



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

10 JAN 26 AM 8:12

ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

### EXPEDITED SETTLEMENT AGREEMENT (ESA)

**DOCKET NO.:** CAA-07-2010-0003

**This ESA is issued to:** Artesian Ice & Cold Storage Company  
**At:** 2700 Stockyards Expressway, St. Joseph, Missouri 64502  
**for violating Section 112(r)(7) of the Clean Air Act.**

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The United States Environmental Protection Agency, Region 7 (EPA) and Artesian Ice & Cold Storage Company, 2700 Stockyards Expressway, St. Joseph, Missouri 64502 (Respondent), have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

The Complainant, by delegation of the Administrator of EPA, is the Director of the Air, and Waste Management Division. The Respondent is Artesian Ice & Cold Storage Company, 2700 Stockyards Expressway, St. Joseph, Missouri 64502.

This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Department of Justice jointly determined that in cases where the first alleged date of violation occurred more than one year before initiation of an administrative action and which meets the criteria set forth in EPA's policy entitled "Use of Expedited Settlements in Addressing Violations of the Clean Air Act Chemical Accident Prevention Provision, 40 C.F.R. Part 68," dated January 5, 2004, are appropriate for administrative penalty action.

#### ALLEGED VIOLATIONS

On September 3, 2009, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 2700 Stockyards Expressway, St. Joseph, Missouri 64502, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Clean Air Act. The EPA found that the Respondent had violated regulations implementing Section 112(r) of the Clean Air Act by failing to comply with the regulations as noted on the enclosed Risk Management Program Inspection Findings (RMP Findings), which is hereby incorporated by reference.

SETTLEMENT

In consideration of 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 in the enclosed RMP Findings, for the total penalty amount of **\$1,545.00**.

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 in the RMP Findings, 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 Clean Air 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 in the enclosed RMP Findings and has sent a cashier's check or certified check (payable to the "United States Treasury") in the amount of **\$1,545.00** 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, Missouri 63197-9000

The Docket Number of this ESA is CAA-07-2010-0003, and must be included on the check.

This original ESA, a copy of the completed RMP Findings, and a copy of the check must be sent by certified mail to:

Deanna Smith  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

A copy of the check must also be sent to:

Kathy M. Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

Upon Respondent's submission of the signed original ESA, EPA will take no further civil action against Respondent for the alleged violations of the Clean Air Act referenced in the RMP Findings. The EPA does not waive any other enforcement action for any other violations of the Clean Air Act or any other statute.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region 7 office at the above address in correct form by the Respondent within 45 days of the date of Respondent's receipt of it (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 herein and in the RMP Findings.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT:

Richard N. Deshon

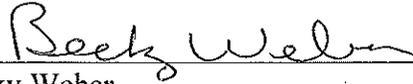
Date: January 13, 2010

Name (print): Richard N. Deshon

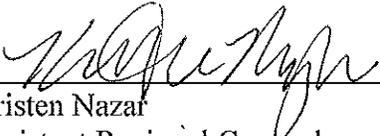
Title (print): President

Artesian Ice & Cold Storage Company

FOR COMPLAINANT:

  
\_\_\_\_\_  
Becky Weber  
Director  
Air and Waste Management Division  
EPA Region 7

Date: 1/20/10

  
\_\_\_\_\_  
Kristen Nazar  
Assistant Regional Counsel  
Office of Regional Counsel  
EPA Region 7

Date: 1/19/2010

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

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

Date: Jan. 26, 2010

Risk Management Program Inspection Findings  
CAA § 112(r) Violations

Artesian Ice & Cold Storage Company  
2700 Stockyards Expressway  
St. Joseph, Missouri 64502  
Docket No. CAA-07-2010-0003

COMPLETE THIS FORM AND RETURN IT WITH THE ESA.

VIOLATIONS

PENALTY AMOUNT

Prevention Program \$ 300.00  
Safety Information [§ 68.65(d)(1)(iii)]  
The owner or operator failed to include electrical classification in the process safety information.

*How was this addressed:*

Risk management plan has been updated to include electrical classification by McNeil Refrigeration, Omaha, Nebraska

Prevention Program \$ 300.00  
Safety Information [§ 68.65(d)(1)(v)]  
The owner or operator failed to include ventilation system design in the process safety information.

*How was this addressed:*

American Industrial Refrigeration (AIR) has completed an inspection of the ventilation system in this plant. Their calculations have been added to the Nor-Am file

Prevention Program \$ 750.00  
Safety Information [§ 68.65(d)(2)]  
The owner or operator failed to document that equipment complies with recognized and generally accepted good engineering practices.

*How was this addressed:*

Owner at time of inspection in consultation with equipment suppliers and installers believe equipment complies with accepted good engineering practices.

Prevention Program

\$ 750.00

Process Hazard Analysis [§ 68.67(e)]

The owner or operator failed to establish a system to promptly address the team's findings and recommendations and assure that the recommendations are resolved in a timely manner and that the resolution is documented.

*How was this addressed:*

~~Format is in place to define Scope and Purpose. Nor-Am will update and revalidate current PHA~~

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Prevention Program

\$ 750.00

Management of Change [§ 68.75(a)]

The owner or operator failed to prepare and implement written procedures to manage changes that affect a covered process.

*How was this addressed:*

~~NOR-Am has implemented new written procedures and have in place with updated scope and purpose, a management plan to address covered processes. New forms are in place.~~

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Prevention Program

\$ 300.00

Employee Participation [§ 68.83(a)]

The owner or operator failed to prepare a written plan of action regarding the implementation of the employee participation required.

*How was this addressed:*

~~A new written safety program has been put in place by Nor-Am management which will address action plans. This program includes retraining for current employees and new employee orientation.~~

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Risk Management Plan

\$2,000.00

Required Corrections [§ 68.195(a)]

The owner or operator failed to submit an updated RMP within six months of an accidental release or by the time the RMP was updated as required at § 68.190, whichever was earlier. (Note: Failed to include accident dated December 30, 2004, in the RMP history.)

How was this addressed:

~~HISTORY OF THE December 30, 2004 accidental release was added to the RMP at the time of the inspection on September 10, 2009. Nor-Am will address accidental releases in their updated RMP as required.~~

Total Unadjusted Penalty

\$5,150.00

**Calculation of Adjusted Penalty**

- 1<sup>st</sup> Reference the multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the row for number of employees 21-50 and column for 1-5 times the threshold quantity of 10,000 pounds of anhydrous ammonia as listed in 40 C.F.R. Part 68.130 for the amount in a process gives a multiplier factor of 0.3. Therefore, the multiplier for Artesian Ice & Storage Company = 0.3.
- 2<sup>nd</sup> Adjusted Penalty = \$5,150.00 (Unadjusted Penalty) X 0.3 (Size-Threshold Multiplier)  
Adjusted Penalty = \$1,545.00.
- 3<sup>rd</sup> An Adjusted Penalty of \$1,545.00 would be assessed to Artesian Ice & Storage Company for violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

**Total Adjusted Penalty**

**\$1,545.00**

The approximate cost to correct the above items: \$9,000.00

Compliance staff name: Richard N. DeShon

Signed: Richard N. DeShon Date: 1/13/10

IN THE MATTER OF Artesian Ice & Cold Storage Company, Respondent  
Docket No. CAA-07-2010-0003

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited Settlement Agreement (ESA) was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Kristen Nazar  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Richard N. DeShon, President  
Artesian Ice & Cold Storage Company  
2700 Stockyards Expressway  
St. Joseph, Missouri 64502

Dated: 1/26/10

  
Kathy Robinson  
Hearing Clerk, Region 7