

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

DOCKET NO: CAA (112r)-09-2018-0008
This ESA is issued to: Phoenix V LLC dba BEI Hawaii
311 Pacific St.
Honolulu, HI 96817

** FILED **
12SEP2018 - 04:15PM
U.S.EPA - Region 09

For: Violation of Section 112(r)(7) of the Clean Air Act.
At: BEI Hawaii - Wailuku Facility - Maui, 300 Pakana St., Wailuku, HI 96793

This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Enrique Manzanilla, Superfund Director, and Phoenix V LLC dba BEI Hawaii ("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 has obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 2 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

Following its February 22, 2017 inspection, EPA alleges Respondent's failure to:

1. *Standard Operating Procedures (SOPs) - 40 CFR §68.69(c): The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.*

The Facility has outdated SOPs for Anhydrous Ammonia and Sulfur Dioxide, chemicals that appear to no longer be kept onsite. The last annual SOP certification for the Facility was signed in 2013 (four years ago).

2. *Compliance Audit - 40 CFR § 68.79(a): The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.*

BEI did not certify compliance once every three years as required. The Facility's most recent audit was conducted over four years and ten months after the previous one.

3. *Compliance Audit - 40 CFR § 68.79 (e): The owner or operator shall retain the two (2) most recent compliance audit reports.*

At the time of the inspection BEI did not have the last two compliance audit reports on file, as required.

4. *Emergency Response - 40 CFR §§68.95(a)(2): Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.*

The required procedures were not sufficient where inspectors could not determine when the recovery vessel (coffin) was last replaced or needed to be replaced. SBCA oxygen tanks were found to be empty and last tested in November 2016.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, and other factors as justice may require, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of **\$3,900**.

This settlement is subject to the following terms and conditions:

The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, 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 attorney's fees and costs, 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 an **Online Payment through the Department of Treasury: WWW.PAY.GOV** (Enter SFO 1.1 in search field. Open form and complete required fields) **or alternatively has sent a cashier's check or certified check** (payable to the Treasurer, United States of America) in the amount of **\$3,900** in payment of the full penalty amount to the following address:

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

The check or online payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment going to the EPA Cincinnati Finance Center. This original ESA and a copy of the check or online receipt must also be sent by certified mail to:

Angie Proboszcz (SFD-9-3)
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 30 days of the date of Respondent's receipt of the proposed ESA and EPA has not granted an extension of its offer to settle, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

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


FOR RESPONDENT – Phoenix V LLC dba BEI Hawaii

Signature:  Date: 8/29/2018

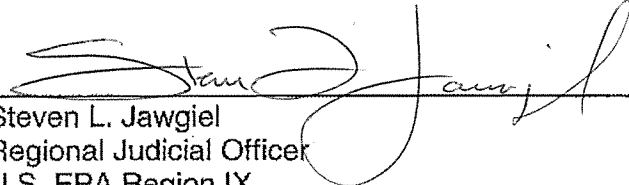
Name (print): Greg Heyd Keith Asato

Title (print): Vice-President, BEI Maui SVP & CFO

FOR COMPLAINANT:

 Date: 4 Sept 18
Enrique Manzanilla
Superfund Director
U.S. EPA Region IX

It is hereby ORDERED that this ESA be entered and Respondent pays the above penalty.

 Date: 09/12/18
Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA Region IX

CERTIFICATE OF SERVICE

This is to certify that a FINAL ORDER for the Consent Agreement and Final Order in the matter of Phoenix V LLC dba BEI Hawaii [Docket Number CAA(112R)-09-2018- 0208], has been signed by the Regional Judicial Officer and has been filed with the Regional Hearing Clerk.

The Final Order has been served on Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:
(With Return Receipt)

Respondent -


Mr. Keith Asato
SVP & CFO, BEI Maui
Phoenix V LLC dba BEI Hawaii
311 Pacific St.
Honolulu, HI 96817

HAND DELIVERED:

Complainant -
(By Counsel)

Andrew Helmlinger
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA. 94105

Dated at San Francisco, CA, Sept. 12, 2018;


Steven Armsey
Regional Hearing Clerk
EPA, Region 9