

Fertilizer Facility Reaches Settlement with EPA Over Improper Ammonia Storage

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The prevention and reduction of accidental releases at industrial and chemical facilities remains a high priority for the United States Environmental Protection Agency (“EPA”). In 2019, EPA announced this as one of six National Compliance Initiatives.[1] As EPA described the problem: “Thousands of facilities nationwide, many of which are in environmental justice communities, make, use, and store extremely hazardous substances. Catastrophic accidents at these facilities—historically about 150 each year—can result in fatalities and serious injuries, evacuations, and other harm to human health and the environment.” To address this problem, the EPA placed a compliance focus on facilities’ obligation to submit and implement a risk management plan (“RMP”).

As part of this National Compliance Initiative, on April 15, 2021, EPA’s Region 7 office announced that it had reached a settlement with Winfield Solutions, LLC d/b/a Omnium concerning alleged Clean Air Act violations at its Dodge City, Kansas facility.[2] Omnium, which is a Land O’ Lakes company, operates a liquid micronutrient formulation and packaging facility. The alleged violations related to Omnium’s alleged failure to submit and implement an RMP, which stored more than 20,000 pounds of aqueous ammonia onsite. Omnium agreed to pay a \$83,975 civil penalty and also took the necessary actions to correct the alleged violations related to its RMP.

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Andrew S. Tugan

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Under the Clean Air Act, EPA is required to publish regulations for the creation, submission, and implementation of RMPs. The EPA maintains detailed background information on the RMP program, as well as fact sheets at its RMP website. RMPs are required for facilities that manufacture, use, store, or otherwise handle more than a specified quantity of a substance regulated under the EPA Risk Management Plan Rule. There are more than 250 substances identified in the rule, with threshold quantities being as little as 500 lbs.[3] For aqueous ammonia (concentration 20% or greater), which is the substance that triggered Omnium's RMP obligations, the threshold quantity is 20,000 lbs. Even though the RMP rule covers more than 250 substances, according to the EPA, approximately 40% of the facilities regulated under this rule are required to submit RMPs because they meet ammonia thresholds. Ammonia is commonly used in large scale refrigeration systems. As a result, the EPA has placed additional focus on ammonia under this National Compliance Initiative, publishing extra guidance, offering more tools, and even providing specific safety training concerning ammonia refrigeration systems.

The EPA separately categorizes anhydrous ammonia, which is commonly used as a nitrogen fertilizer in agricultural applications. It is subject to a lower RMP threshold quantity of 10,000 lbs. – half the threshold quantity of aqueous ammonia.

For any facility required to submit and implement an RMP, the facility must ensure that the RMP contains at least the following information:

- Hazard assessment that details the potential effects of an accidental release, an accident history of the last five years, and an evaluation of worst-case and alternative accidental releases scenarios;
- Prevention program that includes safety precautions and maintenance, monitoring, and employee training measures; and
- Emergency response program that spells out emergency health care, employee training measures and procedures for informing the public and response agencies (e.g., the fire department) should an accident occur.[4]

Facilities are required to submit an RMP as soon as the facility reaches the threshold quantity of a covered substance. At a minimum, the facility must renew its RMP every five years. However, in certain circumstances a facility must revise and resubmit its RMP more frequently.

Takeaway

While all facilities that have threshold quantities of substances covered by the RMP Rule need to submit and implement an RMP, facilities that store threshold quantities of ammonia, whether for refrigeration purposes, agricultural purposes, or any other purposes, must be aware of their

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obligations under this rule. Facilities with commercial ammonia refrigeration systems should be particularly aware of their obligations due to the EPA's particular focus on the risks of ammonia release from those facilities. They should also review the EPA's additional guidance addressing ammonia refrigeration systems and consider taking advantage of the specialized training that the EPA, OSHA, and other agencies have offered. Giving the appropriate attention to a facility's Risk Management Plan will help the facility to avoid fines and potential enforcement actions by the EPA. More importantly, it will reduce the likelihood of an accidental release at the facility, which could cause property damage, personnel injuries, environmental harm, and significant business disruption.

[1] <https://www.epa.gov/sites/production/files/2019-06/documents/2020-2023ncimemo.pdf>

[2] <https://www.epa.gov/newsreleases/epa-reaches-settlement-winfield-solutions-llc-alleged-clean-air-act-violation-dodge>

[3] <https://www.epa.gov/rmp/list-regulated-substances-under-risk-management-plan-rmp-program>

[4] https://www.epa.gov/sites/production/files/2020-03/documents/caa112_rmp_factsheet_march_2020_final.pdf