



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

AUG 23 2013

REPLY TO THE ATTENTION OF

SC-5J

Alex Shulman  
Utilities Manager  
Fresh Express  
1109 East Lake Street  
Streamwood, Illinois 60107  
ashulman@freshexpress.com

RE: Complaint and Expedited Settlement Agreement  
ESA Docket No. RMP-18-ESA-012  
Docket No. CAA-05-2018-0021

Dear Mr. Shulman:

Enclosed please find a copy of the fully executed Expedited Settlement Agreement (ESA). The ESA is binding on EPA and Respondent. EPA will take no further action against Respondent for the violations cited in the ESA. The ESA requires no further action on your part.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181, or chrzaszcz.monika@epa.gov, if you have any questions regarding the enclosed document or if you have any other question about the program. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael E. Hans".

Michael E. Hans, Chief  
Chemical Emergency  
Preparedness & Prevention Section

Enclosure



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 5**

**77 WEST JACKSON BOULEVARD  
CHICAGO, ILLINOIS 60604-3590**



**DOCKET NO: RMP-18-ESA-012**

**CAA-05-2018-0021**

**This ESA is issued to: Fresh Express**

**at: 1109 East Lake Street, Streamwood, Illinois 60107**

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

**EXPEDITED SETTLEMENT AGREEMENT**

The United States Environmental Protection Agency, Region 5, and Fresh Express (“Respondent”), have agreed to the settlement of this action before the filing of a Complaint. EPA and Respondent (jointly “the Parties”) have agreed that settling this action without the filing of a Complaint, or the adjudication of any issue of fact or law, is in their interest and in the public interest. This action is thus simultaneously commenced and concluded by this Expedited Settlement Agreement (“ESA”) and Final Order. *See* 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

This is an administrative action for the assessment of civil penalties instituted pursuant to EPA’s authority under Sections 113(a)(3) and (d) of the Clean Air Act (“Act”), 42 U.S.C. § 7413(a)(3) and (d). The Director of the Superfund Division, Region 5, EPA (“Complainant”) has been delegated the authority to issue an administrative complaint seeking the assessment of civil penalties for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r). The Regional Administrator for Region 5 of EPA is authorized by Sections 113(a)(3) and (d)(1) of the Act, 42 U.S.C. §§ 7413(a)(3), and (d)(1), to issue a Final Order ratifying this ESA. The Regional Administrator has delegated the authority to issue Final Orders ratifying settlements pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(3) to the Regional Judicial Officer, Office of Regional Counsel, EPA Region 5.

**ALLEGED VIOLATIONS**

On December 19, 2017, an authorized EPA representative conducted a compliance inspection of Fresh Express (“Facility”) to determine its compliance with the Risk Management Program (“RMP”) regulations promulgated pursuant to Section 112(r) of the Act, and set forth at 40 C.F.R. Part 68. Based on the December 19, 2017 inspection, EPA has determined that Respondent violated the following regulations:

1. 40 C.F.R. § 68.67(e) Respondent failed to establish a system to promptly address the Process Hazard Analysis team’s findings and recommendations and to assure that recommendations are resolved in a timely manner and that the resolution is documented.

2. 40 C.F.R. § 68.69(a)(1)(iv) Respondent failed to develop written operating procedures that addressed emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.
3. 40 C.F.R. § 68.71(c) Respondent failed to prepare a training record which contains the means used to verify that employees understood training.
4. 40 C.F.R. § 68.73(d)(3) Respondent failed to perform inspections and tests on process equipment that is consistent with applicable manufacturers' recommendations and good engineering practices.
5. 40 C.F.R. § 68.75(a) Respondent failed to implement written procedures to manage changes to process chemistry, technology, equipment and procedures; and, changes to stationary sources that affect a covered process.
6. 40 C.F.R. § 68.75(d) Respondent failed to update process safety information after a change to process chemistry, technology, equipment and procedures; and, changes to stationary sources that affect a covered process.
7. 40 C.F.R. § 68.87(b)(1) Respondent failed to obtain and evaluate information regarding the contract owner or operator's safety performance and programs.

### **SETTLEMENT**

In consideration of Respondent's size of business, its full compliance history, its good faith efforts to comply, other factors as justice may require, and upon consideration of the entire record, the parties enter into this ESA in order to resolve any civil penalties for these alleged violations for the total penalty amount of \$7,200.

