

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2017 MAY 17 AM 8:37
REGION 7

BEFORE THE ADMINISTRATOR

In the Matter of:

National Cold Storage, Inc.
Bonner Springs, Kansas

Respondent

)
)
) Docket No. CAA-07-2017-0003
)
) COMPLAINT AND CONSENT
) AGREEMENT/FINAL ORDER
)

A. COMPLAINT

The United States Environmental Protection Agency, Region 7 ("EPA") and National Cold Storage, Inc. ("Respondent") have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Compliance or Corrective Action Orders, and Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

GENERAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d). EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, 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.

2. This Complaint and Consent Agreement and Final Order ("CA/FO") serves as notice that EPA has reason to believe that Respondent has violated the "General Duty" provision of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and that Respondent was therefore in violation of Section 112(r) of the CAA.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator of EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. Respondent is the owner and operator of a commercial refrigeration facility that utilizes compressed anhydrous ammonia as the refrigerant. The facility is located at 12755 Loring Drive, Bonner Springs, Kansas 66012 (facility).

Statutory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances.

6. Section 112(r)(1) of the CAA states that owners and operators of stationary sources have a general duty in the same manner and to the same extent as 29 U.S.C. § 654, to: (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

7. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$37,500 for violations that occurred from January 12, 2009, through November 2, 2015, and to \$45,268 for violations that occur after November 2, 2015.

General Factual Allegations

8. Respondent is a corporation organized in the State of Kansas and does business in the State of Kansas.

9. On or about January 28-29, 2015, EPA conducted an inspection at, and obtained information regarding the National Cold Storage (NCS) facility located in Bonner Springs, Kansas and the facility's compliance with Sections 112(r)(1) and (7) of the CAA and the implementing regulations at 40 C.F.R. Part 68. Preliminary violations were set forth in an

inspection report that was transmitted to NCS on April 17, 2015. At the time of EPA's inspection, information provided by NCS showed that Respondent had greater than 10,000 pounds of anhydrous ammonia in a process at the facility.

10. On or about April 29, 2015 and November 20, 2015, Respondent submitted information describing actions taken to attempt to address the violations identified by EPA's inspection. On or about November 5, 2015, Respondent met with EPA to discuss the facility's attempt to come into compliance with Section 112(r)(1) and (7) of the CAA.

11. Upon review of information submitted, EPA determined that a compliance order was appropriate to achieve compliance with Section 112(r) of the CAA. On or about June 1, 2016, Respondent and EPA entered into an Administrative Order for Compliance (Order, Docket No. CA-07-2016-0028) that required Respondent to either come into compliance with the requirements of Section 112(r)(7) at the facility, or a plan to reduce the facility's ammonia inventory below 10,000 lbs. and comply with Section 112(r)(1) of the CAA.

12. On or about August 15, 2016, Respondent submitted an affidavit documenting Respondent's review of historical ammonia inventory data, and the results of calibration of the sight gage for the facility documented that between January 2011 to 2016 the inventory at the facility never exceeded 8,502.34 lbs.

13. Respondent is, and at all times referred to herein was, a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

14. Respondent's facility located at 12755 Loring Drive, Bonner Springs, Kansas is a "stationary source" pursuant to 112(r)(c)(2).

15. Anhydrous Ammonia is a "regulated substance" as defined by Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B).

Alleged Violations
Of General Duty Clause
of Section 112(r)(1) of the CAA

16. The allegations set forth above are herein incorporated by reference.

17. Based on the information available to EPA, including information gathered during the inspection performed by EPA at the facility and submitted by Respondent pursuant to the referenced Order, EPA has determined that Respondent failed to satisfy the general duty clause requirements and therefore the provisions of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

18. During the period between February, 2012 and the present (Period of Violations). EPA alleges that Respondent:

- a. failed to develop an adequate hazard analysis for the facility which identified all hazards associated with the process, in violation of Section 112(r)(1); and
- b. failed to develop accurate potential release scenarios and identify the consequences of a release, in violation of Sections 112(r)(1); and
- c. the facility's High Pressure Receiver and piping were badly corroded at the time of the inspection as the facility lacked a maintenance program and had not conducted inspections in accordance with recognized and generally accepted good engineering practices (RAGAGEP) to properly maintain equipment, in violation of Section 112(r)(1); and
- d. failed to properly train employees, in violation of Section 112(r)(1); and
- e. failed to have an accurate inventory of quantity of hazardous substances onsite, in violation of Section 112(r)(1).

