

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

1650 ARCH STREET  
PHILADELPHIA, PA 19103-2029

EXPEDITED PENALTY  
ACTION AND  
CONSENT AGREEMENT

DOCKET NO. CAA-03-2016-0033

RECEIVED  
2016 MAY 13 AM 7:52  
REGIONAL HEARING CLERK  
EPA REGION III PHILA. PA

**RESPONDENT**

Fresh Express  
7505 Grayson Road  
Harrisburg, PA 17111

**FACILITY**

Fresh Express Harrisburg  
7505 Grayson Road  
Harrisburg, PA 17111

On October 7, 2015, an authorized representative of the EPA conducted an inspection of the subject facility 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 Act or CAA). EPA found that the Respondent had violated regulations implementing Section 112(r) of the Act by failing to comply with the regulations, as more fully alleged in the attached RISK MANAGEMENT PROGRAM, INSPECTION FINDINGS, ALLEGED VIOLATIONS AND PROPOSED PENALTY SHEET (FORM), which is hereby incorporated by reference.

The parties enter into this Expedited Penalty Action and Consent Agreement ("Consent Agreement") to settle the civil violations set forth above for a penalty of **\$1,500**. This Consent Agreement commences and concludes this action pursuant to Sections 22.13(b), and 22.18(b)(2), and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. §22.13(b), and 22.18(b)(2), and (3). This Consent Agreement is being entered into by the United States Environmental Protection Agency, Region 3 (EPA), by its duly delegated official, the Director, Hazardous Site Cleanup Division, and by Respondent pursuant to Section 113(a)(3) and (d) of the Act, 42 U.S.C. §7413(a)(3) and (d).

The settlement is subject to the following terms and conditions.

The Respondent consents to the assessment of the penalty stated above. The settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the seriousness of the violations and the other factors provided in CAA Section 113(e)(1) and EPA's Combined Enforcement Policy for CAA Section 112(r) Risk Management Program dated June 20, 2012. The Respondent certifies that it has corrected the violations set forth in the Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet. The Respondent also certifies that, since its last Risk Management Plan update required pursuant to 40 C.F.R. §68.190, it has not done either of the following: (a) introduced a new regulated substance at the facility in an amount greater than its threshold quantity; or (b) introduced a new process which uses a regulated substance in an amount greater than its threshold quantity. Further, the Respondent agrees that it shall, within 15 calendar days of receipt of an executed copy of this Consent Agreement, make payment of **\$1,500** in one of two forms: 1) electronic funds transfer (EFT) or 2) a cashier's check or certified check payable to the "US Environmental Protection Agency", with the Docket Number, located at the top right-hand corner of the Consent Agreement, and "Chemical Accident Prevention Provisions - 112(r)" referenced on the check.

Payment of the penalty amount by EFT to: Federal Reserve Bank of New York  
ABA 021030004  
Account 68010727  
SWIFT address FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D68010727 Environmental Protection Agency"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 ARCH STREET  
PHILADELPHIA, PA 19103-2029

EXPEDITED PENALTY  
ACTION AND  
CONSENT AGREEMENT  
DOCKET NO. CAA-03-2016-0033

Payment of the penalty amount by regular US Postal Service shall be sent via certified mail to:

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

Payment of the penalty amount by overnight mail (FedEx or other non-US Postal Service express mail) shall be sent to:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

The Respondent shall also send a copy of the EPT confirmation or check via certified mail to:

Patrick Beckley  
RMP Inspector  
U.S. EPA, Region III (3HS61)  
1650 Arch Street  
Philadelphia, PA 19103-2029

Lydia Guy  
Regional Hearing Clerk  
U.S. EPA, Region III (3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

The payment made pursuant to this Consent Agreement is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. §162(f), and, therefore, Respondent shall not claim it as a tax deductible expenditure for purposes of federal, state or local law. This Consent Agreement resolves only the civil claims for the specific violations alleged in the attached Risk Management Program, Inspection Findings, Alleged Violations and Proposed Penalty Sheet. Furthermore, EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules. Further, EPA reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Agreement, following its filing with the Regional Hearing Clerk.

