

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

FILED  
2011 APR 15 AM 11:1  
REGIONAL HEARING OFFICE

DOCKET NO: CAA (112r)-09-2011-001

This ESA is issued to: Safeway, Inc.

For: Violation of Section 112(r)(7) of the Clean Air Act.

At: Safeway Tempe Distribution Center, 1115 W. Alameda Dr., Tempe, AZ 85282

This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Jane Diamond, Superfund Director, and Safeway, Inc. ("Respondent") pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b).

**ALLEGED VIOLATIONS**

1. The facility failed to included all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage as required by Section 112(r)(7) of the Clean Air Act (the Act) and 40 C.F.R. §68.42(a).
2. The facility failed to developed and implement written operating procedures that provide instructions or steps for conducting activities associated with each covered process consistent with the safety information. as required by Section 112(r)(7) of the Clean Air Act (the Act) and 40 C.F. R. § 68.69(a), temporary operations 40 C.F.R. §68.69(a)(1)(iii), emergency operations 40 C.F.R. §68.69(a)(1)(v), and startup following a turnaround, or after emergency shutdown 40 C.F.R. §68.69(a)(1)(vii).
3. The facility failed to documented each inspection and test that had been performed on process equipment, which identifies the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test as required by Section 112(r)(7) of the Clean Air Act (the Act) and 40 C.F. R. § 68.73(d)(4)]
4. The facility failed to promptly determined and documented an appropriate response to each of the findings of the compliance audit and documented that deficiencies had been corrected as required by Section 112(r)(7) of the Clean Air Act (the Act) and 40 C.F. R. § 68.79(d).

**SETTLEMENT**

In consideration of Respondent's size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, economic benefit, and other factors as justice may require, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of **\$6800**.

This settlement is subject to the following terms and conditions:

The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, and consents to the assessment of the penalty as stated above. 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. Each party to this action shall bear its own attorney's fees and costs, if any. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the violations listed above and have sent an **Online Payment through the Department of Treasury: WWW.PAY.GOV** (Enter SFO 1.1 in search field. Open form and complete required fields) **or alternatively send a cashier's check or certified check** (payable to the Treasurer, United States of America) in the amount of **\$6800** in payment of the full penalty amount to the following address:

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

The check or online payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment going to the Cincinnati Finance Center. This original ESA and a copy of the check or online receipt must also be sent by certified mail to:

Mary Wesling (SFD-9-3)  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 30 days of the date of Respondent's receipt of the proposed ESA, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT - ~~Ron Dodd, Distribution Center Director~~

Signature: 

Date: 7-29-11

Name (print): Maric Adams

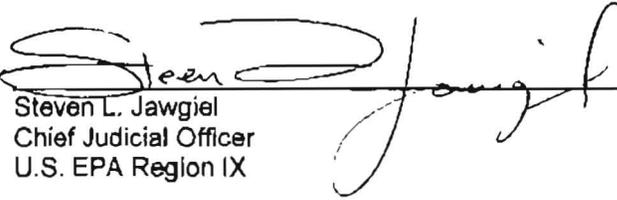
Title (print): VP Corporate Distribution

FOR COMPLAINANT:

*For*   
Jane Diamond  
Superfund Director  
U.S. EPA Region IX

Date: 8-9-11

It is hereby ORDERED that this ESA be entered and Respondent pays the above penalty.

  
Steven L. Jawgiel  
Chief Judicial Officer  
U.S. EPA Region IX

Date: 08/11/11

CERTIFICATE OF SERVICE

I certify that the originals of the fully executed Expedited Settlement Agreements against **Safeway, Inc.** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

**Docket # CAA(112r)-09-2011-0012**

**Docket # EPCRA-09-2011-0008**

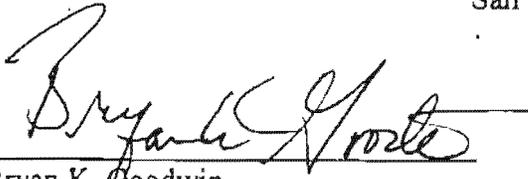
A copy was mailed via CERTIFIED MAIL to:

Pamela Capuchino  
Legal Division  
Safeway, Inc.  
5918 Stoneridge Mall Road  
Pleasanton, CA 94588-9855

**CERTIFIED MAIL NUMBER:** 7011-0470-0003-4952-6872

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Thanne Cox, Esq  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
Bryan K. Goodwin  
Regional Hearing Clerk  
U.S. EPA, Region IX

8/16/11  
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

**CERTIFIED MAIL NO.: 7011 0470 0003 4952 6872**  
**RETURN RECEIPT REQUESTED**

In Reply Refer to:  
Safeway Tempe Distribution Center

AUG 16 2011

Pamela Capuchino  
Legal Division  
Safeway, Inc.  
5918 Stoneridge Mall Rd  
Pleasanton, CA 94588-9855

Re: Safeway Tempe Distribution  
RMP Facility ID#: 1000 0006 2148

Dear Ms. Capuchino:

This letter transmits copies of the fully executed Expedited Settlement Agreements that resolve the alleged violations of Clean Air Act Section (CAA) 112(r)(7) and the Emergency Planning and Community Right-to-Know Act (EPCRA) Section 312 by Safeway, Inc. at its facility located at 1115 West Alameda Drive, Tempe, AZ. The violations involve Safeway Inc.'s failures to fully implement the facility's Risk Management Plan as required by 40 CFR Part 68 and failure to submit correct Tier II annual chemical inventories as required under 40 CFR Part 370(40)(a).

Thank you for your prompt attention to this matter. If you have any questions or need additional information about the CAA Section 112(r)(7) or the EPCRA Section 312 requirements, please feel free to contact Mary Wesling of my staff at (415) 972-3080.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Diamond".

Jane Diamond  
Director, Superfund Division

Enclosures

cc (w/ enclosures):  
M. Wesling, EPA Region IX  
T. Cox, EPA Region IX