



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

JAN 29 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Article No.: 7014 1200 0000 6127 1804

Mr. Ryan Loganbill
Registered Agent for Service
Loganbill Ag Services, LLC
12266 Highway E
Versailles, Missouri 65084

Re: Loganbill Ag Services, LLC
Complaint and Notice of Opportunity for Hearing

Dear Mr. Loganbill:

Enclosed is an administrative Complaint and Notice of Opportunity for Hearing which alleges that Loganbill Ag Services, LLC violated provisions of the Clean Air Act. This document proposes the assessment of civil penalties.

Violations of the CAA are alleged on pages 4 to 6 of the Complaint. Your attention is directed to pages 8 to 10 of the Complaint, which describes Loganbill Ag's options and responsibilities in responding to the Complaint, including filing an Answer within 30 days. Pages 7 to 9 of the Complaint provide information on settling the Complaint through informal settlement negotiations.

If you have any questions concerning this case, please contact Howard Bunch, the attorney assigned to this case. He can be reached at (913) 551-7879.

Sincerely,

A handwritten signature in black ink that reads "Becky Weber".

Becky Weber
Director
Air and Waste Management Division

Enclosures



UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2018 JAN 29 AM 10:02

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of:

Loganbill Ag Services, LLC,

Respondent.

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Docket No. CAA-07-2018-0149

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

COMPLAINT

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, the Administrator and the Attorney General jointly determined that this matter, where the violations involve the failure to submit a Risk Management Plan as required by 40 C.F.R. § 68.150(a), and implement a Risk Management Program as required by 40 C.F.R. § 68.10(a), was appropriate for administrative penalty action.

2. This Complaint serves as notice that the United States Environmental Protection Agency (“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 Clean Air Act, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r). Furthermore, this Complaint serves as notice pursuant to Section 113(d)(2)(A) of the Clean Act, 42 U.S.C. § 7413(d)(2)(A), of EPA’s intent to issue an order assessing penalties for these violations.

Parties

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

4. Respondent is Loganbill Ag, LLC, a limited liability corporation registered and authorized to conduct business in the State of Missouri.

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 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 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), 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, 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 that have more than a threshold quantity of a regulated substance in a process 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 regulated 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 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 provision regulations apply to covered processes. A covered process is eligible for Program 2 if the process does not meet the requirements of Program 1 and if the process does not fall under a specified North American Industry Classification System (“NAICS”) code or the process is not subject to the Occupational 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)(1) of the CAA, 42 U.S.C. § 7412(r)(7)(1), and its implementing regulations. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day for violations that occurred from January 12, 2009, through November 2, 2015; to \$45,268 per day for violations that occurred after November 2, 2015 and for which penalties were assessed on or after January 15, 2017 but before January 15, 2018; and to \$46,192 per day for violations that occurred after November 2, 2015 and for which penalties

are assessed on or after January 15, 2018, up to a maximum of \$369,532 for administrative actions.

Definitions

11. "Person" is defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), to include "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."

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 "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.

14. 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.

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 Clean Air Act, 42 U.S.C. § 7602(e).

17. Respondent Loganbill Ag's facility, located at 600 Hwy 5, Syracuse, MO 65354 ("Syracuse facility") which includes bulk ammonia storage operations, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

18. On or about September 11, 2013, EPA inspected the Syracuse facility to determine compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

19. At the time of the September 2013 inspection, Respondent Loganbill Ag had greater than 10,000 pounds of anhydrous ammonia stored in a process (bulk storage tanks) at the Syracuse facility.

20. 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.

21. At the time of the September 11, 2013, inspection, a residential dwelling was located at the facility, and in direct proximity to the Syracuse facility's ammonia bulk storage tanks.

22. As alleged below, information collected as a result of the September 2013 inspection revealed that Respondent Loganbill Ag had never filed an RMP for the Syracuse facility, and had failed to properly develop and implement a risk management program required by Section 112(r) of the CAA and 40 C.F.R. Part 68 for the Syracuse facility.

23. EPA issued Loganbill Ag Services, LLC an administrative compliance order ("Order") on October 3, 2014, that directed Loganbill Ag, as an owner and/or operator of the Syracuse facility, to prepare and submit an RMP, as well as to implement the required risk management program for its facility (Docket No. CAA-07-2014-0027). Under the authority and direction of the Order, a risk management plan was submitted to EPA on October 27, 2014.

24. Under the terms of the Order, documentation of compliance was required to be submitted to EPA no later than May 1, 2015, including a description of the performance and results of the 3-year compliance audit required by 40 C.F.R. § 68.79. This required report was not submitted by Respondent until August 30, 2016, in violation of the October 2014 Order.

