



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 JUN 23 PM 12: 24

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2010-0010

IN THE MATTER OF:)	
)	
STERLING ETHANOL, LLC.)	FINAL ORDER
Sterling, Colorado)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 23rd DAY OF June, 2010.



 Elyana R. Sutin
 Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
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IN THE MATTER OF:)

Sterling Ethanol, LLC)
Sterling, Colorado)

Respondent)

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

DOCKET NO. : CAA-08-2010-0010

This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter.

This ESA 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 Sterling Ethanol, LLC (Respondent) pursuant to § 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). The EPA and the U.S. Department of Justice have determined, pursuant to § 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 action.

ALLEGED VIOLATIONS

On January 28, 2010, an authorized representative of the EPA conducted a compliance inspection of the Sterling Ethanol, LLC facility, located at 450 Angus Avenue in Sterling, Colorado to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under § 112(r) of the Act. The EPA found that the facility had violated regulations implementing § 112(r) 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).

SETTLEMENT

In consideration of Respondent's facility 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 for the total penalty amount of \$3,150. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.

This settlement is subject to the following terms and conditions:

1. 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.
2. Respondent waives its rights to a hearing afforded by § 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA, and consents to the EPA's approval of the ESA without further notice.
3. Each party to this action shall bear its own costs and attorney's fees, if any.
4. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent will correct the violations listed in the Checklist and Penalty Assessment no later than 60 days from the date the ESA is signed by the Respondent.

After the Regional Judicial Officer issues the Final Order, the Respondent will receive a fully executed copy of this ESA and the Final Order. Within twenty days (20) of receiving a signed Final Order, Respondent shall remit payment in the amount of \$3,150. **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:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfers:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727

ACH Transactions:

PNC Bank/Remittance Express
ABA: 051036706
Account Number: 310006
CTX Format, Transaction Code 22, checking

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

www.PAY.GOV

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
US EPA, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

The penalty specified in this ESA shall not be deductible for purposes of State or Federal taxes.

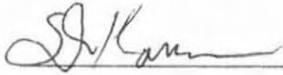
Once Respondent receives a copy of the completely signed ESA, a copy of the Final Order issued by the Regional Judicial Officer in this matter, and Respondent pays in full the penalty assessment described above, then the EPA agrees to take no further civil action against the Respondent for any violations of requirements contained in the Risk Management Plan Penalty Checklist that may have occurred on or before January 28, 2010. The 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 Respondent fails to return the signed original ESA by the stated deadline, fails to timely submit the above-referenced payment, or fails to correct the violations no later than 60 days from the date the ESA is signed, a motion will be filed to withdraw the consent agreement and final order. EPA may then file an administrative or civil enforcement action against Respondent for the violations addressed herein.

This ESA is binding on the parties signing below.

Sterling Ethanol, LLC Expedited Settlement Agreement

FOR RESPONDENT:

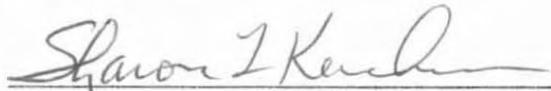
 _____

Date: 5-19-10

Name (print): Dave Kramer

Title (print): President / General Manager
Sterling Ethanol, LLC

FOR COMPLAINANT:

 _____

Date: 6-16-10

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

RMP PROGRAM LEVEL 3 PROCESS CHECKLIST

ALLEGED VIOLATIONS AND PENALTY ASSESSMENT

Facility Name: **Sterling Ethanol, LLC – Sterling, Colorado**

Inspection Date: **1/28/2010**

SECTION A: MANAGEMENT

PENALTY

Has the owner or operator assigned a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements? **[68.15(b)] No. The facility must correctly indicate person/position with overall responsibility and person/position with specific RMP element implementation responsibility. (Facility has designated Dusty Richardson, former SEL plant manager, as person responsible. Mr. Richardson is no longer the plant manager, and is no longer the person responsible for RMP implementation. SEL indicated the person with overall responsibility for RMP to be the contractor, ICM, not an employee with SEL).**

300

SECTION C: PREVENTION PROGRAM

Prevention Program – Process Hazard Analysis [68.67]

Did the PHA address:

1. The hazards of the process?
2. The identification of any previous incident which had a likely potential for catastrophic consequences?
3. Engineering and administrative controls applicable to hazards and interrelationships?
4. Consequences of failure of engineering and administrative controls?
5. Stationary source siting?
6. Human factors?
7. An evaluation of a range of the possible safety and health effects of failure of controls? **[68.67(c)] No.**

- **Engineering and administrative controls applicable to hazards and interrelationships not addressed.** **300**
- **Consequences of failure of engineering and administrative controls not addressed.** **300**
- **Stationary source siting not addressed.** **300**
- **Human factors not addressed.** **300**
- **Range of possible safety and health effects of failure of controls not evaluated.** **300**

