



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 OCT 24 PM 12: 07  
REGIONAL HEARING  
CLERK

**EXPEDITED SETTLEMENT AGREEMENT**

Docket Number: CAA-02-2008-1206

**This ESA is issued to: Fieldbrook Foods, Dunkirk, NY  
for violations of Section 112(r)(7) of the Clean Air Act.**

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This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region II, by its duly delegated official, the Director, Emergency & Remedial Response Division, and by Fieldbrook Foods located at One Ice Cream Drive in Dunkirk, New York ("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). 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 EPA may pursue this type of case through administrative enforcement action.

ALLEGED VIOLATIONS

On June 12, 2007, an authorized representative of EPA conducted a compliance inspection of Respondent's facility at One Ice Cream Drive, Dunkirk, New York, to determine compliance with the Risk Management Plan ("RMP") regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Act. EPA found that the Respondent had violated regulations implementing Section 112(r) of the Act by failing to comply with the regulations as noted on the attached Risk Management Plan Inspection Findings, Alleged Violations and Proposed Penalty Summary ("Summary Form"), which is hereby incorporated by reference.

SETTLEMENT

In consideration of Respondent's service size, 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 this ESA in order to settle the violations described in the attached Summary Form for the total penalty amount of \$3,465.

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 in the Summary Form, 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, and consents to EPA's approval of the ESA without

further notice. 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 attached Summary Form. Respondent agrees to submit payment of the penalty within 45 days of the date of signature of the ESA by, or on behalf of, the Regional Administrator of EPA, Region II. After signature of the ESA by, or on behalf of, the Regional Administrator, Respondent will receive a fully executed copy of this ESA. Respondent's payment shall be made by sending a cashier's check or certified check payable to the "Treasurer, United States of America" in the amount of \$3,465 to the following address:

U.S. EPA-Region II (Regional Hearing Clerk)  
P.O. Box 360188M  
Pittsburgh, Pennsylvania 15251.

The Docket Number of this ESA, as shown at the top of page 1, must be included on the check. A copy of the check and any transmittal letter shall be sent to Ellen Banner, USEPA, Response & Prevention Branch MS-211, 2890 Woodbridge Ave., Edison, New Jersey 08837. At the time payment is made, Respondent shall submit to Ms. Banner information showing the amount that Respondent spent in correcting the violations described in the attached Summary Form.

The penalty specified in this ESA shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or Federal taxes.

Upon Respondent's submission of the signed original ESA, and payment of the penalty as set forth in this ESA, EPA will take no further civil action against Respondent for the alleged violations of the Act referenced in the Summary Form. EPA does not waive its right to take enforcement action for other violations of the Clean Air Act or for violations of any other statute.

If the signed original ESA is not returned to the EPA Region II office at the above address in correct form by the Respondent within 45 days of the date of Respondent's receipt of it (or within 90 days if an extension has been granted by EPA), 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 Form.

In addition, if Respondent fails to comply with the provisions of this ESA, by either failing to timely submit the above-referenced payment, or by failing to correct the violations listed in the attached Summary Form, Respondent agrees that upon written notice from EPA, that this agreement shall become null and void, and that EPA may file an administrative or civil enforcement action against Respondent for the violations addressed herein.

This ESA is binding on the parties signing below.

Docket Number: CAA-02-2008-1206  
Fieldbrook Foods, Dunkirk, New York

FOR RESPONDENT:




Date: 8/25/18

Name (print): Kenneth A. Johnson

Title (print): President and Chief Executive Officer  
Fieldbrook Foods

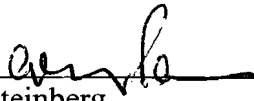
Docket Number: CAA-02-2008 -1206  
Fieldbrook Foods

FOR COMPLAINANT:

  
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George Pavlou, Director  
Emergency and Remedial Response  
Division, Region II

Date: 9/27/08

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

  
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Alan J. Steinberg  
Regional Administrator  
U.S. EPA, Region II

Date: 9/29/08