



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2012 DEC 19 AM 11:19

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2013-0006

IN THE MATTER OF:

SOUTHERN FOODS GROUP, LLC.
(d/b/a MEADOW GOLD DAIRY)
Orem, Utah

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2), 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 Settlement Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 19th DAY OF December, 2012.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF:)

Southern Foods Group, LLC)
(dba Meadow Gold Dairy))
Orem, Utah)

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

Respondent)

DOCKET NO.: CAA-08-2013-0006

AUTHORITY

1. This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA), intended to simultaneously commence and conclude this matter, 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 the Southern Foods Group, LLC (dba Meadow Gold Dairy) (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) and 22.18. The 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 the EPA may pursue this type of case through administrative enforcement.

RESPONDENT

2. The Respondent, Southern Foods Group, LLC (dba Meadow Gold Dairy) is a Delaware corporation that does business in the State of Utah.
3. The Respondent is a "person" under section 302(e) of the Act. 42 U.S.C. § 7602(e).

ALLEGED VIOLATIONS

4. On December 14, 2011, an authorized representative of the EPA conducted a compliance inspection of Respondent's facility located at 845 South State Street, Orem, Utah, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under section 112(r)(7) of the Act. The EPA found that the Respondent had violated regulations implementing section 112(r)(7) 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). The Checklist and Penalty Assessment is incorporated into this ESA.

Southern Foods Group, LLC (dba Meadow Gold Dairy)
EXPEDITED SETTLEMENT AGREEMENT

SETTLEMENT

5. In consideration of the factors contained in section 113(d)(1) of the Act and the entire record, the parties enter into this ESA in order to settle the violations for the total penalty amount of \$2,790. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.
6. This settlement is subject to the following terms and conditions:
 - a. 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.
 - b. The 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.
 - c. Each party to this action shall bear its own cost and attorney fees, if any.
 - d. The Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent will correct the violations listed in the Checklist and Penalty Assessment no later than 60 days after receiving the Final Order.
 - e. The Respondent waives any and all available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this ESA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
7. After the Final Order is issued by the Regional Judicial Officer, a fully executed copy of this ESA and the Final Order will be sent to the Respondent. Within thirty (30) days after receiving the Final Order, the Respondent shall remit payment in the amount of \$2,790. **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:

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

Southern Foods Group, LLC (dba Meadow Gold Dairy)
EXPEDITED SETTLEMENT AGREEMENT

Federal Express, Airborne, or other commercial carrier
(or when a physical address is required):

US Bank
U.S. EPA Fines & Penalties
Government Lockbox 979078
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
(314) 418-4087

Wire Transfers:

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:
“ D 68010727 Environmental Protection Agency”

ACH Transactions (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887 6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account Number: 310006
CTX Format.

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

www.PAY.GOV
(Enter sfo 1.1 in the search field
Open form and complete required fields)

Southern Foods Group, LLC (dba Meadow Gold Dairy)
EXPEDITED SETTLEMENT AGREEMENT

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
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

8. The penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
9. Once the Respondent receives a copy of the Final Order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against the Respondent for the violations alleged in the Checklist and Penalty Assessment, which has been incorporated herein.
10. This ESA does not pertain to any matters other than those expressly specified herein. The EPA reserves and this ESA is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to, the following:
 - a. claims based on a failure by the Respondent to meet a requirement of this ESA including any claims for costs which are caused by the Respondent's failure to comply with this Agreement;
 - b. claims based on criminal liability; and
 - c. claims based on any other violations of the Act or federal or state law.
11. If the Respondent fails to timely submit the above-referenced payment or fails to correct the violations no later than sixty (60) days after receiving the Final Order, a motion may be filed to withdraw the ESA and Final Order. If that motion is granted, the EPA may then file an enforcement action against the Respondent for the violations addressed herein.
12. This ESA, upon incorporation into the Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this ESA. This ESA contains all terms of the settlement agreed to by parties.

