UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3123

ENFORCEMENT & COMPLIANCE ASSURANCE DIVISION

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA-10-2020-0011
This ESA is issued to: Wilbur-Ellis Company LLC
36025 Highway 12
Dayton, Washington

This Expedited Settlement Agreement (ESA) is being entered into by the U.S. Environmental Protection Agency Region 10 (EPA), by its duly delegated official, and by Wilbur-Ellis Company LLC ("Respondent") pursuant to Section 113(a)(3) and (d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). On February 13, 2019, EPA obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

EPA has determined that Respondent violated the Risk Management Program (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Clean Air Act (CAA), as noted on the enclosed Risk Management Plan Inspection Findings and Alleged Violations Summary ("Summary"), 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), and upon consideration of the entire record, the parties enter into the ESA in order to settle the violations described in the enclosed Summary for the total penalty amount of **$4,500.**

This settlement is subject to the following terms and conditions:

Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained herein and in the Summary, and consents to the assessment of the penalty as stated above.

Respondent waives its rights to contest the allegations contained herein or in the Summary, to a hearing afforded by Section 113(d)(2)(A) of the CAA, 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 Respondent has corrected the violations listed in the enclosed Summary.

Respondent agrees to submit payment in full of the $4,500 within 30 days of the filing of a fully executed copy of this ESA with the Regional Hearing Clerk.

Payment instructions are included on the enclosed "Payment Instructions," which is hereby incorporated by reference.

This original ESA must be sent by certified mail to:

David Magdangal, 112(r) Enforcement Officer
Office of Compliance and Enforcement
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, Mail Stop: 20-C04
Seattle, Washington 98101

Upon Respondent's submission of the signed original ESA, signature by EPA, filing with the Regional Hearing Clerk, and timely payment of the penalty, EPA will take no further civil penalty action against Respondent for the alleged violations of the CAA referenced in the Summary. EPA does not waive its right to any other enforcement action for any other violations of the CAA or any other statute.

If the signed original ESA is not returned to the EPA Region 10 at the above address by 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 Summary.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT:

Signature: Rachel Turner Date: 11-12-19
Name (print): Rachel Turner
Title (print): Operations Manager
Cost to correct violation(s): $5,000.00

FOR COMPLAINANT:

Date: 12/09/2019
Edward J. Kowalski
Director
Office of Compliance and Enforcement

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

Date: 12/10/19
Richard Mednick
Regional Judicial Officer

Certificate of Service

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: Wilbur-Ellis Company LLC, Docket No.: CAA-10-2020-0011**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

David Magdangal, 112(r) Enforcement Officer
1200 Sixth Avenue, Suite 155, Mail Stop: 20-C04
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Registered Agent
Registered Agent Solutions, Inc.
3400 Capitol Blvd SE, Suite 101
Tumwater, Washington 985018

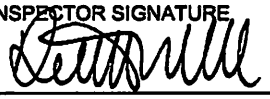
DATED this 11 day of December, 2019

Teresa Young
Regional Hearing Clerk
EPA Region 10

U.S. ENVIRONMENTAL PROTECTION AGENCY

Risk Management Program Inspection Findings and Alleged Violations Summary
Region 10

REASON FOR INSPECTION: This inspection is for the purpose of determining compliance with Section 112(r)(7) accidental release prevention requirements of the Clean Air Act, as amended 1990. 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 of chemical storage, handling, processing, and use; taking samples and photographs; and any other inspection activities necessary to determine compliance with the Act.

FACILITY NAME: Wilbur-Ellis Company (Waitsburg, WA)	☒ PRIVATE ☐ GOVERNMENTAL/MUNICIPAL # EMPLOYEES: 5 POPULATION SERVED: Click here	
FACILITY LOCATION: 36025 Highway 12, Dayton, Washington 99328	INSPECTION START DATE: 6/20/2019	INSPECTION START TIME: 14:00
MAILING ADDRESS: P.O. Box 1643, Walla Walla, Washington 99362	INSPECTION END DATE: 6/20/2019	INSPECTION END TIME: 16:30
RESPONSIBLE OFFICIAL, TITLE, PHONE NUMBER: Ken Keithley, Branch Manager, (509) 337-6751	EPA FACILITY ID# 1000 0009 3766	
FACILITY REPRESENTATIVE(S), TITLE(S), PHONE NUMBER(S): Ken Keithley, Branch Manager, (509) 337-6751 Todd Scott, Shop Foreman, (509) 529-5381	INSPECTOR NAME(S), TITLE(S), PHONE NUMBER(S) David Magdangal, Lead RMP Inspector, (206) 553-4044 Peter Phillips, RMP Inspector, (206) 553-1757 Bob Hales, RMP Inspector, (206) 553-4090	
	INSPECTOR SIGNATURE:  DATE: 10/8/19	

