



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2014 NOV 18 PM 1:07

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )  
)  
Hawkins, Inc. ) DOCKET NO.: CAA-08-2015-0007  
Hawkins Water Treatment Group - )  
Blackhawk ) EXPEDITED SETTLEMENT AGREEMENT  
Blackhawk, SD )  
)  
) (COMBINED COMPLAINT AND  
) CONSENT AGREEMENT)  
Respondent )  
)

AUTHORITY

1. This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA), intended to simultaneously commence and conclude this matter, is being entered into by the United States Environmental Protection Agency (EPA), Region 8, by its duly delegated official, the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, and by Hawkins, Inc. (Respondent) pursuant to sections 113(a)(3) and (d) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a)(3) and (d), and 40 C.F.R. §§ 22.13(b) and 22.18. The EPA and the U.S. Department of Justice have determined, pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that the EPA may pursue this type of case through administrative enforcement.

RESPONDENT

2. The Respondent, Hawkins, Inc. is a Minnesota corporation that does business in the State of South Dakota.
3. The Respondent is a "person" under section 302(e) of the Act. 42 U.S.C. § 7602(e).

ALLEGED VIOLATIONS

4. On April 30, 2014 an authorized representative of the EPA conducted a compliance inspection of Respondent's facility located at 11810 Sturgis Road, Blackhawk, South Dakota, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under section 112(r)(7) of the Act. The EPA found that the Respondent had violated regulations implementing section 112(r)(7) of the Act by failing to comply with the specific requirements outlined in the attached *RMP Program Level 3 Process Checklist-Alleged Violations & Penalty Assessment* (Checklist and Penalty Assessment). The Checklist and Penalty Assessment is incorporated into this ESA.

Hawkins, Inc.  
Hawkins Water Treatment Group – Blackhawk, SD  
EXPEDITED SETTLEMENT AGREEMENT

SETTLEMENT

5. In consideration of the factors contained in section 113(d)(1) of the Act and the entire record, the parties enter into this ESA in order to settle the violations for the total penalty amount of \$900. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.
6. This settlement is subject to the following terms and conditions:
  - a. The Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained in the Checklist and Penalty Assessment and consents to the assessment of the penalty as stated above.
  - b. The 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.
  - c. Each party to this action shall bear its own cost and attorney fees, if any.
  - d. The Respondent certifies that the violations listed in the Checklist and Penalty Assessment have been corrected.
  - e. The Respondent waives any and all available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this ESA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
7. After the Final Order is issued by the Regional Judicial Officer, a fully executed copy of this ESA and the Final Order will be sent to the Respondent. Within twenty (20) days after receiving the Final Order, the Respondent shall remit payment in the amount of \$540. **The payment shall reference the name and docket number of this case** and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

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

Hawkins, Inc.  
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Federal Express, Airborne, or other commercial carrier  
(or when a physical address is required):

US Bank  
U.S. EPA Fines & Penalties  
Government Lockbox 979078  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
(314) 418-4087

Wire Transfers:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read:  
“ D 68010727 Environmental Protection Agency”

ACH Transactions (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact - Jesse White 301-887 6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account Number: 310006  
CTX Format.

There is now an On Line Payment Option, available through the U.S. Department of Treasury. This payment option can be accessed from the information below:

[www.PAY.GOV](http://www.PAY.GOV)  
(Enter sfo 1.1 in the search field  
Open form and complete required fields)

Hawkins, Inc.  
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A copy of the check, or notification that the payment has been made by one of the other methods listed above, shall be sent simultaneously to:

Tina Artemis, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street [8RC]  
Denver, Colorado 80202-1129

and


David Cobb  
EPCRA/RMP Enforcement Coordinator  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street [8ENF-AT]  
Denver, Colorado 80202-1129

8. The penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
9. Once the Respondent receives a copy of the Final Order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against the Respondent for the violations alleged in the Checklist and Penalty Assessment, which has been incorporated herein.
10. This ESA does not pertain to any matters other than those expressly specified herein. The EPA reserves and this ESA is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to, the following:
  - a. claims based on a failure by the Respondent to meet a requirement of this ESA including any claims for costs which are caused by the Respondent's failure to comply with this Agreement;
  - b. claims based on criminal liability; and
  - c. claims based on any other violations of the Act or federal or state law.
11. If the Respondent fails to timely submit the above-referenced payment after receiving the Final Order, a motion may be filed to withdraw the ESA and Final Order. If that motion is granted, the EPA may then file an enforcement action against the Respondent for the violations addressed herein.
12. This ESA, upon incorporation into the Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this ESA. This ESA contains all terms of the settlement agreed to by parties.

Hawkins, Inc.  
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13. Nothing in this ESA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
14. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind the Respondent to the terms and condition of this ESA.
15. The parties agree to submit this ESA to the Regional Judicial Officer with a request that it be incorporated into a final order.

For Respondent: Hawkins, Inc.

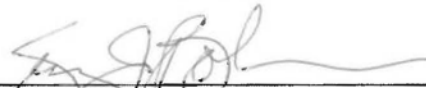
  
\_\_\_\_\_

Date: 4 NOV 2014

Name (print): MICHAEL DOMINOV

Title (print): HSE MANAGER

For Complainant United States Environmental Protection Agency, Region 8:

  
\_\_\_\_\_

Date: 11-18-2014

Suzanne J. Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

**RMP PROGRAM LEVEL 3 PROCESS CHECKLIST  
ALLEGED VIOLATIONS & PENALTY ASSESSMENT**

Respondent: Hawkins, Inc.  
Facility Name: Hawkins Water Treatment Group-Blackhawk (HWTGB)

INSPECTION DATE: 4/30/14

**SUBPART D: PREVENTION PROGRAM [68.65 – 68.87]**

**PENALTY**

**Prevention Program – Safety Information [68.65]**

Does the process safety information include ventilation system design?  
[68.65(d)(1)(v)] No.

