



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 8  
 1595 WYNKOOP STREET  
 DENVER, CO 80202-1129  
 Phone 800-227-8917  
<http://www.epa.gov/region08>

2009 APR 23 AM 8:05

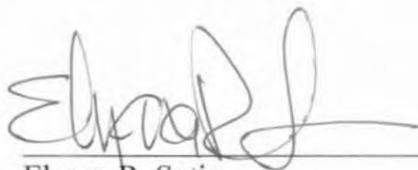
EPA REGION 8  
 HEARING TERM

DOCKET NO.: CAA-08-2009-0014

|                             |   |                    |
|-----------------------------|---|--------------------|
| IN THE MATTER OF:           | ) |                    |
|                             | ) |                    |
| <b>MILLARD REFRIGERATED</b> | ) | <b>FINAL ORDER</b> |
| <b>SERVICES</b>             | ) |                    |
| <b>Greeley, CO</b>          | ) |                    |
|                             | ) |                    |
| RESPONDENT                  | ) |                    |

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 22<sup>nd</sup> DAY OF April, 2009.

  
 Elyana R. Sutin  
 Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2009 APR 23 AM 8:05

|                                 |  |                                       |
|---------------------------------|--|---------------------------------------|
| IN THE MATTER OF: )             |  |                                       |
| Millard Refrigerated Services ) |  | <b>EXPEDITED SETTLEMENT AGREEMENT</b> |
| Greeley, Colorado )             |  | (COMBINED COMPLAINT AND               |
| Respondent )                    |  | CONSENT AGREEMENT)                    |
|                                 |  | <b>DOCKET NO. : CAA-08-2009-0014</b>  |

This Expedited Settlement Agreement (also known as a “Combined Complaint and Consent Agreement,” hereafter “ESA”) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter.

This ESA is being entered into by the United States Environmental Protection Agency (“EPA”), Region 8, by its duly delegated official, the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, and by Millard Refrigerated Services (“Respondent”) 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 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 February 18, 2009, an authorized representative of EPA conducted a compliance inspection of the Millard Refrigerated Services facility located at 2901 First Avenue, Greeley, Colorado, 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 facility had violated regulations implementing section 112(r) of the Act by failing to comply with the specific requirements outlined in the attached *RMP Program Level 3 Process Checklist-Alleged Violations & Penalty Assessment* (“Checklist and Penalty Assessment”).

SETTLEMENT

In consideration of Respondent’s facility service 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 for the total penalty amount of \$450. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.

This settlement is subject to the following terms and conditions:

1. The Respondent by signing below waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained in the Checklist and Penalty Assessment and consents to the assessment of the penalty as stated above.
2. 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.
3. Each party to this action shall bear its own costs and fees, if any.
4. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent will correct the violations listed in the Checklist and Penalty Assessment no later than 60 days from the date the ESA is signed by the Respondent.

After the Regional Judicial Officer issues the Final Order, the Respondent will receive a fully executed copy of this ESA and the Final Order. Within twenty days (20) of receiving a signed Final Order, Respondent shall remit payment in the amount of \$450. The payment shall reference the name and docket number of this case and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

Wire Transfers:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727

ACH Transactions:

PNC Bank/Remittance Express  
ABA: 051036706  
Account Number: 310006  
CTX Format, Transaction Code 22, checking

There is now an On Line Payment Option, available through the US Department of Treasury. This payment option can be accessed from the information below:

[www.PAY.GOV](http://www.PAY.GOV)

A copy of the check, or notification that the payment has been made by one of the other methods listed above, shall be sent simultaneously to:

Tina Artemis, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street [8RC]  
Denver, Colorado 80202-1129

and

David Cobb  
EPCRA/RMP Enforcement Coordinator  
US EPA, Region 8  
1595 Wynkoop Street [8ENF-AT]  
Denver, Colorado 80202-1129

The penalty specified in this ESA shall not be deductible for purposes of State or Federal taxes.

Upon Respondent's receipt of the signed ESA and Final Order by the Regional Judicial Officer and payment of the penalty as set forth in this ESA, EPA will take no further civil action against Respondent for the alleged violations of the Act referenced in the Risk Management Plan 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.

If the signed original ESA is not returned to the EPA Region 8 office at the above address in correct form by the Respondent in a timely manner, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

In addition, if Respondent fails to comply with the provisions of this ESA, by either 1) failing to timely submit the above-referenced payment or 2) by failing to correct the violations no later than 60 days from the date the ESA is signed by the Respondent, the Respondent agrees

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.

