

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
FERRELLGAS, INC.,	)	
	)	
Defendant.	)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for civil penalties pursuant to Section 113(b) of the Clean Air Act (“Act”), 42 U.S.C. § 7413(b), against Defendant Ferrellgas, Inc., doing business as Blue Rhino (“Blue Rhino” or “Defendant”), for violations of the General Duty of Care imposed by Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), with respect to a facility at 300 County Road 448, Tavares, Florida (the “Facility”).

## JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

3. Venue is proper in this District under Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the Defendant does business in and the claims arose in this judicial district.

## THE DEFENDANT

4. The Defendant is a Delaware corporation with its principal place of business in Overland Park, Kansas.

5. The Defendant is a retail marketer of propane in the United States and a provider of propane via cylinder exchange programs under the “Blue Rhino” brand. The Defendant conducts its business at the Facility under the Blue Rhino name.

6. The Defendant is a “person” within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

## STATUTORY AND REGULATORY FRAMEWORK

7. In 1990, Congress added Section 112(r) to the Clean Air Act, *see* Pub. L. 101-549 (Nov. 15, 1990), in response to a 1984 catastrophic release of methyl isocyanate in Bhopal, India that resulted in 3,400 fatalities, 200,000 injuries, and

damage to property. S. Rep. No. 101-228 (Dec. 20, 1989), *reprinted in* 1990 U.S.C.C.A.N. 3385, 3519. The objective of Section 112(r) of the Clean Air Act, and its implementing regulations, is “to prevent the accidental release and to minimize the consequences of any such release” of any extremely hazardous substance. 42 U.S.C. § 7412(r)(1).

8. “Extremely hazardous substances” include, but are not limited to, substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, and chemicals on the list of extremely hazardous substances published under Section 302 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11002, at 40 C.F.R. Part 355, Appendices A and B. An extremely hazardous substance is any chemical which may, as a result of short-term exposures because of releases to the air, cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility or corrosivity. S. Rep. No. 228, 101st Cong., 1st Sess. 211 (1989), *reprinted in* 1990 U.S.C.C.A.N. 3385, 3519.

9. The term “accidental release” is defined by 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.”

10. Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), mandates three distinct general duty of care requirements for owners and operators of stationary sources producing, processing, handling or storing specific hazardous substances, including extremely hazardous substances. In pertinent part, Section 112(r)(1) provides:

It 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 of Title 29 [29 U.S.C. § 654)] 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.

42 U.S.C. § 7412(r)(1) (hereinafter the “General Duty Clause” or “General Duty of Care”).

11. The term “stationary source” means “any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.” 42 U.S.C. § 7412(r)(2)(C).

12. Pursuant to the General Duty Clause, an owner/operator of a stationary source has a general duty to (1) identify hazards which may result from accidental releases of extremely hazardous substances, using appropriate hazard assessment techniques; (2) design and maintain a safe facility, taking such steps as are necessary to prevent accidental releases of extremely hazardous substances; and (3) minimize the consequences of accidental releases of extremely hazardous substances. These duties are known as the first, second, and third prongs of the General Duty Clause, respectively.

13. Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), provides that the Administrator of EPA shall, in the case of a person that is the owner or operator of a major stationary source, and may, in the case of any other person, whenever such person violates any requirement or prohibition of Subchapter I of the Act (42 U.S.C. §§ 7401-7515), commence a civil action for injunctive relief and to assess and recover a civil penalty of up to \$25,000 per day for each such violation.

14. Under the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvements Act of 1996, 31 U.S.C. § 3701 (“DCIA”), and pursuant to EPA’s Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, promulgated pursuant to the DCIA, the maximum amount of the civil penalties provided under Section 113(b) of the Clean

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