



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 NOV 24 A 11:38
REGIONAL HEARING
CLERK

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CAA-02-2011-1201

This ESA is issued to: Middleport Cold Storage

P. O. Box 177, Middleport, NY 14105

for violations of Section 112(r)(7) of the Clean Air Act.

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 Middleport Cold Storage, Middleport, New York ("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 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 November 18, 2009, an authorized representative of EPA conducted a compliance inspection of Respondent's facility located at Middleport Cold Storage, 10 Kelly Avenue, in Middleport, 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.

SETTLEMENT

In consideration of Respondent's 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 Findings section of EPA's inspection report for the total penalty amount of \$1,980.

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, 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 identified in the Program 3 Penalty Checklist.

If the Respondent chooses to continue with the ESA process and agree to its' terms, please sign this ESA and return it, within 14 days, to:

Francesco Maimone
USEPA Region 2
Response & Prevention Branch MS-211
2890 Woodbridge Ave.
Edison, New Jersey 08837

If the signed original ESA is not returned to the EPA Region 2 office at the above address in correct form by the Respondent within 14 days of the date of Respondent's receipt of it, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified in the Program 3 Penalty Checklist.

Please note that upon Respondent's submission of the signed original ESA, and payment of the penalty as set forth in the next mailing, EPA will take no further civil action against Respondent for the alleged violations of the Act referenced in the Program 3 Penalty Checklist. 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. Additionally, please note that 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.

This document will be returned to you after the Regional Judicial Officer of EPA Region 2 has signed. *After the Regional Judicial Officer has signed, you will receive this ESA and further penalty payment information in a subsequent mailing.*

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 Program 3 Penalty Checklist, 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.

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FOR RESPONDENT:

Robert Neuman

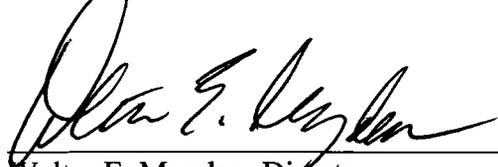
Date: 11 / 2 / 2010

Name (print): Robert Neuman

Title (print): Plant Manager

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FOR COMPLAINANT:



Walter E. Mugdan, Director
Emergency and Remedial Response
Division, Region II

Date: Nov. 16, 2010

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: Nov 17, 2010