



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

08 MAY -7 PM 3:54

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101
ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

EXPEDITED SETTLEMENT AGREEMENT (ESA)

DOCKET NO.: CAA-07-2008-0014

This ESA is issued to: Skylark Meats, Inc.

At: 4430 South 110th Street, Omaha, Nebraska 68137

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

The United States Environmental Protection Agency, Region 7 (EPA) and Skylark Meats, Inc., 4430 110th Street, Omaha, Nebraska 68137 (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 Skylark Meats, Inc., 4430 South 110th Street, Omaha, Nebraska 68137.

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 Attorney General jointly determined that this matter, where the total penalty exceeds \$270,000 or where the first alleged date of violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

ALLEGED VIOLATIONS

On July 18, 2006, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 4430 South 110th Street, Omaha, Nebraska 68137, 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, Alleged Violations and Proposed Penalty Sheet (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 **\$3165**.

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 in 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 **\$3165** 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-07-2008-0014, 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 5th 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 5th 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:

Gary Hunter

Date: 4-21-08

Name (print): GARY HUNTER

Title (print): PLANT MANAGER
Skylark Meats, Inc.

FOR COMPLAINANT:



Becky Weber
Director
Air and Waste Management Division
EPA Region 7

Date: 5/05/08



Sarah Thibos LaBoda
Assistant Regional Counsel
EPA Region 7

Date: 4/25/08

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

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

Date: May 7, 2008

Risk Management Program Inspection Findings

Skylark Meats, Inc.
4430 South 110th Street
Omaha, Nebraska 68137

CAA § 112(r)

Violations

Penalty Amount

Prevention Program

Process Hazard Analysis [68.67]

\$750

The owner or operator failed to establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations. [§ 68.67(e)]

How was this addressed?

THE SKYLARK PSM PROGRAM HAS BEEN UPDATED TO ENSURE THE ITEMS LISTED ABOVE ARE BEING ADDRESSED. ALL PHA ISSUES ARE BEING INCORPORATED IN THE MONTHLY PSM MEETINGS SO THEY CAN BE MONITORED AND RESOLVED IN A TIMELY MANNER.

Prevention Program

Process Hazard Analysis [68.67]

\$300

The owner or operator failed to retain process hazard analyses and updates or revalidations for each process covered by this section, as well as the documented resolution of recommendations described in paragraph (e) of this section for the life of the process. [§ 68.67(g)]

How was this addressed?

ALL RESOLUTIONS FROM THE PREVIOUS PHA'S HAVE BEEN ADDRESSED. ALL FUTURE PSM DOCUMENTATION WILL BE KEPT IN A SECURE LOCATION AND NO ORIGINAL DOCUMENTS WILL BE ALLOWED TO LEAVE THAT AREA UNLESS A COPY IS MADE.

Violations

Penalty Amount

Prevention Program

Operating Procedures [68.69]

\$600

The owner or operator failed to review the operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator failed to certify annually that these operating procedures are current and accurate.

[§ 68.69(c)]

How was this addressed?

ALL SOP'S ARE ON A YEARLY REVIEW TIME FRAME. SOP'S WILL ALSO BE UPDATED AND SIGNED OFF ON AS NEEDED DUE TO PROCEDURAL CHANGES OR PSM ISSUES.

Prevention Program

Mechanical Integrity [68.73]

\$450

The owner or operator failed to correct deficiencies in equipment that were outside acceptable limits defined by the process safety information before further use or in a safe and timely manner when necessary means were taken to assure safe operation. [§ 68.73(e)]

How was this addressed?

THE PLANT HAS MADE SIGNIFICANT PROGRESS IN ADDRESSING THESE ISSUES. ALL RELIEF PIPING AND VALVES HAVE BEEN REDESIGNED TO THE CURRENT DESIGN CODES. THE MECHANICAL INTEGRITY FINDINGS HAVE ALSO BEEN ADDRESSED

Prevention Program

Management of Change [68.75]

\$750

The owner or operator failed to establish and implement 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)]

How were these violations addressed?

