations of CAA § 112(r)(1)'s General Duty Clause. The statement must specifically identify hazards which could result from a release of the chemicals used at the facility and specify the hazard assessment technique(s) used to identify those hazards; describe how facility is designed and maintained to be safe, including the measures the facility takes to prevent releases; and describe the measures the facility takes to minimize the consequences of accidental releases which do occur.

#### Submissions

31. Respondent must provide documentation of completion of these tasks to EPA by January 31, 2017. All documentation shall be submitted in accordance with Paragraphs 32 and 33 of this Order.

32. All submissions to EPA required by this Order shall contain the following certification signed by an authorized representative of 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.

33. All submissions to EPA required by this Order shall be sent to:

Krystal Stotts  
Chemical and Oil Release Prevention Branch  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

34. 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.

## **GENERAL PROVISIONS**

### **Potential Liability**

35. 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)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator may:

- a. issue an administrative penalty order assessing a civil penalty not to exceed \$37,500 per day of violation, pursuant to Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B);
- b. bring a civil action for permanent or temporary injunction, or to assess and recover a civil penalty not to exceed \$37,500 per day of violation, or both, pursuant to Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2); or
- c. request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA, 42 U.S.C. § 7413(c).

36. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), issuance of this Order does not preclude EPA from assessing penalties or taking any other action authorized under the CAA. This Order does not affect the obligation of Respondent to comply with all federal, state, and local statutes, regulations, and permits.

### **Amendment of Order**

37. EPA may subsequently amend this Order, in writing, in accordance with the authority of the CAA. Any amendment will be transmitted to Respondent. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order.

### **Access and Requests for Information**

38. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect Respondent's facility, and/or to request additional information from Respondent pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414.

### **Effective Date**

39. This Order shall become effective on the date that it is signed by the authorized EPA representative.

Termination

40. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Notice to the State

41. Pursuant to Section 113(a)(4), 42 U.S.C. § 7413(a)(4), the State of Nebraska has been provided notice of this action.

**RESPONDENT:  
KUGLER OIL COMPANY**

Date: 5/24/16

  
\_\_\_\_\_  
Signature

J. KUGLER  
\_\_\_\_\_  
Name

CEO - PRESIDENT  
\_\_\_\_\_  
Title

Date: 5/25/2016

  
\_\_\_\_\_

Stephen D. Mossman  
Mattson Ricketts Law Firm  
134 South 13<sup>th</sup> Street, Suite 1200  
Lincoln, Nebraska 68508

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 6/1/16

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

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Hearing Clerk, United States Environmental Protection Agency, Region 7, 11201 Renner Blvd, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Administrative Order for Compliance on Consent by first class certified mail, return receipt requested, to:

Stephen D. Mossman  
Mattson Ricketts Law Firm  
134 South 13<sup>th</sup> Street, Suite 1200  
Lincoln, Nebraska 68508

I further certify that on the date noted below I sent a copy of the foregoing Administrative Order for Compliance on Consent by standard U.S. Mail to the following representative of the State of Nebraska:

Mark Lohnes  
Nebraska Department of Environmental Quality  
1200 N Street  
P.O. Box 98922  
Lincoln, Nebraska 68508

6/1/16  
Date

  
Name