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Air Enforcement/112(r): U.S. Environmental Protection Agency and Walton, Kentucky Facility Enter Into Consent Agreement to Address Alleged Violations

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The United States Environmental Protection Agency ("EPA") and Merchants Cold Storage, LLC ("MCS") entered into a March 10th Consent Agreement and Final Order ("CAFO") to address alleged violations of the Clean Air Act ("CAA") Chemical Accident Prevention Provisions regulations. See Docket Number: CAA-4-2016-8002(b).

The CAFO alleges that the company's Walton, Kentucky facility is a stationary source subject to the Section 112(r) provisions of the CAA addressing prevention of releases of substances listed pursuant to Section 112(r)(3).

Rules codified at 40 C.F.R. Part 68, Chemical Action Prevention pursuant to Section 112(r)(3) and 112(r)(7) of the CAA apply to an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

The MCS facility is stated to have a risk management ("RMP") program covering process, ammonia refrigeration, which stores or otherwise uses ammonia, in an amount exceeding its applicable threshold of 10,000 pounds. The CAFO notes in relevant part that the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMP program threshold in a "process" as defined in 40 C.F.R. § 68.3 must:

... develop an RMP program accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

MCS is stated to have submitted a registered RMPlan to EPA for a stationary source identified in the CAFO and developed a RMP program accidental release prevention program for the previously referenced stationary source.

The CAFO alleges that based on a RMP program compliance monitoring investigation EPA initiated on October 29, 2013 that MCS violated the Clean Air Act Chemical Accident Prevention Provisions because it did not adequately implement provisions of 40 C.F.R. Part 68 when it:

- Failed to use the most recent Census data, or other updated information, to estimate the population potentially affected in defining offsite impacts as required by 40 CFR § 68.30(c);

- Failed to document that equipment complies with recognized and generally accepted good engineering practices as required by 40 CFR § 68.65(d)(2);
- Failed to annual certify that operating procedures are current and accurate as required by 40 CFR § 68.69(c);
- Failed as the owner or operator to ascertain in a training record that each employee involved in operating a process has received and understood the training as required by 40 CFR § 68.71(c)
- Failed to perform inspections and tests on process equipment as required by 40 CFR § 68.73(d)(1);
- Failed to implement inspection and testing procedures that follow recognized and generally accepted good engineering practices as required by 40 CFR § 68.73(d)(2);
- Failed to assure authorization requirements were addressed prior to any changes as required by 40 CFR § 68.75(b)(5);
- Failed to confirm a pre-startup review that prior to the introduction of regulated substances to a process, construction and equipment is in accordance with design specifications, and that safety, operating, maintenance, and emergency procedures are in place and are adequate as required by 40 CFR § 68.77(b);
- Failed to certify evaluation of compliance with risk management program provisions at least three years as required by 40 CFR § 68.79(a);
- Failed to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected as required by 40 CFR § 68.79(d);
- Failed to periodically evaluate the performance of the contract owner or operator in fulfilling their obligations specified in 40 CFR § 68.87(c) as required by 40 CFR § 68.87(b)(5);
- Failed to implement emergency response program procedures for inspection, testing and maintenance as required by 40 CFR § 68.95(a)(2);
- Failed to implement training for all employees in relevant procedures of the emergency response program as required by 40 CFR § 68.95(a)(3);

MCS neither admits nor denies the CAFO's allegations.

The CAFO assesses a civil penalty of \$43,500.

[Click here to download a copy of the CAFO.](#)