



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2015 JUN -9 AM 10:59

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2015-0013

IN THE MATTER OF:

HUNTER PANELS, LLC.

RESPONDENT

)
)
)
)
)

FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 9th DAY OF June, 2015.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2015 JUN -9 AM 11:00

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Hunter Panels, LLC,)
)
)
)
)
)
Respondent.)

DOCKET NO. : CAA-08-2015-0013

COMBINED COMPLAINT AND CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. part 22.
2. Complainant is the United States Environmental Protection Agency, Region 8 (EPA). On the EPA's behalf, Suzanne J. Bohan, Assistant Regional Administrator, is delegated the authority to settle civil administrative penalty proceedings under section 113(d) of the Act.
3. Respondent is Hunter Panels LLC, a corporation doing business in the state of Utah.
4. Respondent is a "person" as defined in section 302(e) of the Act, 42 U.S.C. § 7602(e).
5. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this combined complaint and consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

B. JURISDICTION

6. This Agreement is entered into under section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. part 22. The alleged violations in this Agreement are pursuant to section 113(a)(3)(A).
7. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.
8. The Regional Judicial Officer is authorized to ratify this Agreement which memorializes a settlement between Complainant and Respondent in a final order. 40 C.F.R. §§ 22.4(a) and 22.18(b).
9. This Agreement and approval in a final order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorized the Administrator to promulgate regulations regarding the prevention and detection of accidental releases of designated chemicals. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan (RMP) to prevent or minimize risks of accidental releases of those designated substances. The regulations, promulgated by the EPA pursuant to CAA section 112(r)(7), are set forth in 40 C.F.R. part 68.

11. Under 40 C.F.R. § 68.3, the following definitions apply:
 - (a) “Stationary source” means “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.”
 - (b) “Regulated substance” means “any substance (listed pursuant to section 112(r)(3) of the Clean Air Act) in 40 C.F.R. § 68.130.” Threshold quantities for the regulated substances are included in 40 C.F.R. § 68.130.

D. STIPULATED FACTS

12. Respondent is the owner of the insulation manufacturing facility, a stationary source, located at 501 S. Emerald Road in Tooele, Utah (Facility).
13. The Facility uses, handles, and/or stores more than a threshold quantity of isopentane (CAS # 78- 78-4) and pentane (CAS # 109-66-0), regulated substances.
14. On July 17, 2014, an authorized representative of the EPA conducted an inspection (the EPA inspection) of the Facility, with the consent of Respondent, to determine compliance with CAA section 112(r)(7). During the EPA inspection, the EPA representative observed alleged violations of the CAA section 112(r)(7). The alleged violations are described in paragraphs 15-20.

E. ALLEGED VIOLATIONS OF LAW

15. 40 C.F.R. § 68.69(a)(1)(vii) provides that the owner or operator shall 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, and shall address startup following a turnaround, or after an emergency shutdown. Respondent did not

establish written procedures that address startup after an emergency shutdown. This is a violation of 40 C.F.R. § 68.69(a)(1)(vii).

16. 40 C.F.R. § 68.73(b) provides that the owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment. Respondent did not establish written procedures to maintain the on-going integrity of the Pentane High Pressure Heat Exchanger (PHPHE) in accordance with manufacturers' recommendations. This is a violation of 40 C.F.R. § 68.73(b).
17. 40 C.F.R. § 68.73(d)(1) provides that inspections and tests shall be performed on process equipment. Prior to the EPA inspection, Respondent did not perform inspections and tests on pentane piping at the Facility. Recognized and generally accepted good engineering practices (RAGAGEP), such as the American Petroleum Institute (API) *570 Piping Inspection Code*, determine inspection type and inspection frequency. This is a violation of 40 C.F.R. § 68.73(d)(1).
18. 40 C.F.R. § 68.73(d)(1) provides that inspections and tests shall be performed on process equipment. Prior to the EPA inspection, Respondent did not perform inspections and tests on the pentane storage vessel at the Facility. RAGAGEP, such as the *API 510 Pressure Vessel Inspection Code*, determine inspection type and inspection frequency. This is a violation of 40 C.F.R. § 68.73(d)(1).
19. 40 C.F.R. § 68.77(b)(2) provides that the pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process, safety, operating, maintenance and emergency procedures are in place and are adequate. The pre-startup safety review performed at the Facility for the installation of the PHPHE on or around May 17, 2013, did not confirm maintenance procedures were in place and adequate. This is a violation of 40 C.F.R. § 68.77(b)(2).

20. 40 C.F.R. § 68.79(d) provides that the owner or operator shall promptly determine and document an appropriate response to each of the findings of any compliance audit, required by 40 C.F.R. § 68.79, and document that the identified deficiencies have been corrected. Respondent conducted a compliance audit, required by 40 C.F.R. § 68.79, in December 2008. Three findings from the December 2008 compliance audit were not corrected in a timely manner. The three audit findings identified deficiencies with piping and instrumentation diagrams (P&ID) at the Facility. These three audit findings were carried over from the 2008 compliance audit to the 2011 compliance audit and not documented as corrected until 2012, nearly four years after being identified. Additionally, Respondent did not document that one finding from the October 2011 compliance audit was corrected in a timely manner. This audit finding identified a deficiency with the mechanical integrity plan for the pentane storage vessel. There was no documentation that this finding had been corrected at the time of the EPA inspection. This is a violation of 40 C.F.R. § 68.79(d).

F. TERMS OF CONSENT AGREEMENT

21. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
 - (b) neither admits nor denies the alleged violations of law stated above;
 - (c) consents to the assessment of a civil penalty as stated below;
 - (d) consents to the issuance of any specified compliance or corrective action order;
 - (e) consents to the conditions specified in this Agreement;
 - (f) consents to any stated Permit Action;
 - (g) waives any right to contest the alleged violations of law set forth in Section E of this Agreement; and

(h) waives its rights to appeal any final order which approves this Agreement.