19. The allegations set forth in the paragraphs above constitute violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and therefore Respondent is subject to penalties pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

B. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.
2. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth above.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this CA/FO.
5. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.
6. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

7. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

8. This CA/FO addresses all civil and administrative claims for CAA violations during the Period of Violation that are specifically alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

9. Respondent and EPA entered into an Administrative Order for Compliance on Consent (Order, Docket No. CA-07-2016-0028). Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent's Facility is in compliance with the referenced Order.

10. The effect of the settlement described in Paragraph B.8 above is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph B.9 of this CA/FO.

11. EPA and its authorized representatives shall have access to Respondent's facility at all reasonable times to monitor compliance with the CAA and the referenced Order for Compliance. Nothing herein shall be construed to limit EPA's access authority under the CAA or any other law.

12. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a mitigated penalty of \$54,588.00, plus interest, as set forth in Paragraphs B.14 and B.15, below.

13. Respondent understands that failure to pay any portion of the mitigated civil penalty on the proper due dates may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

Payment Procedures

14. Respondent shall pay a mitigated civil penalty of Fifty Four Thousand, Five Hundred and Eighty Eight Dollars (\$54,588) plus interest, in installments as set forth in Attachment A to this CA/FO.

15. Each installment payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

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

Each payment shall reference docket number CAA-07-2017-0003.

Copies of each payment shall be mailed to:

Howard Bunch
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

16. Respondent's failure to pay any portion of the civil penalty (or stipulated penalties) in accordance with the provisions of this CA/FO may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest and applicable late fees thereon at the applicable statutory rate. No portion of the penalties or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

17. The Final Order portion of this CA/FO shall apply to and be binding upon Respondent and Respondent's agents, successors, or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.

General Provisions

18. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO by initiating a judicial or administrative action, and to seek penalties against Respondent or to seek any other remedy allowed by law.

19. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CA A and its implementing regulations and to enforce the terms and conditions of this CA/FO.

20. The Final Order shall be entered and become effective on the date filed with the Region 7 Regional Hearing Clerk. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.


21. Respondent and Complainant shall bear their respective costs and attorney's fees.

22. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.


23. Respondent and Complainant agree that this CA/FO can be signed in part and counterpart.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 5/12/17


Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

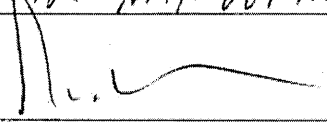
Date 5/6/17


Howard C. Bunch
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

RESPONDENT:
NATIONAL COLD STORAGE, INC.

Date 5-2-2017

AMIR MINOOFAR
Name


Signature

PRESIDENT
Title

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

May 17, 2017
Date

ATTACHMENT A

Payment Schedule

| Payment Due Dates; days after Effective Date | Amount Due | | | Outstanding Balance |
|---|--------------------|----------------|--------------------|------------------------|
| | Due | Interest | Principal | |
| 30 days after | \$27,294.00 | \$0.00 | \$27,294.00 | \$27,294.00 |
| 60 days after | \$13,658.37 | \$11.37 | \$13,647.00 | \$13,647.00 |
| 90 days after | \$13,669.75 | \$22.75 | \$13,647.00 | \$0.00 |
| Totals | \$54,622.12 | \$34.12 | \$54,588.00 | |

Terms

Interest will be set at the effective rate for debts to the United States as of the effective date of the Consent Agreement and Final Order (CAFO). For the calendar year 2017, the rate is 1% per annum. Upon the due date of the first installment, interest shall begin to accrue on the remaining penalty balance. Interest will not be compounded and interest will be calculated based on a 360-day year. At any time, Respondent may make advance payment of the remaining penalty balance and interest due, after obtaining a payoff figure and date from EPA. Unless excused, failure to timely pay any portion of the mitigated civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest, as stated in Paragraph B.22 of the Consent Agreement. In computing time, if a due date falls on a Saturday, Sunday, or Federal Holiday, the due date shall be the next day that is not a Saturday, Sunday, or Federal Holiday.

IN THE MATTER Of National Cold Storage, Inc., Respondent
Docket No. CAA-07-2017-0003

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:


Copy via Email to Complainant:

bunch.howard@epa.gov

Copy via First Class Mail to Respondent:

Amir Minoofar, President
National Cold Storage, Inc.
12755 Loring Road
Bonner Springs, Kansas 66012

Dated: 5/17/17


Kathy Robinson
Hearing Clerk, Region 7