



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

RECEIVED

SEP 28 2012

EPA ORC *WS*
Office of Regional Hearing Clerk

September 28, 2012

BY HAND

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: In the matter of JP Lillis Enterprises, Inc. (dba
Cape Cod Ice), Docket No. CAA-01-2012-0115

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Administrative Complaint and Notice of Opportunity for Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

A handwritten signature in blue ink that reads "Laura J. Berry".

Laura J. Berry
Enforcement Counsel

Enclosures

cc: Joseph Lillis, JP Lillis Enterprises, Inc. (dba Cape Cod Ice)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)
)
JP LILLIS ENTERPRISES, INC.)
D/B/A CAPE COD ICE)
)
1 Noyes Avenue)
East Providence, RI 02860)
)
Respondent)
)
Proceeding under Section 113(d) of)
the Clean Air Act, 42 U.S.C. § 7413(d))
_____)

Docket No. CAA-01-2012-0115

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

RECEIVED

SEP 28 2012

EPA ORC
Office of Regional Hearing Clerk

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency Region 1 (“EPA”) issues this administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d). This action is subject to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The authority to issue this Complaint has been delegated to the Director of the Office of Environmental Stewardship, Region 1 (“Complainant”).

2. This Complaint alleges that JP Lillis Enterprises, Inc. d/b/a Cape Cod Ice (“JP” or “Respondent”) failed to prepare and submit a risk management plan (“RMP”) for anhydrous ammonia before using it in a process in an amount that exceeded the regulatory threshold, in violation of Section 112(r) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7412(r), and its implementing regulations set forth at 40 C.F.R. Part 68.

3. The Notice of Opportunity for Hearing describes Respondent’s option to file an Answer to the Complaint and to request a formal hearing.

II. STATUTORY AND REGULATORY AUTHORITY

4. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs to prevent and minimize the consequences of the accidental release of certain regulated substances. In particular, Section 112(r)(3), 42 U.S.C. § 7412(r)(3), requires EPA to promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released, and Section 112(r)(5), 42 U.S.C. § 7412(r)(5), requires EPA to establish for each regulated substance a threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement a Risk Management Plan (“RMP”).

5. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA promulgated RMP regulations, found at 40 C.F.R. Part 68 (“Part 68”). Section 68.130 of 40 C.F.R. lists the substances regulated under Part 68 (“RMP chemicals” or “regulated substances”) and their associated threshold quantities.

6. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

7. A “process” is defined by 40 C.F.R. § 68.3 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.

8. Each process in which a regulated substance is present in more than a threshold quantity (a “covered process”) is subject to one of three risk management programs, whose eligibility requirements are set forth in 40 C.F.R. § 68.10. Program 1 is the least comprehensive, and Program 3 is the most comprehensive. Under 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in certain specified NAICS codes or subject to the Occupational Safety and Health Administration (“OSHA”) process safety management (“PSM”) standard set forth at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process meeting neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

9. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source implement the chemical accident prevention provisions of Part 68 to which it is subject and submit an RMP. The RMP documents compliance with Part 68. For example, the RMP for a Program 3 process documents compliance with the elements of a Program 3 Risk Management Program, including 40 C.F.R. § 68.12 (General Requirements); 40 C.F.R. § 68.15 (Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-Site Consequences of a Release); 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

10. Additionally, 40 C.F.R. § 68.190(b) dictates that the owner or operator of a stationary source must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or most recent update.

11. Under Section 112(r)(7)(e) of the CAA, 42 U.S.C. § 7412(r)(7)(e), it is unlawful for any person to operate any stationary source subject to regulations promulgated pursuant to Section 112(r) in violation of such regulation or requirement.

12. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to \$32,500 per day for violations occurring between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for violations occurring after January 12, 2009.

III. GENERAL ALLEGATIONS

13. At all times relevant to the violations alleged herein, Respondent operated a cold storage warehouse and ice manufacturing facility located at 1 Noyes Avenue in East Providence, Rhode Island (the "Facility").

