Region 6 - Enforcement & Compliance Assurance Division

INSPECTION REPORT

Inspection Date(s):	June 4 – 5, 2024	
Media Program:	Air	
Regulatory Program(s)	Clean Air Act (CAA) § 112(r) and 40 Code of Federal Regulations (C.F.R.) Part 68 Chemical Accident Risk Management Plan (RMP)	
Company Name:	Newmark	
Facility Name:	Park 10 Ninety Nine	
Facility Physical Location:	23623 Colonial Pkwy	
(city, state, zip code)	Katy, TX 77493	
Mailing address:	11001 Lakeline Blvd. Bldg. 2 - Suite 140	
(city, state, zip code)	Austin, TX 78717	
County/Parish:	Harris County	
Facility Phone Number:	(404) 886-4786	
Facility Contact:	Jody Hembree	Chief Engineer
	jody.hembree@nmrk.com	
FRS Number:	110023011934	
Identification/Permit Number:	ICIS 2200016802	
Media Identifier Number:	RMP 1000113895	
NAICS:	49311 General Warehousing and Storage	
SIC:		
Personnel participating in inspection:		
Aimee Boss	EPA Region 6 ECDAC	Physical Scientist
Kayla Buchanan	EPA Region 6 ECDAC	RMP Inspector
Julia Torres	EPA Region 6 ECDAC	Physical Scientist
Bob Nelson	Newmark	Contractor
Jody Hembree	Newmark	Chief Engineer
John Lewis	Letsos	Tech
John Dupree	Newmark	Vice President, Critical Environments
Amber Carnes	Newmark	Property Manager
EPA Lead Inspector Signature/Date	AIMEE BOSS Digitally signed by AIMEE BOSS Date: 2024.08.05 09:27:40 -05'00'	
	Aimee Boss	Date
Supervisor Signature/Date	SAMUEL TATES Digitally signed by SAMUEL TATES Date: 2024.08.05 09:50:50 -05'00'	
	Samuel Tates	Date

Section I – INTRODUCTION

PURPOSE OF THE INSPECTION

United States Environmental Protection Agency (EPA) Region 6 Inspectors Kayla Buchanan and Aimee Boss, and inspector-in-training Julia Torres ("we"), arrived at the Park 10 Ninety Nine ("Park 10" or the "Facility"), operated by Newmark, in Katy, Texas at 8:30 AM on June 4, 2024, for an announced inspection. We met with Bob Nelson (Newmark Contractor) and Jody Hembree (Newmark Chief Engineer) at the Opening Conference. I, Aimee Boss, presented my credentials to Bob Nelson and Jody Hembree and informed them that this was an EPA inspection to evaluate compliance with the requirements of the Chemical Accident Prevention Provisions of Title 40 of the Code of Federal Regulations (C.F.R.) Part 68 under CAA § 112(r). Employee representatives were invited to participate in the inspection. The Facility does not have union representation.

The inspection was prompted by the Park 10 Facility's anhydrous ammonia release on February 11, 2023. The Facility was under ownership of 99 Cents Only Stores, Inc. ("99 Cents") at the time of this release. The Texas Commission on Environmental Quality (TCEQ) Air Emission Event Report, dated March 28, 2023, estimated 24,000 lbs. of anhydrous ammonia released from a high-pressure receiver into the section pipe that was opened for retrofitting. As a result of the release, the Facility was evacuated and the entirety of the systems quantity of anhydrous ammonia was released. Additionally, Harris County Public Health issued a shelter-in-place in West Harris County.

FACILITY DESCRIPTION

Park 10 distribution center is located at 23623 Colonial Parkway, Katy, Texas 77493. The Facility is in operation 24 hours a day, seven days a week, with approximately 3 employees, and a variety of tenants. The facility utilizes an anhydrous ammonia refrigeration system to keep cold storage for tenants for food storage and distribution. The maximum intended inventory of anhydrous ammonia that is expected to be present in this system is 48,000 pounds, which is more than the 10,000 lbs. threshold quantity for RMP regulated substances. The anhydrous ammonia is the only regulated substance present at Park 10. An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under § 68.115, shall comply with the requirements of the Part 68 – Chemical Accident Prevention Provision.

