

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2013 SEP 10 AM 10:16

IN THE MATTER OF:)

Americold Logistics, LLC)
Americold Logistics Plant #78421)
Sioux Falls, SD)

Respondent)

FILED
EPA REGION VIII
HEARING CLERK

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

DOCKET NO. : CAA-08-2013-0012

AUTHORITY

1. This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA), intended to simultaneously commence and conclude this matter, 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 the Americold Logistics, LLC (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) and 22.18. The 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 the EPA may pursue this type of case through administrative enforcement.

RESPONDENT

2. The Respondent, Americold Logistics, LLC is a Delaware Limited Liability Company that does business in the State of South Dakota.
3. The Respondent is a "person" under section 302(e) of the Act, 42 U.S.C. § 7602(e).

ALLEGED VIOLATIONS

4. On March 7, 2013, an authorized representative of the EPA conducted a compliance inspection of Respondent's facility located at 2300 East Rice Street in Sioux Falls, South Dakota to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under section 112(r)(7) of the Act. The EPA found that the Respondent had violated regulations implementing section 112(r)(7) 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). The Checklist and Penalty Assessment is incorporated into this ESA.

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SETTLEMENT

5. In consideration of the factors contained in section 113(d)(1) of the Act and the entire record, the parties enter into this ESA in order to settle the violations for the total penalty amount of \$6,480. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.
6. This settlement is subject to the following terms and conditions:
 - a. 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.
 - b. The 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.
 - c. Each party to this action shall bear its own cost and attorney fees, if any.
 - d. The Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent will correct the violations listed in the Checklist and Penalty Assessment no later than sixty (60) days after receiving the Final Order.
 - e. The Respondent waives any and all available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this ESA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
7. After the Final Order is issued by the Regional Judicial Officer, a fully executed copy of this ESA and the Final Order will be sent to the Respondent. Within thirty (30) days after receiving the Final Order, the Respondent shall remit payment in the amount of \$6,480. **The payment shall reference the name and docket number of this case** and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

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

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Federal Express, Airborne, or other commercial carrier
(or when a physical address is required):

US Bank
U.S. EPA Fines & Penalties
Government Lockbox 979078
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
(314) 418-4087

Wire Transfers:

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 Fedwire message should read:
" D 68010727 Environmental Protection Agency"

ACH Transactions (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887 6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account Number: 310006
CTX Format.

There is now an On Line Payment Option, available through the U.S. Department of Treasury. This payment option can be accessed from the information below:

www.PAY.GOV
(Enter sfo 1.1 in the search field
Open form and complete required fields)

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A copy of the check, or notification that the payment has been made by one of the other methods listed above, 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

David Cobb
EPCRA/RMP Enforcement Coordinator
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

8. The penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
9. Once the Respondent receives a copy of the Final Order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against the Respondent for the violations alleged in the Checklist and Penalty Assessment, which has been incorporated herein.
10. This ESA does not pertain to any matters other than those expressly specified herein. The EPA reserves and this ESA is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to, the following:
 - a. claims based on a failure by the Respondent to meet a requirement of this ESA including any claims for costs which are caused by the Respondent's failure to comply with this Agreement;
 - b. claims based on criminal liability; and
 - c. claims based on any other violations of the Act or federal or state law.
11. If the Respondent fails to timely submit the above-referenced payment or fails to correct the violations no later than sixty (60) days after receiving the Final Order, a motion may be filed to withdraw the ESA and Final Order. If that motion is granted, the EPA may then file an enforcement action against the Respondent for the violations addressed herein.
12. This ESA, upon incorporation into the Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this ESA. This ESA contains all terms of the settlement agreed to by parties.

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13. Nothing in this ESA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
14. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind the Respondent to the terms and condition of this ESA.
15. The parties agree to submit this ESA to the Regional Judicial Officer with a request that it be incorporated into a final order.

For Respondent Americold Logistics, LLC:




Date: 8/13/13

Name (print): Todd N. Sheehan

Title (print): EVP, GC: Com Sec'y

For Complainant United States Environmental Protection Agency, Region 8:

for 

Date: 9/5/13

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

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

Respondent: Americold Logistics, LLC
 Facility Name: Americold Logistics (ACL) Plant #78421, Sioux Falls, SD

INSPECTION DATE: 3/7/2013

SUBPART D: PREVENTION PROGRAM [68.65 – 68.87]

PENALTY

Prevention Program – Safety Information [68.65]

Does the process safety information include materials of construction pertaining to the equipment in the process? [68.65(d)(1)(i)]

600

- **The materials of construction were unknown for two process vessels identified as V-4 and V-6.**

Has the owner or operator documented that equipment complies with recognized and generally accepted good engineering practices? [68.65(d)(2)]

1500

- **Ammonia Pressure Vessels V-4 and V-6 were missing the nameplates.**
- **IIAR Bulletin No. 109 Minimum Safety Criteria for a Safe Ammonia Refrigeration System 4.3.1.2 states:**

All pressure vessels shall have a name plate with the following minimum data:

- **Manufacturer's name**
- **Serial number**
- **Model number**
- **Year of manufacture**
- **Maximum allowable pressure**
- **Test pressure applied**
- **National Board Number (where applicable)**
- **Manufacturer's ASME stamp (where applicable)**