14. The Facility is located on the banks of the Seekonk River, adjacent to a railway line, less than 0.2 miles from several residential houses, a church, and several office buildings, and less than 0.5 miles from an elementary school.

15. Respondent is a corporation organized under the laws of the Commonwealth of Massachusetts with its principal office located in Sandwich, Massachusetts.

16. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

17. The Facility is a building or structure from which an accidental release may occur and is therefore a “stationary source” as that term is defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

18. At all times relevant to the violations alleged herein, Respondent was and is the “operator,” as that term is defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

19. Anhydrous ammonia is a regulated extremely hazardous substance listed under 40 C.F.R. § 68.130, having a threshold quantity of 10,000 pounds.

20. The use, storage, manufacturing, handling or on-site movement of a regulated substance at the Facility (in any vessel, group of interconnected vessels, or separate vessels that are located such that a regulated substance could be involved in a potential release) is a “process,” as defined by 40 C.F.R. § 68.3.

21. The Facility’s refrigeration system, which is comprised of a series of interconnected vessels, uses anhydrous ammonia, an RMP Chemical.

22. On February 14, 2012, EPA sent Respondent a request for information (“Information Request”) pursuant to Section 114 of the CAA, 42 U.S.C. § 7414.

23. On March 9, 2012, Respondent submitted to EPA a response to the Information Request (“March 9th Letter”).

24. According to the March 9th Letter, the Facility’s refrigeration system uses approximately 19,000 pounds of anhydrous ammonia.

25. Additional ammonia inventory calculations submitted by Respondent with the March 9th Letter indicate that the Facility’s refrigeration system used approximately 14,900

pounds of anhydrous ammonia in October 2004 and approximately 16,500 pounds of anhydrous ammonia in February 2010.

26. Anhydrous ammonia was “used,” “stored,” and “handled” in a covered process at the Facility in an amount greater than the threshold amount under 40 C.F.R. § 68.130 from at least October 2004 through the filing of this Complaint.

27. The endpoint for a worse case release of this amount of anhydrous ammonia at the Facility is greater than the distance to a public receptor.

28. Anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds is subject to OSHA’s PSM requirements at 29 C.F.R. § 1910.119.

29. As the owner and operator of a stationary source that has more than the threshold amount of a regulated substance in a covered process, Respondent is subject to the RMP provisions of Part 68. In accordance with 40 C.F.R. § 68.10(a)-(d), Respondent’s use, storage, and handling of anhydrous ammonia at the Facility are subject to the requirements of RMP Program 3. The covered process is subject to Program 3 because (1) the distance to a toxic or flammable endpoint for a worst-case release of anhydrous ammonia is more than the distance to a public receptor, making the process ineligible for Program 1; and (2) the process is subject to OSHA’s PSM regulations.

30. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), EPA obtained from the Department of Justice a waiver of the twelve-month limitation on EPA’s authority to initiate administrative cases.

IV. VIOLATIONS

31. The allegations in paragraphs 1 through 30 are hereby realleged and incorporated herein by reference.

32. From at least October 2004 through the filing of this Complaint, Respondent stored, handled, or used anhydrous ammonia in the refrigeration system at the Facility in an amount that exceeded the 10,000 pound threshold set forth in 40 C.F.R. § 68.130.

33. Such storage, handling, or use of anhydrous ammonia, an RMP chemical, in the Facility's refrigeration system is a "covered process," as that term is defined in 40 C.F.R. § 68.3.

34. Pursuant to 40 C.F.R. §§ 68.10 and 68.12, Respondent was required to implement a Level 3 Risk Management Program for the use, handling, and storage of anhydrous ammonia in quantities over the 10,000 lb. threshold.

35. Under 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, Respondent was required to prepare and submit a RMP for anhydrous ammonia documenting such compliance before they began using anhydrous ammonia at the Facility.

