



August 21, 2025 12:27 pm
USEPA – Region II
Regional Hearing Clerk

REGION 2

NEW YORK, N.Y. 10007

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA-02-2025-1214
This ESA is issued to: FIFCO USA
445 St. Paul Street
Rochester, NY 14605

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 FIFCO USA (“Respondent” or “your Company”) 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

On January 25, 2024, EPA conducted an onsite inspection at Respondent’s facility, located at 445 St. Paul Street, Rochester, New York to determine compliance with the Act’s Risk Management Program regulations, promulgated at 40 C.F.R. Part 68 pursuant to Section 112(r) of the Act. The Facility is identified in the Risk Management Plan submitted for the Facility as High Falls Operating Company, LLC. Pursuant to the inspection, EPA has determined that Respondent violated the Risk Management Program regulations as described in the Risk Management Program Findings (“Findings”). EPA described the violations in a letter sent by email to Respondent dated October 16, 2024.

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 violations described in the Findings for the total penalty amount of **seven thousand two hundred dollars (\$7,200)**.

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 in the Findings; 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 violations described in the Findings.

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

Tyler Diercks, Physical Scientist
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 violations 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 violations identified herein.

Respondent agrees to submit a payment in full of seven thousand two hundred dollars (\$7,200) 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 <https://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: \$7,200
- ii. Name of Respondent: FIFCO USA
- iii. Docket No.: CAA-02-2025-1214

To ensure your payment is recorded properly, you are required to notify EPA contemporaneously with the payment. Please send an email message or letter, preferably electronically, that references the

date of the payment, the payment amount, the docket number, and your name and address to the following: Tyler Diercks, 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 violations identified herein are "restitution or paid to come into compliance with law."

Tax Reporting. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS"), annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (*i.e.*, a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 ("Request for Taxpayer Identification

Number and Certification”) or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. §§ 6723 and 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at wise.milton@epa.gov, within thirty (30) days after the Effective Date of this ESA, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within thirty (30) days after the Effective Date, then Respondent, using the same email address identified in Subparagraph c., shall further:
 - i. notify EPA’s Cincinnati Finance Center of this fact, via email, within thirty (30) days after the thirty (30) days after the Effective Date of this ESA; and
 - ii. provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s issuance and receipt of the TIN.

By signing this ESA (consent agreement), Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of this ESA (consent agreement and final order).

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

FOR RESPONDENT:

Signature: David J. Simoni

Date: 8/7/2025

Name (print): David J. Simoni

Title (print): General Counsel, Corporate Affairs

FOR COMPLAINANT:

Kathleen Anderson, 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.

Regional Judicial Officer
U.S. EPA, Region 2

Date: _____

Risk Management Program Findings
CAA §112(r) Violations

FIFCO USA
445 St. Paul Street
Rochester, NY 14605

COMPLETE THIS FORM AND RETURN IT WITH THE ESA

| <u>VIOLATION</u> | <u>PENALTY AMOUNT</u> |
|--|------------------------------|
| <u>Subpart B Hazard Assessment</u> | |
| <i>Hazard Assessment [68.25(b)(1)]</i> The owner or operator did not determine the worst case release quantity using the greatest amount held in a single vessel. | \$600 |
| <u>Subpart D Prevention Program</u> | |
| <i>Process Safety Information [68.65(d)(2)]</i> The owner or operator failed to document that the covered process is designed and maintained in compliance with recognized and generally accepted good engineering practices. | \$1,500 |
| <i>Process Hazard Analysis [68.67(c)(4)]</i> The Facility's 2020 Process Hazard Analysis failed to completely address the consequences of failure of engineering and administrative controls. | \$600 |
| <i>Process Hazard Analysis [68.67(c)(7)]</i> The Facility's 2020 Process Hazard Analysis failed to completely evaluate a range of possible safety and health effects of failure of controls. | \$600 |
| <i>Process Hazard Analysis [68.67(e)]</i> The owner or operator did not timely resolve all of the 2020 Process Hazard Analysis findings and recommendations. | \$1,500 |
| <i>Operating Procedures [68.69(a)(1)(vii)]</i> The Facility's operating procedures did not address steps for startup following a turnaround, or after an emergency shutdown. | \$1,200 |
| <i>Mechanical Integrity [68.73(e)]</i> The owner or operator did not correct deficiencies in equipment that were outside acceptable limits before further use or in a safe and timely manner. | \$900 |

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|-------------------------------------|--------------|
| <i>Compliance Audits [68.79(d)]</i> | <i>\$300</i> |
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The owner or operator did not promptly determine and document responses to Compliance Audit findings and document that deficiencies have been corrected.

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|----------------------|----------------|
| Total Penalty | \$7,200 |
|----------------------|----------------|

The approximate cost to correct the above items: \$ 2,000,000.00

Compliance staff name: David J. Simoni

Signed: David J. Simoni Date: 8/7/2025