Prevention Program – Process Hazard Analysis [68.67]

Has the owner or operator established a system to promptly address the team’s findings and recommendations; assured that the recommendations are resolved in a timely manner and documented; documented what actions are to be taken; completed actions as soon as possible; developed a written schedule of when these actions are to be completed; and communicated the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations? [68.67(e)]

1500

- **Numerous recommendations were not resolved for the 2004 and 2009 Process Hazard Analyses (PHAs). For example:**
 - **Action Item #7 on the 4/1/2004 PHA Deficiency Action Log states “Consider extending all PRV headers to 15 feet above the roof and point to a safe location.”**
 - **Item 2.515 on the 3/17/2009 PHA states, “Replace outdated PRVs. Update headers to 15 feet and to a safe location.”**
 - **During the 3/7/2013 inspection, a PRV header was observed to be less than 15 feet above the roof. A facility representative confirmed that it still needed to be fixed.**

Prevention Program – Training [68.71]

Has each employee involved in operating a process, and each employee before being involved in operating a newly assigned process, been initially trained in an overview of the process and in the operating procedures? [68.71(a)(1)]

1500

- **Jon Quist started working at ACL in November 2009. ACL was unable to provide documentation of his initial training. ACL was unable to provide any training records prior to 2012.**

Prevention Program – Mechanical Integrity [68.73]

Has the owner or operator followed recognized and generally accepted good engineering practices for inspections and testing procedures? [68.73(d)(2)]

900

- **Extensive insulation damage on V-4 and piping was documented on the 2009 Mechanical Integrity (5-year independent) inspection and the 2012 annual inspection. Extensive insulation damage on V-4 and the LTR Liquid line were observed during this inspection.**

- **IIAR Bulletin 110 (Revised 3/02) Guidelines for: Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems**
 - **Section 6.4.3.1(Revised Feb. 4, 2004) Pressure Vessels: “Where a section of insulation is materially damaged, it should be repaired or replaced. Underlying areas affected by surface corrosion should be cleaned off, inspected and appropriately treated before reinstatement of the protective finish, insulation and vapor barrier.”**
 - **Section 6.7.2 Insulated Piping: “Any mechanical damage to insulation should be repaired immediately . . . Sections of insulation which are obviously in poor condition shall be removed and the integrity of the exposed piping determined with the aid of non-destructive testing techniques, as appropriate.”**

Has the owner or operator documented each inspection and test that has been performed on process, which identifies the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test? [68.73(d)(4)]

900

- **ACL used IIAR Bulletin 109 Safety Inspection Checklists to document the 2012 annual inspections. ACL was unable to produce documentation for annual inspections prior to 2012.**

Has the owner or operator corrected deficiencies in equipment that were outside acceptable limits defined by the process safety information before further use or in a safe or timely manner when necessary means were taken to assure safe operation? [68.73(e)]

900

- **There are numerous deficiencies from the 2009 Mechanical Integrity Inspection Issues Tracking Report that do not have a documented response. In particular, Findings # 245, 246, 248, 251, 252 and 253 refer to damaged insulation.**
- **Safety relief valves identified as V-2 and V-3 expired in 2009 and were in service in at the time of EPA’s inspection.**
Note: a PO from 2/28/2013 (this date is after ACL received our NOI) indicated that ACL is in the process of replacing all the expired PRVs.
- **Safety relief valves identified as #9, #10 and #11 had no valve tags and no date of installation information. These valves were on compressor CP-8.**

Prevention Program – Compliance Audits [68.79]

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? [68.79(d)]

- **ACL did not document that all deficiencies were corrected from the 7/26/2011 Compliance Audit.**

300

BASE PENALTY

\$8,100



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX
Americold Logistics, LLC
Americold Logistics Plant #78421
Sioux Falls, SD

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

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

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 is a private company which 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 10-100 employees and the row for >5-10 times the threshold quantity amount gives a multiplier factor of 0.8.
- 2nd Use the Adjusted Penalty formula

Adjusted Penalty = \$4700 (Unadjusted Penalty) X 0.8(Size-Threshold Multiplier)
Adjusted Penalty = \$3760
- 3rd An Adjusted Penalty of \$3760 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).

Calculation for Adjusted Penalty – Americold Logistics Plant #78421

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$6,480 = \$8,100 \times 0.8^*$$

* # of employees is 48. The covered chemical, anhydrous ammonia, exceeds the listed threshold value by 5.7 times

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT and FINAL ORDER** in the matter **AMERICOLD LOGISTICS, LLC., AMERICOLD LOGISTICS PLANT #78421; DOCKET NO.: CAA-08-2013-0012**. The documents were filed with the Regional Hearing Clerk on September 10, 2013.

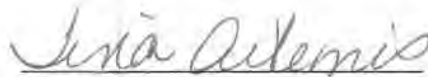
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were resent and placed in the United States mail certified/return receipt on September 10, 2013 to:

Chad W. Koltz
Regional Facility Service Director
Americold Logistics, LLC.
2300 East Rice Street
Sioux Falls, SD 57103

And emailed to:

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

September 10, 2013



Tina Artemis
Paralegal/Regional Hearing Clerk

