

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD 2017 NOV -7 AM 9:02
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR

In the Matter of)
)
Kelso Milling Co., Inc.) **Docket No. CAA-07-2018-0013**
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Kelso Milling Co., Inc. (Respondent) have agreed to a settlement of this action before the 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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding 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, in which the first date of alleged violation occurred more than twelve 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 the 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 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 CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these violations.

Parties

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

4. Respondent is Kelso Milling Co., Inc., a corporation in good standing under the laws of the state of Missouri and doing business in the state of Missouri, which owns and operates the agriculture chemical distribution facility located at: 1205 Main Street, Scott City, Missouri 63780 (the Facility).

Statutory and Regulatory Background

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 the 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 that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical 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, the EPA promulgated a final rule setting forth the Chemical Accident Prevention Provisions, 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 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 the EPA.

8. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. 68.10(a)(3) an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under § 68.115, shall comply with the requirements of Part 68, Chemical Accident Prevention Provisions, no later than the date on which a regulated substance is first present above a threshold quantity in a process.

9. Pursuant to 40 C.F.R. § 68.10(c), a covered process is subject to Program 2 requirements if the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(b) and (d), respectively.

10. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an 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.

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any 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. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), 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.

14. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

15. The regulation at 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

16. The regulation at 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, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

17. The regulation at 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.

18. 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) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations. The Debt Collection Improvement Act of 2008 and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, and implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum to \$37,500 for violations occurring from January 12, 2009, through November 2, 2015, and to \$45,268 for violations occurring after November 2, 2015.

General Factual Allegations

19. 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).

20. Respondent is, and at all times referred to herein was, the “owner or operator” of the Facility as defined by Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

21. The Facility is, and at all times referred to herein was, a “stationary source” as defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

22. 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, is 10,000 pounds.

23. On or about November 2, 2016, representatives of the EPA conducted an inspection (the EPA inspection) of the Facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

24. Information gathered during the EPA inspection revealed that the Facility had greater than 10,000 pounds of anhydrous ammonia in a process.

25. From the time the Facility first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

26. From the time the Facility first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to the Program 2 prevention program requirements pursuant to 40 C.F.R. § 68.10(c), because the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(b) and (d), respectively.

27. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was required under Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 2 requirements provided at 40 C.F.R. § 68.12(c) and detailed in Subpart C.

28. As a result of the EPA inspection, Complainant has determined that violations of the Chemical Accident Prevention provisions found in 40 C.F.R. Part 68 occurred.

Allegations of Violation

29. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1

30. The facts stated in Paragraphs 19 through 28 above are herein incorporated.

31. Pursuant to 40 C.F.R. § 68.12(c)(2), the owner or operator of a stationary source with a process subject to Program 2 shall conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42.

32. Pursuant to 40 C.F.R. § 68.36(a), the owner or operator shall review and update the offsite consequence analyses at least once every five years.

33. The EPA inspection revealed that Respondent had not reviewed nor updated the offsite consequence analyses for the Facility at least once every five years.

34. Respondent's failure to review and update the offsite consequence analyses at least once every five years pursuant to 40 C.F.R. § 68.36(a) is a violation of 40 C.F.R. § 68.12(c)(2). Respondent, therefore, violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2

35. The facts stated in Paragraphs 19 through 28 above are herein incorporated.

36. Pursuant to 40 C.F.R. § 68.12(c)(3), the owner or operator of a stationary source with a process subject to Program 2 shall implement the Program 2 prevention steps provided in 40 C.F.R. §§ 68.48 through 68.60.

37. The EPA inspection revealed that Respondent had not implemented the following Program 2 prevention steps:

- a. The owner or operator shall compile and maintain up-to-date safety-information related to the maximum intended inventory of equipment in which the regulated substances are stored or processed. 40 C.F.R. § 68.48(a)(2).
- b. The owner or operator shall compile and maintain up-to-date safety-information related to the safe upper and lower temperatures, pressures, flows, and compositions. 40 C.F.R. § 68.48(a)(3).
- c. The owner or operator shall compile and maintain up-to-date safety-information related to the equipment specifications. 40 C.F.R. § 68.48(a)(4).
- d. The owner or operator shall compile and maintain up-to-date safety-information related to the codes and standards used to design, build, and operate the process. 40 C.F.R. § 68.48(a)(5).
- e. The owner or operator shall ensure that the process is designed in compliance with recognized and generally accepted good engineering practices. 40 C.F.R. § 68.48(b);
- f. The owner or operator shall conduct a review of the hazards associated with

the regulated substances, process and procedures, document the results of the review and ensure that problems identified are resolved in a timely manner, and update the review at least once every five years. 40 C.F.R.

