

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

**** FILED ****
21SEP2017 - 08:44AM

DOCKET NO: CAA (112r)-09-2017-0006

This ESA is issued to: **Bashas' Distribution Center**
200 South 56th Street
Chandler, AZ 85226

U.S.EPA - Region 09

For: Violation of Section 112(r)(7) of the Clean Air Act.
At: Bashas' Distribution Center; 200 South 56th Street, Chandler, AZ 85226

This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Enrique Manzanilla, Superfund Director, and Bashas' Distribution Center ("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). EPA has obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 2 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

Following its February 2, 2017 inspection, EPA alleges Respondent's failure to:

- 1) Comply with the requirements of 40 C.F.R. § 68.25(a) in that neither the 2015 Environmental Data Resources (EDR) Offsite Receptor Report, nor the 2017 EDR Offsite Receptor Report, provide a justification or explanation stating the reason for using the shorter distances than the 1.5 miles endpoint originally modeled in the January 23, 2003 Hazard Assessment (HA). Bashas has not provided an updated HA using the greatest distance to an endpoint in its updated HAs.
- 2) Comply with the requirements of 40 C.F.R. § 68.65(d) in that labeling of the process piping and equipment throughout the system did not meet generally accepted good engineering practices. Additionally, the engine room door did not have a restricted access sign to indicate that only authorized personnel are permitted to enter the room as also required by generally accepted good engineering practices, including ANSI/IIAR 2 – Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems 6.15.3 Restricted Access Signage.
- 3) Comply with the requirements of 40 C.F.R. § 68.69(a) in that control measures to be taken if physical contact or airborne exposure occurs were not included in Standard Operating Procedures, nor any specified personal protective equipment (i.e. Operation of the Pilot Receiver).
- 4) Comply with the requirements of 40 C.F.R. § 68.79(a) in that Bashas' December 2014 Compliance Audit should have been completed three years from the April 2009 Compliance Audit, in April 2012.
- 5) Comply with the requirements of 40 C.F.R. § 68.81(d) in that the Bashas' investigative report used to document the August 10, 2016 near miss of a 45-pound release of anhydrous ammonia failed to include the date the incident investigation began.
- 6) Comply with the requirements of 40 C.F.R. § 68.87(b) in that Bashas' contractor procedure does not include a form or document to periodically evaluate its contractor's performance in fulfilling their obligations.
- 7) Comply with the requirements in 40 C.F.R. § 68.190(a) in that Bashas failed to review and update its

Risk Management Plan and submit it to EPA on or before January 30, 2014, and did not submit a fully updated RMP to EPA until February 2, 2015.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, and other factors as justice may require, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of **\$8,300**.

This settlement is subject to the following terms and conditions:

The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, 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 attorney's fees and costs, 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 above and has sent an **Online Payment through the Department of Treasury: WWW.PAY.GOV** (Enter SFO 1.1 in search field. Open form and complete required fields) **or alternatively has sent a cashier's check or certified check** (payable to the Treasurer, United States of America) in the amount of **\$8,300** in payment of the full penalty amount to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check or online payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment going to the EPA Cincinnati Finance Center. This original ESA and a copy of the check or online receipt must also be sent by certified mail to:

Angie Proboszcz (SFD-9-3)
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 30 days of the date of Respondent's receipt of the proposed ESA and EPA has not granted an extension of its offer to settle, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT – Bashas' Distribution Center

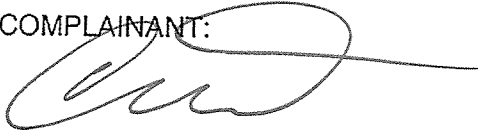
Signature: 

Date: 8/31/2017

Name (print): Mike Basha

Title (print): Vice President - Logistics

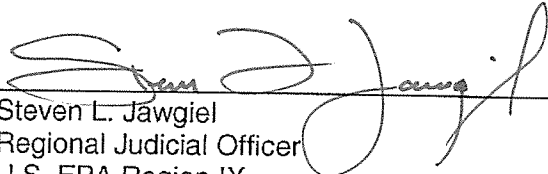
FOR COMPLAINANT:



Date: 9/8/17

Enrique Manzanilla
Superfund Director
U.S. EPA Region IX

It is hereby ORDERED that this ESA be entered and Respondent pays the above penalty.


Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA Region IX

Date: 09/20/17

CERTIFICATE OF SERVICE

This is to certify that a FINAL ORDER for the Consent Agreement and Final Order in the matter of Bashas' Distribution Center (Bashas') [Docket Number CAA(112R)-09-2017-0006], has been signed by the Regional Judicial Officer and has been filed with the Regional Hearing Clerk.

The Final Order has been served on Respondent, and Counsel for EPA, as indicated below:

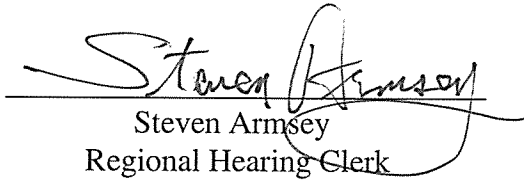
BY FIRST CLASS MAIL:
(With Return Receipt)

Respondent - Mr. Mike Basha
Vice President - Logistics
Bashas' Distribution Center
200 South 56th Street
Chandler, AZ 85226

HAND DELIVERED:

Complainant - Andrew Helmlinger
(By Counsel) Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA. 94105

Dated at San Francisco, CA, Sept. 21, 2017s;


Steven Armsey
Regional Hearing Clerk
EPA, Region 9