This settlement is subject to the following terms and conditions:

By signing below, Respondent consents to, and is bound by, the terms and conditions of this ESA, including the assessment of the civil penalty set forth above. Respondent admits the jurisdictional allegations in the ESA, and waives any objections that it may have regarding jurisdiction. Respondent waives its right to contest the specific factual allegations contained herein, and neither admits nor denies these specific factual allegations. Respondent acknowledges that pursuant to 40 C.F.R. § 22.15(c), and Section 113(d)(2)(A) of the Act, 42 U.S.C § 7413(d)(2)(A), it has the right to request a hearing on any material fact, or on the appropriateness of the penalty, but Respondent waives its rights to such a hearing. Respondent also waives its right to appeal this ESA and the accompanying Final Order.

Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the violations set forth in this ESA, and has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$7,200 in payment of the full penalty amount to the following address:

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

The **Docket Number of this ESA must be included on the check.** (The Docket Number is RMP-18-ESA-012.)

This signed original ESA and a **copy of the check must be sent by certified mail to:**

Monika Chrzaszcz  
Chemical Emergency  
Preparedness and Prevention Section (SC-5J)  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Upon Respondent's submission of the signed original ESA, and the issuance of the Final Order, Respondent's liability is resolved only for any federal civil penalties due as a result of the facts and violations alleged in this ESA. This ESA, the Final Order, and Respondent's full payment of the civil penalty set forth herein, do not affect the right of EPA to pursue appropriate injunctive, other equitable relief, or criminal sanctions for any violations of law. EPA also does not waive any enforcement authority for any other violation of the Act or any other statute. The issuance of the Final Order does not waive, extinguish, or otherwise affect Respondent's duty to comply with the Act, the regulations promulgated thereunder, or any other applicable law or requirement.

If the signed original ESA **with an attached copy of the check** is not returned to the **EPA Region 5 office** at the above address in correct form by Respondent within 45 days of the date of Respondent's receipt of this ESA (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 in this ESA.

This ESA is binding on the Parties signing below.

Each Party to this action shall bear its own costs and fees, if any.

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

**Expedited Settlement Agreement**

**In the Matter of Fresh Express, Streamwood, Illinois**

**Docket No.** RMP-18-ESA-0012

CAA-05-2018-0021

**FOR RESPONDENT:**

Signature: 


Date: 7/23/18

Name (print): ADO R. QUINTANILLA

Title (print): PLANT MANAGER

Respondent

**FOR COMPLAINANT:**

  
Douglas Ballotti,  
Acting Director  
Superfund Division

Date: 8/17/18

**FINAL ORDER**

The foregoing Expedited Settlement Agreement is hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ORDERED to comply with all of the terms of the foregoing Expedited Settlement Agreement, which upon its filing with the Regional Hearing Clerk shall become immediately effective. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**IT IS SO ORDERED.**



\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

Date: 8/21/18

WELLS FARGO BANK, N.A.  
P.O. Box 5131, N9777-112 OFC  
Sioux Falls, SD 57117-5131



Treasurer, United States of America  
Fresh Express Incorporated  
Attn: Melanie Brown  
4757 The Grove Drive, Ste# 260  
Windermere, FL 34786

August 8, 2018

CASHIER'S CHECK



CAA-05-2018-0021

PLEASE DETACH BEFORE DEPOSITING

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK		<b>CASHIER'S CHECK</b>	HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK	
		Check Number: [REDACTED]		
		Date: August 8, 2018		
Pay to the order of Treasurer, United States of America				\$7,200.00
***Seven Thousand Two Hundred dollars and 00/100***				
For CRT RMP-18-ESA-12 Wells Fargo Bank, N.A. FOR INQUIRIES: 480-394-3122			Drawer: WELLS FARGO BANK, N.A.	
			Authorized Signature <i>Richard Levy</i> Authorized Signature	



Expedited Settlement Agreement  
In the matter of: Fresh Express, Streamwood, Illinois  
Docket Number: CAA-05-2018-0021

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Expedited Settlement Agreement**, docket number CAA-05-2018-0021 which was filed on August 23, 2018 in the following manner to the following addresses:

Copy by E-mail to  
Respondent:

Alex Shulman  
ashulman@freshexpress.com

Copy by E-mail to  
EPA Program Staff:

Monika Chrzaszcz  
Chrzaszcz.monika@epa.gov

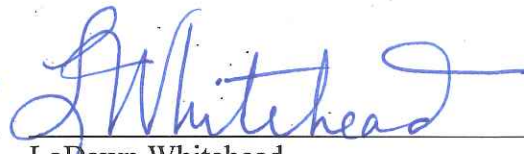
Copy by E-mail to  
Attorney for Complainant:

Steven Kaiser  
kaiser.steven@epa.gov

Copy by e-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated:

August 23, 2018 

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5