§§ 68.50(a), (c) and (d);

- g. The owner or operator shall prepare written operating procedures that address each operating phase. 40 C.F.R. § 68.52(b);
- h. The owner or operator shall ensure that each employee has been trained or tested competent in the operating procedures provided in 40 C.F.R. § 68.52 and shall be provided refresher training at least every 3 years. 40 C.F.R. §§ 68.54(a) and (b); and
- i. The owner or operator shall certify that they have evaluated compliance with the provisions of subpart C (compliance audit) at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed. 40 C.F.R. § 68.58.

38. Respondent's failure to implement the Program 2 prevention steps as described above provided in 40 C.F.R. §§ 68.48 through 68.60 is a violation of 40 C.F.R. § 68.12(c)(3). Respondent, therefore, violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3

39. The facts stated in Paragraphs 19 through 28 above are herein incorporated.

40. Pursuant to 40 C.F.R. § 68.12(a), the owner or operator of a stationary source subject to this part shall submit a single RMP, as provided in 40 C.F.R. §§ 68.150 through 68.185.

41. Pursuant to 40 C.F.R. § 68.150(d), RMPs submitted pursuant to 40 C.F.R. § 68.150 shall be updated and corrected in accordance with 40 C.F.R. §§ 68.190 and 68.195.

42. Pursuant to 40 C.F.R. § 68.190(b)(1), the owner or operator of a stationary source shall revise and update the RMP submitted under 40 C.F.R. § 68.150 at least once every five years from the date of its initial submission or most recent update.

43. The EPA inspection and information provided by Respondent revealed that Respondent submitted an RMP pursuant to 40 C.F.R. § 68.150 in June of 2010, but failed to submit and updated RMP by June of 2015.

44. Respondent's failure to revise and update the RMP submitted under 40 C.F.R. § 68.150 within 5 years of June 2010 pursuant to 40 C.F.R. § 68.190(b)(1) is a violation of 40 C.F.R. § 68.12(a). Respondent, therefore, violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

45. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- a. Admits the jurisdictional allegations set forth herein;
 - b. Neither admits nor denies the specific factual allegations stated herein;
 - c. consents to the assessment of a civil penalty, as stated herein;
 - d. consents to the issuance of any specified compliance or corrective action order;
 - e. consents to any conditions specified herein;
 - f. consents to any stated Permit Action;
 - g. waives any right to contest the allegations set forth herein; and
 - h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

46. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

47. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

48. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Thirty-Seven Thousand Eight Hundred Seventy-Seven Dollars (\$37,877), as set forth below.

49. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

50. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Clarissa Howley Mills, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

51. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

52. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

53. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

54. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

55. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

56. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

57. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

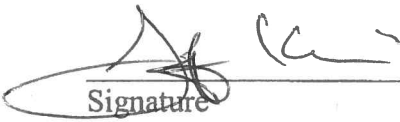
58. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

59. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

60. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT:
KELSO MILLING CO., INC.

Date: 10-23-2017



Signature

JEFF KIRN
Name

PRESIDENT
Title


**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 10/27/17



Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency, Region 7

Date: 10/27/2017



Clarissa Howley Mills
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Nov. 6, 2017
Date

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 emailed to Attorney for Complainant:

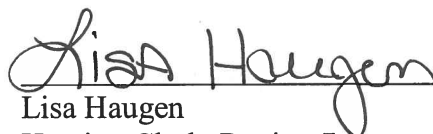
mills.clarissa@epa.gov

Copy emailed to Respondent and copy by First Class Mail to Respondent:

jkfarms@gmail.com

Jeff Kirn
Kelso Milling Co., Inc.
1205 Main Street
Scott City, Missouri 63780

Dated: Nov. 7, 2017



Lisa Haugen
Hearing Clerk, Region 7