INSPECTION FINDINGS

IS FACILITY SUBJECT TO RMP REGULATION (40 CFR 68)?	☒ YES ☐ NO
DID FACILITY SUBMIT AN RMP AS PROVIDED IN 68.150 TO 68.185?	☒ YES ☐ NO
DATE RMP FILED WITH EPA: June 21, 1999	DATE OF LATEST RMP UPDATE: May 20, 2019
1) PROCESS/NAICS CODE: 42491	PROGRAM LEVEL: ☐ 1 ☒ 2 ☐ 3
REGULATED SUBSTANCE: Anhydrous Ammonia	MAX. QUANTITY IN PROCESS (lbs.): 77,000

DESCRIPTION OF ALLEGED VIOLATIONS

CAA Section 112(r) and its implementing regulations in 40 C.F.R. Part 68 require an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance (listed in § 68.130) in a process, to develop a Risk Management Plan (RMP) and Risk Management Program.

Three (3) EPA representatives inspected the Wilbur-Ellis Company (Waitsburg, WA) facility on June 20, 2019. Based upon this inspection, the Wilbur-Ellis Company (Waitsburg, WA) facility is in violation of the following risk management program elements:

Prevention Program- Safety information [68.48]

1. The Wilbur-Ellis Company did not compile and maintain up-to-date safety information, related to the maximum intended inventory for anhydrous ammonia. The Wilbur-Ellis Company was unable to provide calculations for the maximum intended inventory for anhydrous ammonia. Therefore, Wilbur-Ellis violated prevention program provisions required by 40 C.F.R. § 68.48(a)(2).

Prevention Program- Operating procedures [68.52]

2. The Wilbur-Ellis Company did not have written operating procedures for the following: (1) startup following a normal or emergency shutdown or a major change that requires a hazard review; and (2) consequences of deviations and steps required to correct or avoid deviations. Therefore, Wilbur-Ellis violated prevention program provisions required by 40 C.F.R. § 68.52(b)(6) and 40 C.F.R. § 68.52(b)(7), respectively.

Prevention Program - Training [68.54]

3. The Wilbur-Ellis Company did not certify that Todd Scott (hired September 1, 1991) has been trained or tested competent in the operating procedures. Therefore, the Wilbur-Ellis Company violated the prevention program provisions required by 40 C.F.R. § 68.54(a) by not certifying in writing that the employee (already operating a process on June 21, 1999) has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as provided in the operating procedures.
4. The Wilbur-Ellis Company did not provide refresher training at least every three years, or more often if necessary, to Larry Pitcher (hired October 9, 2013) and Miguel Franco (hired March 30, 2000), to ensure that the employee understands and adheres to the current operating procedures of the process. Larry Pitcher and Miguel France underwent refresher training on September 12, 2017 that is greater than three years. This is the only training documented for them. Therefore, the Wilbur-Ellis Company violated the prevention program provisions required by 40 C.F.R. § 68.54(b).
5. The Wilbur-Ellis Company has not determined, in consultation with the employees operating the process, the appropriate frequency of refresher training. This was identified as a deficiency in a September 12, 2016 compliance audit. There is no evidence that this deficiency was corrected. Therefore, the Wilbur-Ellis Company violated prevention program provisions required by 40 C.F.R. § 68.54(b).

