

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

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

2018 JAN 24 AM 8:17

BEFORE THE ADMINISTRATOR

In the Matter of:

Winfield Solutions, LLC d/b/a Omnium

Respondent

)
)
)
)
)
)

Docket No. CAA-07-2018-0151

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Winfield Solutions, LLC d/b/a Omnium (Respondent) 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 proceeding 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 the 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 the EPA's intent to issue an order assessing penalties for these violations.

Parties

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

4. Respondent is Winfield Solutions, LLC d/b/a/ Omnium, an LLC in good standing under the laws of the state of Delaware doing business in the state of Missouri, which owns and operates an agricultural chemical manufacturing facility located at 1417 SW Lower Lake Road in St. Joseph, Missouri (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 the 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, the 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 the 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 Occupation Safety and Health Administration (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

Debt Collection Improvement Act of 2008 and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, and implementing regulations at 40 C.F.R. Part 19, adjusted this amount so that penalties of up to \$37,500 per day are now authorized for violations of CAA § 112(r)(7) that occurred from January 12, 2009, through November 2, 2015, and penalties of up to \$45,268 per day are authorized 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. Methyl mercaptan is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for methyl mercaptan, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

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

20. Dimethylamine is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The

threshold quantity for dimethylamine, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

21. Aqueous ammonia is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for aqueous ammonia, as listed in 40 C.F.R. § 68.130, is 20,000 pounds.

22. On or about August 18-19, 2015, representatives of the 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 (EPA Inspection).

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

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

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

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

27. From the time Respondent first had onsite greater than 10,000 pounds of methyl mercaptan, isopropylamine, and/or dimethylamine in a process, and/or greater than 20,000 pounds of aqueous 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.

28. From the time Respondent first had onsite greater than greater than 10,000 pounds of methyl mercaptan, isopropylamine, and/or dimethylamine in a process, and/or greater than 20,000 pounds of aqueous ammonia in a process, Respondent was subject to Program 3 prevention program requirements because pursuant to 40 C.F.R. § 68.10(d), one or more covered processes at its facility did not meet the eligibility requirements of Program 1, are in North American Industry Classification System code 325320, and are subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

29. From the time Respondent first had onsite greater than 10,000 pounds of methyl mercaptan, isopropylamine, and/or dimethylamine in a process, and/or greater than 20,000 pounds of aqueous 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

30. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1

31. The facts stated in Paragraphs 16 through 29 above are herein incorporated.

32. The regulation at 40 C.F.R. § 68.12(d)(2) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the hazard assessment requirements of 40 C.F.R. §§ 68.22 through 68.42.

33. The EPA inspection revealed that Respondent failed to implement the following hazard assessment requirements, as required by 40 C.F.R. § 68.12(d)(2):

- (a) Respondent failed to develop a worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint resulting from an accidental release of dimethylamine from covered processes under worst-case conditions, as required by 40 C.F.R. § 68.25(a)(2)(ii); and
- (b) Respondent failed to consider the five-year accident history provided in 40 C.F.R. § 68.42, including the June 21, 2013 RMP reportable injury incident involving dimethylamine, in selecting the alternate release scenario, as required by 40 C.F.R. § 68.28(e).

34. Respondent's failures to comply with the hazard assessment requirements of 40 C.F.R. §§ 68.25(a)(2)(ii) and 68.28(e), as required by 40 C.F.R. § 68.12(d)(2), violate Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2

35. The facts stated in Paragraphs 16 through 29 above are herein incorporated.

36. 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.

