



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

08 JUL 17 AM 8:06

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

EXPEDITED SETTLEMENT AGREEMENT (ESA)

DOCKET NO.: CAA-07-2008-0027

This ESA is issued to: Dold Foods, Inc.

At: 2929 Ohio Street, Wichita, Kansas 67219

for violating Section 112(r)(7) of the Clean Air Act.

The United States Environmental Protection Agency, Region 7 (EPA) and Dold Foods, Inc., 2929 Ohio Street, Wichita, Kansas 67219 (Respondent), have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

The Complainant, by delegation of the Administrator of EPA, is the Director of the Air, and Waste Management Division. The Respondent is Dold Foods, Inc., 2929 Ohio Street, Wichita, Kansas 67219.

This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the total penalty exceeds \$270,000 or where the first alleged date of violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

ALLEGED VIOLATIONS

On September 24, 2007, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 2929 Ohio Street, Wichita, Kansas 67219, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Clean Air Act. The EPA found that the Respondent had violated regulations implementing Section 112(r) of the Clean Air Act by failing to comply with the regulations as noted on the enclosed Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet (RMP Findings), 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 enclosed RMP Findings, for the total penalty amount of **\$1,080**.

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 in herein and in the RMP Findings, 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 Clean Air 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 enclosed RMP Findings and has sent a cashier's check or certified check (payable to the "United States Treasury") in the amount of **\$1,080** 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, Missouri 63197-9000

The Docket Number of this ESA is CAA-07-2008-0027, and must be included on the check.

This original ESA, a copy of the completed RMP Findings, and a copy of the check must be sent by certified mail to:

Deanna Smith
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

A copy of the check must also be sent to:

Kathy M. Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

Upon Respondent's submission of the signed original ESA, EPA will take no further civil action against Respondent for the alleged violations of the Clean Air Act referenced in the RMP

Findings. The EPA does not waive any other enforcement action for any other violations of the Clean Air Act or any other statute.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region 7 office at the above address in correct form by the Respondent within 45 days of the date of Respondent's receipt of it (90 days if an extension is granted), the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein and in the RMP Findings.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT:

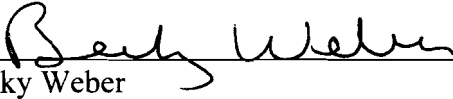


Date: 7/9/08

Name (print): Terry Hadden

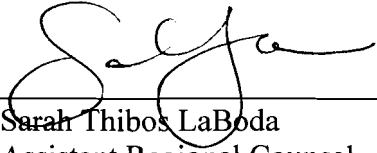
Title (print): Plant Manager
Dold Foods, Inc.

FOR COMPLAINANT:



Becky Weber
Director
Air and Waste Management Division
EPA Region 7

Date: 7/15/08



Sarah Thibos LaBoda
Assistant Regional Counsel
EPA Region 7

Date: 7/14/08

I hereby ratify the ESA and incorporate it herein by reference. It is so ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Date: July 16, 2008

Risk Management Program Inspection Findings

Dold Foods, Inc.
2929 Ohio Street
Wichita, Kansas 67219

CAA § 112(r) Violations

VIOLATIONS

PENALTY AMOUNT

Prevention Program

Process Hazard Analysis [§ 68.67]

The owner or operator failed to establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations. [§ 68.67(c)]

\$750

How was this addressed:

Dold Foods has reviewed the process hazard analysis (PHA) tracking sheet generated after the May26-27, 2004 PHA. All recommendations have been properly completed and final decisions documented, with the exception of the installation of an ammonia detection system in the engine room. The capital appropriation has been approved, and this work has been scheduled. When the detection system has been installed, the results of all PHA findings will be communicated to affected staff.

Prevention Program

Operating Procedures [§ 68.69]

The owner or operator failed to review the operating procedures as often as necessary to assure that they reflect current operating practice and to certify annually that the operating procedures are current and accurate. [§ 69.69(c)]

\$600

How was this addressed:

The standard operating procedures for Process Safety Management (PSM) and Risk Management Plan (RMP) are currently in compliance. An annual reminder is generated by our computerized preventive maintenance system to ensure continuing compliance.

VIOLATIONS

PENALTY AMOUNT

Prevention Program

Compliance Audits [§ 68.79]

The owner or operator failed to certify that the stationary source has evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed. [§ 69.79(a)]

\$300

How was this addressed:

The PSM/RMP compliance audits have been completed every three years since initiation of the program at Dold Foods. During the inspection conducted by the EPA September 24-25, 2007 Dold Foods was unable to produce documentation for the 2001 PSM/RMP compliance audit. Following the EPA inspection, Dold Foods found and sent documentation to the EPA inspector. We feel that the facility is and always has been in compliance with this provision.

Prevention Program

Compliance Audits [§ 68.79]

The owner or operator failed to determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected. [§ 68.79(d)]

\$150

How was this addressed:

Dold Foods has reviewed the PSM/RMP compliance audits conducted on December 11, 2007; December 20, 2004; and November 28-29, 2001. All recommendations have been properly completed and final decisions documented, with the exception of communicating the results of the PHA findings to affected staff. This will occur upon installation of the ammonia detection system for the engine room at Dold Foods.

section. The contract owner or operator shall prepare a record which contains the identity of the contract employee, the date of training, and the means used to verify that the employee understood the training. [§ 68.155(f)]

How was this addressed:

Hormel Foods policy states that the contractor is responsible for training their employees. Dold Foods has recently implemented a verification program, requiring contractors to provide training records, including dates of training, and means used to verify that the contract employee understood the training.

Total Unadjusted Penalty \$1,800

Calculation of Adjusted Penalty

- 1st Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix for Private Industry. Number of employees is greater than 100 and has 16,000 pounds of anhydrous ammonia on site, which gives it a multiplier factor of 0.6.
- 2nd Adjusted Penalty = \$1,800 (Unadjusted Penalty) X 0.6 (Size-Threshold Multiplier) is \$1,080.
- 3rd An Adjusted Penalty of \$1,080 would be assessed to Dold Foods, Inc., for violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

TOTAL ADJUSTED PENALTY \$1,080

The approximate cost to correct the above items: \$ 25,000

Compliance staff name: Michael Haag, Plant Engineer

Signed:  Date: 7/9/08

IN THE MATTER OF Dold Foods, Inc., Respondent
Docket No. CAA-07-2008-0027

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited Settlement Agreement (ESA) was sent this day in the following manner to the addressees:

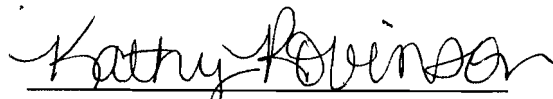
Copy hand delivered to
Attorney for Complainant:

Sarah Thibos LaBoda
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Terry Hadden, Plant Manager
Dold Foods, Inc.
2929 Ohio Street
Wichita, Kansas 67219

Dated: 7/17/08



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7