



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

AUG 24 2011

Mr. Lance Kennemer
BGC Maintenance Manager
Brookshire Grocery Company SWF Ice
and BGC Perishable/Frozen Warehouse
200 North Fuller Avenue
Tyler, TX 75702

Re: Expedited Settlement Agreement-Final Order
Docket No. CAA-06-2011-3579

Dear Mr. Kennemer:

Enclosed for your records is a copy of the fully executed Expedited Settlement Agreement (ESA) for the CAA 112(r) violation found at the Brookshire Grocery Company SWF Ice Plant and BGC Perishable/Frozen Warehouse located in Tyler, Texas.

If you have any questions regarding this matter, please do not hesitate to call. I may be reached by phone at (214) 665-6632 or by email at GOODFELLOW.BOB@EPA.GOV.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Goodfellow".

Bob Goodfellow
RMP Enforcement Officer
Response and Prevention Branch
EPA Region 6

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

FILED
2011 AUG 24 PM 2:09
REGIONAL HEARING CLERK
EPA REGION VI

EXPEDITED SETTLEMENT AGREEMENT (ESA)

DOCKET NO: 06-2011-3579

This complaint is issued to: Brookshire Grocery Company SWF Ice Plant and BGC Perishable/Frozen Warehouse

At: 1601 WSW Loop 323, Tyler, TX for violating Section 112(r)(7) of the Clean Air Act.

This Expedited Settlement Agreement (ESA) is being entered into by the United States Environmental Protection Agency (EPA), Region 6, by its duly delegated official, the Director, Superfund Division, and by Respondent pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). On August 13, 2003, EPA obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. §7413(d)(1), to pursue this administrative enforcement action.

On May 10, 2011, an authorized representative of the EPA conducted a compliance inspection of the subject facility (Respondent) to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Act. EPA found that the Respondent had violated regulations implementing Section 112(r) of the Act by failing to comply with the regulations as noted on the attached RISK MANAGEMENT PLAN INSPECTION FINDINGS, ALLEGED VIOLATIONS AND PROPOSED PENALTY SHEET ("FORM"), which is hereby incorporated by reference.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history, its good faith effort to comply, and other factors as justice may require, and upon consideration of the entire record the parties enter into the ESA in order to settle the violations, described in the attached FORM for the total penalty amount of \$5,100.00.

This settlement is subject to the following terms and conditions:

The Respondent by signing below waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained herein, and consents to the assessment of the penalty as stated above. Respondent waives its rights to a hearing afforded by Section 113(d)(2)(A) of the Act, 42 U.S.C §7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own costs and fees, if any. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the violations listed in the attached FORM and has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$5,100.00 in payment of the full penalty amount to the following address:

U. S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000

The DOCKET NUMBER OF THIS EXPEDITED SETTLEMENT AGREEMENT must be included on the certified check. (The DOCKET NUMBER is located at the top left corner of this Expedited Settlement Agreement.)

This original Settlement Agreement and a copy of the certified check must be sent by certified mail to:

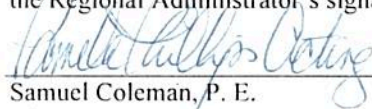
Elizabeth R. Rogers
RMP 112(r) Compliance Officer
Superfund Division (6SF-PC)
U. S. Environmental Protection Agency Region 6
1445 Ross Avenue, 12th Floor
Dallas, Texas 75202-2733

Upon the Respondent's signing and submission of this Settlement Agreement, EPA will take no further action against the Respondent for the alleged violations of the Clean Air Act described in the above Form. EPA does not waive any enforcement action by EPA for any other past, present, or future violations under the Clean Air Act or any other statute.

If the Settlement Agreement with an attached copy of the certified check is not returned to the EPA Region 6 office at the above address in correct form by the Respondent within 45 days of the date of the receipt of this Settlement Agreement, the Complaint and Expedited Settlement Agreement is withdrawn, without prejudice to EPA's ability to file additional enforcement actions for the violations identified in this Settlement Agreement.

Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this complaint pursuant to 40 CFR § 22.14. Upon signing and returning of this Settlement Agreement to EPA, the Respondent waives the opportunity for a hearing pursuant to Section 113(d)(2)(A) of the Clean Air Act, 42 U.S.C. § 7413(d)(2)(A).

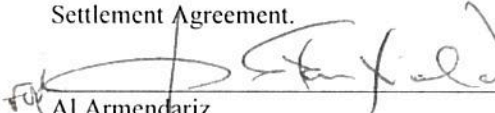
This Settlement Agreement is binding on the EPA and the Respondent signing below. By signing below, the Respondent waives any objections to EPA's jurisdiction with respect to the Settlement Agreement and consents to EPA's approval of this Settlement Agreement without further notice. This Settlement Agreement is effective upon the Regional Administrator's signature.



Samuel Coleman, P. E.
Director
Superfund Division

Date: 7/15/11

It is so ORDERED. This Order shall become effective upon filing of the fully executed Complaint and Expedited Settlement Agreement.



Al Armendariz
Regional Administrator

Date: 8/24/11

SIGNATURE BY RESPONDENT:

Signature: Lance Kennemer
Name (print): LANCE KENNEMER
Title (print): MANUFACTURING MAINTENANCE MANAGER
Cost of Corrective Actions: \$ 33,000⁰⁰

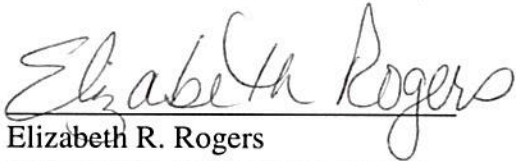
Date: 7-28-2011

RECEIVED
2011 AUG 10 PM 2:58
SUPERFUND DIV.
PREVENTION & RESPONSE
BRANCH (RSP-PI)

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December 2011, the original of the foregoing Final Order of Clean Air Act, Section 112(r) Expedited Settlement Agreement was hand delivered to the Regional Hearing Clerk, U. S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States mail, first class postage prepaid, addressed to the following:

Mr. Lance Kennemer
BGC Maintenance Manager
Brookshire Grocery Company SWF Ice
and BGC Perishable/Frozen Warehouse
200 North Fuller Avenue
Tyler, TX 75702



Elizabeth R. Rogers
RMP 112(r) Compliance Officer
Prevention and Response Branch