

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

UNITED STATES
ENVIRONMENTAL
PROTECTION AGENCY - *AK*
REGION 7
2012 SEP 27 AM 9:02

IN THE MATTER OF)
)
Crop Production Services, Inc. facility #443)
Atlanta, Missouri)
)
Crop Production Services, Inc. facility #675)
Garden City, Kansas)
)
Respondent)

Docket No. CAA-07-2012-0015

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Crop Production Services, Inc. (CPS or Respondent) have agreed to a settlement of this action before 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

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, where the first date of alleged violation occurred more than

12 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 provisions governing Chemical Accident Prevention, and specifically the requirement to implement a Risk Management Plan as required by 40 C.F.R. Part 68 and 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 Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

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

4. The Respondent, Crop Production Services, Inc., owns two facilities that are the subject of this Consent Agreement and Final Order (CAFO): CPS facility #443, located at 30017 State Highway J, Atlanta, Missouri; and CPS facility #675, located at 715 South VFW Road, Garden City, Kansas. Both facilities engage in the storage of anhydrous ammonia for sale.

Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 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. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to 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). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

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), 42 U.S.C. § 7412(r)(7), of the CAA. 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.

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, the RMP must be submitted by an 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. 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 the CAA referenced therein, including Section 112(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the

United States assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997 through March 15, 2004; \$32,500 per day for each violation that occurs after March 15, 2004; and \$37,500 per day for each violation occurring after January 12, 2009.

Definitions

10. 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.

11. 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, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

12. 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.

13. 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.

Alleged Violations

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

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 facilities located in Atlanta, Missouri #443 (Atlanta facility) and Garden City Kansas #675 (Garden City facility) are “stationary sources” pursuant to 40 C.F.R. § 68.3.

17. 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.

18. Both the Atlanta facility and the Garden City facility are subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because CPS is an owner and operator of stationary sources that had more than a threshold quantity of a regulated substance in a process.

19. Respondent was required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

Atlanta, Missouri facility

20. On May 12, 2009, an EPA Grantee with the National Older Workers Career Center performed an inspection at the Atlanta, Missouri facility to determine compliance with Section 112 (r) of the CAA and 40 C.F.R. Part 68.

21. Records collected during the inspection showed that Respondent had exceeded the threshold quantity for anhydrous ammonia. After acquiring the Atlanta facility, Respondent filed a RMP for the Atlanta facility on February 23, 2005.

22. Records collected during and after the inspection showed that Respondent failed to implement all applicable requirements of a risk management program. Specifically, Respondent failed to: (1) ensure the process is designed in compliance with all applicable recognized and generally accepted good engineering practices in accordance with 40 C.F.R. § 68.48(b); (2) conduct and update a proper review of the hazards associated with the regulated substances, processes, and procedures as required by 40 C.F.R. § 68.50(a)(3); (3) document the results of the review and ensure that all problems identified are resolved in a timely manner as required by 40 C.F.R. § 68.50(c); (4) prepare and implement all necessary procedures to maintain the ongoing mechanical integrity of the process equipment as required by 40 C.F.R. § 68.56(a); and (5) promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected as required by 40 C.F.R. § 68.58(d).

23. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth in paragraph 22 above, is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Garden City, Kansas facility

24. On October 15, 2009, an EPA Grantee with the National Older Workers Career Center performed an inspection at the Garden City, Kansas facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

25. Records collected during the inspection showed that Respondent has exceeded the threshold quantity for anhydrous ammonia. After Respondent acquired the Garden City facility, Respondent filed a RMP for the Garden City facility on September 5, 2008.

26. Records collected during the inspection and subsequent conversations between the EPA and the Local Emergency Planning Commission (LEPC) showed that Respondent failed to coordinate with the LEPC for inclusion of the regulated toxic substance in the community response plan as required by 40 C.F.R. § 68.95(c).

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

CONSENT AGREEMENT

28. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

29. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.

30. Respondent neither admits nor denies the factual allegations set forth above.

31. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

32. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

33. This Consent Agreement and Final Order addresses all civil and administrative claims for the CAA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA or other applicable law.

34. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's Atlanta, Missouri and Garden City, Kansas facilities, as identified in Paragraph 4 above, are in compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all applicable regulations promulgated thereunder.

35. The effect of settlement described in paragraph 33 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 34 of this Consent Agreement and Final Order.

37. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

38. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

39. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the Consent Agreement and Final Order and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Thirty-Six Thousand Dollars (\$36,000), within thirty (30) days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

This payment shall reference docket number CAA-07-2012-0015.

2. A copy of the check should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Belinda Holmes
Senior Counsel, Chemical Management Branch
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

By Belinda Holmes
Belinda Holmes
Senior Counsel
Chemical Management Branch

Date 9/24/2012

By Becky Weber
Becky Weber
Director
Air and Waste Management Division

Date: 9/25/12

RESPONDENT:
CROP PRODUCTION SERVICES, INC.

By J. Billy Puhla
Title Sr Director EHS
Date Sept 21, 2012

IT IS SO ORDERED. This Final Order shall become effective immediately.

By Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Date Sept. 27, 2012

IN THE MATTER OF Crop Production Services, Inc. Facility #443 and Crop Production Services, Inc.
Facility #675, Respondent
Docket No. CAA-07-2012-0015

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Belinda L. Holmes
Senior Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Certified Mail to:

Adam S. Cohen, Esq.
Davis Graham & Stubbs LLP
1550 Seventeenth Street, Suite 500
Denver, Colorado 80202

Dated: 9/27/12


Kathy Robinson
Hearing Clerk, Region 7