

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

GOLDEN LEAF ENERGY, INC,
HARVEY, LA

JEFFERSON PARISH

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EPA DOCKET NO. CAA-06-2013-3351

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR A HEARING

I. STATEMENT OF AUTHORITY

1. This Complaint and Notice of Opportunity for a Hearing (Complaint) is issued to initiate an administrative action against Golden Leaf Energy, Inc (Respondent) as authorized by sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, as amended (Act or CAA), 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B), and 40 C.F.R. §§ 22.13 and 22.34(b). The Complainant in this action is the Director, Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6, who has been delegated the authority to issue such complaints in Louisiana.

2. Through this action, Complainant seeks to assess a civil administrative penalty for violations of section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1). Complainant will show that Respondent owns and operates a biodiesel manufacturing plant located in Harvey, Jefferson Parish, Louisiana, that Respondent's operation of this facility is subject to general duties under section 112(r)(1) of the Clean Air Act, and that Respondent failed to fulfill its general duties leading up to and following an explosion and related fire on August 24, 2012, at the facility.

II. STATUTORY AND REGULATORY BACKGROUND

3. Under sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the Clean Air Act including, but not limited to, a requirement or prohibition of any rule promulgated under the Clean Air Act, other than those requirements specified in sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the Clean Air Act, 42 U.S.C. § 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A), the Administrator may issue an order assessing a civil administrative penalty. As adjusted by the Civil Penalty Inflation Adjustment Rule of December 11, 2008 (73 Fed. Reg. 75340, 75346), 40 CFR § 19.4, the Administrator may assess a civil penalty of up to \$37,500 per day of violation for a violation occurring after January 12, 2009.

4. Under section 112(r)(1) of the Clean Air Act, 42 U.S.C. §7412(r)(1), “[i]t shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as section 654, Title 29 of the United States Code, to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur”.

5. “Owner or operator” is defined in section 112(a)(9) of the Clean Air Act, 42 U.S.C. § 7412(a)(9), as any person who owns, leases, operates, controls, or supervises a stationary source.

6. “Stationary source” is defined in section 112(r)(2)(C) of the Clean Air Act, 42 U.S.C. §7412(r)(2)(C), 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.

7. “Accidental release” is defined in section 112(r)(2)(A) of the Clean Air Act, 42 U.S.C. §7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

III. FACTUAL BASIS OF VIOLATIONS

8. Respondent is a Louisiana Business Corporation doing business in the State of Louisiana.

9. Respondent is a “person” as that term is defined in section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), and within the meaning of section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

10. As described by this Complaint, EPA has determined that Respondent has violated a requirement of the Clean Air Act.

11. EPA has jurisdiction over this action, which is authorized by section 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B).

12. Respondent owns and operates a biodiesel manufacturing plant located at 1225 Peters Road, Harvey, LA 70058 (the "Facility").

13. Respondent has operated the Facility since approximately 2011.

14. The Facility, including its buildings, structures, equipment, installations, or substance emitting stationary activities and operations, belongs to North American Industry Classification System code 325199 (all other basic organic chemical manufacturing), comprises a "stationary source" as defined in CAA section 112(r)(2)(C).

15. Respondent produces, processes, handles or stores methanol and sulfuric acid at the Facility for use in a mixing process to produce biodiesel.

16. Sulfuric acid is an extremely hazardous substance listed in 40 CFR Part 355, Appendices A and B, pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA) Section 302.

17. Methanol and sulfuric acid as produced, processed, handled or stored at the Facility, are flammable, toxic, and/or extremely hazardous substances.

18. The Material Safety Data Sheet (MSDS) for methanol indicates that methanol is hazardous in case of skin contact (irritant), eye contact (irritant), ingestion, and inhalation, that severe over-exposure can result in death, that methanol is highly flammable and explosive in the presence of open flames, sparks, and heat, that methanol vapor may travel considerable distance to a source of ignition and flash back, and that all equipment containing methanol should be grounded.

19. The National Institute for Occupational Safety and Health (NIOSH), Pocket Guide to Chemical Hazards indicates that methanol is a Class IB Flammable Liquid with a flash point of 52 degrees F and a boiling point of 147 degrees F.

20. The MSDS for sulfuric acid indicates that sulfuric acid can cause severe burns, tissue destruction, blindness, upper respiratory tract irritation, lung irritation, chest pain, wheezing, shortness of breath, and that sulfuric acid is highly reactive and capable of igniting combustible material on contact.

21. On August 24, 2012, the Facility was mixing sulfuric acid and methanol as a trial run to utilize a new process to produce biodiesel.

22. After adding 30 gallons of 98% sulfuric acid to 150 gallons of methanol in a plastic tote, the mixture was stirred through the opening at the top of the plastic tote with a PVC pipe. At approximately 9:00 p.m. the vapors from the mixture ignited, which resulted in an explosion and related fire that led to an employee fatality and property damage. The property damage included damage to two plastic totes, two pivoting fans, the steel storage container where the mixing operation took place, insulation at the rear corner of the main plant building and two cars.

