

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

2008 APR 11 AM 11:15

EPA REGION 8
HEALTHY ENVIRONMENT

IN THE MATTER OF:

City of Helena, Montana.

Respondent

Proceeding under section 113 of the
Clean Air Act, 42 U.S.C. §7413

ADMINISTRATIVE ORDER

DOCKET NO.: CAA-08-2008-0015

ADMINISTRATIVE ORDER

This Administrative Order ("Order") is issued to City of Helena, Montana ("Respondent") pursuant to Title I, section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. §7413 (a)(3)(B). Section 113(a)(3)(B) grants to the Administrator of the U.S. Environmental Protection Agency ("EPA") the authority to make a finding of violation of a requirement or prohibition of Title I, and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition.

BACKGROUND

1. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added section 112(r) to the Clean Air Act, 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.
2. Pursuant to Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), the owners and operators of stationary sources are required to develop and implement a risk management plan ("RMP") that includes a hazard assessment, a prevention program and an emergency response program. The RMP must be submitted to the EPA Reporting Center 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 June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

3. 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.
4. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to section 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130, Tables 1, 2, 3 and 4. Threshold quantities for the regulated substances are included in § 68.130.
5. 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.

FINDINGS OF FACT

6. 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).
7. Respondent is the owner and/or operator of the Ten Mile Water Treatment Plant and Missouri River Treatment Plant located at 1115 Rimini Road and 2560 Canyon Ferry Road in Helena, Montana, respectively (“the Facilities”).
8. The Facilities are “stationary sources” pursuant to section 112(r)(2)(C) of the Clean Air Act and 40 C.F.R. § 68.3.
9. At its Facilities, Respondent has handled, and/or currently uses or stores, chlorine, in an amount that exceeds the threshold quantity established in 40 C.F.R. § 68.130. Chlorine is a regulated substance pursuant to section 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130, Tables 1, 2, 3 and 4.
10. EPA inspector, Dianne Miller, conducted an RMP inspection/review of the Facilities’ RMP programs on November 29, 2007, to determine compliance with section 112(r) of the Clean Air Act.
11. EPA’s inspection of the RMP programs revealed a number of safety concerns including the adequacy of the process hazards analyses, internal compliance audits, and designation of program implementation responsibilities.

FINDINGS OF VIOLATIONS

RMP and Program Implementation

12. Pursuant to section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), the owners and operators of stationary sources are required to develop and implement a RMP program that includes a hazard assessment, a prevention program and an emergency response program.

13. Based on information available to EPA, including information gathered during the inspection performed by EPA and the Findings of Fact set forth above. EPA has determined that Respondent failed to adequately implement the RMP program. Therefore, Respondent violated the provisions of section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7).

COMPLIANCE ORDER

14. Based upon the foregoing Findings of Fact, Findings of Violations, other information available to EPA, and pursuant to section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7413 (a)(3)(B), Respondent is hereby ORDERED as follows:

- a. To comply with the Clean Air Act and its implementing regulations including, but not limited to, those requirements set forth in section 112(r)(7) and those requirements specifically required in this Order. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.
- b. Respondent shall take the following steps to fully comply with the RMP program requirements of the Clean Air Act:
 - i. During the timeframe of **April 2 – May 15, 2008**, Respondent will identify and employ a third party consultant to be used by the Respondent to address deficiencies in the RMP and its associated implementation program.
 - ii. The third party consultant will evaluate and modify the Respondent's existing RMP to ensure that it meets all of the requirements found at 40 C.F.R § 68. Subsequently, the third party consultant will work with the Respondent in the development of protocols and procedures to fully implement an adequate RMP program.
 - iii. By **October 31, 2008**, the third party consultant will have completed all work identified in paragraph ii.
 - iv. The total expenditure for work completed by the third party consultant shall not be less than Forty Two Hundred Dollars (\$4,200).

- v. By **November 14, 2008**, Respondent shall provide EPA with documentation of the expenditures made to complete the work identified in paragraph ii. All correspondence shall be mailed to the following address:

U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Attn: Cheryl Turcotte, ENF-AT

Email address: turcotte.cheryl@epa.gov

PENALTY PROVISIONS

15. Section 113(a)(3) of the Clean Air Act provides that upon failure to comply with an order issued under Section 113(a)(3)(B), the EPA Administrator may, inter alia: issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to \$25,000 per day of violation; or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and the Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121 (February 13, 2004), this penalty maximum was increased to \$32,500 per day for violations occurring on or after March 15, 2004.

16. Issuance of this Order does not preclude EPA from assessing penalties or taking any other action authorized under the Act. This Order does not affect the obligation of Respondent to comply with all federal, state and local statutes, regulations and permits.

EFFECTIVE DATE

17. Respondent may request a conference with EPA concerning the violations alleged in, and the requirements of, this Order. Such request must be made in writing and be received by EPA **no later than ten (10) days after Respondent's receipt of this Order**. The written request for a conference may be sent by **email or mail** to the address listed in paragraph 14(b)(v). Respondent has the right to be represented by counsel at the conference but it is not required.

18. If no conference with EPA is requested, the Respondent shall sign and date the Order **no later than ten (10) days after Respondent's receipt of this Order**. The signed Order shall be sent by mail to the address listed in paragraph 14(b)(v).

19. If no conference is requested and the signed original Order is not returned to the EPA Region 8 office in correct form by the Respondent by the deadline described in paragraph 18, the opportunity to sign the Order is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Date 4/10/08

By: Michael T. Resner
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

CITY OF HELENA, MONTANA

Date 3-28-08

By: Tim Burton
Tim Burton, City Manager

APPROVED AS TO FORM:
David L. Nielsen
PRINT NAME David L. Nielsen
TITLE City Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE ORDER was hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was mailed by certified mail to:

Tim Burton, City Manager
City of Helena
316 North Park Avenue, Room 256
Helena, MT 59623



Cheryl Turcotte
Technical Enforcement Program
U.S. EPA, Region VIII



Date