



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

JAN 08 2020

Mr. John Howard
Utilities Manager
Brakebush-Irving
2230 E. Union Bower Road
Irving, TX 75061

Re: Expedited Settlement Agreement (ESA) for Risk Management Plan Inspection Findings and Proposed Penalty
In the Matter of Brakebush-Irving Facility
Docket No. CAA 06-2020-3502

Dear Mr. Howard:

Enclosed for your record is a copy of a fully executed Expedited Settlement Agreement (ESA) for the Brakebush-Irving facility located in Irving, Texas. As provided in the ESA, the Brakebush-Irving facility should have already certified that the violation(s) have been corrected, provided a brief description of complying action(s), and paid the civil penalty of \$ 3,700.00.

If you have any questions relating to this ESA, please contact Elizabeth Rogers of my staff at (214) 665-6708 or via e-mail at rogers.elizabeth@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to be "Cheryl T. Seager", with a long horizontal line extending to the right.

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure(s)

Ecc: Michael De La Cruz, Manager
Air Enforcement Section
Enforcement Division, Office of Compliance & Enforcement
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, TX 78711-3087
michael.delacruz@tceq.texas.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

FILED

2020 JAN -8 PM 12:52

REGIONAL OFFICE
EPA REGION VI

DEC 05 2019

EXPEDITED SETTLEMENT AGREEMENT (ESA)

DOCKET NO: CAA 06-2020-3502

This complaint is issued to: Brakebush-Irving Facility

At: 2230 E. Union Bower Road, Irving, Texas

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

This Expedited Settlement Agreement (ESA) is being entered into by the United States Environmental Protection Agency (EPA), Region 6, by its delegated official, the Director, Enforcement and Compliance Assurance Division, and by Brakebush-Irving facility (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 and the United States Department of Justice have jointly determined that EPA may pursue this type of case as an administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

On June 20, 2019, an authorized representative of the EPA conducted a compliance inspection of the subject facility (Respondent) to determine compliance with the Risk Management Program (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Act, 42 U.S.C. § 7412(r). EPA found that the Respondent had violated regulations implementing Section 112(r) of the Act, 42 U.S.C. § 7412(r), by failing to comply with the regulations as noted.

- 1) 40 C.F.R. § 68.25(c)(1) "Worst-case release scenario analysis" For regulated toxic substances that are normally gases at ambient temperature and handled as a gas or as a liquid under pressure, the owner or operator shall assume that the quantity in the vessel or pipe is released as a gas over ten minutes.

The Respondent violated 40 C.F.R. § 68.25(c)(1) by originally assuming only a two-minute release. The Respondent began updating the worst-case scenario analysis at time of the RMP inspection.

- 2) 40 C.F.R. § 68.30(a) "Defining offsite impacts-population" The owner or operator shall estimate in the RMP the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint.

The Respondent violated 40 C.F.R. § 68.30(a) by only identifying the population within an ALOHA model. The Respondent began updating the total population number at the time of the RMP inspection.

- 3) 40 C.F.R. § 68.67(e) "Process hazard analysis (PHA)" The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is 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; communicate the actions to operating,

maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

The Respondent violated 40 C.F.R. § 68.67(e) by failing to produce a complete and adequate PHA document dated 2015. The Respondent's PHA findings and recommendations document dated 2015 contained multiple incomplete statuses with end dates of 2015. While various items had been resolved, these items had not been documented as completed.

- 4) 40 C.F.R. § 68.195(b) "Required corrections" The owner or operator of a stationary source for which an RMP was submitted shall correct the RMP. The owner or operator shall submit a correction of the emergency contact information required under 40 C.F.R. § 68.160(b)(6) within one month of any change in the required emergency contact information.

The Respondent violated 40 C.F.R. § 68.195(b) by failing to update the emergency contact information. Specifically, the Brakebush-Irving emergency contact number goes to the automated company directory and not to a specific individual.

SETTLEMENT

In consideration of the factors set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e), including 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 above for the total penalty amount of **\$ 3,700.00**. 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 herein, 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 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 above and has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") or by wire transfer in the amount of **\$ 3,700.00**, 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, MO 63197-9000

Or

For wire transfer, the payment should be remitted to:

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

Field Tag 4200 of the Fed-wire message should read "D 68010727 Environmental Protection Agency" with a phone number of (412) 234-4381.

The DOCKET NUMBER OF THIS ESA must be included on the certified check. (The DOCKET NUMBER is located at the top of this ESA). **The original Settlement Agreement and a copy of the certified check or wire transfer must be sent by mail to:**

Elizabeth Rogers
RMP Enforcement Officer
Enforcement and Compliance Assurance Division (ECDAC)
U. S. Environmental Protection Agency - Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2101

Respondent's full payment of the penalty as provided in this Settlement Agreement shall resolve Respondent's liability for Federal civil penalties for the violations and facts alleged above. EPA does not waive any enforcement action by EPA for any other past, present, or future violations under the Act or any other statute.

If the Settlement Agreement with an attached copy of the certified check is not returned to the EPA Region 6 office at the above address in correct form by the Respondent within 30 days of the date of the receipt of this Settlement Agreement, the Complaint and ESA is withdrawn without prejudice to EPA's ability to file additional enforcement actions for the violations identified in this Settlement Agreement.

Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this complaint pursuant to 40 C.F.R. § 22.41. Upon signing and returning of this Settlement Agreement to EPA, the Respondent waives the opportunity for a hearing pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

This Settlement Agreement is binding on the EPA and the Respondent. By signing below, the Respondent waives any objections to EPA's jurisdiction with respect to the Settlement Agreement and consents to EPA's approval of this Settlement Agreement without further notice. This Settlement Agreement is effective upon filing with the Regional Hearing Clerk.

SIGNATURE BY RESPONDENT:

Signature: *John Howard*

Date: 12-12-19

Name (print): John Howard

Title (print) Utilities Manager

Cost of Corrective Actions: \$1,800

Respondent's Brief Description of Complying Action: Findings #1 & #2 were completed on the day of the audit 6-19-19. Finding #3 after reviewing the PHA we were able to locate the completed list of findings and put it in place. Finding #4 was completed on 8-23-19 when resubmission of our RMP was done with all above corrections.

If you need additional space or would like to provide additional supporting documentation, please attach to this document.

SIGNATURE BY EPA:

Cheryl T. Seager

Date: 1-7-2020

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

It is so ORDERED. This Order shall become effective upon filing of the fully executed Complaint and ESA with the Regional Hearing Clerk.

Thomas Rucki

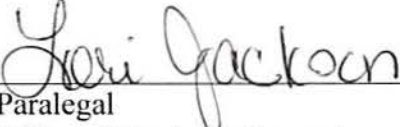
Date: 1/8/2020

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of Jan. 2020, the original of the foregoing Final Order of Clean Air Act, Section 112(r) Expedited Settlement Agreement was hand delivered to the Regional Hearing Clerk, U. S. EPA, Region 6 (ORC), 1201 Elm Street, Suite 500, Dallas, Texas 75270, and that a true and correct copy was placed in the United States mail, first class postage prepaid, addressed to the following:

Mr. John Howard
Utilities Manager
Brakebush-Irving
2230 E. Union Bower Road
Irving, TX 75061



Paralegal
Office of Regional Counsel
US EPA - Region 6