



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 JAN 24 11 54 23

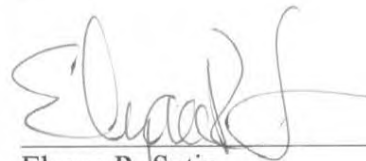
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

DOCKET NO.: CAA-08-2008-0006

IN THE MATTER OF:)	
)	
CEREAL FOOD PROCESSORS, INC.)	FINAL ORDER
)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 24th DAY OF January, 2008



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 JAN 24 11 51 23

IN THE MATTER OF:)	
)	
Cereal Food Processors, Inc.)	EXPEDITED SETTLEMENT AGREEMENT
)	(COMBINED COMPLAINT AND
Respondent)	CONSENT AGREEMENT)
)	DOCKET NO. : CAA-08-2008-0006

This Expedited Settlement Agreement (also known as a "Combined Complaint and Consent Agreement," hereafter "ESA") is entered into by the parties for the purpose of simultaneously commencing and concluding this matter.

This ESA 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 Cereal Food Processors, 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). 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 EPA may pursue this type of case through administrative enforcement action.

ALLEGED VIOLATIONS

On August 24, 2007, an authorized representative of EPA conducted a compliance inspection of Cereal Food Processors, Inc. located at 220 West 30th Street, Ogden, Utah, 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 facility had violated regulations implementing section 112(r) 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”).

SETTLEMENT

In consideration of Respondent’s facility service size, 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 this ESA in order to settle the violations for the total penalty amount of \$720. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.

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 the Checklist and Penalty Assessment 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, and consents to EPA’s approval of the ESA without further notice. 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 Respondent will correct the violations listed in the Checklist and Penalty Assessment **no later than 60 days** from the date the ESA is signed by the Respondent.

After the Regional Judicial Officer issues the Final Order, the Respondent will receive a fully executed copy of this ESA and the Final Order. Within twenty days (20) of receiving a signed Final Order, Respondent shall remit a cashier's or certified check payable to the "Treasurer, United States of America" in the amount of \$720 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 check shall reference Respondent's name and facility address, the EPA Docket Number of this action. **(A docket number will be assigned to the fully executed copy of the ESA.)** A copy of the check 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

Cheryl Turcotte
EPCRA/RMP Enforcement Coordinator
US EPA, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

The penalty specified in this ESA shall not be deductible for purposes of State or Federal taxes.

Upon Respondent's receipt of the signed ESA and Final Order by the Regional Judicial Officer and payment of the penalty as set forth in this ESA, EPA will take no further civil action against Respondent for the alleged violations of the Act referenced in the Risk Management Plan Penalty Checklist. EPA does not waive its right to take enforcement action for other violations of the Clean Air Act or for violations of any other statute.

If the signed original ESA is not returned to the EPA Region 8 office at the above address in correct form by the Respondent in a timely manner, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

In addition, if Respondent fails to comply with the provisions of this ESA, by either 1) failing to timely submit the above-referenced payment or 2) by failing to correct the violations no later than 60 days from the date the ESA is signed by the Respondent, the Respondent agrees that this agreement shall become null and void, and that EPA may file an administrative or civil enforcement action against Respondent for the violations addressed herein.

This ESA is binding on the parties signing below.

Cereal Food Processors, Inc. Expedited Settlement Agreement

FOR RESPONDENT:



Date: 10/2/07

Name (print): DENNIS C. WILSON

Title (print): Plant Manager

Cereal Food Processors, Inc.

FOR COMPLAINANT:



Date: 1/23/08

Assistant Regional Administrator
Office of Enforcement, Compliance and Environmental Justice

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

Facility Name: Cereal Food Processors, Inc. – Ogden, Utah

INSPECTION DATE: 8/24/2007

Section A: Management Program

PENALTY

Has the owner or operator:

Documented other persons responsible for implementing individual requirements of the risk management program and defined the lines of authority through an organization chart or similar document? [68.15(c)] **No, facility did not document the specific responsibilities of RMP implementation. There was not a current organizational chart showing delegations or a similar document for RMP compliance management.**

300

Section C: Prevention Program

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)] **No, the facility was not able to provide the SOP for the chlorine hoist.**

750

Have inspections and tests been performed on process equipment? [68.73(d)(1)] **No, inspection records for chlorine hoist were not provided.**

750

BASE PENALTY

\$1800

Recommendation:

Change accident/incident investigation SOP to include releases (of chlorine) with **potential to be catastrophic**, as well as catastrophic releases. Present SOP lists catastrophic releases but upon review of accident/incident reports, the facility clearly investigates all accidents and incidents. The SOP should include the facility's definition of an "incident".



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX

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

Governmental Entities*

Service Size (pop.)	Multiplier
0-10,000	.2
10,001-25,000	.4
25,001-50,000	.5
>50,000	1

*Primarily public drinking water and waste water systems (40 CFR Part 68, pg 31715, dated June 20, 1996)

Private Industry

*times the threshold quantity listed in CFR 68.130 for the
particular chemical use in a process

	*times the threshold quantity listed in CFR 68.130 for the particular chemical use in a process		
	1-5*	5-10*	>10*
1-5	.1	.15	.3
6-20	.15	.3	.4
21-50	.3	.4	.6
51-100	.4	.6	.7
>100	.6	.7	1

of Employees

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 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

1st Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for 21-50 employees and the row for 5- 10 times the threshold quantity amount gives a multiplier factor of 0.4. Therefore, the multiplier for XYZ Facility = 0.4.

2nd Use the Adjusted Penalty formula

Adjusted Penalty = \$4700 (Unadjusted Penalty) X 0.4 (Size-Threshold Multiplier)

Adjusted Penalty = \$1880

3rd An Adjusted Penalty of \$1880 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).

For Cereal Food Processors, Inc.:

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$720 = \$1,800 \times 0.4^*$$

* # of employees is 50. The total quantity of chlorine on-site is 16,000 lbs. The threshold quantity for chlorine is 2500 lbs.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **CEREAL FOOD PROCESSORS, INC.**, **DOCKET NO.: CAA-08-2008-0006** was filed with the Regional Hearing Clerk on January 24, 2008.

Further, the undersigned certifies that a true and correct copy of the document was delivered to David Janik, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on January 24, 2008.

Dennis Moen, Plant Manager
Cereal Food Processors, Inc.
220 West 30th Street
Ogden, UT 84401

E-mailed to:

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

January 24, 2008



Tina Artemis
Paralegal/Regional Hearing Clerk