Southern Foods Group, LLC (dba Meadow Gold Dairy)
EXPEDITED SETTLEMENT AGREEMENT

- 13. Nothing in this ESA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
- 14. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind the Respondent to the terms and condition of this ESA.
- 15. The parties agree to submit this ESA to the Regional Judicial Officer with a request that it be incorporated into a final order.

For Respondent Southern Foods Group, LLC (dba Meadow Gold Dairy):

David Hugie Date: 12/1/12
Name (print): David Hugie
Title (print): Plant Manager

For Complainant United States Environmental Protection Agency, Region 8:

Andrew M. Gaydosh Date: 12/18/12
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: Southern Foods Group, LLC (dba Meadow Gold Dairy (MGD)) – Orem, Utah

INSPECTION DATE: 12/14/11

SUBPART C: PREVENTION PROGRAM [68.85 – 68.87]

Prevention Program – Safety Information [68.65]

Does the process safety information contain materials of construction for the equipment in the process? [40 CFR 68.65(d)(1)(i)] No.

600

- MGD has not documented materials of construction for its ammonia piping.

Does the process safety information contain electrical classification for the equipment in the process? [40 CFR 68.65(d)(1)(iii)] No.

600

- MGD has not attributed the correct electrical classification to its ammonia system.

According to MGD, the electrical classification of its ammonia equipment is “Non-hazardous (Unclassified)”. According to the National Electric Code (NEC), MGD’s ammonia equipment should be classified as Class 1, Group D, Division 2.

In order to be classified as “Non-hazardous (Unclassified)”, MGD must take one of two exceptions:

The first exception is found in the NEC. This exception allows that "For atmospheres containing ammonia, the authority having jurisdiction (AHJ) for enforcement of this code shall be permitted to reclassify the location to a less hazardous location or non-hazardous location, if the ammonia room meets the requirements of the applicable code."

In order for MGD to take the NEC exception, the AHJ must reclassify Meadow Gold's electrical system. The AHJ would be the local building department, or a similar agency. (The AHJ would not be the EPA.)

The second exception is found in ANSI/ASHRAE15-2010. This exception allows that "When ammonia is used, the requirements of Class 1, Division 2, of the NEC shall not apply providing the requirements of Section 8.12(h) are met."

- Section 8.12(h) states that the ventilation system must run constantly and be equipped with an alarm that actuates when the ventilation system fails. Alternatively, the machinery room must be equipped with a detector that meets certain requirements.

In order to take the ANSI/ASHRAE exception, MGD must run the ventilation system constantly. (MGD was not running the system during the EPA inspection; MGD mentioned, during the EPA inspection, that MGD does not run the ventilation system constantly, especially in the winter.) Alternately, Meadow Gold could install a detector that complies with the ANSI/ASHRAE standard.

Has the owner or operator documented that equipment complies with recognized and generally accepted good engineering practices? [40 CFR 68.65(d)(2)] No.

1500

- Regarding discharge from pressure relief devices above the engine/machinery room:

Discharge from pressure relief devices to the atmosphere is not in accordance with *IAR Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems § 11.3.6.4*. Discharge above SW corner of engine/machinery room is located less than 15 feet above the adjacent roofline. According to IAR, the discharge from pressure relief device to the atmosphere shall be not be less than 15 feet above the adjacent grade or roof level or as specified by the jurisdictional authority and shall be arranged to avoid spraying of refrigerant on persons in the vicinity.

- Regarding southwest exit door of the engine/machinery room:

Southwest exit door in engine/machinery room is not in compliance with *IAR Bulletin 112 Ammonia Machine Room Design § 4.2.1*. The SW exit door is a roll-up door. The SW exit door is difficult to open and close and does not swing outward. The SW exit door is not equipped with panic hardware. The SW exit door is not self-closing. According to IAR, a minimum of 2 exits must be provided from the machinery room. Exit doors shall swing outward and be equipped with panic-type hardware. Doors shall be self-closing. An unobstructed path to exit is to be clearly marked.