- Ventilation system design for the building was not available.

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**Prevention Program – Management of Change [68.75]**

Has the owner or operator established and implemented written procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process? [68.75] No.

- HWTGB did not conduct an MOC before/during/after its office/warehouse remodeling project of 2007
- After the 2007 remodel:
  - Chlorine was delivered to a new loading/unloading area.
  - The new loading/unloading area was elevated so as to become a loading dock.
  - The chlorine was stored in a new location.
  - A ramp was required to move chlorine from the new loading dock to the new storage location, and vice versa.

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<b>Prevention Program – Pre-startup Safety Review [68.77]</b>	
<p>If the facility installed a new stationary source, or significantly modified an existing source,(as discussed at 68.77(a)) did it perform perform a pre-startup safety review prior to the introduction of a regulated substance to a process to confirm:</p> <ul style="list-style-type: none"> <li>• Construction and equipment was in accordance with design specifications? [68.77(b)(1)];</li> <li>• Safety, operating, maintenance, and emergency procedures were in place and were adequate? [68.77(b)(2)];</li> <li>• For new stationary sources, a process hazard analysis had been performed and recommendations had been resolved or implemented before startup? [68.77(b)(3)];</li> <li>• Modified stationary sources meet the requirements contained in management of change? [68.77(b)(3)];</li> <li>• Training of each employee involved in operating a process had been completed? [68.77(b)(4)]</li> </ul> <ul style="list-style-type: none"> <li>• <b>HWTGB did not perform a PSSR before/during/after its office/warehouse remodeling project of 2007</b></li> <li>• <b>After the 2007 remodel:</b> <ul style="list-style-type: none"> <li>- Chlorine was delivered to a new loading/unloading area</li> <li>- The new loading/unloading area was elevated so as to become a loading dock</li> <li>- The chlorine was stored in a new location</li> <li>- A ramp was required to move chlorine from the new loading dock to the new storage location, and vice versa</li> </ul> </li> </ul>	<b>0</b>
<b>Prevention Program – Compliance Audits [68.79]</b>	
<p>Has the owner or operator retained the two most recent compliance audits? [68.79(e)] No.</p> <ul style="list-style-type: none"> <li>• <b>Only one Compliance Audit was available. This CA was completed on September 23, 2012.</b></li> <li>• <b>Hawkins has owned the facility since 1989, and has stored chlorine onsite in reportable quantities since before September 23, 2009.</b></li> </ul>	<b>300</b>
<b>BASE PENALTY</b>	<b>\$900</b>





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460  
OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX  
Hawkins, Inc.  
Hawkins Water Treatment Group-Blackhawk  
Blackhawk, SD

MULTIPLIER FACTORS FOR CALCULATING PROPOSED PENALTIES FOR  
VIOLATIONS FOUND DURING RMP INSPECTIONS

Private Industries

# of Employees	1 – 5*	>5 – 10*	> 10*
0 – 9	0.4	0.6	0.8
10 – 100	0.6	0.8	1.0
> 100	1.0	1.0	1.0

\* Largest Multiple of Threshold Quantity of any Regulated Chemical(s) on Site.

**PROPOSED PENALTY WORKSHEET**

**Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier**

The Unadjusted Penalty is calculated by adding up all the penalties listed on the Risk Management Program Inspections Findings, Alleged Violations and Proposed Penalty Sheet.

The Size-Threshold Quantity multiplier is a factor that considers the size of the facility and the amount of regulated chemicals at the facility.

The Proposed Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the Total Penalty and the Size/Threshold Quantity multiplier.

**Example:**

XYZ Facility is a private company which has 24 employees and 7 times the threshold amount for the particular chemical in question. After adding the penalty numbers in the Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet an unadjusted penalty of \$4700 is derived.

### Calculation of Adjusted Penalty

- 1<sup>st</sup> Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for 10-100 employees and the row for >5-10 times the threshold quantity amount gives a multiplier factor of 0.8.
- 2<sup>nd</sup> Use the Adjusted Penalty formula  
  
Adjusted Penalty = \$4700 (Unadjusted Penalty) X 0.8(Size-Threshold Multiplier)  
Adjusted Penalty = \$3760
- 3<sup>rd</sup> An Adjusted Penalty of \$3760 would be assessed to XYZ Facility for Violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

### Calculation for Adjusted Penalty – Hawkins Water Treatment Group-Blackhawk

**Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier**

$$\$540 = \$900 \times 0.6^*$$

\* # of employees is 3. The covered chemical, chlorine, exceeds the listed threshold value by 7.45 times

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER**, in the matter of **HAWKINS, INC., HAWKINS WATER TREATMENT GROUP - BLACKHAWK; DOCKET NO.: CAA-08-2015-0007**, was filed with the Regional Hearing Clerk on November 18, 2014.

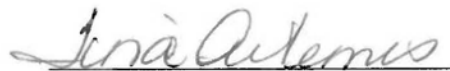
Further, the undersigned certifies that a true and correct copy of the document was delivered to Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail, domestic return receipt on November 18, 2014, to:

Michael Donaldson, EH&S Manager  
Hawkins, Inc.  
2381 Rosegate  
Roseville, MN 55113

And emailed to:

Kim White  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

November 18, 2014



Tina Artemis  
Paralegal/Regional Hearing Clerk