**Millard Refrigerated Services Expedited Settlement Agreement**

FOR RESPONDENT:

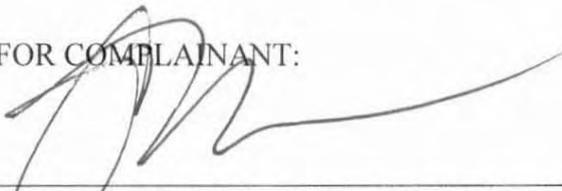
  
\_\_\_\_\_

Date: 3-27-09

Name (print): ALLEN TEBMEISTER

Title (print): DIRECTOR CORPORATE COMPLIANCE  
**Millard Refrigerated Services**

FOR COMPLAINANT:

  
\_\_\_\_\_

Date: 4/14/09

Andrew M. Gaydosh, Assistant Regional Administrator  
Office of Enforcement, Compliance and Environmental Justice

**RMP PROGRAM LEVEL 3 PROCESS CHECKLIST  
ALLEGED VIOLATIONS & PENALTY ASSESSMENT**

Facility Name: Millard Refrigerated Services - Greeley, Colorado

INSPECTION DATE: 2/18/09

**SECTION C: PREVENTION PROGRAM**

**PENALTY**

**Prevention Program – Process Hazard Analysis [68.67]**

Has the owner or operator established a system to promptly address the team’s findings and recommendations; assured that the recommendations are resolved in a timely manner and documented; documented what actions are to be taken; completed actions as soon as possible; developed a written schedule of when these actions are to be completed; and communicated 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)] No. The PHA does not document the responsible party or time schedule for completion of the recommendations and when the action was completed.**

**750**

**Prevention Program – Operating Procedures [68.69]**

Has the owner or operator certified annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary? **[68.69(c)] No. Although all Millard facilities are requested by the Corporate office to review procedures annually, no certification was available for review.**

**600**

**Prevention Program – Compliance Audits [68.79]**

Has the owner or operator promptly determined and documented an appropriate response to each of the findings of the audit and documented that deficiencies had been corrected? **[68.79(d)] No. The compliance audit documentation did not include deadlines or follow up for recommendations.**

**150**

**BASE PENALTY**

**\$1500**

## RECOMMENDATIONS

### **Organizational Chart:**

The facility has corporate organizational and plant engineering charts, which list some RMP responsibilities. A separate document should be established which lists persons responsible for implementing individual requirements of the Risk Management Program at the facility.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**EXPEDITED SETTLEMENT PENALTY MATRIX**  
**Millard Refrigerated Services**

MULTIPLIER FACTORS FOR CALCULATING PROPOSED PENALTIES FOR  
VIOLATIONS FOUND DURING RMP INSPECTIONS

| <i>(Amt of Chemical in process)</i><br><i>x (Threshold Quantity)</i> |        | <b>1-5*</b> | <b>5-10*</b> | <b>&gt;10*</b> |
|----------------------------------------------------------------------|--------|-------------|--------------|----------------|
| <i># of Employees</i>                                                | 1-5    | .1          | .15          | .3             |
|                                                                      | 6-20   | .15         | .3           | .4             |
|                                                                      | 21-50  | .3          | .4           | .6             |
|                                                                      | 51-100 | .4          | .6           | .7             |
|                                                                      | >100   | .6          | .7           | 1              |

\*times the threshold quantity listed in CFR 68.130 for the particular chemical use in a process

**PROPOSED PENALTY WORKSHEET**

**Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier**

The Unadjusted Penalty is calculated by adding up all the penalties listed on the Risk Management Program Inspections Findings, Alleged Violations and Proposed Penalty Sheet.

The Size-Threshold Quantity multiplier is a factor that considers the size of the facility and the amount of regulated chemicals at the facility.

The Proposed Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the Total Penalty and the Size/Threshold Quantity multiplier.

**Example:**

XYZ Facility has 24 employees and 7 times the threshold amount for the particular chemical in question. After adding the penalty numbers in the Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet an unadjusted penalty of \$4700 is derived.

Calculation of Adjusted Penalty

1<sup>st</sup> Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for 21-50 employees and the row for 5- 10 times the threshold quantity amount gives a multiplier factor of 0.4. Therefore, the multiplier for XYZ Facility = 0.4.

2<sup>nd</sup> Use the Adjusted Penalty formula

$$\begin{aligned} \text{Adjusted Penalty} &= \$4700 (\text{Unadjusted Penalty}) \times 0.4 (\text{Size-Threshold Multiplier}) \\ \text{Adjusted Penalty} &= \$1880 \end{aligned}$$

3<sup>rd</sup> An Adjusted Penalty of \$1880 would be assessed to XYZ Facility for Violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

Calculation for Adjusted Penalty – Millard Refrigerated Services.

**Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier**

$$\$450 = \$1,500 \times .3^*$$

\* # of employees is 33. At least one covered chemical exceeds the listed threshold value by 1-5 times.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter **MILLARD REFRIGERATED SERVICES; DOCKET NO.: CAA-08-2009-0014**; these documents were filed with the Regional Hearing Clerk on April 23, 2009.

Further, the undersigned certifies that a true and correct copies of the documents were delivered to David Rochlin, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on April 23, 2009 to:

Steve Swanson  
General Manager  
Millard Refrigerated Services  
2901 First Avenue  
Greeley, Colorado 80631

E-mailed to:

Michelle Angel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

April 23, 2009



Tina Artemis  
Paralegal/Regional Hearing Clerk

