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EPA - REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CAA-10-2020-0022
UNIVERSITY OF ALASKA -)	
FAIRBANKS)	CONSENT AGREEMENT
)	
Fairbanks, Alaska)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and University of Alaska Fairbanks ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement & Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is part of the State of Alaska university system.

3.2. Respondent owns and operates the Combined Power and Heat Plant located at 802 Alumni Drive, Fairbanks, Alaska (“facility”).

3.3. Section 112(r) of the CAA and its implementing regulations at 40 C.F.R. Part 68 require the owner and operator of a stationary source at which a regulated substance is present in more than a threshold quantity in a process to develop and implement a risk management plan (“RMP”) and program to detect and prevent or minimize accidental releases of such substances

from the stationary source and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

3.4. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), makes it unlawful for any person to operate a stationary source subject to the regulations promulgated under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in violation of such regulations.

3.5. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines an “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

3.6. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as an 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.

3.7. 40 C.F.R. §§ 68.10, 68.12, and 68.150 requires that an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process submit to EPA a single RMP as provided in 40 C.F.R. §§ 68.150 to 185 for all covered processes no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

3.8. 40 C.F.R. § 68.3 defines “stationary source” 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.

3.9. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to section 112(r)(3) of the CAA in 40 C.F.R. § 68.130.

3.10. 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to section 112(r)(5) of the CAA in 40 C.F.R. § 68.130.

3.11. Under 40 C.F.R. § 68.115, a threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is “present at a stationary source” if the total quantity of the regulated substance contained in a process exceeds the threshold quantity.

3.12. 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.

3.13. Ammonia (conc 20% or greater) is listed as a regulated substance in 40 C.F.R. § 68.130.

3.14. 40 C.F.R. § 68.130 lists the threshold quantity of ammonia (conc 20% or greater) as 20,000 pounds.

3.15. 40 C.F.R. § 68.10(g) provides that a covered process is subject to Program 2 requirements if it is not subject to either Program 1 or Program 3 requirements.

3.16. 40 C.F.R. § 68.3 defines “covered process” as a process that has a regulated substance present in more than a threshold quantity.

3.17. 40 C.F.R. §§ 68.12(a) and (c) require, in addition to submitting an RMP as provided in 40 C.F.R. §§ 68.150 to 68.185, facilities with a Program 2 covered process to:

- a. develop and implement a management system as provided in § 68.15;
- b. conduct a hazard assessment as provided in §§ 68.20 through 68.42;
- c. implement the prevention program as required by §§ 68.48 through 68.60;

d. coordinate response actions with local emergency planning and response agencies as provided in § 68.93;

e. develop and implement an emergency response program as provided in §§ 68.90 through 68.96; and

f. submit as part of the RMP the data on prevention program elements for Program 2 processes as provided in § 68.170.

3.18. Respondent's Combined Power and Heat Plant is a stationary source or part of a stationary source.

3.19. Respondent uses aqueous ammonia as the reduction reagent in the selective catalytic reduction ("SCR") system used to control nitrogen oxide emissions from the 9.6-megawatt diesel-fired generator located adjacent to the facility. The aqueous ammonia is stored in vessels which are connected by piping to the SCR system.

3.20. The vessels storing aqueous ammonia, the SCR system, and the related piping constitute a single "process" under 40 C.F.R. § 68.3 (hereinafter "Aqueous Ammonia Process").

3.21. More than 20,000 pounds of 29% aqueous ammonia solution was present in Respondent's Aqueous Ammonia Process from at least December 16, 2014 through October 7, 2016.

3.22. Respondent's Aqueous Ammonia Process is a Program 2 covered process, as defined in 40 C.F.R. § 68.10(g), because it is not subject to either the Program 1 or Program 3 requirements.

3.23. Respondent was required to submit and have in place an RMP for the facility from at least December 16, 2014 through October 7, 2016.

3.24. Respondent had not submitted to EPA an RMP by December 16, 2014, or at any time through October 7, 2016, as required by 40 C.F.R. §§ 68.12(a) and (c) and 68.150.