99 Cents previously managed the anhydrous ammonia process at the Facility. On April 6, 2024, 99 Cents filed for bankruptcy and the building was to be emptied by April 30, 2024. On May 1, 2024, 99 Cents rejected the lease and Newmark accepted the role to manage the process on behalf of the Park 10 property owners, Yacoel 2021 Partners, LP and Katy Mission, LLC. Letsos

Company, a mechanical contractor company, entered into a service contract on May 1, 2024, to conduct work onsite.

Section II - OBSERVATIONS

The documentation review began onsite with Newmark personnel as listed on the sign in sheets, see **Appendix 1**.

40 C.F.R. Part 68 – CHEMICAL ACCIDENT PREVENTION PROVISION

Subpart A – General

40 C.F.R. § 68.10 Applicability – Park 10 is a stationary source that has more than a threshold quantity of regulated substances in their process. The previous RMP re-submittal was on July 21, 2023, under 99 Cents and the recent submittal with the change in ownership was made May 29, 2024. Park 10 is a RMP Program 3 facility. The Facility is subject to the Occupational Safety and Health Administration's (OSHA) Process Safety Management (PSM) Standard (29 C.F.R. § 1910.119).

40 C.F.R. § 68.12 General requirements – Park 10 submitted their most recent RMP submission on May 29, 2024, due to a change in ownership. The regulated substance (anhydrous ammonia) is a listed toxic substance over the threshold quantity for the RMP Program Level 3 process.

40 C.F.R. § 68.15 Management – Park 10 is in the process of developing a management system to oversee the implementation of the RMP Program elements. Park 10 did not provide an organizational chart that outlined the positions for implementation of the individual elements of the RMP, as required by this subpart, at the time of this inspection. **[AOC 1]**

Subpart B – Hazard Assessment

40 C.F.R. § 68.20 Applicability – Park 10 operates an RMP Program Level 3 process, which is subject to this subpart and is required to prepare a worst-case release scenario analysis. Park 10 provided the worst-case release scenario analysis and a five-year accident history in the RMP. We identified no areas of concern with this subpart.

40 C.F.R. § 68.22 Offsite consequence analysis parameters – Park 10 provided the parameters in the RMP as required by this subpart. We identified no areas of concern with this subpart.

40 C.F.R. § 68.25 Worse-case release scenario analysis – Park 10 analyzed and reported a worst-case release scenario in the RMP as required by this subpart. We identified no areas of concern with this subpart.

40 C.F.R. § 68.28 Alternative release scenario analysis – Park 10 identified an alternative release scenario in its Program 3 process as required by this subpart. We identified no areas of concern with this subpart.

40 C.F.R. § 68.30 Defining offsite impacts-population – Park 10 used the most current Census Bureau population data. We identified no areas of concern with this subpart.

40 C.F.R. § 68.33 Defining offsite impacts-environment – It is unclear if Park 10 used United States Geological Survey maps data to determine the environmental receptors or how information for the greatest distance in any direction to an endpoint was gathered as required by § 68.22, which does not meet the requirements of this regulation. **[AOC 2]**

40 C.F.R. § 68.36 Review and update – Park 10 provided Marplot maps of the worst-case and alternative-case scenarios. The worst-case scenarios should be updated and reviewed at least every five years. It is unclear when Park 10 is anticipating a review.

40 C.F.R. § 68.39 Documentation – Park 10 operates a RMP Program Level 3 process, which is subject to this subpart and is required to prepare a worst-case release scenario analysis and complete the five-year accident history. We reviewed the worst-case and alternative-case scenarios provided; however, no methodology or explanation of the parameters for the Offsite Consequence Analysis (OCA) was documented as required by this subpart. **[AOC 3]**

40 C.F.R. § 68.42 Five-year accident history – Park 10 did not report any accidental release(s) in their RMP that resulted in deaths, injuries, or property damage. The February 11, 2023, release does not meet RMP reportable criteria. We reviewed the documentation provided to make this analysis and identified no areas of concern with this subpart.