37. The EPA inspection revealed that Respondent failed to implement the following Program 3 prevention requirements, as required by 40 C.F.R. § 68.12(d)(3). Specifically:

- (a) Respondent failed to compile written process safety information pertaining to any of the reactor vessels in the process for relief system design and design basis, as required by 40 C.F.R. § 68.65(d)(1)(iv);
- (b) Respondent failed to identify the June 21, 2013 injury incident involving dimethylamine and failed to fully include the October 28, 2015 release of methyl mercaptan, both of which had a likely potential for catastrophic consequences, in the process hazard analysis, as required by 40 C.F.R. § 68.67(c)(2);

- (c) Respondent failed to establish a system to promptly address the team's process hazard analysis findings and recommendations and document the resolutions for the June 2014 process hazard analysis, as required by 40 C.F.R. § 68.67(e);
- (d) Respondent failed to fully complete the management of change form dated January 6, 2016 for the procedure for decommissioning of the synthesis process and removal of hazardous materials, methyl mercaptan, as required by 40 C.F.R. § 68.75;
- (e) Respondent failed to certify that it had evaluated compliance with the provisions of Subpart D at least once every three years to verify that procedures and practice developed under this subpart are adequate and are being followed, as required by 40 C.F.R. § 68.79(a); and
- (f) Respondent failed to establish a system to promptly address and resolve the incident report findings and recommendations for the June 21, 2013 injury incident involving dimethylamine, as required by 40 C.F.R. § 68.81(e).

38. Respondent's failures to comply with the Program 3 prevention requirements of 40 C.F.R. §§ 68.65 through 68.87 stated above, as required by 40 C.F.R. § 68.12(d)(3), violate Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3

39. The facts stated in Paragraphs 16 through 29 above are herein incorporated.

40. 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.

41. The EPA inspection revealed that Respondent failed to submit an RMP pursuant to the requirements of 40 C.F.R. §§ 68.150 to 68.185, as required by 40 C.F.R. § 68.12(a). Specifically:

- (a) Respondent failed to include the five-year accident history and planned changes to improve safety in the executive summary of the RMP, as required by 40 C.F.R. § 68.155(d) and (f);

- (b) Respondent failed to include the correct maximum quantity of dimethylamine in a process to two significant digits in the RMP, as required by 40 C.F.R. § 68.160(b)(7);
- (c) Respondent failed to update the five-year accident information in the RMP within 6 months of the June 21, 2013 dimethylamine release or by the time the RMP is updated, whichever is earlier, as required by 40 C.F.R. § 68.195(a); and
- (d) Respondent failed to update the emergency contact in the RMP within one month of the change, as required by 40 C.F.R. § 68.195(b).

42. Respondent's failure to submit an RMP pursuant to the requirements of 40 C.F.R. §§ 68.150 to 68.185 stated above, as required by 40 C.F.R. § 68.12(a), violates Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

43. 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.

44. 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.

45. 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

46. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Seventy-Two Thousand Four Hundred Twenty-Six Dollars (\$72,426.00).

47. 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>.

48. 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.

49. 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).

Effect of Settlement and Reservation of Rights

50. 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.

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

52. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

53. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of 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.

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

General Provisions

55. 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.

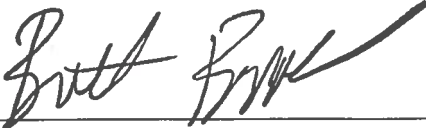
56. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional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

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

58. 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 respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT:
WINFIELD SOLUTIONS, LLC D/B/A OMNIUM

Date: 1/8/18



Signature

Brett Bruggeman

Name

SVP, marketing and Offer Development

Title


**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 1/23/18



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

Date: 1/23/18



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 Borrromeo

Karina Borrromeo
Regional Judicial Officer

Jan. 23, 2018

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

bieri.britt@epa.gov

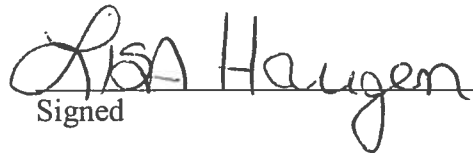
Copy via first class mail to Respondent:

Rod Archdekin
Winfield Solutions, LLC-Omnium
1417 SW Lower Lake Road
St. Joseph, Missouri 64504

Copy via email to the attorney for Respondent:

Andrew Brown
brown.andrew@dorsey.com

Dated this 24th day of January, 2018.


Signed _____