3.25. During the time period from December 16, 2014 through October 7, 2016, Respondent did not develop and implement a management system to oversee the implementation of the risk management program elements, as required by 40 C.F.R. § 68.15.

3.26. During the time period from December 16, 2014 through October 7, 2016, Respondent did not prepare an offsite consequences analysis—including a worst-case release scenario and an alternative release scenario, defining offsite population and environmental impacts—for its Aqueous Ammonia Process, as required by 40 C.F.R. §§ 68.20 through 68.36.

3.27. During the time period from December 16, 2014 through October 7, 2016, Respondent failed to conduct a hazard review for its Aqueous Ammonia Process, as required by 40 C.F.R. § 68.50.

3.28. During the time period from December 16, 2014 through October 7, 2016, Respondent failed to ensure that refresher training was provided to each employee involved in operating its Aqueous Ammonia Process and that each employee operating the process understood and adhered to the current operating procedures of the process, as required by 40 C.F.R. § 68.54(b).

3.29. During the time period from December 16, 2014 through October 7, 2016, Respondent failed to train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of its Aqueous Ammonia Process, as required by 40 C.F.R. § 68.56(b).

3.30. During the time period from December 16, 2014 through October 7, 2016, Respondent failed to fully develop and implement the emergency response program provided for in 40 C.F.R. § 68.95 by failing to include procedures for informing the appropriate state and local emergency agencies about accidental releases, as required by 40 C.F.R. § 68.95(a)(1)(i).

3.31. Respondent, therefore, violated Section 112(r) of the CAA and the implementing regulations at 40 C.F.R. Part 68.

3.32. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 per day for those violations that occurred through November 2, 2015 and not more than \$47,357 per day for those violations that occurred after November 2, 2015.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering these factors, EPA has determined, and Respondent agrees, that an appropriate penalty to settle this action is \$74,051 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, automated clearing house (ACH), or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop: 11 - C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

David Magdangal
U.S. Environmental Protection Agency
Region 10, Mail Stop: 20 - C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Magdangal.David@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the

Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

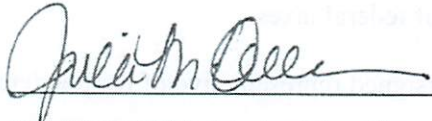
4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreements, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

5 Dec 2019

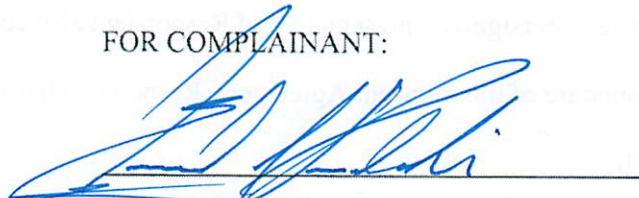


JULIE QUEEN, Interim Vice Chancellor for Administrative Services
University of Alaska Fairbanks

DATED:

FOR COMPLAINANT:

12/10/2019



EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2020-0022
)	
UNIVERSITY OF ALASKA)	FINAL ORDER
FAIRBANKS,)	
)	
Fairbanks, Alaska,)	
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Respondent.)	

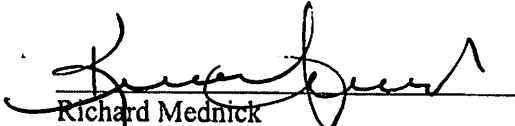
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 10th day of December, 2019.


Richard Mednick
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: University of Alaska Fairbanks, Docket No.: CAA-10-2020-0022**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

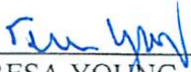
The undersigned certifies that a true and correct copy of the document was delivered to:

Andrew Futerman
U.S. Environmental Protection Agency
Region 10, Mail Stop 11 - C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Russ Steiger
University of Alaska Fairbanks
P.O. Box 758145
Fairbanks, Alaska 99775-8145

DATED this 11 day of December 2019.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10