Subpart D – Program 3 Prevention Program

40 C.F.R. § 68.65 Process safety information (PSI) - We reviewed various sections of the PSI for the RMP covered process at Park 10. We were provided the original process and instrumentation diagram (P&ID) associated with the process, a recent draft, and a red-lined P&ID; however, the red-lined P&ID does not have the associated authors or draft dates listed. Newmark was unable to provide a block flow diagram or a simplified process flow diagram of the Park 10 facility. At the time of this inspection, we were unable to review a compilation of written process safety information before conducting any process hazard analysis required by this subpart. **[AOC 4]**

40 C.F.R. § 68.67 Process hazard analysis (PHA) – Newmark was unable to provide us with Park 10's PHA for the regulated process at the time of this inspection. This subpart requires that the PHA shall be retained for the life of the process. **[AOC 5]**

40 C.F.R. § 68.69 Operating procedures – We reviewed several operating procedures such as: Lock out/Tag out for Letsos Company, Hot Work program for 99 Cents Line and Equipment

Opening Procedures for 99 Cents, Pressure & Leak Test PSSR Procedure. Newmark was unable to provide us with Park 10's operating procedures that provide clear instructions for safely conducting activities such as: initial startup, normal operations, temporary operations, emergency shutdown, emergency operations, normal shutdown, and startup following a turnaround, or after an emergency shutdown the time of this inspection, as required by this subpart. **[AOC 6]**

40 C.F.R. § 68.71 Training – Newmark was unable to provide us with Park 10's training documentation for the regulated process at the time of this inspection. This subpart requires each employee to be trained in an overview of the process and in the operating procedures before being involved in operating a newly assigned process and that refresher training shall be provided at least every three years. **[AOC 7]**

40 C.F.R. § 68.73 Mechanical integrity (MI) – EPA reviewed records for the RMP covered process equipment. At the time of this inspection, Newmark was unable to provide us with written procedures for inspection and testing of equipment, required by this subpart. **[AOC 8]**

The preventative maintenance program is conducted by Letsos Company and includes weekly and monthly inspections. Weekly inspections include observations for evaporators, heat exchangers, safety showers, compressors, and condensers. Monthly inspections involve compressors, condensers, oil pots, coolant, ventilation system, ammonia detectors, a general monthly walk through, evaporators, and heat exchangers. The checklist used for both weekly and monthly inspections are labeled under 99 Cents and should be updated to reflect change in ownership. The checklist should also reflect the current operations and equipment. The inspections should also reflect recommended corrective action(s) for each deficiency identified, expected completion date(s), and actual completion date(s) as required by IIAR 6-2019 Ch. 5 Standard for Inspection, Testing, and Maintenance of Closed-Circuit Ammonia Refrigeration Systems. Additionally, Newmark was unable to provide us with Park 10's inspection or testing on the storage tank "Controlled Pressure Receiver" at the time of inspection, as required by IIAR 6-2019 Ch. 10 Pressure Vessels. **[AOC 9]**

40 C.F.R. § 68.75 Management of change (MOC) – Newmark was unable to provide Park 10's MOC procedures at the time of this inspection. **[AOC 10].** We were provided with and reviewed an MOC for the pressure relief valve replacement as a result of the May 21, 2024 incident investigation. This MOC form indicates that updates for the Hot Work Permit Program, MOC Program, and Emergency Action/Response Procedures are required to reflect the transition in owner/operator responsibilities. The status of these updates are not reflected in the MOC information provided at the time of this inspection. **[AOC 11].**

40 C.F.R. § 68.77 Pre-startup safety review (PSSR) – Newmark provided Park 10's PSSR form for pressure and leak test records per ASME B31.5 and IIAR-5 2019 Ch. 7 Startup Process. We were not provided additional startup documentation such as startup checklists and standard operating procedures, as required by the IIAR and this subpart. **[AOC 12].**

