

112(r)/Air Enforcement: U.S. Environmental Protection Agency and Burress, Nebraska Agriculture Retail Facility Enter into Consent Agreement



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

11/27/2019

The United States Environmental Protection Agency (“EPA”) and Manning Grain Company (“MGC”) entered into an October 29th Consent Agreement and Final Order (“CAFO”) addressing an alleged violation of the regulations implementing Section 112(r) of the Clean Air Act.

The CAFO provides that MGC operates an agriculture retail facility (“Facility”) that receives, stores, and sells anhydrous ammonia in Burress, Nebraska.

The Facility is a “stationary source.”

EPA is stated to have conducted an inspection of the Facility to determine compliance with Section 112(r) of the Clean Air Act and 40 C.F.R. Part 68 on June 19, 2018. Information gathered during the inspection indicated the Facility had ammonia storage capacity of a 30,000 gallon ammonia storage vessel, one 12,000 gallon ammonia storage vessel, and 72 ammonia nurse tanks. This is stated to have provided MGC the capacity to store 650,000 of anhydrous ammonia at the Facility. EPA’s review is stated to have further indicated that the Facility regularly stored greater than 400,000 pounds of anhydrous ammonia in a process at the Facility.

Anhydrous ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold for this substance is 10,000 pounds.

The CAFO states that from the time the MGC Facility first had onsite greater than 10,000 pounds of anhydrous ammonia in a process that it was subject to Program 2 prevention program requirements. Further, it was stated to have been required under Section 112(r)(7) of the Clean Air Act to submit a Risk Management Plan (“RMP”) and comply with the Program 2 requirements. The Facility is stated to have not submitted an RMP at the time of the federal agency inspection.

The CAFO alleges the following violations:

- Failure to Submit Risk Management Plan
- Failure to perform and maintain records of offsite consequences
- Failure to comply with Program 2 prevention requirements
- Failure to determine and document who would respond to accidental releases

MGC neither admits nor denies the specific factual allegations.

A civil penalty of \$45,796 is assessed.

Further, the CAFO provides for the opportunity to complete a Supplemental Environmental Project ("SEP") which would include the purchase of equipment for the local emergency responder. This SEP is described in Appendix A of the CAFO. It is required to cost at least \$8,415.

A copy of the CAFO can be downloaded [here](#).