



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

### REGION 1

5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

### **EXPEDITED SETTLEMENT AGREEMENT**

**DOCKET NO:** CAA-01-2020-0024

**This ESA is issued to:** Dead River Company and Green Mountain Railroad Corp., 6 Benzanson Road Bellows Falls, Vermont 05101 **for violating Section 112(r)(7) of the Clean Air Act.**

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This Expedited Settlement Agreement (“ESA”) is being entered into by the United States Environmental Protection Agency (“EPA”), Region 1, by its duly delegated official and by Respondents, Dead River Company (“Dead River”) and Green Mountain Railroad Corp. (“GMRC”), pursuant to Sections 113(a)(3) and (d) of the Clean Air Act (“Act”), 42 U.S.C. §§ 7413(a)(3) and (d), and 40 C.F.R. § 22.13(b). EPA and the U.S. Department of Justice have jointly determined that this action is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

#### ALLEGED VIOLATIONS

On July 12, 2017, authorized EPA representatives conducted a compliance inspection of the facility operated by Dead River on GMRC property located at 6 Benzanson Road in Bellows Falls, Vermont (“Facility”) to determine its compliance with the Risk Management Program (“RMP”) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Act. Following the inspection, EPA requested certain documents and information from Dead River and GMRC and reviewed the provided information with support from outside specialists. The Parties also discussed the ongoing compliance status at the Facility and outstanding action items. EPA has found that Respondents violated regulations implementing Section 112(r) of the Act by failing to comply with the regulations as noted on the attached “Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Form” (“Form”), which is hereby incorporated by reference.

#### SETTLEMENT

In consideration of the penalty assessment factors set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the parties enter into the ESA in order to settle the violations, described in the attached Form, for the total penalty amount of \$14,700.

This settlement is subject to the following terms and conditions:

Respondents, by signing below, waive any objections that they may have regarding jurisdiction, neither admit nor deny the specific factual allegations contained herein and in the Form, and consent to the assessment of the penalty as stated above. Respondents waive their rights to contest the allegations contained herein and in the Form, 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. Respondents also certify, subject to civil and criminal penalties for making a false submission to the United States Government, that

Respondents have corrected the violations listed in the attached Form. Respondents agree to submit payment of the \$14,700 penalty within 30 days of receiving a fully executed copy of this ESA. Respondents may pay the penalty by cashier's check, certified check, or wire transfer.

If payment is made by check, make payable to "Treasurer, United States of America," include Docket Number CAA-01-2020-0024, and send to:

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

If payment is made by wire transfer, include the Docket Number CAA-01-2020-0024 in Field Tag 6000 and "D 68010727 Environmental Protection Agency" in Field Tag 4200. The wire transfer account is:

Federal Reserve Bank of New York  
33 Liberty Street  
New York NY 10045  
ABA: 021030004  
Account: 68010727  
SWIFT address: FRNYUS33

Respondents must also send a copy of the check or wire transfer receipt to:

Christine M. Foot, Enforcement Counsel  
U.S. Environmental Protection Agency Region 1  
5 Post Office Square, Suite 100 (MC 04-2)  
Boston, MA 02109-3912

and

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (MC 04-6)  
Boston, MA 02109-3912

Upon Respondents' submission of the signed original ESA, EPA will take no further civil penalty action against Respondents for the violations of the Act alleged above and in the Form. Nothing in this ESA shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This ESA does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of the Act and regulations promulgated or permits issued thereunder.

For purposes of the identifying requirement of 26 U.S.C. § 162(f) of the Internal Revenue Code, the corrective actions referred to above are restitution or actions taken to come into compliance with the violations identified in the Summary.

If the signed ESA is not returned to the EPA Region 1 office at the address above by Respondents within 30 days of the date of receipt, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the cited violations. If you do not sign and return the ESA and pay the penalty on time, EPA may pursue more formal enforcement measures, including seeking civil penalties of up to \$47,357 per day for each violation. This ESA is binding on the parties signing below.

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT DEAD RIVER CO.:

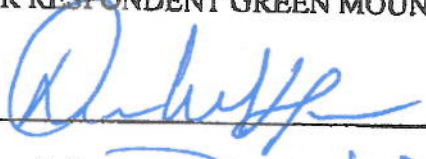


Date: 2-26-20

Name (print): Deanna S. Sherman

Title (print): President + CEO

FOR RESPONDENT GREEN MOUNTAIN RAILROAD CORP.:

  
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Date: 2/21/2020

Name (print): DAVID WOLFSON

Title (print): PRESIDENT

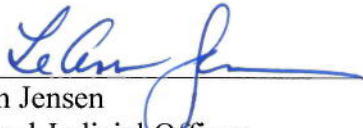
FOR COMPLAINANT:



Karen McGuire, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 1

Date: 3-12-20

I hereby ratify the ESA resolving *In the Matter of Dead River Company et al.* No. CAA-01-2020-0024 and incorporate it herein by reference. It is so ORDERED.