40 C.F.R. § 68.79 Compliance audits – Newmark was unable to provide us with Park 10's compliance audits for the regulated process at the time of this inspection. This subpart requires the two most recent compliance audits shall be retained. **[AOC 13].**

40 C.F.R. § 68.81 Incident investigation - We reviewed a Summary of Incident Investigation Report for a release on May 21, 2024. The incident was cause by a power outage that resulted in compressors shutting down. This led to a line pressure build up and caused a heat exchange pressure relief valve to relieve the pressure build up. When the power was restored, the contractor performed maintenance to ensure components were working properly. It is estimated that 70.32 lbs of anhydrous ammonia was released during the approximate 3.75-hour duration. The recommendations from the investigation were to replace the heat exchange pressure relief valve and to conduct a power study to identify the cause for the power disruption. The incident investigation occurred within 48 hours of the incident, as required by this subpart. Additionally, we reviewed the MOC for the pressure relief valve replacement to ensure the status. We did not receive information regarding the status of the power study at the time of this inspection. **[AOC 14].**

40 C.F.R. § 68.83 Employee participation – Newmark was unable to provide us with Park 10's written plan of action regarding the implementation of the employee participation at the time of this inspection, as required by this subpart. **[AOC 15].**

40 C.F.R. § 68.85 Hot work permit – We reviewed the hot work procedure provided, which is labeled as 99 Cents Only Store Hot Work Program. The Facility name should be updated to reflect the current owner/operator. Additionally, Newmark was unable to provide us with any hot work permits that are required to be retained for three years according to this subpart. **[AOC 16].**

40 C.F.R. § 68.87 Contractors – We reviewed the service contract for Letsos Company that explains the expectations of the contract work. We also observed the Contractor/On-Site Visitor Ammonia Awareness Notification and Training for Process Safety Management that is required to be reviewed and signed by each onsite visitor and contractor. This document includes the contractor ammonia emergency action plan, safety data sheet, hot work program, and lockout/tagout program. We identified no areas of concern with this subpart.

Subpart E – Emergency Response

40 C.F.R. § 68.90 Applicability – Park 10 is not a responding stationary source in case of an accidental release of a regulated substance and is applicable to this subpart.

40 C.F.R. § 68.93 Emergency response coordination activities – The May 21, 2024, incident investigation represents the annual coordination and exercise was completed, as required by this subpart and reflected in 68.96(c)(2). We identified no areas of concern with this subpart.

40 C.F.R. § 68.95 Emergency response program – We reviewed the Emergency Action Plan Newmark provided for Park 10. It included procedures and measures for emergency response after an accidental release of a regulated substance, as required by this subpart. The facility name is listed as 99 Cents Only and should be updated to reflect the current name of the facility [**AOC 17**]. The Contractor Ammonia Emergency Action Plan provided does reflect the current name of the facility.

40 C.F.R § 68.96 Emergency response exercises – The May 21, 2024, incident investigation represents the annual coordination and exercise was completed, as required by this subpart. We identified no areas of concern with this subpart.

Subpart G – Risk Management Plan

40 C.F.R. § 68.190 Updates – Park 10's RMP submittal was on May 29, 2024, and the previous submittal for this facility was on July 21, 2023, for 99 Cents. The initial RMP submitted for this facility was on October 8, 2004, for 99 Cents.

Section III – AREAS OF CONCERN (AOC)

1. **40 C.F.R. § 68.15(c) Management**
   (c) When responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under paragraph (b) of this section, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

   Park 10 did not provide an organizational chart that outlined the positions for implementation of the individual elements of the RMP, at the time of this inspection, as required by this subpart.

2. **40 C.F.R. § 68.33(b) Defining offsite impacts-environment**
   (b) Data sources acceptable. The owner or operator may rely on information provided on local U.S. Geological Survey maps or on any data source containing U.S.G.S. data to identify environmental receptors.

   It is unclear if Park 10 used U.S. Geological Survey maps data to determine the environmental receptors or how information for the greatest distance in any direction to an endpoint was gathered, as required by § 68.22, thus not meeting the requirements of this subpart.

