



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


2008 MAY 12 10:41

DOCKET NO.: CAA-08-2008-0018

IN THE MATTER OF:	)	
	)	
ALBERTSONS LLC	)	FINAL ORDER
DISTRIBUTION CENTER	)	
Aurora, CO	)	
	)	
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 12<sup>th</sup> DAY OF May, 2008.

  
 \_\_\_\_\_  
 Elyana R. Sutin  
 Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2008 JAN 12 11 01 01

IN THE MATTER OF: )

Albertsons LLC )  
Distribution Center )  
Aurora, Colorado )

Respondent )

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND  
CONSENT AGREEMENT)

DOCKET NO.: CAA-08-2008-0018

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 Albertsons LLC ("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 January 9, 2008, authorized representatives of EPA conducted a compliance inspection at the Albertsons LLC Distribution Center located at 2780 Tower Road, Aurora, 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 \$1,710. 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 \$1,710. 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

Cheryl Turcotte  
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.

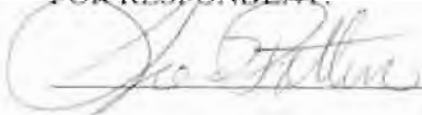
In addition, if Respondent fails to comply with the provisions of this ESA, by either 1) failing to timely submit the above-referenced payment or 2) by failing to correct the violations no later than 60 days from the date the ESA is signed by the Respondent, the Respondent agrees

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.

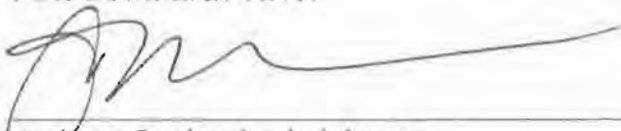
**Albertsons LLC Expedited Settlement Agreement**

FOR RESPONDENT:

  
\_\_\_\_\_  
Name (print): GEORGE POTTER  
Title (print): Facilities Maint Manager  
**Albertsons LLC**

Date: April 16, 2008

FOR COMPLAINANT:

  
\_\_\_\_\_  
Assistant Regional Administrator  
Office of Enforcement, Compliance and Environmental Justice

Date: 5/1/08

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

Facility Name: Albertsons LLC Distribution Center – Aurora, Colorado

INSPECTION DATE: 1/9/2008

**SECTION A: PREVENTION PROGRAM**

**PENALTY**

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

Has the owner or operator developed and implemented written operating procedures that provide instructions or steps for conducting activities associated with **each** covered process consistent with safety information [68.69(a)]? **No. There was no SOP for ultra sonic testing of pipes, although the procedure has been done.**

750

**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. Several items carried over to the 2007 audit; specific actions with dates need to be added to 2007 audit.**

150

**SECTION B: EMERGENCY RESPONSE [68.90 – 68.95]**

Are appropriate mechanisms in place to notify emergency responders when there is need for a response [68.90(b)(3)]? **No. The plan did not include a procedure to notify (who, when, incidental vs. CERCLA response) emergency responders.**

450

Does the emergency response plan contain procedures for informing the public and local emergency response agencies about accidental releases [68.95(a)(1)(i)]? **No. There is no procedure for notifying the public.**

375

Does the emergency response plan contain documentation of proper first-aid and emergency medical treatment to treat accidental human exposures [68.95(a)(1)(ii)]? **No documentation for medical treatment in case of human exposures.**

375

Has the owner or operator developed and implemented procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes [68.95(a)(4)]? **No. These procedures are not included in the plan.**

750

**BASE PENALTY**

**\$2850**



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

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**EXPEDITED SETTLEMENT PENALTY MATRIX**  
**Albertsons LLC Distribution Center – Aurora, Colorado**

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

<i>(Amt of Chemical in process) x (Threshold Quantity)</i>		<b>1-5*</b>	<b>5-10*</b>	<b>&gt;10*</b>
<b># of Employees</b>	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 Penalty Assessment 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 Penalty Assessment 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 – Albertsons LLC Distribution Center

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

$$\$1,710 = \$2,850 \times .6^*$$

\* # of employees is 200. Anhydrous ammonia in process exceeds the listed threshold value in the range of 1-5 times.



## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **ALBERTSONS LLC, DISTRIBUTION CENTER; DOCKET NO.: CAA-08-2008-0018** was filed with the Regional Hearing Clerk on May 12, 2008.

Further, the undersigned certifies that a true and correct copy 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 documents were placed in the United States mail certified/return receipt requested on May 12, 2008, to:

George Potter  
Facilities Manager  
Albertsons LLC Distribution Center  
2780 Tower Road  
Aurora, CO 80011

E-mailed to:

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

May 12, 2008



Tina Artemis  
Paralegal/Regional Hearing Clerk

