



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2015 SEP 16 PM 3:03

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2015-0016

IN THE MATTER OF:

NICHOLAS AND CO., INC.
5520 Harold Gatty Drive
Salt Lake City, UT 84116

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), 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 16th DAY OF September, 2015.

Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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IN THE MATTER OF:)
)
Nicholas and Co., Inc.)
5520 Harold Gatty Drive)
Salt Lake City, Utah 84116)
)
)
Respondent)
_____)

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EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

DOCKET NO:CAA-08-2015-0016

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 Nicholas and Co., Inc. (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 is a Utah 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 February 5, 2015, an authorized representative of the EPA conducted a compliance inspection of Respondent's facility located at 5520 Harold Gatty Drive in Salt Lake City, 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 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.

Nicholas and Co., Inc.
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 \$4,800. 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 with respect to the violations alleged in the Checklist & Penalty Assessment:
 - a. 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. 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 costs and attorney fees, if any.
 - d. 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. §§ 701-706.
7. By signing this ESA Respondent certifies that: (1) the alleged violations listed in the Checklist and Penalty Assessment have been corrected, and (2) Respondent is submitting payment of the civil penalty as described below.

Within 30 days of receipt of this ESA, Respondent must send a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$4,800 in payment of the full penalty amount to the following address:

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

**The following Payment Number for this ESA must be included on the check:
ESA-R8-CAA-15-003**

Nicholas and Co., Inc.
EXPEDITED SETTLEMENT AGREEMENT

The signed ESA and a copy of the check must be sent by certified mail to:

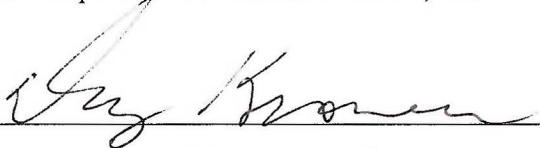
Greg Bazley
RMP/EPCRA Technical Enforcement Program
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

8. Respondent agrees that 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 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 Respondent with respect to all other matters, including but not limited to, the following:
 - a. Claims based on a failure by 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 signed original ESA with an attached copy of the check is not returned to the EPA Region 8 office at the above address in correct form by Respondent within 45 days of the date of Respondent's receipt of this ESA, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified in this ESA.
12. This ESA, upon incorporation into the Final Order, applies to and is binding upon, the EPA and 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.
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 Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind Respondent to the terms and condition of this ESA.

Nicholas and Co., Inc.
EXPEDITED SETTLEMENT AGREEMENT

15. The parties agree to submit this ESA to the Regional Judicial Officer with a request that it be incorporated into a final order.

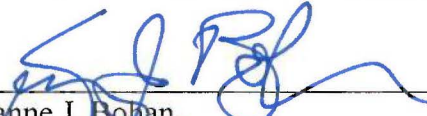
For Respondent: Nicholas and Co., Inc.


_____ Date: 8.24.15

Name (print): Doug Kronen

Title (print): Safety & Risk Manager

For Complainant United States Environmental Protection Agency, Region 8:


_____ Date: 9/16/15

Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

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

Respondent: Nicholas and Co., Inc. (NAC)
Facility Name: Nicholas and Company, Salt Lake City, Utah

INSPECTION DATE: 02/05/2015

SUBPART D: PREVENTION PROGRAM [40 CFR 68.65 – 68.87]

PENALTY

Prevention Program – Safety Information [68.65]