3. **40 C.F.R. § 68.39 Documentation**
   The owner or operator shall maintain the following records on the offsite consequence analyses (a)-(e).

The worst-case and alternative-case scenarios provided have no description of parameters or methodologies used. Documentation of controls or mitigation, estimated quantity released, release rate, duration of release, methodology used to determine distance to endpoints, and data used to estimate population and environmental receptors should be included.

4. **40 C.F.R. § 68.65(a) and (c) Process safety information (PSI)**
   (a) The owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by this part and shall keep process safety information up to date. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.
   (c) Information pertaining to the technology of the process.
   1. Information concerning the technology of the process shall include at least the following:
   i. A block flow diagram or simplified process flow diagram.

   At the time of this inspection, we were unable to review a compilation of written process safety information before conducting any process hazard analysis required by this subpart. Additionally, the red-lined P&ID provided does not have draft dates listed. Newmark was unable to provide a block flow diagram or simplified process flow diagram of the Park 10 facility.

5. **40 C.F.R. § 68.67(g) Process hazard analysis (PHA)**
   (g) The owner or operator shall retain process hazards analyses and updates or revalidations for each process covered by this section, as well as the documented resolution of recommendations described in paragraph (e) of this section for the life of the process.

   Newmark was unable to provide us with Park 10 PHA for the regulated process at the time of this inspection. This subpart requires PHAs to be retained for the life of the process.

6. **40 C.F.R. § 68.69(a) Operating procedures**
   (a) The owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements…

At the time of this inspection, Newmark was unable to provide us with Park 10's operating procedures that provide clear instructions for safely conducting activities such as: initial startup, normal operations, temporary operations, emergency shutdown, emergency operations, normal shutdown, and startup following a turnaround, or after an emergency shutdown, as required by this subpart.

7. **40 C.F.R. § 68.71 Training**

   (a) Initial training (1) Each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in § 68.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

   Newmark was unable to provide us with Park 10's training documentation for the regulated process at the time of this inspection. This subpart requires each employee to be trained in an overview of the process and in the operating procedures before being involved in operating a newly assigned process and that refresher training shall be provided at least every three years.

8. **40 C.F.R. § 68.73(b) Mechanical integrity (MI)**

   (b) Written procedures. The owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

   At the time of this inspection, Newmark was unable to provide us with written procedures for inspection and testing of equipment, required by this subpart.

9. **40 C.F.R. § 68.73(d) Mechanical integrity (MI)**

   (d) Inspection and testing. (1) Inspections and tests shall be performed on process equipment. (2) Inspection and testing procedures shall follow recognized and generally accepted good engineering practices.

   The checklist used for both weekly and monthly inspections are labeled under 99 Cents and should be updated to reflect change in ownership. The checklist should also reflect the current operations and equipment. Some equipment names appear to be hand-written into the checklist, rather than included before the inspection occurs. The inspections should also reflect recommended corrective action(s) for each deficiency identified, expected completion date(s); and actual completion date(s) as required by IIAR 6-2019 Ch. 5 Standard for Inspection, Testing, and Maintenance of Closed-Circuit Ammonia Refrigeration Systems.

   Newmark was unable to provide us with Park 10's inspection or testing on the storage tank "Controlled Pressure Receiver" at the time of inspection as required by IIAR 6-2019 Ch. 10 Pressure Vessels.

10. 40 C.F.R. § 68.75(a) Management of change (MOC)

(a) The owner or operator shall establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process.

Newmark was unable to provide Park 10's MOC procedures at the time of this inspection.

11. 40 C.F.R. § 68.75(b)(4) Management of change (MOC)

(b) The procedures shall assure that the following considerations are addressed prior to any change: (4) Necessary time period for the change.

We reviewed an MOC for the pressure relief valve replacement as a result of the May 21, 2024 incident investigation. Although, the replacement is to be a replacement in kind and an MOC is not required. This MOC form indicates that updates for the Hot Work Permit Program, MOC Program, and Emergency Action/Response Procedures are required to reflect the transition in owner/operator responsibilities. A time period for these changes is not reflected in the MOC information provided at the time of inspection.

