

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
 PowerSouth Energy Cooperative)
)
 Respondent)
 _____)

Docket Number: CAA-04-2015-882(b)

2016 MAR 17 AM 6:17
HEARING CLERK
USEPA REGION 4
OFFICE OF GENERAL
COUNSEL

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (Consolidated Rules), published in 40 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency. Respondent is PowerSouth Energy Cooperative (hereinafter, "Respondent").

2. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under the CAA to the Regional Administrators by the EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has re-delegated this authority to the Director, Air, Pesticides and Toxics Management Division. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18, and agree to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. Respondent, PowerSouth Energy Cooperative, is a cooperative doing business in the State of Alabama.

4. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is therefore subject to the provisions of the CAA and regulations promulgated thereunder.

5. Respondent operates a "stationary source" as that term is defined by Section 302(z) of the CAA, 42 U.S.C. § 7602(z). The Respondent's stationary source is located at 28570 U.S. Highway 29 North, Andalusia, Alabama 36420.

6. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

7. Pursuant to Section 112(r)(3) and 112(r)(7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 CFR Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the "Risk Management Program" (RMProgram) and apply to an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 CFR § 68.130.

8. The Respondent, at its stationary source identified in Paragraph 5 of this CAFO, has an RMProgram covered process, selective catalytic reduction, which stores or otherwise uses ammonia, in an amount exceeding its applicable threshold of 20,000 pounds.

9. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 CFR §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a "process" as defined in 40 CFR § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

10. Respondent has submitted and registered an RMPlan to the EPA for the stationary source identified in Paragraph 5 of this CAFO. Respondent has developed an RMProgram accidental release prevention program for the stationary source identified in Paragraph 5 of this CAFO.

11. Based on an RMProgram compliance monitoring investigation initiated on August 7, 2013, the EPA alleges that the Respondent violated the codified rules governing the CAA Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 CFR Part 68 when it:

Failed to include in the five-year accident history an accidental release from a covered process that resulted in an injury, as required by 40 CFR § 68.42(a);

Failed to compile and maintain up-to-date safety information related to the regulated substances, processes and equipment as required by 40 CFR § 68.48(a);

Failed to perform or cause to be performed an inspection or test on process equipment following recognized and generally accepted good engineering practices as required by 40 CFR § 68.56(d).

III. Consent Agreement

12. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.
13. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.
14. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
15. Respondent has agreed to undertake and complete a supplemental environmental project (SEP) in accordance with paragraph 23 of this CAFO.
16. Respondent certifies that as of the date of execution of this CAFO, to the best of the Respondent's knowledge after a good faith inquiry, it is compliant with the applicable requirements of Section 112(r) of the CAA.
17. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
18. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the RMProgram.

IV. Final Order

19. Respondent agrees to pay a civil penalty of **SEVEN THOUSAND EIGHT HUNDRED SEVENTY FIVE DOLLARS (\$7,875)**, to be paid within thirty (30) days of the effective date of this CAFO.
20. Respondent shall pay the penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," to one of the following addresses:

For payment sent via electronic transfer
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency";

For payment sent via U.S. Postal Service

U.S. Environmental Protection Agency
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000; or

For payment sent via overnight mail service (FedEx, UPS)

U.S. Environmental Protection Agency
Cincinnati Finance Center
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson @ 314-425-1818.

The check shall reference on its face the name and the Docket Number of the CAFO.

21. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Deanne Grant
Chemical Management and Emergency Planning Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

22. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such penalty payment shall constitute a violation of this CAFO.

