

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

_____)		
UNITED STATES OF AMERICA,)		
)	
Plaintiff,)		
)	Civil Action No. 6:21-cv-0043
v.)		
)	
FORMOSA PLASTICS CORPORATION,)		
TEXAS,)		
)	Judge
Defendant.)		
_____)		

COMPLAINT

The United States of America, acting on behalf of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil environmental enforcement action for assessment of civil penalties and injunctive relief brought pursuant to Section 113(b) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b), against Formosa Plastics Corporation, Texas (“Defendant”) for violations of Sections 112(r)(1) and 112(r)(7) of the CAA, 42 U.S.C. §§ 7412(r)(1) and 7412(r)(7), and the Chemical Accident Prevention Provisions promulgated at 40 C.F.R. Part 68 (the “Risk Management Program” regulations), at Defendant’s petrochemical manufacturing plant located at 201 Formosa Drive in Point Comfort, Texas (the “Facility”).

JURISDICTION, VENUE, AUTHORITY AND NOTICE

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

3. Venue is proper in this judicial district pursuant to 42 U.S.C. § 7413(b) and 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1395 because Defendant does business within this judicial district at its petrochemical manufacturing plant located in Point Comfort, Texas, and because the actions giving rise to the violations alleged in this Complaint occurred in this judicial district.

4. Authority to bring this action is vested in the United States Department of Justice pursuant to Section 305 of the CAA, 42 U.S.C. § 7605.

5. Notice of commencement of this action has been given to the State of Texas pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

PARTIES

6. Plaintiff is the United States of America, acting at the request of the EPA.

7. Defendant is Formosa Plastics Corporation, Texas, a corporation organized under the laws of the State of Delaware.

8. Defendant is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

9. At all times relevant to this Complaint, Defendant owned and operated a petrochemical manufacturing plant at 201 Formosa Drive, Point Comfort, Texas.

STATUTORY AND REGULATORY FRAMEWORK

A. CAA Section 112(r)(1) – the “General Duty Clause”

10. CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1), provides in pertinent part:

The owners and operators of stationary sources producing, processing, handling or storing [any substance listed pursuant to Section 112(r)(3) of the CAA or any other extremely hazardous substance] have a general duty . . . 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.

11. A “regulated substance” is any substance set forth in 40 C.F.R. § 68.130, tables 1, 2, 3, and 4. 42 U.S.C. § 7412(r)(2)(B).

12. Extremely hazardous substances include regulated substances and chemicals on the list of extremely hazardous substances published pursuant to 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, but the CAA does not limit the term to such listed substances. Thus, the term “extremely hazardous substances” also includes other agents not listed or otherwise identified by any Government agency that may, as the result of short-term exposure associated with release to the air, cause death, injury or property damage. S. Rep. No. 228, *reprinted in* 1990 U.S.C.C.A.N. at 3596.

13. The term “accidental release” is defined by CAA Section 112(r)(2)(A), 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.”

B. CAA Section 112(r)(7) – Risk Management Program Regulations

14. CAA Section 112(r)(7), 42 U.S.C. § 4712(r)(7), provides in pertinent part:

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

* * * *

(B) (ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection.

* * * *

(B) (iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require.

15. In 1994, EPA promulgated the Risk Management Program regulations in accordance with CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7). *See* 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations require owners and operators of stationary sources that have more than a threshold quantity of a regulated substance in a process to develop and implement a risk management program that must be described in a risk management plan (“RMP”) submitted to EPA. The RMP must include, among other things, a management system, a hazard assessment, and a prevention program.

16. Pursuant to 40 C.F.R. § 68.10, the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the Risk Management Program regulations.

17. CAA Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3, define a “stationary source” as “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, ...and (iv) from which an accidental release may occur.”

18. A “process” is defined broadly to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or [any] combination of these activities” and “any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.” 40 C.F.R. § 68.3.

19. A “covered process” means “a process that has a regulated substance present in more than a threshold quantity as determined under [40 C.F.R.] § 68.115.” 40 C.F.R. § 68.3.

20. The regulations at 40 C.F.R. Part 68 divide the covered processes into three categories, designated as Program 1, Program 2, and Program 3, and set forth specific requirements for owners and operators of stationary sources with processes that fall within the respective programs.

21. A “Program 3” process is subject to the most stringent risk management requirements under the Risk Management Program regulations. Pursuant to 40 C.F.R. § 68.12, the owner or operator of a stationary source with a process subject to the Program 3 requirements must, among other things, comply with the prevention requirements of 40 C.F.R. §§ 68.65 – 68.87 and the emergency response program of 40 C.F.R. §§ 68.90-68.95.

22. Pursuant to 40 C.F.R. § 68.67(a), the owner or operator must perform an initial process hazard analysis (“PHA”) on processes covered by 40 C.F.R. Part 68. The PHA must be “appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator must determine and document the priority order for conducting process hazard analyses based on a rationale which includes such considerations

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