12. 40 C.F.R. § 68.77 Pre-startup safety review (PSSR)

(b) The pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process: (2) Safety, operating, maintenance, and emergency procedures are in place and are adequate;

Newmark provided Park 10's PSSR form for pressure and leak test records per ASME B31.5 and IIAR-5 2019 Ch. 7 Startup Process. We were not provided additional startup documentation such as: startup checklists and standard operating procedures, as required by the IIAR and this subpart.

13. 40 C.F.R. § 68.79(a) and (e) Compliance audits

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart, at least every three years to verify that the procedures and practices developed under this subpart are adequate and are being followed. When required as set forth in paragraph (f) of this section, the compliance audit shall be a third-party audit.

(e) The owner or operator shall retain the two (2) most recent compliance audit reports.

Newmark was unable to provide us with Park 10's compliance audits for the regulated process at the time of this inspection. This subpart requires the two most recent compliance audits shall be retained in addition to conducting a compliance audit to verify procedures and practices are adequate.

14. 40 C.F.R. § 68.81(e) Incident investigation

(e) The owner or operator shall establish a system to promptly address and resolve the incident report findings and recommendations. Resolutions and corrective actions shall be documented.

We reviewed a Summary of Incident Investigation Report for a release on May 21, 2024. The incident was caused by a power outage that resulted in compressors being shut down. This led to a line pressure build up and caused a heat exchange pressure relief valve to relieve the pressure build up. The recommendations from the investigation were to replace the heat exchange pressure relief valve and to conduct a power study to identify the cause for power disruption. We did not receive information regarding the status of the power study at the time of this inspection.

15. 40 C.F.R. § 68.83(a) and (e) Employee participation

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation requirements required by this section.

(e) (1) The owner or operator shall develop and implement a process to allow employees and their representatives to report to either or both the owner or operator and EPA unaddressed hazards that could lead to a catastrophic release, accidents covered by § 68.42(a) but not reported under § 68.195(a), and any other noncompliance with this part.

Newmark was unable to provide us with Park 10's written plan of action regarding the implementation of the employee participation at the time of this inspection, as required by this subpart. With other vendors working within the facility, it is important to have a plan to communicate to the employees of the other vendors.

16. 40 C.F.R. § 68.85 Hot work permit

(c) *The permit shall be retained for three years after the completion of the hot work operations.*

We reviewed the hot work procedure provided, which is labeled as 99 Cent's Hot Work Program. The Facility name should be updated to reflect the current owner/operator. Additionally, Newmark was unable to provide us with any hot work permits that are required to be retained for three years according to this subpart.

17. 40 C.F.R. § 68.95(a) Emergency response program

(a) The owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment.

We reviewed the Emergency Action Plan Newmark provided for Park 10. It included procedures and measures for emergency response after an accidental release of a regulated substance, as required by this subpart. The facility name is listed as 99 Cents and should be updated to reflect the current name of the Facility.

EPA Region 6 inspectors Aimee Boss, Kayla Buchanan, and inspector-in-training Julia Torres conducted a closing conference at Park 10 at 10:55 pm on June 5, 2024, for the inspection. During the closing conference, we explained the EPA inspection report process and that we would set up a virtual meeting to discuss any additional documents Newmark could provide for Park 10. At the time of this closing conference, we did not identify any areas of concern. However, we noted not having documents that were requested as part of the inspection to show compliance with the regulation was a concern.

Section IV – FOLLOW UP

On June 12, 2024, EPA Region 6 inspector Aimee Boss, and inspector-in-training Julia Torres, met with Newmark representatives Amber Carnes (Property Manager), John DuPree (Vice President, Critical Environments), and Jody Hembree (Chief Engineer) via Microsoft Teams for a follow-up discussion about the documentation requested at the Park 10 facility inspection. EPA received an additional 10 documents provided from Newmark, from the June 12th virtual meeting to June 28, 2024.

Section V – LIST OF APPENDICES

No appendices included.