25. Upon knowledge and belief, Respondent continues to store and sell anhydrous ammonia from the Syracuse facility. Inspections by the Missouri Department of Agriculture of the Syracuse facility in March 2013, March 2015, and March 2016 directed Respondent to install a hydrostatic relief valve on a product line to prevent ammonia from being trapped between shutoff valves. Further, the March 2016 inspection documented that required breakaway devices on nurse tanks would not function properly because of improperly located nurse clamps.

Violations of Section 112 of the CAA

26. The facts stated above are hereby incorporated by reference.

27. The Syracuse, Missouri, facility is owned and/or operated by Respondent and 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 a stationary source that has more than the threshold quantity (10,000 pounds) of a regulated substance (anhydrous ammonia) in a process.

28. Pursuant to 40 C.F.R. § 68.10(c), the Syracuse facility is subject to the requirements of the Program 2 prevention program, 40 C.F.R. Part 68, Subpart C, because the process is not subject to the requirements of the OSHA process safety management standard, 29 C.F.R. § 1910.119, and there are public receptors at the facility.

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

- (i) Respondent failed to comply with applicable paragraphs of 40 C.F.R. Part 68, Subpart G in not submitting an RMP that included the information required by 68.155 through 68.170 and 68.180 through 68.185 for all covered processes, as required by 40 C.F.R. §§ 68.12(a), and 68.150-195.
- (ii) Respondent failed to comply with applicable paragraphs of 40 C.F.R. Part 68, Subpart B, by failing to conduct and document the required hazard assessment as required by 40 C.F.R. §§ 68.20 through 68.33, and 68.39.
- (iii) Respondent failed to maintain an up-to-date Material Safety Data Sheet for the anhydrous ammonia in the process, as required by 40 C.F.R. § 68.48(a)(1).
- (iv) Respondent failed to keep an accurate maximum intended inventory for equipment in which anhydrous ammonia is stored or processed, as required by 40 C.F.R. § 68.48(a)(2).
- (v) Respondent failed to compile and maintain safe upper and lower temperatures, pressures, flows, and compositions related to equipment in which anhydrous ammonia is stored, as required by 40 C.F.R. § 68.48(a)(3).
- (vi) Respondent failed to have designed its process in compliance with recognized and generally accepted good engineering practices as indicated in “American National Standard Safety Requirements for the Storage and Handling of Anhydrous Ammonia,” ANSI K61.1 - 1999, per 40 C.F.R. § 68.48(b), including but not limited to the following deficiencies:
 - a. combustible material located within 10 feet of ammonia bulk storage tanks;
 - b. ineffective vehicle barriers around the ammonia bulk storage tanks;
 - c. bulging flexible piping from the ammonia bulk storage tanks;
 - d. unlabeled piping from the ammonia bulk storage tanks;
 - e. rusting of the ammonia bulk tanks;
 - f. unlabeled ammonia bulk storage tanks;
 - g. hoses at the transfer station held on with wire;
 - h. the gauges on two bulk tanks were not designed for anhydrous ammonia;
 - i. failure to install a hydrostatic relief valve on the product line to avoid ammonia being trapped in the line between shutoff valves;
 - j. failure to ensure that breakaway valves on hoses on nurse tank riser assemblies would effectively function; and
 - k. support saddles on the bulk storage tanks were too small.
- (vii) Respondent failed to conduct a hazard review, as required by 40 C.F.R. § 68.50.

- (viii) Respondent failed to prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with the covered process, as required by 40 C.F.R. § 68.52.
- (ix) Respondent failed to ensure that each employee has been trained or tested competent in the covered process, as required by 40 C.F.R. § 68.54(a).
- (x) Respondent failed to prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment, as required by 40 C.F.R. § 68.56(a).
- (xi) Respondent failed to train each employee involved in maintaining the on-going mechanical integrity of the process, as required by 40 C.F.R. § 68.56(b).
- (xii) Respondent failed to ensure that stationary sources with any regulated toxic substance held in a process, above the threshold quantity, are included in the community emergency response plan, as required by 40 C.F.R. § 68.90(b)(1).
- (xiii) Respondent failed to develop a management system to oversee the implementation of the risk management program elements, assign a qualified person or position that has overall responsibility for the RMP, and document persons or positions, other than the qualified individual, who have been assigned responsibilities for implementing elements, as required by 40 C.F.R. § 68.15(a-c).