23. As set forth above, this explosion and fire resulted in the release of 30 gallons of sulfuric acid, 150 gallons of methanol, and 300 gallons of sodium methylate, which was stored in the steel storage container where the mixing operation took place.

24. The fire was extinguished the same day of the release.

25. The National Fire Protection Association (NFPA) updated NFPA 77,

Recommended Practice on Static Electricity in 2007 to address the hazards of static electricity, including the specific hazards as they relate to static electricity and flammable gases and vapors.

26. NFPA 77, Section 8.13.2.4 prohibits the use of nonconductive portable tanks and intermediate bulk containers, such as a plastic tote, for Class I flammable liquids, such as methanol.

27. NFPA 77, Section 8.13 requires metallic portable tanks and intermediate bulk containers for use with Class 1 flammable liquids such as methanol, with the portable tank or intermediate bulk container bonded to the fill system prior to filling until after filling is complete.

28. NFPA 77, Section 7.2.2 suggests adding an inert gas such as nitrogen to make the vapors non-ignitable due to oxygen deficiency, as a way to prevent the flammable vapors from igniting.

29. The Respondent did not use any inert gas such as nitrogen on August 24, 2012 to make the vapors non-ignitable due to oxygen deficiency, as a way to prevent the flammable vapors from igniting.

30. NFPA 77, Section 7.2.3 suggests using mechanical ventilation to dilute the concentration of flammable vapors below their lower flammable limit, as a way to prevent the flammable vapors from igniting.

31. The National Electric Code, NFPA 70 requires equipment, wiring methods, and installations of equipment in areas where explosion hazards exist due to flammable gases or vapors to be approved as intrinsically safe, approved for the hazardous location, or safe for the hazardous location.

32. Electrical fans were used by the Respondent to ventilate the steel storage container where the methanol and sulfuric acid were being mixed on August 24, 2012. The electrical fans and their electrical connections were not approved as intrinsically safe, approved for the hazardous location, or safe for the hazardous location.

33. The electrical fans did not sufficiently dilute the concentration of flammable vapors below their lower flammable limit on August 24, 2012.

IV. VIOLATIONS

Count 1. Violation of Section 112(r)(1) of the Clean Air Act (General Duty Clause) –

Failure to Design and Maintain a Safe Facility

34. Complainant incorporates paragraphs 1-33 as if restated herein.

35. The Facility' is a "stationary source" as that term is defined in section 112(r)(2)(C) of the Clean Air Act, 42 U.S.C. § 7412(r)(2)(C).

36. Methanol is an extremely hazardous substance as referenced in section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1) due to its toxicity and its volatile, flammable and explosive properties.

37. Sulfuric acid is an extremely hazardous substance as referenced in section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1) due to its toxicity and reactivity.

38. The Facility produces, processes, handles or stores extremely hazardous substances, including methanol and sulfuric acid.

39. The Facility is under Respondent's control as the owner and operator.

40. Respondent is subject to the general duties enumerated in section 112(r)(1) of the Clean Air Act, with respect to its operation of the Facility..

41. An accidental release of extremely hazardous substances occurred at the Facility on August 24, 2012. Flammable vapors escaped to the ambient air during the mixing of methanol and sulfuric acid and ignited, causing the explosion and fire described in this Complaint.

42. On August 24, 2012 Respondent failed to design and maintain a safe facility and did not take such necessary steps to prevent accidental releases. Respondent did not follow publically available and accepted practices to ensure safety by mixing methanol and sulfuric acid in a plastic tote. Respondent failed to perform the mixing operation involving a Class 1 flammable liquid such as methanol in a conductive container that was bonded to the filling system during filling, and used electrical fans that were not approved as intrinsically safe, approved for the hazardous location, or safe for the hazardous location.

43. Therefore, Respondent failed to satisfy its general duties under section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1).

Count 2. Violation of Section 112(r)(1) of the Clean Air Act (General Duty Clause) –

Failure to Minimize the Hazardous Release

44. Complainant incorporates paragraphs 1-43 as if restated herein.

45. Additionally, by not utilizing sufficient ventilation or an inert gas such as nitrogen to prevent ignition of the flammable vapors on August 24, 2012, the Respondent failed to minimize hazards related to an accidental release. Respondent did not follow publically available and accepted practices that would have minimized the hazard of the release by preventing ignition of the flammable vapors, the fire and the related explosion.

46. Therefore, Respondent failed to satisfy its general duties under section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1).

Count 3. Violation of Section 112(r)(1) of the Clean Air Act (General Duty Clause) –

Failure to Identify the Hazard

47. Complainant incorporates paragraphs 1-46 as if restated herein.

48. Additionally, Respondent failed to identify the hazards of accidental releases during mixing of methanol and sulfuric acid on August 24, 2012, using appropriate hazard assessment techniques. The hazards of flammable vapors from Class I flammable liquids, flammable vapors in the presence of electrical equipment and connections, and flammable vapors where static electric charges may accumulate are well documented and understood based on the applicable NFPA standards that have been developed. Respondent knowingly operated without identifying hazards of its process by not conducting adequate analysis prior to mixing sulfuric acid and methanol. The failure to identify the hazards ultimately led to an explosion, fire, and release of methanol, sulfuric acid and sodium methylate that resulted in an employee fatality and property damage.

