



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CAA-02-2021-1205
Respondent: Star of the West Milling Co., New York
35 Main Street
Churchville, New York 14428

This Expedited Settlement Agreement (“ESA”) is being entered into by the U.S. Environmental Protection Agency Region 2 (“EPA”), by its duly delegated official, and by Star of the West Milling Co., 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 United States Department of Justice have jointly determined that EPA may pursue this type of case as an administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

ALLEGED VIOLATIONS

Facilities that produce, handle, process, distribute, or store certain chemicals are required to develop a Risk Management Program, prepare a Risk Management Plan (“RMP”), and submit the RMP to the EPA in accordance with 40 C.F.R. Part 68. Facilities must fully update and resubmit the RMP, at a minimum, every five years. Respondent failed to timely resubmit a Risk Management Plan to EPA for Respondent’s facility, located at 35 Main Street in Churchville, New York (the “Facility”), in violation of 40 C.F.R. § 68.190(b)(1). On December 29, 2015, Respondent submitted a Risk Management Plan (“RMP”) to EPA regarding the covered process at its Facility. On or about March 11, 2021, Respondent submitted the updated RMP regarding the Facility to EPA, over two months late.

SETTLEMENT

In consideration of the penalty assessment factors set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e), and upon consideration of the entire record, the parties enter into the ESA in order to settle the violation described herein for the total penalty amount of **one thousand two hundred dollars (\$1,200)**.

For purposes of this proceeding, Respondent agrees to the following: it waives any objections that it may have regarding jurisdiction; it neither admits nor denies the specific factual allegations contained herein; it consents to the assessment of the penalty as stated herein; and it waives its rights to contest the allegations contained herein, or 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 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 violation noted herein.

After signature, a scanned copy of the signed ESA must be sent by email to Francesco Maimone at the following email address: Maimone.Francesco@epa.gov. The original, signed ESA must be sent by certified mail to:

Francesco Maimone, Physical Scientist
Air Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, NY 10007

The ESA, when executed by both parties and the Regional Judicial Officer and filed with the Regional Hearing Clerk, is binding on EPA and Respondent. Upon such filing and Respondent's timely payment of the penalty, EPA agrees it will not take any further civil penalty action against Respondent for the alleged violation of the Act referenced herein.

Nothing in this ESA shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This ESA does not relieve, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations promulgated or permits issued thereunder.

If the signed ESA is not returned to EPA Region 2 as instructed herein by Respondent within forty-five (45) days of the date of Respondent's receipt of it (or within ninety (90) days if an extension is requested and granted), the proposed ESA is withdrawn, without any prejudice regarding EPA's ability to file an enforcement action for the alleged violation identified herein.

Respondent agrees to submit payment in full of \$1,200 within thirty (30) days of the filing of a fully executed copy of this ESA with the Regional Hearing Clerk.

PAYMENT INSTRUCTIONS

EPA requests that payments be made through the <http://Pay.gov> website using the following link: <https://www.pay.gov/public/form/start/11751879>.

Please ensure that the following information is included on the payment form:

- i. Amount of payment: \$1,200
- ii. Name of Respondent: Star of the West Milling Co., New York
- iii. Docket No.: CAA- 02-2021-1205

To ensure your payment is recorded properly, you are required to notify EPA contemporaneously with the payment. Please send an email message or letter that references the date of the payment, the payment amount, the docket number, and your name and address to the following: Francesco Maimone, at his email or address, shown above, and to:

Jean Regna
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866
email: Regna.Jean@epa.gov

Milton Wise
U.S. Environmental Protection Agency
26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, OH 45268
emails: Wise.Milton@epa.gov and cinwd_acctsreceivable@epa.gov

and

Karen Maples, Regional Hearing Clerk
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
email: Maples.Karen@epa.gov

Failure to pay the penalty when due may subject Respondent to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the penalty, including accrued interest, attorney's fees, collection costs, and nonpayment penalties.

For purposes of the requirements of 26 U.S.C. § 162(f) of the Internal Revenue Code, the cost of actions taken to come into compliance with the violation identified herein are "restitution or paid to come into compliance with law."

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

FOR RESPONDENT:

Signature: Patrick Nellenbach

Date: 07.07.2021

Name (print): Patrick Nellenbach

Title (print): Director of Safety and Security

FOR COMPLAINANT:

For Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 2

Date: _____

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

Helen Ferrara
Regional Judicial Officer
U.S. EPA, Region 2

Date: _____

Risk Management Program Findings
CAA § 112(r) Violations

Star of the West Milling Co., New York
35 Main Street
Churchville, New York 14428

COMPLETE THIS FORM AND RETURN IT WITH THE ESA.

VIOLATION

PENALTY AMOUNT

Risk Management Plan
Required Updates [§ 68.190]

\$2,000.00

The owner or operator failed to revise, update, and resubmit the RMP for the Facility at least once every 5 years.

Adjustments to Penalty

Pursuant to EPA's "Expedited Settlement Penalty Matrix, Multiplier Factors For Calculating Proposed Penalties For Violations Found During RMP Inspections," a multiplier factor of 0.6, in consideration of the size of the company (10-100 employees) and the quantity of the regulated substance (1 - 5 times the threshold quantity), is being applied to reduce the penalty.

$$\$2,000 \times 0.6 \text{ (multiplier factor)} = \$1,200$$

Total Penalty

\$1,200

The approximate cost to correct the above item: \$_____

Compliance staff name: _____

Signed: _____ Date: _____