30. Pursuant to Section 113(d)(1)(B) of the Clean Air Act, 42 U.S.C. § 7413(d)(1)(B) and based upon the facts stated above, it is proposed that a civil penalty of up to the maximum administrative penalty, but no less than \$137,796, be assessed against Respondent.

Relief

31. 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)(1) of the CAA, 42 U.S.C. § 7412(r)(7)(1), and its implementing regulations. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day for violations that occurred from January 12, 2009, through November 2, 2015; to \$45,268 per day for violations that occurred after November 2, 2015 and for which penalties were assessed on or after January 15, 2017 but before January 15, 2018; and to \$46,192 per day for violations that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018, up to a maximum of \$369,532 for administrative actions. For purposes of determining the amount of a civil penalty to be assessed, 113(e)(1) of the CAA states EPA “shall take into consideration (in addition to such other factors as justice

may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation." Complainant took into account the particular facts and circumstances of this case, the statutory penalty factors set forth in Section 113 of the CAA, and EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 Enforcement Response* (ERP). The ERP sets forth a general penalty assessment policy for violations of Section 112 of the CAA, including violations of the risk management program requirements. The ERP provides a rational, consistent and equitable approach for applying the statutory penalty factors to particular cases.

32. In satisfaction of 40 C.F.R. § 22.14(a)(4)(ii), the severity of these violations, as considered by Complainant in proposing the penalty of not less than \$137,796, includes, but is not limited to, the potential risks to the adjacent communities and emergency responders from Respondent's failures, Respondent's failure to respond to directives from the Missouri Department of Agriculture to develop a risk management plan, and the duration of Respondent's failure to have a risk management plan and/or comply with applicable industry safety and operational standards. Accordingly, the penalty proposed in Paragraph 30 is based upon the facts stated in this Complaint, and on the nature, circumstances, extent and gravity of the above-cited violations, in accordance with Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

33. The proposed penalty as set forth in this Complaint is based on the best information available to EPA at the time that the Complaint was issued.

34. The penalty may be adjusted if the Respondent establishes bona fide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

35. Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk. Payment of the penalty, \$137,796 may be made by certified or cashier's check payable to "Treasurer, United States of America" and remitted to:

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

The check should reference the name and docket number of the Complaint.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

36. If Respondent pays the proposed penalty within thirty (30) days after receiving the Complaint, then no Answer need be filed.

37. If Respondent wishes to resolve the proceeding by paying the proposed penalty instead of filing an Answer, but needs additional time to pay the penalty, Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving the Complaint stating that Respondent agrees to pay the proposed penalty in accordance with Rule 22.18(a)(1) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits; codified at 40 C.F.R. Part 22 (hereinafter "Consolidated Rules"). The written statement need not contain any response to, or admission of, the allegations in the Complaint. Respondent must then pay the full amount of the penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject Respondent to default.

38. Respondent may request a hearing to contest any material fact contained in the Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules, a copy of which is enclosed herewith.

39. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations, Respondent must file a written Answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The Answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent intends to place at issue; and (c) whether a hearing is requested.

40. Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations. The Answer shall be filed with the following:

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

41. If within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, Respondent fails to: (1) submit full payment of the penalty; or (2) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty; or (3) file a written answer and request for a hearing, Respondent may be found in default. Default by the

Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalty proposed shall be ordered unless the penalty is clearly inconsistent with the record of the proceeding or the Clean Air Act.

Informal Settlement Conference

42. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:


Howard Bunch
Sr. Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Telephone (913) 551-7879.

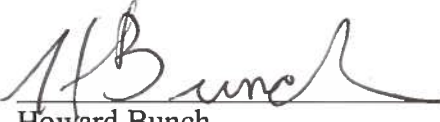
Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

43. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement through an informal settlement conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

44. If Respondent has neither achieved a settlement by informal conference nor filed an answer within the thirty (30) day time period allowed by this Notice, the penalty proposed above may be assessed by the entry of a Default Order.

Date 1/26/18


Becky Weber
Director
Air and Waste Management Division


Howard Bunch
Sr. Assistant Regional Counsel
Office of Regional Counsel

Enclosures: Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits; Final Rule

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the Penalty Calculation Summary; a copy 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; a copy of the Combined Enforcement Policy for Clean Air Act Sections 112(r), 112(r)(7) to the following registered agent for Loganbill Ag Services, LLC:

Mr. Ryan Loganbill
Registered Agent for Service
Loganbill Ag Services, LLC
12266 Highway E
Versailles, Missouri 65084

1/29/18
Date