- Regarding hand-valve drawings at the engine/machinery room:

A drawing showing locations of hand valves has not been posted per *IAR Bulletin 112 Ammonia Machinery Room Design § 4.3*. According to IAR, the location of critical hand valves shall be shown on a drawing which is posted outside of the machinery room.

<ul style="list-style-type: none"> • Regarding labeling throughout the facility: <p>Labeling of refrigeration system piping is not in compliance with <i>IIAR Bulletin 114 Identification of Ammonia Refrigeration Piping and System Components § 5.0</i>. According to IIAR, “Piping markers shall be located as follows:</p> <ul style="list-style-type: none"> - <i>before and after a change in piping direction,</i> - <i>before and after piping penetrations of walls, ceilings and floors,</i> - <i>on extended horizontal or vertical runs of pipe, with a maximum spacing of 40 feet between markers, in order to provide positive identification, and</i> - <i>at least once on the piping in every area through which the refrigeration piping passes.”</i> <p>Note: Exterior markers may be of the vinyl “snap-on” type.</p>	
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Prevention Program – Process Hazard Analysis [68.67]

<p>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? [40 CFR 68.67(e)] No.</p> <ul style="list-style-type: none"> • Two recommendations from MGD’s 2009 PHA are still open. (These two recommendations are referred to as “Recommendation #15” and “Recommendation #16”.) • When the PHA was completed, the two recommendations were tentatively scheduled to be closed out on 12/31/2009 and 6/1/2010, respectively. • It appears that an employee, Dale Clark, was assigned to close out the recommendations. Mr. Clark left MGD before the close-outs could be completed. • It appears that no one was assigned to close out the recommendations after Mr. Clark left MGD. 	<p>750</p>
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Prevention Program – Compliance Audits [68.79]

<p>Has the owner or operator certified that the stationary source has evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed? [40 CFR 68.79(a)] No.</p> <ul style="list-style-type: none">• MGD's most recent Compliance Audits were completed on October 19, 2007 and on September 1, 2011.• Approximately 4 years elapsed between the 2007 Compliance Audit and the 2011 Compliance Audit.	<p>1200</p>
<p>BASE PENALTY</p>	<p>\$4,650</p>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 WASHINGTON, D.C. 20460
 OFFICE OF
 ENFORCEMENT AND
 COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX
 Southern Foods Group, LLC (dba Meadow Gold Dairy)

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

Private Industries

# of Employees	1 – 5*	>5 – 10*	> 10*
0 – 9	0.4	0.6	0.8
10 – 100	0.6	0.8	1.0
> 100	1.0	1.0	1.0

* Largest Multiple of Threshold Quantity of any Regulated Chemical(s) on Site.

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 is a private company which 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

- 1st Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for 10-100 employees and the row for >5-10 times the threshold quantity amount gives a multiplier factor of 0.8.
- 2nd Use the Adjusted Penalty formula

Adjusted Penalty = \$4700 (Unadjusted Penalty) X 0.8(Size-Threshold Multiplier)
Adjusted Penalty = \$3760
- 3rd An Adjusted Penalty of \$3760 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

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$2,790 = \$4,650 \times 0.6^*$$

* # of employees is 48-68. The covered chemical, anhydrous ammonia, exceeds the listed threshold value by 1.8 times.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **SOUTHERN FOODS GROUP, LLC. (d/b/a MEADOW GOLD DAIRY); DOCKET NO.: CAA-08-2013-0006** was filed in the Regional Hearing Clerk's Office on December 19, 2012.

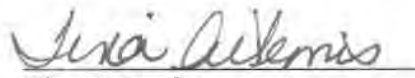
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on December 19, 2012.

David Hughie, Plant Manager
Southern Foods Group
(dba Meadow Gold Dairy)
845 South State Street
Orem, UT 84097

E-mailed to:

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

December 19, 2012


Tina Artemis
Paralegal/Regional Hearing Clerk