Respondent neither admits nor denies the allegations set forth in the attached Risk Management Program, Inspection Findings, Alleged Violations and Proposed Penalty Sheet, but admits that jurisdiction has been established for this Penalty Action. Also, upon EPA final approval of the Consent Agreement, Respondent expressly waives its right to contest the allegations, to a hearing under Section 113(d)(2)(A) of the Act, 42 U.S.C. §7413(d)(2)(A), and to appeal this Order under Section 113 (d)(4) of the Act, 42 U.S.C. §7413(d)(4). Moreover, in entering into this Consent Agreement, the Respondent agrees to bear its own costs and attorney's fees related to this Consent Agreement.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 ARCH STREET  
PHILADELPHIA, PA 19103-2029

EXPEDITED PENALTY  
ACTION AND  
CONSENT AGREEMENT  
DOCKET NO. CAA-03-2016-0033

**ACCEPT THE PROPOSED PENALTY**

I/we consent to the proposed penalty.

**DECLINE THE PROPOSED PENALTY**

I/we decline the proposed penalty. If you choose to decline this proposed penalty, check the box. You may be subject to formal enforcement action and, in that event, will have an opportunity to a hearing related to any subsequent penalty assessment.

**COST OF COMPLIANCE**

Respondent certifies that it has expended \$63,274.21 to correct the alleged violation(s) and to come into compliance.

**EFFECTIVE DATE**

This Consent Agreement will be effective upon filing.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind the party whom he or she represents to this Consent Agreement.

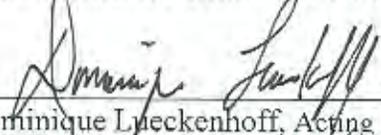
Signature: James Pfeifer Date: 3/29/16

Name and Title (print) James Pfeifer Plant Manager

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 ARCH STREET  
PHILADELPHIA, PA 19103-2029

EXPEDITED PENALTY  
ACTION AND  
CONSENT AGREEMENT  
DOCKET NO. CAA-03-2016-0033

SIGNATURE BY COMPLAINANT:

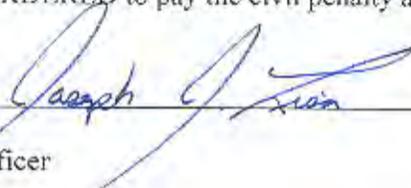
  
\_\_\_\_\_  
Dominique Lueckenhoff, Acting Director  
Hazardous Site Cleanup Division

Date: 5/5/16

**FINAL ORDER**

Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. §7413(d)(1), and in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, and having relied upon the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based on a consideration of the factors set forth in CAA Section §7413(c)(1) and EPA's Combined Enforcement Policy for CAA Section 112(r) Risk Management Program dated June 20, 2012.

THEREFORE, the foregoing Consent Agreement is hereby approved and incorporated by reference into the Final Order. The Respondent is ORDERED to pay the civil penalty as set forth in the Consent Agreement.

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial Officer

Date: May 12, 2016



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 1650 Arch Street  
 Philadelphia, Pennsylvania 19103-2029

DATE:

In the Matter of:	)	EPA Docket No.:
Fresh Express	)	CAA-03-2016-0033
7505 Grayson Road	)	
Harrisburg, PA 17111	)	
	)	
Respondent,	)	
	)	Proceedings under Section
Fresh Express	)	113(d)(1) of the Clean Air Act, 42
7505 Grayson Road	)	U.S.C. § 7413(d)(1).
Harrisburg, PA, 17111	)	
	)	
Facility.	)	
	)	

RECEIVED  
 2016 MAY 13 AM 7:52  
 REGIONAL HEARING CLERK  
 EPA REGION III PHILA, PA

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Complainant's, the United States Environmental Protection Agency's, Expedited Penalty Action and Consent Agreement ("Consent Agreement") with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement, were sent to:

Via certified mail, return receipt requested

James Pfeifer, Plant Manager  
 Fresh Express Harrisburg  
 7505 Grayson Road  
 Harrisburg, PA 17111

5/13/2016

Date

*Patrick Beckley*

Patrick Beckley (311S61)