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

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- **The exterior exit from the machinery room can only be accessed by first going through another door into a smaller separate room. Neither the door into the smaller room nor the exterior exit is equipped with panic type hardware. IIAR Standard 2-2008 (with Addendum B) Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems section 13.1.10 states: “The refrigerating machinery room shall have a door that opens directly to the outside air or through a vestibule equipped with self-closing, tight-fitting doors equipped with panic-type hardware.” (13.1.10.3) It also states that “Each refrigerating machinery room shall have a tight-fitting door or doors opening outward, self-closing if they open into the building.” (13.1.10.1)**
- **The main shut-off valve (king valve) was not in compliance with recognized and generally accepted good engineering practices. The king valve was not identified with a prominent sign. IIAR Bulletin 109 Minimum Safety Criteria for a Safe Ammonia Refrigeration System section 4.10.3 states: “The main shut-off valve(s) (king valve(s)) . . . of the ammonia system should be readily accessible and identified with a prominent sign having letters sufficiently large to be easily read.”**
- **The ammonia piping was not in compliance with recognized and generally accepted good engineering practices. The insulated piping on the roof had labels that were missing or illegible. IIAR Standard 2-2008 section 10.6 states: “All piping mains, headers and branches shall be identified as to the physical state of the refrigerant (that is, vapor, liquid, etc.), the relative pressure level of the refrigerant and the direction of flow. The identification**

<p>system used shall either be one established as a standard by a recognized code or standards body or one described and documented by the facility owner.”</p>	
<p>Prevention Program – Mechanical Integrity [68.73]</p>	
<p>Has the owner or operator performed inspections and tests on process equipment? [68.73(d)(1)] No.</p> <ul style="list-style-type: none"> • Periodic inspections of shut-off valves were not performed. IIAR Bulletin 110 (Revised 3/02) Guidelines for: Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems section 6.6.1 states: “Every six months, for valves with exposed stems, the condition of the stem and the gland seal should be inspected and the stem cleaned and regreased.” Section 6.6.1 also states “Externally inspect valves annually,” and “Test all shut-off valves for function every five years.” 	<p>1500</p>
<p>Has the owner or operator 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? [68.73(d)(4)] No.</p> <ul style="list-style-type: none"> • The documentation for the 2012, 2013 and 2014 inspections of the pressure vessels did not include the serial number or other identifier of the vessels. • The documentation for the 2012 and 2013 inspections of the refrigeration system piping did not include the serial number or other identifier of the piping. 	<p>900</p>
<p>Has the owner or operator corrected deficiencies in equipment that were outside acceptable limits defined by the process safety information before further use or in a safe and timely manner when necessary means were taken to assure safe operation? [68.73(e)] No.</p> <ul style="list-style-type: none"> • Surface corrosion of the inlet and outlet ammonia piping on condensers EC-1 and EC-2 was observed during the inspection. This piping corrosion was also noted in the December 29, 2014 Mechanical Integrity Audit performed by Roser with the recommendation to clean and re-surface these lines with appropriate weather resistive material. In the response to this recommendation dated March 2, 2015 NAC stated: “All exposed piping on Condensers EC-1 and EC-2 has been re-painted with rust-inhibitive paint.” The photos NAC submitted confirming 	<p>900</p>

<p>this action shows sections of the piping have not been adequately re-painted. IIAR Bulletin 109 Minimum Safety Criteria for a Safe Ammonia Refrigeration System section 4.7 states “Uninsulated refrigerant piping should be examined for signs of corrosion. If corrosion exists, the pipe should be cleaned down to bare metal and painted with a rust preventive paint. Badly corroded pipe should be replaced.” (4.7.4)</p>	
<p style="text-align: right;">BASE PENALTY</p>	<p style="text-align: center;">\$4800</p>



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

EXPEDITED SETTLEMENT PENALTY MATRIX
Nicholas and Co., Inc.
Salt Lake City, Utah

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 RMP Program Level 3 Process Checklist Alleged Violations & Penalty Assessment.

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 – Nicholas and Co., Inc.

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$4,800 = \$4,800 \times 1.0^*$$

* # of employees is 570. The covered chemical, anhydrous ammonia, exceeds the listed threshold value by 1.1 times

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER**, in the matter **NICHOLAS AND CO., INC.;** **DOCKET NO.: CAA-08-2015-0016** was filed with the Regional Hearing Clerk on September 16, 2015.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Jessica Portmess, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on September 16, 2015 to:

Respondent is:

Doug Kronen, Safety and Compliance Manager
Nicholas and Co., Inc.
5520 Harold Gatty Drive
Salt Lake City UT 84116

And emailed to:

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

September 16, 2015



Michael C. Nelson
Acting Regional Hearing Clerk