22. For the purpose of this proceeding, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Agreement, including any right of judicial review under section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement, in the United States District Court for the District of Utah; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

23. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each violation of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of 42 U.S.C. § 7412(r). To determine the amount of the civil penalty to be assessed pursuant to section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), the EPA took into account, 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 violations as established by any credible evidence, payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations.

24. The EPA has compromised the civil penalty due to the conditions in paragraph 27, pursuant to section 113(d)(2)(B) of the Act, 42 U.S.C. § 7413(d)(2)(B).
25. Penalty Payment. Respondent agrees to:
 - (a) pay the civil penalty of \$99,100 (EPA Penalty) within 30 calendar days of the Effective Date of this Agreement.
 - (b) pay the EPA Penalty using the instructions found in Attachment A (Collection Information). Within 24 hours of payment of the EPA Penalty, send proof of payment to Greg Bazley at bazley.greg@epa.gov (proof of payment means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements).
26. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:
 - (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
 - (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

- (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
- (d) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

27. Conditions. As a condition of settlement, Respondent agrees to the following:

- (a) Respondent shall develop written operating procedures for startup following emergency shutdown at the Facility no later than June 30, 2015;
- (b) Respondent shall establish and implement written procedures to maintain the ongoing mechanical integrity of the PHPHE at the Facility in accordance with manufacturers' recommendations no later than June 30, 2015;
- (c) Respondent shall perform inspections and tests on all pentane piping at the Facility in accordance with *API 570 Piping Inspection Code* no later than June 30, 2015;
- (d) Respondent shall perform inspections and tests on the pentane storage vessel at the Facility in accordance with *API 510 Pressure Vessel Inspection Code* no later than June 30, 2015; and,
- (e) Respondent shall confirm that all findings from previous compliance audits have been addressed and the appropriate response documented no later than June 30, 2015.

28. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in paragraph 27 are completed (Tolling Period) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (Tolled Claims) set forth in Section E of this Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.
29. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in paragraph 28, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.
30. By signing this Agreement, Respondent acknowledges that this Agreement will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.
31. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to

execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

32. By signing this Agreement, both parties agree that each party's obligations under this Agreement constitute sufficient consideration for the other party's obligations. Additionally, both parties agree that Complainant's covenant not to sue Respondent (stated in paragraph 36) during the time period between the issuance of any final order approving this Agreement and the deadline (stated in paragraph 27) for Respondent to complete the non-penalty conditions of this Agreement constitutes sufficient consideration for Respondent's obligation to completely perform the non-penalty conditions of this Agreement as stated in paragraph 27, regardless of whether the covenant not to sue subsequently terminates.
33. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
34. Except as qualified by paragraph 26, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF AGREEMENT

35. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
36. Complainant covenants not to sue Respondent for injunctive or other equitable relief for the violations and facts alleged in this matter, but such covenant automatically terminates if and

when Respondent fails to timely and satisfactorily complete every condition stated in paragraph 27. If and when such covenant terminates, the United States at its election may seek to compel performance of the conditions stated in paragraph 27 in a civil judicial action under the CAA or as a matter of contract. The covenant not to sue becomes permanent upon satisfactory performance of the conditions stated in paragraph 27.

37. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
38. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
39. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.
40. Any violation of this Agreement and subsequently issued final order approving this agreement may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
41. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be

construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

42. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
43. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

H. EFFECTIVE DATE

44. Respondent and Complainant agree to issuance of a final order approving this Agreement. Upon filing, the EPA will transmit a copy of the filed Agreement to the Respondent. This Agreement and subsequently issued final order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

The foregoing Combined Complaint and Consent Agreement In the Matter of Hunter Panels LLC, is Hereby Stipulated, Agreed, and Approved.

FOR RESPONDENT:

Signature  _____ Date 5/18/15 _____

Printed Name: John D. Waclawski _____


Title: VP + General Counsel _____

Address: 1285 Risher Highway, Carlisle, PA 17013 _____

Respondent's Federal Tax Identification Number: 01-0514287 _____

FOR COMPLAINANT:

5/20/15
DATE



Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

COLLECTION INFORMATION

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

CHECK PAYMENTS- U.S. Postal Service:

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

Contact: Craig Steffen, 513-487-2091

OVERNIGHT MAIL (Federal Express, Airborne, or other commercial carrier):

US Bank
Cincinnati Finance Center Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

WIRE TRANSFERS (FEDWIRE):

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

Field Tag 4200 of the Fedwire message should read “ D 68010727 Environmental Protection Agency “

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the “Search Public Forms” field

Open form and complete required fields then click “Submit Data”.

AUTOMATED CLEARINGHOUSE (VENDOR EXPRESS)

Automated clearinghouse payments can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 – checking

Physical location of US Treasury Facility:

5700 Rivertech Court

Riverdale, MD 20737

US Treasury Contact Information:

John Schmid: 202-874-7026

Remittance Express (REX): 1-866-234-5681

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT AND FINAL ORDER** in the matter **HUNTER PANELS, LLC.; DOCKET NO.: CAA-08-2015-0013** was filed with the Regional Hearing Clerk on June 9, 2015.

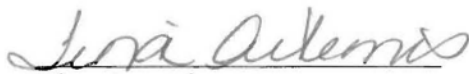
Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on June 9, 2015 to:

Mr. Peter Franzosa
Director of Plant Engineering
Carlisle Construction Materials
1275 Ritter Highway
Carlisle, PA 17013

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

June 9, 2015


Tina Artemis
Paralegal/Regional Hearing Clerk

