



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT - 8 2015

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ted E. Grzywacz
President
Berkshire Refrigerated Warehousing, LLC
4550 S. Packers Avenue
Chicago, IL 60609

RE: Berkshire Refrigerated Warehousing, LLC, Chicago, Illinois
Expedited Settlement Agreement
ESA Docket No. RMP-15-ESA-38
Docket No. **CAA-05-2016-0002**

Dear Mr. Grzywacz:

Enclosed please find a copy of the fully executed Expedited Settlement Agreement (ESA) in resolution of the above case. The ESA is binding on the United States Environmental Protection Agency and Berkshire Refrigerated Warehousing, LLC. EPA will take no further action against the Respondent for the violations cited in the ESA. The ESA requires no further action on your part.

Please feel free to contact Silvia Palomo at (312) 353-2172 if you have any questions regarding the enclosed document or the Risk Management Program. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Hans".

Michael E. Hans, Chief
Chemical Emergency
Preparedness & Prevention Section



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604-3590

CAA-05-2016-0002



DOCKET NO: RMP-15-ESA-38

This ESA is issued to: Berkshire Refrigerated Warehousing, LLC
at: 4550 S. Packers Avenue, Chicago, Illinois 60609
for violations of Section 112(r)(7) of the Clean Air Act.

EXPEDITED SETTLEMENT AGREEMENT

The United States Environmental Protection Agency, Region 5, and Berkshire Refrigerated Warehousing, LLC (“Respondent”), have agreed to the settlement of this action before the filing of a Complaint. EPA and Respondent (jointly “the Parties”) have agreed that settling this action without the filing of a Complaint, or the adjudication of any issue of fact or law, is in their interest and in the public interest. This action is thus simultaneously commenced and concluded by this Expedited Settlement Agreement (“ESA”) and Final Order. *See* 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

This is an administrative action for the assessment of civil penalties instituted pursuant to EPA’s authority under Sections 113(a)(3) and (d) of the Clean Air Act (“Act”), 42 U.S.C. § 7413(a)(3) and (d). The Director of the Superfund Division, Region 5, EPA (“Complainant”) has been delegated the authority to issue an administrative complaint seeking the assessment of civil penalties for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r). The Regional Administrator for Region 5 of EPA is authorized by Sections 113(a)(3) and (d)(1) of the Act, 42 U.S.C. §§ 7413(a)(3), and (d)(1), to issue a Final Order ratifying this ESA.

ALLEGED VIOLATIONS

On June 28, 2012, an authorized EPA representative conducted a compliance inspection of Berkshire Refrigerated Warehousing, LLC (“Facility”) to determine its compliance with the Risk Management Program (“RMP”) regulations promulgated pursuant to Section 112(r) of the Act, and set forth at 40 C.F.R. Part 68. Based on the June 28, 2012 inspection, EPA has determined that Respondent violated the following regulations:

1. 40 C.F.R. § 68.67(e)-Respondent failed to establish a system to promptly address the process hazard analysis recommendations.
2. 40 C.F.R. § 68.67(f)-Respondent failed to timely revalidate the process hazard analysis five years after the completion of the initial process hazard analysis.
3. 40 C.F.R. § 68.73(d)(1)-Respondent failed to perform inspections and tests on process equipment.

4. 40 C.F.R. § 68.79(a)-Respondent failed to timely conduct a compliance audit every three years.
5. 40 C.F.R. § 68.79(d)-Respondent failed to address the deficiencies discovered during the compliance audit.
6. 40 C.F.R. § 68.87(b)-Respondent failed to obtain and evaluate information on contractors' safety performance and programs prior to selecting the contractors.
7. 40 C.F.R. § 68.190(b)(1)-Respondent failed to revise and update its risk management plan.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history, its good faith efforts to comply, other factors as justice may require, and upon consideration of the entire record, the parties enter into this ESA in order to resolve any civil penalties for these alleged violations for the total penalty amount of **\$5,940.00**.

This settlement is subject to the following terms and conditions:

By signing below, Respondent consents to, and is bound by, the terms and conditions of this ESA, including the assessment of the civil penalty set forth above. Respondent admits the jurisdictional allegations in the ESA, and waives any objections that it may have regarding jurisdiction. Respondent waives its right to contest the specific factual allegations contained herein, and neither admits nor denies these specific factual allegations. Respondent acknowledges that pursuant to 40 C.F.R. § 22.15(c), and Section 113(d)(2)(A) of the Act, 42 U.S.C § 7413(d)(2)(A), it has the right to request a hearing on any material fact, or on the appropriateness of the penalty, but Respondent waives its rights to such a hearing. Respondent also waives its right to appeal this ESA and the accompanying Final Order.

Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the violations set forth in this ESA, and has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of **\$5,940.00** in payment of the full penalty amount to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The Docket Number of this ESA must be included on the check. (The Docket Number is RMP-15-ESA-38.)

This signed original ESA and a copy of the check must be sent by certified mail to:

Silvia Palomo
Chemical Emergency
Preparedness and Prevention Section (SC-5J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Upon Respondent's submission of the signed original ESA, and the issuance of the Final Order, Respondent's liability is resolved only for any federal civil penalties due as a result of the facts and violations alleged in this ESA. This ESA, the Final Order, and Respondent's full payment of the civil penalty set forth herein, do not affect the right of EPA to pursue appropriate injunctive, other equitable relief, or criminal sanctions for any violations of law. EPA also does not waive any enforcement authority for any other violation of the Act or any other statute. The issuance of the Final Order does not waive, extinguish, or otherwise affect Respondent's duty to comply with the Act, the regulations promulgated thereunder, or any other applicable law or requirement.


If the signed original ESA **with an attached copy of the check** is not returned to the **EPA Region 5 office** at the above address in correct form by Respondent within 45 days of the date of Respondent's receipt of this ESA (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 in this ESA.

This ESA is binding on the Parties signing below.

Each Party to this action shall bear its own costs and fees, if any.


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

FOR RESPONDENT:

Signature: 
Name (print): TED E. SZYMANSKI
Title (print): PRESIDENT/CEO
Respondent

Date: 9-11-2015

FOR COMPLAINANT:


Richard C. Karl, Director
Superfund Division

Date: 10-1-15

FINAL ORDER

The foregoing Expedited Settlement Agreement is hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ORDERED to comply with all of the terms of the foregoing Expedited Settlement Agreement, which upon its filing with the Regional Hearing Clerk shall become immediately effective. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

IT IS SO ORDERED.



Date: 10/2/2015

Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the matter of: **Berkshire Refrigerated Warehousing, LLC, Chicago, Illinois**
Docket Number: **CAA-05-2016-0002**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Expedited Settlement Agreement**, which was filed on October 8, 2015, this day in the following manner to the addressees:

Copy by certified mail
return-receipt requested:

Ted E. Grzywacz
President
Berkshire Refrigerated Warehousing, LLC
4550 S. Packers Avenue
Chicago, IL 60609

Copy by e-mail to
Complainant:

Steven Kaiser
Kaiser.steven@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: October 8, 2015



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): _____

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