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LeAnn Jensen  
Regional Judicial Officer  
U.S. EPA Region I

Date: 3/17/20



U.S. ENVIRONMENTAL PROTECTION AGENCY

RISK MANAGEMENT PROGRAM INSPECTION FINDINGS, ALLEGED VIOLATIONS AND PROPOSED PENALTY FORM

REASON FOR INSPECTION: This inspection is for the purpose of determining compliance with the accidental release prevention requirements of Section 112(r)(7) of the Clean Air Act (Act), 42 U.S.C. ' 7412(r)(7), and the regulations set forth at 40 C.F.R. Part 68. The scope of this inspection may include but is not limited to: reviewing and obtaining copies of documents and records; interviews and taking of statements; reviewing chemical storage, handling, processing, and use; taking samples and photographs; and any other inspection activities necessary to determine compliance with the Act.

FACILITY NAME: Dead River Company – Bellows Falls
PRIVATE [checked] GOVERNMENTAL/MUNICIPAL [ ]
# of EMPLOYEES: 100 GMRC; 1000 DRC

FACILITY ADDRESS: 6 Benzanson Road Bellows Falls, Vermont 05101
INSPECTION START DATE AND TIME: July 12, 2017
INSPECTION END DATE AND TIME: July 12, 2017

RESPONSIBLE OFFICIAL, TITLE, PHONE NUMBER: Mark Anderson, Safety & Fleet Manager
207-358-5800; Mark.anderson@deadriver.com
EPA FACILITY ID#: 1000 0022 5981

FACILITY REPRESENTATIVE(S), TITLE(S), PHONE NUMBER(S): Don Osborne, Plant Manager
Don.osborne@deadriver.com
John Pelletier, Manager of Propane Rail Terminals
207-862-3460; John.pelletier@deadriver.com
INSPECTOR NAME(S), TITLE(S): Leonard B. Wallace IV, EPA Region 1
David F. Oberhauser, US EPA/SEE/NOWCC
Aaron Gilbert, U.S. EPA Region 1
Mark Briggs, ERG, Inc.
Larry Aleksandrich, Aleksandrich Compliance and Engineering Services, LLC
Tony Neibert, Aleksandrich Compliance and Engineering Services, LLC

INSPECTION FINDINGS

IS FACILITY SUBJECT TO RMP REGULATION (40 CFR Part 68)? YES [checked] NO [ ]

DID FACILITY SUBMIT AN RMP AS PROVIDED IN 68.150 TO 68.185 AND UPDATE THE RMP AS PROVIDED IN 68.190 TO 69.195? YES [checked] NO [ ]

DATE RMP INITIALLY FILED WITH EPA: 06/19/2014. DATE OF RMP UPDATE: 10/26/2016

1) PROCESS/NAICS CODE: 424710 PROGRAM LEVEL: 1 [ ] 2 [ ] 3 [checked]
REGULATED SUBSTANCE: propane MAX. QUANTITY IN PROCESS: 1,253,550 pounds

DID FACILITY CORRECTLY ASSIGN PROGRAM LEVELS TO PROCESSES?

YES

NO

ATTACHED CHECKLIST(S):

PROGRAM LEVEL 1 PROCESS CHECKLIST

PROGRAM LEVEL 2 PROCESS CHECKLIST

PROGRAM LEVEL 3

PROCESS CHECKLIST

OTHER

ATTACHMENTS: \_\_\_\_\_



U. S. ENVIRONMENTAL PROTECTION AGENCY  
 REGION I  
 5 POST OFFICE SQUARE  
 BOSTON, MA 02109-3912

**Process Checklist (Findings) and Alleged Violations and Proposed Penalty Form:  
 Dead River Company and Green Mountain Railroad Corp., Bellows Falls, Vermont**