A NEW MOC PROCEDURE FOR SKYLARK HAS BEEN IMPLEMENTED. PREVIOUS MOC'S WITH OUT DOCUMENTATION HAVE HAD A POST MOC AUDIT PERFORMED ON THEM AND ANY OPEN ISSUES OF CONCERN WERE ADDRESSED

Violations

Penalty Amount

Prevention Program

Pre-Startup Review [68.77]

The owner or operator failed to perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification was significant enough to require a change in the process safety information. [§ 68.77(a)] The pre-startup review failed to confirm that prior to introduction of regulated substances to a process [§ 68.77(b)]:

- Construction and equipment was in accordance with design specifications [§ 68.77(b)(1)]. \$150
- Safety, operating, maintenance, and emergency procedures are in place and are adequate [§ 68.77(b)(2)]. \$150
- For new stationary sources, a process hazard analysis was performed and recommendations were resolved or implemented before startup. [§ 68.77(b)(3)] \$150
- Modified stationary sources met the requirements contained in management of change. [§ 68.77(b)(3)] \$150
- Training of each employee involved in operating a process has been completed. [§ 68.77(b)(4)] \$150

How were these addressed?

THE ITEMS LISTED ABOVE HAVE BEEN ADDRESSED BY PERFORMING A POST MOC AUDIT. RECENT MOC'S AND PHA'S HAVE ALSO REVIEWED THE ITEMS ABOVE ALONG WITH THE RELATED TRAINING ISSUES.

Prevention Program

Compliance Audits [68.79]

\$300

The owner or operator failed to certify that they have evaluated compliance at least every three years to verify that procedures and practices developed are adequate and are being followed. [§ 68.79(a)]

How was this addressed?

THE REQUIRED COMPLIANCE AUDITS AND PHA'S HAVE BEEN SCHEDULED AND ARE REVIEWED AT EACH MONTHLY PSM MEETING.

Prevention Program

Contractors [68.87]

No Penalty
Assessed

The owner or operator failed to provide proof that their contractor had documented the identity of each employee, date of training, and means to verify training was understood as required. [§ 68.87(c)(3)]

Violations

Penalty Amount

How was this addressed?

CONTRACTORS ARE NOW BEING AUDITED AND CERTIFIED.
ALL WORKERS TRAINING DOCUMENTS ARE BEING KEPT
ON FILE.

Emergency Response

Emergency Response Program [68.95]

\$375

The owner or operator failed to develop and implement procedures for informing the public and local emergency response agencies about accidental releases. [§ 68.95(a)(1)(i)]

How was this addressed?

THE ERP HAS BEEN MODIFIED TO BETTER CLARIFY
RESPONSIBILITIES FOR PUBLIC NOTIFICATION.

Risk Management Plan

Required Corrections [68.195]

\$1000

When the emergency contact information required at 68.160(b)(6) changed, the owner or operator failed to submit corrected information within thirty days of the change. [§ 68.195(b)]

How was this addressed?

THE RMP INFORMATION IS ALSO BEING ADDRESSED IN MONTHLY
RMP MEETING NOTES. THE CURRENT RMP IS CONTINUALLY
BEING ADDRESSED AT EVERY MONTHLY MEETING.

Total Unadjusted Penalty \$5275

Calculation of Adjusted Penalty

1st Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix for Private Industry. Number of employees is greater than 100 and the threshold quantity falls into the 1-5 times range, which gives a multiplier factor of 0.6.

2nd Adjusted Penalty = \$ 5275 (Unadjusted Penalty) X 0.6 (Size-Threshold Multiplier) is \$3165.

3rd An Adjusted Penalty of \$3165 would be assessed to Skylark Meats, Inc. for Violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA)

TOTAL ADJUSTED PENALTY

\$3165

The approximate cost to correct the above items: \$ 400,000

MATERIALS
CENTRAL + INTERNAL
230,000 + 170,000

Compliance staff name: JASON OSBAUR (CORPORATE ENGINEER)

Signed: [Signature] Date: 04/21/03

IN THE MATTER OF Skylark Meats, Inc., Respondent
Docket No. CAA-07-2008-0014

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:

Sarah Thibos LaBoda
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Gary Hunter, Plant Manager
Skylark Meats, Inc.
4430 South 110th Street
Omaha, Nebraska 68137

Dated: 5/8/08


Kathy Robinson
Hearing Clerk, Region 7