Prevention Program – Operating Procedures [68.69]	
Has the owner or operator certified annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary? [68.69(c)] No. Facility does not certify operating procedures annually.	600
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)] No. No documentation was presented to demonstrate that the operators were trained in the operating procedures of covered process: NH3 loading/unloading; NH3 tank inspections; piping inspections; denaturant loading; and, integrity tank inspections.	750
Prevention Program – Management of Change [68.75]	
Has the owner or operator established and implemented written procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process? [68.75(a)] No. NH3 injection system at fermentation tanks was added after the plant was built. MOC for NH3 was supposed to have been completed by ICM. MOC is incomplete. According to SEL, ICM is still working on the MOC, years after the injection system was installed.	750
Do procedures assure that the following considerations are addressed prior to any change 1) Impact of change on safety and health & 2) Necessary time period for the change? [68.75(b)] No.	
<ul style="list-style-type: none"> ▪ Impact of change on safety and health was not addressed in facility MOC procedure. ▪ Necessary time period for change was not addressed in facility MOC procedure 	150 150
If a change resulted in a change in the operating procedures or practices, had such procedures or practices been updated accordingly? [68.75(e)] No. NH3 injection system at fermentation tanks was added after plant was built. OP's for NH3 were supposed to have been completed by ICM. OP's are incomplete. According to SEL, ICM is still working on the OP's, years after the injection system was installed.	450

Prevention Program – Compliance Audits [68.79]	
<p>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)] No.</p> <ul style="list-style-type: none"> • Corrective actions to be taken are not assigned to a specific employee • No date is assigned for completion of corrective actions • Corrective actions to be taken are handled verbally without written documentation 	150
EMERGENCY RESPONSE – [68.90 – 68.95]	
<p>Are appropriate mechanisms in place to notify emergency responders when there is need for response? [68.90(b)(3)] No. Ammonia must be specifically included in the emergency response plan (in addition to oil/ethanol which is currently in the plan) with specific mechanisms (type of incident, quantity, type of communication (911, etc)) documented in the plan. (Further information such as procedures to be followed by employees who remain to operate critical plant operations before they evacuate must be outlined in accordance with OSHA’s Emergency Action Plan requirements [29 CFR 1910.38])</p>	450
BASE PENALTY	\$5250

RECOMMENDATIONS:
The facility should evaluate the ammonia system pipe labeling to ensure it is in accordance with industry standards [ANSI/ASME A13.1 & IIAR bulletin #114].
Complete Compliance Audit every three years as required by 40 CFR 68.79(d).
Designate a facility “Emergency Response Coordinator” who participates in the local emergency planning process as required by 40 CFR § 355.30(c).
Ensure proper labeling of process chemicals. Denaturant was mislabeled NFPA 3. The facility stated they would immediately correct this to NFPA 4.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX
Sterling Ethanol, LLC

MULTIPLIER FACTORS FOR CALCULATING PROPOSED PENALTIES FOR
VIOLATIONS FOUND DURING RMP INSPECTIONS

<i>(Amt of Chemical in process) x (Threshold Quantity)</i>		1-5*	5-10*	>10*
# of Employees	1-5	.1	.15	.3
	6-20	.15	.3	.4
	21-50	.3	.4	.6
	51-100	.4	.6	.7
	>100	.6	.7	1

*times the threshold quantity listed in CFR 68.130 for the particular chemical use in a process

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 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 21-50 employees and the row for 5- 10 times the threshold quantity amount gives a multiplier factor of 0.4. Therefore, the multiplier for XYZ Facility = 0.4.

2nd Use the Adjusted Penalty formula

$$\begin{aligned} \text{Adjusted Penalty} &= \$4700 (\text{Unadjusted Penalty}) \times 0.4 (\text{Size-Threshold Multiplier}) \\ \text{Adjusted Penalty} &= \$1880 \end{aligned}$$

3rd An Adjusted Penalty of \$1880 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 – Sterling Ethanol, LLC.

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$3150 = \$5250 \times .6^*$$

* # of employees is 26. At least one covered chemical exceeds the listed threshold value by >10 times.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT/FINAL ORDER** in the matter of **STERLING ETHANOL, LLC.; DOCKET NO.: CAA-08-2010-0010** was filed with the Regional Hearing Clerk on June 23, 2010.

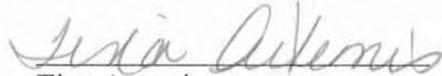
Further, the undersigned certifies that a true and correct copy of the documents were delivered David Rochlin, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on June 23, 2010.

Jeff Gilbert, Compliance Officer
Sterling Ethanol, LLC.
P. O. Box 1804
450 Angus Avenue
Sterling, CO 80751

E-mailed to:

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

June 23, 2010


Tina Artemis
Paralegal/Regional Hearing Clerk