Prevention Program - Compliance audits [68.58]

6. The Wilbur-Ellis Company has not certified that compliance audits are conducted at least every three years to verify that the procedures and practices are adequate and are being followed. The Wilbur-Ellis Company has two audits on file, one performed on September 12, 2016 and another performed on July 3, 2012. The September 12, 2016 compliance audit was performed a year later passed the due date of July 2015. Therefore, the Wilbur-Ellis Company violated prevention program provisions required by 40 C.F.R. § 68.58(a).
7. The Wilbur-Ellis Company has not promptly determined and documented an appropriate response to the training deficiency identified above (item #5). This deficiency was identified in the September 12, 2016 compliance audit. Therefore, the Wilbur-Ellis Company violated prevention program provisions required by 40 C.F.R. § 68.58(d).

DID FACILITY CORRECTLY ASSIGN PROGRAM LEVELS TO PROCESSES? ☒ YES ☐ NO

ATTACHED CHECKLIST(S):

☐ PROGRAM LEVEL 1 ☒ PROGRAM LEVEL 2 ☐ PROGRAM LEVEL 3

OTHER ATTACHMENTS:

Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet

RMP Program Level 2 Process Penalty Schedule	
Facility Name: Wilbur-Ellis Company (Waitsburg, WA) (EPA ID# 1000 0009 3766)	
Section A – Management [68.15]	
Management system developed and implemented as provided in 40 CFR 68.15?	
Comments:	
Has the owner or operator:	
1. Developed a management system to oversee the implementation of the risk management program elements? [68.15(a)]	0
2. Assigned a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements? [68.15(b)]	0
3. 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)]	0
Section B: Hazard Assessment [68.20-68.42]	
Hazard assessment conducted and documented as provided in 40 CFR 68.20-68.42?	
Comments:	
Hazard Assessment: Offsite consequence analysis parameters [68.22]	
1. Used the following endpoints for offsite consequence analysis for a worst-case scenario: [68.22(a)]	0
__ For toxics: the endpoints provided in Appendix A of 40 CFR Part 68? [68.22(a)(1)]	
__ For flammables: an explosion resulting in an overpressure of 1 psi? [68.22(a)(2)(i)]; or	
__ For flammables: a fire resulting in a radiant heat/exposure of 5 kw/m^2 for 40 seconds? [68.22(a)(2)(ii)]	
__ For flammables: a concentration resulting in a lower flammability limit, as provided in NFPA documents or other generally recognized sources? [68.22(a)(2)(iii)]	
2. Used the following endpoints for offsite consequence analysis for an alternative release scenario: [68.22(a)]	0
__ For toxics: the endpoints provided in Appendix A of 40 CFR Part 68? [68.22(a)(1)]	
__ For flammables: an explosion resulting in an overpressure of 1 psi? [68.22(a)(2)(i)]	
__ For flammables: a fire resulting in a radiant heat/exposure of 5 kw/m^2 for 40 seconds? [68.22(a)(2)(ii)]	
__ For flammables: a concentration resulting in a lower flammability limit, as provided in NFPA documents or other generally recognized sources? [68.22(a)(2)(iii)]	
3. Used appropriate wind speeds and stability classes for the release analysis? [68.22(b)]	0
4. Used appropriate ambient temperature and humidity values for the release analysis? [68.22(c)]	0
5. Used appropriate values for the height of the release for the release analysis? [68.22(d)]	0
6. Used appropriate surface roughness values for the release analysis? [68.22(e)]	0
7. Do tables and models, used for dispersion analysis of toxic substances, appropriately account for dense or neutrally buoyant gases? [68.22(f)]	0
8. Were liquids, other than gases liquefied by refrigeration only, considered to be released at the highest daily maximum temperature, based on data for the previous three years appropriate for a stationary source, or at process temperature, whichever is higher? [68.22(g)]	0
Hazard Assessment: Worst-case release scenario analysis [68.25]	
9. Analyzed and reported in the RMP one worst-case release scenario estimated to create the greatest distance to an endpoint resulting from an accidental release of a regulated toxic substance from covered processes under worst-case conditions? [68.25(a)(2)(i)]	0
10. Analyzed and reported in the RMP one worst-case release scenario estimated to create the greatest distance to an endpoint resulting from an accidental release of a regulated flammable substance from covered processes under worst-case conditions? [68.25(a)(2)(ii)]	0
11. Analyzed and reported in the RMP additional worst-case release scenarios for a hazard class if the worst-case release from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case release scenario developed under 68.25(a)(2)(i) or 68.25(a)(2)(ii)? [68.25(a)(2)(iii)]	0
12. Has the owner or operator determined the worst-case release quantity to be the greater of the following: [68.25(b)]	0
__ If released from a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity? [68.25(b)(1)]	
__ If released from a pipe, the greatest amount held in the pipe, taking into account administrative controls that limit the maximum quantity? [68.25(b)(2)]	

Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet

13.a. Has the owner or operator for toxic substances that are normally gases at ambient temperature and handled as a gas or liquid:	
13.a.(1) Assumed the whole quantity in the vessel or pipe would be released as a gas over 10 minutes? [68.25(c)(1)]	0
13.a.(2) Assumed the release rate to be the total quantity divided by 10, if there are no passive mitigation systems in place? [68.25(c)(1)]	0
13.b. Has the owner or operator for toxic gases handled as refrigerated liquids at ambient pressure:	
13.b.(1) Assumed the substance would be released as a gas in 10 minutes, if not contained by passive mitigation systems or if the contained pool would have a depth of 1 cm or less? [68.25(c)(2)(i)]	0
13.b.(2) [Optional for owner / operator] Assumed the quantity in the vessel or pipe would be spilled instantaneously to form a liquid pool, if the released substance would be contained by passive mitigation systems in a pool with a depth greater than 1 cm? [68.25(c)(2)(ii)]	0
13.b.(3) Calculated the volatilization rate at the boiling point of the substance and at the conditions specified in 68.25(d)? [68.25(c)(2)(ii)]	0
13.c. Has the owner or operator for toxic substances that are normally liquids at ambient temperature:	
13.c.(1) Assumed the quantity in the vessel or pipe would be spilled instantaneously to form a liquid pool? [68.25(d)(1)]	0
13.c.(2) Determined the surface area of the pool by assuming that the liquid spreads to 1 cm deep, if there is no passive mitigation system in place that would serve to contain the spill and limit the surface area, or if passive mitigation is in place, was the surface area of the contained liquid used to calculate the volatilization rate? [68.25(d)(1)(i)]	0
13.c.(3) Taken into account the actual surface characteristics, if the release would occur onto a surface that is not paved or smooth? [68.25(d)(1)(ii)]	0
13.c.(4) Determined the volatilization rate by accounting for the highest daily maximum temperature in the past three years, the temperature of the substance in the vessel, and the concentration of the substance if the liquid spilled is a mixture or solution? [68.25(d)(2)]	0
13.c.(5) Determined the rate of release to air from the volatilization rate of the liquid pool? [68.25(d)(3)]	0
13.c.(6) Determined the rate of release to air by using the methodology in the RMP Offsite Consequence Analysis Guidance, any other publicly available techniques that account for the modeling conditions and are recognized by industry as applicable as part of current practices, or proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request? [68.25(d)(3)] What modeling technique did the owner or operator use? [68.25(g)] _____	0
13.d. Has the owner or operator for flammables:	
13.d.(1) Assumed the quantity in a vessel(s) of flammable gas held as a gas or liquid under pressure or refrigerated gas released to an undiked area vaporizes resulting in a vapor cloud explosion? [68.25(e)]	0
13.d.(2) For refrigerated gas released to a contained area or liquids released below their atmospheric boiling point, assumed the quantity volatilized in 10 minutes results in a vapor cloud? [68.25(f)]	0
13.d.(3) Assumed a yield factor of 10% of the available energy is released in the explosion for determining the distance to the explosion endpoint, if the model used is based on TNT-equivalent methods? [68.25(e)]	0
14. Used the parameters defined in 68.22 to determine distance to the endpoints? [68.25(g)]	0
15. Determined the rate of release to air by using the methodology in the RMP Offsite Consequence Analysis Guidance, any other publicly available techniques that account for the modeling conditions and are recognized by industry as applicable as part of current practices, or proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request? [68.25(g)] What modeling technique did the owner or operator use? [68.25(g)] _____	0
16. Ensured that the passive mitigation system, if considered, is capable of withstanding the release event triggering the scenario and will still function as intended? [68.25(h)]	0
17. Considered also the following factors in selecting the worst-case release scenarios: [68.25(i)]	0
__ Smaller quantities handled at higher process temperature or pressure? [68.25(i)(1)]	
__ Proximity to the boundary of the stationary source? [68.25(i)(2)]	

Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet

Hazard Assessment: Alternative release scenario analysis [68.28]	
18. Identified and analyzed at least one alternative release scenario for each regulated toxic substance held in a covered process(es) and at least one alternative release scenario to represent all flammable substances held in covered processes? [68.28(a)]	0
19. Selected a scenario: [68.28(b)]	
__ That is more likely to occur than the worst-case release scenario under 68.25? [68.28(b)(1)(i)]	0
__ That will reach an endpoint off-site, unless no such scenario exists? [68.28(b)(1)(ii)]	
20. Considered release scenarios which included, but are not limited to, the following: [68.28(b)(2)]	
__ Transfer hose releases due to splits or sudden hose uncoupling? [68.28(b)(2)(i)]	
__ Process piping releases from failures at flanges, joints, welds, valves and valve seals, and drains or bleeds? [68.28(b)(2)(ii)]	
__ Process vessel or pump releases due to cracks, seal failure, or drain, bleed, or plug failure? [68.28(b)(2)(iii)]	0
__ Vessel overfilling and spill, or overpressurization and venting through relief valves or rupture disks? [68.28(b)(2)(iv)]	
__ Shipping container mishandling and breakage or puncturing leading to a spill? [68.28(b)(2)(v)]	
21. Used the parameters defined in 68.22 to determine distance to the endpoints? [68.28(c)]	0
22. Determined the rate of release to air by using the methodology in the RMP Offsite Consequence Analysis Guidance, any other publicly available techniques that account for the modeling conditions and are recognized by industry as applicable as part of current practices, or proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request? [68.28(c)]	0
What modeling technique did the owner or operator use? [68.25(g)] _____	
23. Ensured that the passive and active mitigation systems, if considered, are capable of withstanding the release event triggering the scenario and will be functional? [68.28(d)]	0
24. Considered the following factors in selecting the alternative release scenarios: [68.28(e)]	
__ The five-year accident history provided in 68.42? [68.28(e)(1)]	0
__ Failure scenarios identified under 68.50? [68.28(e)(2)]	
Hazard Assessment: Defining off-site impacts--Population [68.30]	
25. Estimated population that would be included in the distance to the endpoint in the RMP based on a circle with the point of release at the center? [68.30(a)]	0
26. Identified the presence of institutions, parks and recreational areas, major commercial, office, and industrial buildings in the RMP? [68.30(b)]	0
27. Used most recent Census data, or other updated information to estimate the population? [68.30(c)]	0
28. Estimated the population to two significant digits? [68.30(d)]	0
Hazard Assessment: Defining off-site impacts--Environment [68.33]	
29. Identified environmental receptors that would be included in the distance to the endpoint based on a circle with the point of release at the center? [68.33(a)]	0
30. Relied on information provided on local U.S.G.S. maps, or on any data source containing U.S.G.S. data to identify environmental receptors? [Source may have used LandView to obtain information] [68.33(b)]	0
Hazard Assessment: Review and update [68.36]	
31. Reviewed and updated the off-site consequence analyses at least once every five years? [68.36(a)]	0
32. Completed a revised analysis and submit a revised RMP within six months of a change in processes, quantities stored or handled, or any other aspect that might reasonably be expected to increase or decrease the distance to the endpoint by a factor of two or more? [68.36(b)]	0
Hazard Assessment: Documentation [68.39]	
33. For worst-case scenarios: a description of the vessel or pipeline and substance selected, assumptions and parameters used, the rationale for selection, and anticipated effect of the administrative controls and passive mitigation on the release quantity and rate? [68.39(a)]	0
34. For alternative release scenarios: a description of the scenarios identified, assumptions and parameters used, the rationale for the selection of specific scenarios, and anticipated effect of the administrative controls and mitigation on the release quantity and rate? [68.39(b)]	0
35. Documentation of estimated quantity released, release rate, and duration of release? [68.39(c)]	0
36. Methodology used to determine distance to endpoints? [68.39(d)]	0
37. Data used to estimate population and environmental receptors potentially affected? [68.39(e)]	0
Hazard Assessment: Five-year accident history [68.42]	
38. Has the owner or operator included all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage? [68.42(a)]	0

Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet

39. Has the owner or operator reported the following information for each accidental release: [68.42(b)]	
__ Date, time, and approximate duration of the release? [68.42(b)(1)]	0
__ Chemical(s) released? [68.42(b)(2)]	0
__ Estimated quantity released in pounds and percentage weight in a mixture (toxics)? [68.42(b)(3)]	0
__ NAICS code for the process? [68.42(b)(4)]	0
__ The type of release event and its source? [68.42(b)(5)]	0
__ Weather conditions (if known)? [68.42(b)(6)]	0
__ On-site impacts? [68.42(b)(7)]	0
__ Known offsite impacts? [68.42(b)(8)]	0
__ Initiating event and contributing factors (if known)? [68.42(b)(9)]	0
__ Whether offsite responders were notified (if known)? [68.42(b)(10)]	0
__ Operational or process changes that resulted from investigation of the release? [68.42(b)(11)]	0
Section C: Prevention Program	
Implemented the Program 2 prevention requirements as provided in 40 CFR 68.48 - 68.60?	
Comments:	
Prevention Program- Safety information [68.48]	
1. Compiled and maintained the following up-to-date safety information, related to the regulated substances, processes, and equipment: [68.48(a)]	
__ Material Safety Data Sheets (MSDS) that meet the requirements of the OSHA Hazard Communication Standard [29 CFR 1910.1200(g)]? [68.48(a)(1)]	0
__ Maximum intended inventory of equipment in which the regulated substances are stored or processed? [68.48(a)(2)]	300
__ Safe upper and lower temperatures, pressures, flows, and compositions? [68.48(a)(3)]	0
__ Equipment specifications? [68.48(a)(4)]	0
__ Codes and standards used to design, build, and operate the process? [68.48(a)(5)]	0
2. Ensured the process is designed in compliance with recognized and generally accepted good engineering practices? [68.48(b)]	0
3. Updated information if a major change has occurred that made the information inaccurate? [68.48(c)]	0
Prevention Program- Hazard review [68.50]	
4. Has the owner or operator conducted a review of the hazards associated with the regulated substances, processes, and procedures? [68.50(a)]	0
5. Did the review identify:	
__ The hazards associated with the process and regulated substances? [68.50(a)(1)]	0
__ Opportunities for equipment malfunctions or human errors that could cause an accidental release? [68.50(a)(2)]	0
__ The safeguards used or needed to control the hazards or prevent equipment malfunctions or human error? [68.50(a)(3)]	0
__ Any steps used or needed to detect or monitor releases? [68.50(a)(4)]	0
6. Determined by inspecting all equipment that the processes are designed, fabricated, and operated in accordance with applicable standards or rules, if designed to meet industry standards or Federal or state design rules? [68.50(b)]	0
7. Documented the results of the review? [68.50(c)]	0
8. Ensured that problems identified were resolved in a timely manner? [68.50(c)]	0
9. Updated the review at least once every five years or whenever a major change in the processes occurred? [68.50(d)]	0
10. Resolved all issues identified in the review before startup of the changed process? [68.50(d)]	0
Prevention Program- Operating procedures [68.52]	
11. Has the owner or operator prepared written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process? (Operating procedures or instructions provided by equipment manufacturers or developed by persons or organizations knowledgeable about the process and equipment may be used as a basis for a stationary source's operating procedures.) [68.52(a)]	0

Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet

12. Do the procedures address the following: [68.52(b)]	
__ Initial startup? [68.52(b)(1)]	0
__ Normal operations? [68.52(b)(2)]	0
__ Temporary operations? [68.52(b)(3)]	0
__ Emergency shutdown and operations? [68.52(b)(4)]	0
__ Normal shutdown? [68.52(b)(5)]	0
__ Startup following a normal or emergency shutdown or a major change that requires a hazard review? [68.52(b)(6)]	1200
__ Consequences of deviations and steps required to correct or avoid deviations? [68.52(b)(7)]	1200
__ Equipment inspections? [68.52(b)(8)]	0
13. Has the owner or operator ensured that the operating procedures have been updated, if necessary, whenever a major change occurred and prior to startup of the changed process? [68.52(c)	0
Prevention Program - Training [68.54]	
14. Certified that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in § 68.52 that pertain to their duties? (For those employees already operating a process on June 21, 1999, the owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as provided in the operating procedures.) [68.54(a)]	1500
15. Provided refresher training at least every three years, or more often if necessary, to each employee operating a process, to ensure that the employee understands and adheres to the current operating procedures of the process? [68.54(b)]	1500
16. Determined, in consultation with the employees operating the process, the appropriate frequency of refresher training? [68.54(b)]	300
17. Certified that each employee was trained in any updated or new procedures prior to startup of a process after a major change? [68.54(d)]	0
Prevention Program - Maintenance [68.56]	
18. Prepared and implemented procedures to maintain the on-going mechanical integrity of the process equipment? [68.56(a)]	0
19. Trained or caused to be trained each employee, involved in maintaining the on-going mechanical integrity of the process, in the hazards of the process, in how to avoid or correct unsafe conditions, and in the procedures applicable to the employee's job tasks? [68.56(b)]	0
20. Has every maintenance contractor ensured that each contract maintenance employee is trained to perform the maintenance procedures developed? [68.56(c)]	0
21. Has the owner or operator performed or caused to be performed inspections and tests on process equipment that follow recognized and generally accepted engineering practices? [68.56(d)]	0
Prevention Program - Compliance audits [68.58]	
22. Has the owner or operator certified that compliance audits are conducted at least every three years to verify that the procedures and practices are adequate and are being followed? [68.58(a)]	1200
23. Has compliance audit been conducted by at least one person knowledgeable in the process? [68.58(b)]	0
24. Has the owner operator developed a report of the audits findings? [68.58(c)]	0
25. Has the owner or operator promptly determined and documented an appropriate response to each of the findings of the audit and documented that deficiencies had been corrected? [68.58(d)]	300
26. Has the owner or operator retained the two most recent compliance audit reports, unless more than five years old? [68.58(e)]	0
Prevention Program - Incident Investigation [68.60]	
27. Has the owner or operator investigated each incident that resulted in, or could reasonably have resulted in a catastrophic release? [68.60(a)]	0
28. Were all incident investigations initiated not later than 48 hours following the incident? [68.60(b)]	0
29. Was a summary prepared at the conclusion of every investigation, which included: [68.60(c)]	
__ Date of incident? [68.60(c)(1)]	0
__ Date investigation began? [68.60(c)(2)]	0
__ A description of incident? [68.60(c)(3)]	0
__ The factors that contributed to the incident? [68.60(c)(4)]	0
__ Any recommendations resulting from the investigation? [68.60(c)(5)]	0
30. Has the owner or operator promptly addressed and resolved the investigation findings and recommendations, and are the resolutions and corrective actions documented? [68.60(d)]	0

Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet

31. Has the owner or operator reviewed the finding with all affected personnel whose job tasks are affected by the findings? [68.60(e)]	0
32. Has the owner or operator retained investigation summaries for five years? [68.60(f)]	0
Section D - Emergency Response [68.90 - 68.95]	
Developed and implemented an emergency response program as provided in 40 CFR 68.90-68.95?	
Comments:	
1. Is the facility designated as a "first responder" in case of an accidental release of regulated substances"	
1.a. If the facility is not a first responder:	
1.a.(1) For stationary sources with any regulated substances held in a process above threshold quantities, is the source included in the community emergency response plan developed under 42 U.S.C. 11003? [68.90(b)(1)]	0
1.a.(2) For stationary sources with only regulated flammable substances held in a process above threshold quantities, has the owner or operator coordinated response actions with the local fire department? [68.90(b)(2)]	0
1.a.(3) Are appropriate mechanisms in place to notify emergency responders when there is need for a response? [68.90(b)(3)]	0
2. An emergency response plan is maintained at the stationary source and contains the following? [68.95(a)(1)]	
__ Procedures for informing the public and local emergency response agencies about accidental releases? [68.95(a)(1)(i)]	0
__ Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures? [68.95(a)(1)(ii)]	0
__ Procedures and measures for emergency response after an accidental release of a regulated substance? [68.95(a)(1)(iii)]	0
3. The emergency response plan contains procedures for the use of emergency response equipment and for its inspection, testing, and maintenance? [68.95(a)(2)]	0
4. The emergency response plan requires, and there is documentation of, training for all employees in relevant procedures? [68.95(a)(3)]	0
5. The owner or operator has developed and implemented procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes? [68.95(a)(4)]	0
6. Did the owner or operator use a written plan that complies with other Federal contingency plan regulations or is consistent with the approach in the National Response Team's Integrated Contingency Plan Guidance ("One Plan")? If so, does the plan include the elements provided in paragraph (a) of 68.95, and also complies with paragraph (c) of 68.95? [68.95(b)]	0
7. Has the emergency response plan been coordinated with the community emergency response plan developed under EPCRA? [68.95(c)]	0
Section E – Risk Management Plan [40 CFR 68.160 – 68.195]	
1. 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)]	0
2. Did the facility assign the correct program level(s) to its covered process(es)? [68.160(b)(7)]	0
3. Has the owner or operator reviewed and updated the RMP and submitted it to EPA [68.190(a)]?	
Reason for update:	
__ Five-year update. [68.190(b)(1)]	0
__ Within three years of a newly regulated substance listing. [68.190(b)(2)]	0
__ At the time a new regulated substance is first present in an already regulated process above threshold quantities. [68.190(b)(3)]	0
__ At the time a regulated substance is first present in an new process above threshold quantities. [68.190(b)(4)]	0
__ Within six months of a change requiring revised PHA or hazard review. [68.190(b)(5)]	0
__ Within six months of a change requiring a revised OCA as provided in 68.36. [68.190(b)(6)]	0
__ Within six months of a change that alters the Program level that applies to any covered process. [68.190(b)(7)]	0
4. If the owner or operator experienced an accidental release that met the five-year accident history reporting criteria (as described at 68.42) subsequent to April 9, 2004, did the owner or operator submit the information required at 68.168, 68.170(j) and 68.175(l) within six months of the release or by the time the RMP was updated as required at 68.190, whichever was earlier. [68.195(a)]	0
5. If the emergency contact information required at 68.160(b)(6) has changed since June 21, 2004, did the owner or operator submit corrected information within thirty days of the change? [68.195(b)]	0
TOTAL ASSESSED PENALTY	$7,500

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3123

ENFORCEMENT &
COMPLIANCE ASSURANCE
DIVISION

EXPEDITED SETTLEMENT PENALTY WORKSHEET

Wilbur-Ellis Company LLC
Dayton, Washington

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 Inspection Findings and Alleged Violations Summary.

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 Adjusted Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the Unadjusted Penalty and the Size-Threshold Quantity multiplier.

Calculation:

Wilbur-Ellis Company (Waitsburg, WA) facility, located in Dayton, Washington has five (5) employees. Wilbur-Ellis Company uses/stores 7.7 times the threshold amount of anhydrous ammonia regulated under the Clean Air Act - Section 112(r) Risk Management Program. After adding the penalty numbers in the Risk Management Program Expedited Settlement Penalty Sheet, an unadjusted penalty of $7,500 is derived.

Calculation of Adjusted Penalty

1st Reference the Multipliers for calculating proposed penalties for violations found during the RMP inspection. Finding the row for 0 to 9 employees and the column for 5 to 10 times the threshold quantity amount gives a multiplier of 0.6. Therefore, the multiplier for Wilbur-Ellis Company is 0.6.

2nd Use the Adjusted Penalty formula

Adjusted Penalty = $7,500 (Unadjusted Penalty) x 0.6 (Size-Threshold Multiplier)
Adjusted Penalty = $4,500

3rd An Adjusted Penalty of $4,500 would be assessed to Wilbur-Ellis Company for violations found during the RMP inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

EXPEDITED SETTLEMENT PENALTY MATRIX

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

Governmental Entities
(Primarily public drinking water and waste water systems)

Total Population Served	1 – 5*	> 5 – 10*	>10*
1 – 10,000	0.2	0.4	0.6
10,001 – 100,000	0.4	0.6	0.8
> 100,000	0.6	0.8	1.0

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