49. Therefore, Respondent failed to satisfy its general duties under section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1).

V. PROPOSED PENALTY

50. Complainant incorporates paragraphs 1-49 as if restated herein.

51. Complainant believes that a penalty pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d) is warranted.

52. Complainant has identified three separate violations that were each one day in duration.

53. Pursuant to section 113(e)(1) of the Clean Air Act, 42 U.S.C. § 7413(e)(1), in determining the amount of any penalty to be assessed, the Administrator shall consider (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. Attached to this Complaint are penalty calculation worksheets that explain the reasoning behind the proposed penalty, as required by 40 C.F.R. § 22.14(a)(4).

54. In light of the facts alleged in this Complaint, including, but not limited to, the fire, explosion, and death of an employee, and having considered the statutory penalty factors in section 113(e)(1) of the Clean Air Act, 42 U.S.C. § 7413(e)(1), Complainant is seeking the issuance of an administrative order against Respondent assessing a total civil administrative penalty of **one hundred twelve thousand and five hundred dollars (\$112,500.00)** for the three, one-day violations alleged in Section IV of this Complaint.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

55. By issuance of this Complaint, Respondent is hereby notified of its opportunity to answer and request a hearing on the record in this matter.

56. If Respondent contests any material fact upon which this Complaint is based, contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled

to judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk for EPA Region 6 not later than thirty (30) days after being served with this Complaint.

57. Respondent's Answer shall clearly and directly admit, deny, or explain each of the factual allegations set forth in this Complaint with regard to which Respondent has knowledge. If Respondent has no knowledge of a particular factual allegation and states so in its Answer, the allegation will be deemed denied. The failure of Respondent to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

58. Respondent's Answer also shall state (a) the circumstances or arguments which are alleged to constitute the grounds of defense, (b) the facts which Respondent disputes, (c) the basis for opposing any proposed relief, and (d) whether a hearing is requested. A hearing on the issues raised by this Complaint and Respondent's Answer shall be held upon request of the Respondent in its Answer. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 554 and 556, and the Consolidated Rules of Practice, 40 CFR Part 22, a copy of which is included.

59. The Answer must be sent to:

Regional Hearing Clerk (6RC-D)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

In addition, Respondent is requested to send a copy of the Answer and all other documents that it files in this action to:

Mr. Jay Przyborski
Assistant Regional Counsel (6RC-ER)
U.S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
przyborski.jay@epa.gov

60. As provided in 40 CFR § 22.17, if Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, Respondent may be deemed to have admitted all allegations made in this Complaint and waived its right to a hearing. A Default Order may thereafter be issued, and the civil penalty assessed shall become due and payable without further proceedings thirty (30) days after a Default Order becomes final.

61. Respondent is further informed that 40 CFR Part 22 prohibits any ex parte (unilateral) discussion of the merits of this action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

VII. SETTLEMENT CONFERENCE

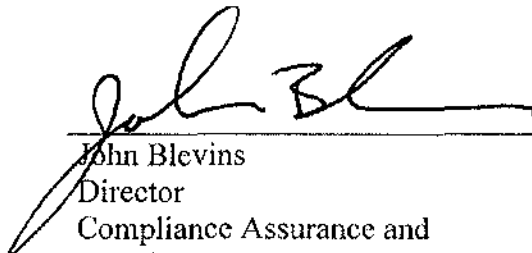
62. Whether or not Respondent requests a formal hearing or responds with an Answer, Respondent may request an informal conference in order to discuss the facts of this case and to arrive at settlement. To request a settlement conference, Respondent may contact Mr. Jay Przyborski, Assistant Regional Counsel, at the address or e-mail in paragraph 59 of this Complaint.

63. Please note that a request for an informal settlement conference does not extend the 30-day period during which Respondent must submit a written Answer and, if desired, a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing procedure.

64. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of an informal conference. Respondent is advised that no penalty reduction will be made simply because such a conference is held. As set forth in 40 CFR § 22.18, any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement signed by the parties and their representatives and a Final Order issued by the Regional Judicial Officer, EPA Region 6. The issuance of such Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Date: _____

8.19.13



John Blevins
Director
Compliance Assurance and
Enforcement Division

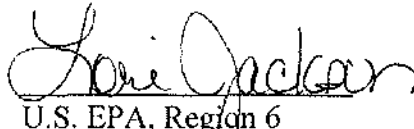
CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Complaint and Notice of Opportunity for Hearing (Complaint) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint and the Consolidated Rules of Practice were placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL, RETURN RECEIPT REQUESTED: # 70123050000165003793

Golden Leaf Energy, Inc
C/O Troy Clark
1125 Lake Louise Drive
Gretna, La 70056

Date: 8-22-2013


U.S. EPA, Region 6
Dallas, Texas