V. Supplemental Environmental Project

23. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Respondent shall expend

no less than **TWENTY NINE THOUSAND FIVE HUNDRED FIFTY NINE DOLLARS (\$29,559)** for the purchase of the following equipment for donation to the Andalusia Fire Department:

<u>Quantity</u>	<u>Description</u>
6	LION Super Commando Coat Khaki Advance, 43-32R
5	LION Super Commando Coat Khaki Advance, 42R
6	Thorogood Leather Boot, Knockdown Elite, NFPA, 10W
5	LION Conway Legacy 5 Modern Helmet, 4" Faceshield, Yellow
5	LION Suspender, Traditional H-Back, 42"
5	Firecraft Glove, Phoenix Leather, NFPA, Gauntlet, Sz XL
6	Majestic FF Hood, Black P84 NFPA, 21" Total, 2-Ply
2	Kappler Zytron 500 Fully Encapsulated Level A Suit L-XL
3	AVON/ISI Deltair SCBA, 4500psi 45 Minute Carbon Cylinder
2	AVON/ISI 45 Minute, 4500psi Cylinder, Carbon

This CAFO shall not be construed to constitute EPA's endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

24. Respondent certifies that:

- a. all cost information provided to the EPA in connection with the EPA's approval of the SEP described in paragraph 23 is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$29,559; and
- b. the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO.

25. Respondent also certifies that:

- a. It is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in paragraph 23; and
- b. It has inquired of the Andalusia Fire Department whether the Andalusia Fire Department is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Andalusia Fire Department that it is not a party to such a transaction.

26. Respondent further certifies that, as of the date this CAFO is signed, it is not required to perform or develop any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant, or as injunctive relief awarded in any other action in any

forum. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind, and Respondent will not receive reimbursement for any portion of this SEP from another person or entity.

27. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 23. If Respondent does not fully and timely complete the SEP, it shall be required to pay stipulated penalties pursuant to Paragraph 28.

28. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of **TWENTY NINE THOUSAND FIVE HUNDRED FIFTY NINE DOLLARS (\$29,559)**, Respondent shall pay to the United States, a stipulated penalty of the difference between **\$29,559** and the actual SEP expenditure.

29. For purposes of Paragraphs 27 and 28, the determination as to whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

30. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violation of Section 112(r)(7) of the Clean Air Act (CAA).”

31. No later than sixty (60) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the Chemical Management and Emergency Planning Section, to the attention of Deanne Grant at the address provided above in Paragraph 21. The Report shall include the following:

(a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(b) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than **\$29,559**, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 23.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

32. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

33. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties.

Such penalties shall be paid in accordance with the procedures set forth in the written demand from EPA.

34. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

35. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

36. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

37. This CAFO shall be binding upon the Respondent, its successors and assigns.

38. The following individual is authorized to receive service for EPA in this proceeding:

Robert W. Bookman
U.S. EPA, Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9169.

39. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

THIS SECTION INTENTIONALLY LEFT BLANK

VI. Effective Date

40. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

PowerSouth Energy Cooperative

By: *Gary Smith* Date: 10/13/15
Name: Gary L. Smith (Typed or Printed)
Title: President & CEO (Typed or Printed)

U.S. Environmental Protection Agency

By: *Beverly H. Banister* Date: 11-17-15
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 15th day of March, 2016

Tanya Floyd
Tanya Floyd
Regional Judicial Officer

Form Approved By Legal Dept.
EC Woodward
Date: 10/13/15

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing

Consent Agreement and Final Order, In the Matter of: PowerSouth Energy Cooperative, Docket

Number: CAA-04-2015-8012(b), on the parties listed below in the manner indicated:

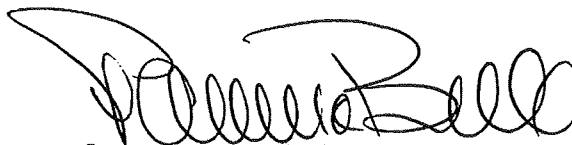
Robert W. Bookman (Via EPA's internal mail)
U.S. EPA, Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street
Atlanta, Georgia 30303

Bonnie Sawyer (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Regional Counsel
61 Forsyth Street
Atlanta, Georgia 30303

Robert Caplan (Via EPA's internal mail)
Senior Attorney
U.S. EPA, Region 4
Office of Regional Counsel
61 Forsyth Street
Atlanta, Georgia 30303

Mr. Richard E. Glaze, Jr., Esq. (Via Certified Mail—Return Receipt Requested)
Balch & Bingham LLC
30 Ivan Allen, Jr. Boulevard, Northwest
Atlanta, Georgia 30308

Date: 3-17-16



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511