

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Ag Distributors, Inc.)
19303 Highway 25 North)
Kennett, Missouri 63857)
)
Respondent)
_____)

Docket No. CAA-07-2010-0024

ADMINISTRATIVE ORDER FOR COMPLIANCE

Pursuant to Section 113(a)(3)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(3)(B), as amended, Ag Distributors, Inc. ("Ag Distributors") is hereby ordered by the United States Environmental Protection Agency ("EPA") to comply with the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68, Subpart G and to take the specific compliance actions set forth below.

I. Statutory and Regulatory Background

1. 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), 42 U.S.C. § 7412(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).

2. 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.

3. 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.

4. 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 for all covered processes, 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.

5. 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 penalty of up to \$37,500 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), 42 U.S.C. § 7412(r)(7).

II. Definitions

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

7. 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.

8. 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.

9. 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.

III. Factual Background

10. EPA inspected the Ag Distributors facility, located at 19303 Highway 25 North, Kennett, Missouri, on December 15, 2009, 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 the Ag Distributors facility had failed to properly implement the risk management program at its facility.

IV. Finding of Violation

11. Ag Distributors, 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).

12. The Ag Distributors facility, located 19303 Highway 25 North, Kennett, Missouri, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

13. 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.

14. At the time of the inspection, Ag Distributors had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

15. Ag Distributors is 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 it is the owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

16. Ag Distributors is subject to the requirements of the Program 3 risk management program, 40 C.F.R. Part 68, Subpart D, because the process is subject to the Occupational Safety and Health Administration ("OSHA") safety management process standard, 29 C.F.R. § 1910.119, 40 C.F.R. § 68.10(d).

17. Ag Distributors failed to comply with the requirements of 40 C.F.R. Part 68, as follows, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r):

- (i) Failure to establish safe upper and lower limits for such items as temperatures, pressures, flows or compositions (§ 68.65(c)(1)(iv));
- (ii) Failure to document process equipment specifications of the ventilation system, specifically the design codes and standards employed (§ 68.65(d)(i)(vi));
- (iii) Failure to document that equipment complies with recognized and generally accepted good engineering practices (§ 68.65(d)(2));
- (iv) Failure to develop and implement written operating procedures that provide instructions or steps for conducting activities associated with each covered process consistent with the safety information (§ 68.69(a));
- (v) Failure to establish and implement written procedures to maintain the ongoing integrity of the process equipment (§ 68.73(b));
- (vi) Failure to promptly determine and document an appropriate response to each of the findings of the audit and document that deficiencies had been corrected (§ 68.79(d));

- (vii) Failure to file the RMP as Program 3 and address the stationary source and regulated substance handled (§ 68.160(b)(7)); and
- (viii) Failure to update the emergency contact information within thirty days of the change (§ 68.195(b)).

V. Compliance Order

18. Based on the Findings of Fact 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), as amended Respondent is hereby ORDERED to take the actions described in Paragraphs 19 and 20.

19. Within 90 days of the effective date of this Order, EPA hereby ORDERS Respondent to comply with the requirements of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68, Subpart G, including, but not limited to, completion of the following compliance actions:

- a. Comply with the Program 3 eligibility requirements in accordance with 40 C.F.R. § 68.10;
- b. Complete a compilation of written process safety that include information concerning the technology of the process information of safe upper and lower limits for such items as temperatures, pressures, flows or compositions in accordance with 40 C.F.R. § 68.65 (c)(1)(iv);
- c. Complete a compilation of written process safety that include information pertaining to the equipment in the process of: (i) Materials of construction; (ii) Piping and instrument diagrams (P & ID's); (iii) Electrical classification; (iv) Relief system design and design basis; (v) Ventilation system design; (vi) Design codes and standards employed; (vii) Material and energy balances for processes built after June 21, 1999; and (viii) Safety systems (e.g. interlocks, detection or suppression systems) in accordance with 40 C.F.R. § 68.65(d)(1)(iv);
- d. Document that equipment complies with recognized and generally accepted good engineering practices and provide documentation of completion of these corrections in accordance with 40 C.F.R. § 68.65(d)(2);
- e. Develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information in accordance with 40 C.F.R. § 68.69(a);

- f. Establish and implement written procedures to maintain the on-going integrity of process equipment in accordance with 40 C.F.R. § 68.73(b);
- g. determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected in accordance with 40 C.F.R. § 68.79(d);
- h. Provide in the RMP an executive summary that includes a brief description of the stationary source and regulated substances handled in accordance with 40 C.F.R. § 68.155;
- i. Submit the emergency contact information corrected information within thirty days of the change in accordance with 40 C.F.R. § 195(b);
- j. Maintain records supporting the implementation of the RMP for in accordance with 40 C.F.R. § 68.200; and
- k. Submit a RMP reflecting the changes listed above.

19. Ag Distributors must provide documentation of completion of these tasks to EPA within 120 days of the effect date of this Order. All documentation shall be submitted to in accordance with Paragraph 25 of this Order.

VI. Potential Liability

20. Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), grants EPA the authority to issue an Order to any person found in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated pursuant thereto.

21. 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) of the CAA, 42 U.S.C. § 7413(a), the Administrator is authorized to address such a violation as follows:

- a. Issue an administrative penalty order assessing a civil penalty not to exceed \$37,500 per day of violation;
- b. Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$37,500 per day of violation, or both; 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).

22. Issuance of this Order does not preclude the State of Missouri or EPA from assessing penalties or taking any other action authorized under the CAA. This Order does not affect the obligation of Ag Distributors to comply with all federal, state and local statutes, regulations, and permits.

23. EPA may subsequently amend this Order in accordance with the authority of the CAA. 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.

24. 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.

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

Fatima Ndiaye
Chemical Risk Information Branch
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101.

26. Pursuant to 40 C.F.R §§ 2.201-2.311, Respondent may assert a business confidentiality claim covering any portion of the submitted information which is entitled to confidential treatment. For any such claim, describe the basis of the claim under the applicable regulation. Any material for which business confidentiality is claimed should be placed in a separate envelope labeled, "Confidential Business Information." Failure to assert a claim in the manner described in 40 C.F.R. § 2.203(b) allows EPA to release the submitted information to the public without further notice. EPA may disclose information subject to the business confidentiality claim only to the extent set forth in the above-cited regulations.

27. The terms of this Order shall be effective and enforceable against Respondent upon its receipt.

7/15/10
Date

Becky Weber
Becky Weber
Director
Air and Waste Management Division