36. By failing to submit an RMP for anhydrous ammonia before using it at the Facility in an amount that exceeded the regulatory threshold, from at least October 2004 until July 2012, Respondent violated Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150.

37. Respondent is therefore subject to an assessment of penalties under Section 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. Part 19.

38. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended, authorize EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Pursuant to the DCIA, 31 U.S.C. §§ 3701 *et seq.*, and 40 C.F.R. Part 19, violations that occurred between March 15, 2004 and January 12, 2009 are subject to a penalty of up to \$32,500 per day; and violations that occur after January 12, 2009 are subject to penalties of up to \$37,500 per day of violation.

V. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY

39. Based on the foregoing allegations and pursuant to the authority of Section 113(a)(3) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (d), as amended, the Federal Civil Penalties Inflation Act of 1990, 28 U.S.C. § 2461 *et seq.*, the DCIA, 31 U.S.C. § 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, Complainant proposes that a Final Order assessing civil penalties be issued against Respondent of up to \$32,500 per day for each day prior to and including January 12, 2009, during which the violations continued, and up to \$37,500 per day for each day after January 12, 2009, during which the violations continued, up to a maximum of \$295,000.

40. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as adjusted for inflation by the DCIA and 40 C.F.R. Part 19, prescribes a \$295,000 penalty limit and a twelve-month duration limitation on EPA's authority to initiate an Administrative Penalty Order. However, these limitations may be waived where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty or a longer period of violation is appropriate for an administrative penalty action. EPA and the Department of Justice have jointly determined that an administrative penalty action is appropriate in this case.

41. EPA is seeking a penalty from Respondent of up to \$32,500 per day for each day prior to and including January 12, 2009, during which the violations continued, and up to \$37,500 per day for each day thereafter, for the duration of Respondent's violation, which was for a total of up to 1,738 days, up to a maximum of \$295,000. For penalty purposes, the duration is from at least September 29, 2007 to July 2, 2012.

42. The violation alleged in this Complaint, Respondent's failure to develop a RMP that documents a Level 3 chemical release prevention program, represents a substantial violation of the CAA because of the extent and duration of the violation and because of the potential

environmental consequences of a release of anhydrous ammonia, which is a very dangerous chemical. An RMP plan helps facility personnel and emergency responders to assess and manage the hazards that are posed by chemicals at a facility so that the threat and impacts of releases are minimized. Anhydrous ammonia is an extremely hazardous chemical, and the Facility is located adjacent to a railway line, less than 0.2 miles from several residential houses, a church, and several office buildings, and less than 0.5 miles from an elementary school.

43. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty, as required by the Consolidated Rules of Practice, taking into account the size of the business, the economic impact of the penalty on the business, Respondent's prior compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of any penalties previously assessed for the same violation, any economic benefit or savings accrued to Respondent resulting from the violation, and the seriousness of the violation, and such other matters as justice may require. An appropriate penalty will be derived using the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" (June 2012), which policy takes into account the above penalty factors.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

44. Pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed. Any request for a hearing must be included in Respondent's written Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

45. In its Answer, a Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts the Respondent intends to place at issue.

46. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (ORA18-1)
Boston, MA 02109-3912

Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action, to Laura J. Berry, the attorney assigned to represent EPA and who is designated to receive service in this matter at:

Laura J. Berry
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES04-2)
Boston, MA 02109-3912
Tel: (617) 918-1148

47. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

48. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

VII. INFORMAL SETTLEMENT CONFERENCE

49. Whether or not a hearing is requested upon the filing of an Answer, Respondent may confer informally with EPA concerning the alleged violations, the amount of any penalty, and/or the possibility of settlement. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. EPA has the authority to adjust penalties, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order.

50. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondent or its representative should contact Laura J. Berry, Enforcement Counsel, at (617) 918-1148.

VIII. CONTINUED COMPLIANCE OBLIGATION

51. Neither assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and implementing regulations at 40 C.F.R. Part 68.

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England

09/26/12
Date