**1. Program Level 3 Alleged Violations and Unadjusted Penalties**

<b>Section C – Prevention Program – Safety information [68.65]</b>	
<p>Has the owner or operator documented that equipment complies with recognized and generally accepted good engineering practices [68.65(d)(2)]?</p> <ul style="list-style-type: none"> <li>– At the time of the inspection, several aspects of the Facility were not adequately labeled, including inadequately labeled piping, stationary LPG containers NFPA 704 diamonds not sufficiently visible to emergency responders and the public, and lacking signage on the door of the electrical/storage building to warn employees of the presence of high voltage before entering. <i>See, e.g.</i>, ASME A13.1-2007 § 3; NFPA 1-2012 §§ 60.5.1.6.2 &amp; 60.5.1.8.2.1; NFPA 704-2012; NEC/NFPA 70-2014, § 110.27(C).</li> </ul>	\$ 1500.00
<b>Section C – Prevention Program – Safety information [68.65]</b>	
<p>Has the owner or operator documented that equipment complies with recognized and generally accepted good engineering practices [68.65(d)(2)]?</p> <ul style="list-style-type: none"> <li>– At the time of the inspection, several aspects of the Facility posed electrical hazards, in that: electrical wires protruded from the ground beneath the propane railcars; material was placed in front of electrical panels in the electrical/storage building preventing inspection and servicing; and some electrical breakers are too high, and a platform will be required in front of the panel for access. Propane is highly flammable, necessitating care with electrical safety. <i>See, e.g.</i>, NEC/NFPA 70-2014, §§ 110.26(B), 110.32, 240.24, 250.12, 250.53(G), 300.4.</li> </ul>	\$ 1500.00
<b>Section C – Prevention Program – Safety information [68.65]</b>	
<p>Has the owner or operator documented that equipment complies with recognized and generally accepted good engineering practices [68.65(d)(2)]?</p> <ul style="list-style-type: none"> <li>– At the time of the inspection, LPG containers and piping were inadequately protected of from damage from vehicles. <i>See, e.g.</i>, NFPA 58-2011 § 6.6.1.2; 29 C.F.R. § 1910.110(d)(10); Propane Education and Research Council, Operations and Maintenance Handbook for LP-Gas Storage Facilities § 6 at 100 (2007).</li> </ul>	\$ 1500.00
<b>Section C – Prevention Program – Operating procedures [68.69]</b>	
<p>Has the owner or operator developed and implemented written operating procedures that provide instructions or steps for conducting activities associated with each covered process consistent with the safety information? [68.69(a)]</p> <ul style="list-style-type: none"> <li>– At the time of the inspection, the facility did not have adequate operating procedures in place. For example, there was no written SOP pertaining to switching out the nitrogen tank and pressurizing the nitrogen system.</li> </ul>	\$ 1500.00
<b>Section C – Prevention Program – Operating procedures [68.69]</b>	
<p>Do the procedures address all the elements listed in 68.69(a) (Steps for each operating phase, Operating limits, Safety and health considerations, and Safety systems and their functions)? [68.69(a)]</p> <ul style="list-style-type: none"> <li>– At the time of the inspection, the facility’s operating procedures within its RMP Documentation and O&amp;M Plan did not adequately address all required RMP elements nor all of the requirements of NFPA 58 Section 14.</li> </ul>	\$ 1,200.00

**Section C – Prevention Program – Operating procedures [68.69]**

Has the owner or operator reviewed the operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources? Has the owner or operator certified annually that these operating procedures are current and accurate [68.69(c)]? – At the time of the inspection, the facility had not annually certified that the SOPs were current and accurate.	\$ 1,200.00
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**Section C – Prevention Program – Mechanical Integrity [68.73]**

Has the owner or operator established and implemented written procedures to maintain the on-going integrity of the process equipment listed in 68.73(a)? [68.73(b)] – At the time of the inspection, the Facility did not have a detailed written maintenance plan to adequately address all required RMP and NFPA 58 Section 14 elements.	\$ 1,500.00
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**Section C – Prevention Program – Mechanical Integrity [68.73]**

Has the owner or operator performed and adequately ensured the frequency of inspections and tests on process equipment with a frequency consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience [68.73(d)(3)]? – At the time of the inspection, Respondents did not provide EPA with adequate documentation showing that inspections or tests on process equipment had been performed at the needed intervals. See, e.g., NFPA 58 § 14; PERC, Operation and Maintenance Handbook for LP Gas Storage Facilities §§ 6 & 7.	\$ 900.00
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**Section C – Prevention Program – Mechanical Integrity [68.73]**

Has the owner or operator corrected deficiencies in equipment that were outside acceptable limits defined by the process safety information before further use or in a safe and timely manner when necessary means were taken to assure safe operation [68.73(e)]? – At the time of the inspection, there was excessive rusting on piping and welds, indicating that equipment deficiencies were not being corrected in a safe and timely manner.	\$ 900.00
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**Section H – Risk Management Plan [40 CFR 68.190 – 68.195]**

Does the single registration form include, for each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the five- or six-digit NAICS code that most closely corresponds to the process and the Program level of the process [68.160(b)(7)]? – The 2016 RMP listed the “Propane Rail Unloading” process as containing 665,800 pounds of propane. However, this amount failed to account for the full capacity of the process, which is at least the total propane contained in the three storage tanks as well as five railcars when connected to the unloading stations.	\$ 1,000.00
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Did the owner or operator review and update the RMP and submitted it to EPA for the Five-year update [68.190(b)(1)]? – Respondents' five-year RMP update was due June 16, 2019. It was uploaded in the CDX system but not submitted and certified until July 8, 2019. Respondents made a similar error with the initial RMP for the facility in 2014.	\$ 2,000.00
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**Total unadjusted penalty: \$14,700**

**2. Size-Threshold Quantity Multiplier**

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

**Expedited Settlement Penalty Matrix: Private Industries**

# of Employees	Largest Multiple of Threshold Quantity of any Regulated Chemical(s) on Site		
	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

Size/Threshold Quantity multiplier from Expedited Settlement Penalty Matrix: **1.0**

**3. Proposed Penalty**

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.

$$\begin{array}{rcl} \text{Proposed Penalty} & = & \mathbf{\$14,700} \text{ (Unadjusted Penalty)} \\ & \times & \mathbf{1.0} \text{ (Size/Threshold Quantity Multiplier)} \\ & = & \mathbf{\underline{\$14,700}} \end{array}$$