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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

EXPEDITED SETTLEMENT AGREEMENT (ESA)

DOCKET NO.: CAA-07-2014-0012

This ESA is issued to: ADM Milling Company

At: 540 South Street, Lincoln, Nebraska 68502

for violating Section 112(r)(7) of the Clean Air Act.

The United States Environmental Protection Agency, Region 7 (EPA) and ADM Milling Company (Respondent), have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

The Complainant, by delegation of the Administrator of the EPA, is the Director of the Air and Waste Management Division. The Respondent is ADM Milling Company, 540 South Street, Lincoln, Nebraska, 68502.

This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that cases which meet the criteria set forth in EPA's policy entitled "Use of Expedited Settlements in Addressing Violations of the Clean Air Act Chemical Accident Prevention Provision, 40 C.F.R. Part 68," dated January 5, 2004, are appropriate for administrative penalty action.

ALLEGED VIOLATIONS

On September 25 and 26, 2013, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 540 South Street, Lincoln, Nebraska, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the CAA. The EPA found that the Respondent had violated regulations implementing Section 112(r) of the CAA by failing to comply with the regulations as noted on the enclosed Risk Management Program Inspection Findings (RMP Findings), which is hereby incorporated by reference.

SETTLEMENT

In consideration of Respondent's size of business, 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 the ESA in order to settle the violations, described in the enclosed RMP Findings, for the total penalty amount of **\$2,520**.

This settlement is subject to the following terms and conditions:

The Respondent by signing below waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained herein and in the RMP Findings, 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 CAA, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own costs and fees, 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 in the enclosed RMP Findings and has sent a cashier's check or certified check (payable to the "United States Treasury") in the amount of **\$2,520** 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, Missouri 63197-9000

The Docket Number of this ESA is CAA-07-2014-0012, and must be included on the check.

This original ESA, a copy of the completed RMP Findings, and a copy of the check must be sent by certified mail to:

Christine Hoard
Chemical Risk Information Branch
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

A copy of the check must also be sent to:

**Kathy M. Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.**

Upon Respondent's submission of the signed original ESA, the EPA will take no further civil action against Respondent for the alleged violations of the CAA referenced in the RMP Findings. The EPA does not waive any other enforcement action for any other violations of the CAA or any other statute.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region 7 office at the above address in correct form by the Respondent within 45 days of the date of Respondent's receipt of it (90 days if an extension is granted), the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein and in the RMP Findings.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT:




Date: 5-21-14

Name (print): Jennifer L. Frey


Title (print): Plant Superintendent
ADM Milling Company Lincoln, NE

FOR COMPLAINANT:



Becky Weber
Director
Air and Waste Management Division
EPA Region 7

Date: 6/6/14



Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel
EPA Region 7

Date: 6/5/2014

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I hereby ratify the ESA and incorporate it herein by reference. It is so ORDERED.

Karina Borromeo

Date: 6-9-14

Karina Borromeo
Regional Judicial Officer

**Risk Management Program Inspection Findings
CAA § 112(r) Violations**

**ADM Milling Company
540 South Street
Lincoln, Nebraska 68502
Docket No. CAA-07-2014-0012**

COMPLETE THIS FORM AND RETURN IT WITH THE ESA.

VIOLATIONS

PENALTY AMOUNT

Management [68.15(a)]

\$1,500

The owner or operator failed to develop a management system overseeing the risk management program elements.

Facility addressed this post inspection.

Prevention Program

Process Hazard Analysis [68.67(e)]

\$1,500

The owner or operator failed to establish 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.

Facility addressed this post inspection.

Prevention Program

Compliance Audits [68.79(a)]

\$1,200

The owner or operator failed to certify (November 2010) 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.

How was this addressed: audit certified

Total Unadjusted Penalty

\$4,200

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 1-5 times the threshold quantity of 2,500 pounds of chlorine as listed in 40 C.F.R. Part 68.130 for the amount in a process gives a multiplier factor of 0.6. Therefore, the multiplier for ADM Milling Co = 0.6.

2nd Adjusted Penalty = \$4,200 (Unadjusted Penalty) X 0.6 (Size-Threshold Multiplier)
Adjusted Penalty = \$2,520

3rd An Adjusted Penalty of \$2,520 would be assessed to ADM Milling Co for Violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA)

Total Adjusted Penalty

\$2,520

This section must be also be completed and signed by ADM Milling Company:

The approximate cost to correct the above items: \$ 2,520.00

Compliance staff name: Jennifer Frey

Signed: [Signature] Date: 6-3-13

Process Safety Management Compliance Audit

29 CFR 1910.119

Lincoln, NE

Location 265

ADM Milling

May 19, 2014

(Audit Conducted August 10-12, 2010)

Performed by:

Lead auditor: Kenneth Tague ADM Process Safety Specialist

ADM Office of Compliance and Ethics

(Title at the time of August 2010 audit and department)

Audit Scope:

The covered process was chlorine used for performance enhancement and whitening of baking flours. Four 1T cylinders are in the tank room with all two feeding the process at any given time. This storage and delivery system to the five flour agitators is the covered process. There are also 4 additional cylinders kept separately and remotely allowing delivery and rotation on a planned basis. This audit focused on the requirements of 29 CFR 1910.119 Process Safety Management of Highly Hazardous Chemicals.

Audit format:

The audit document follows the requirements of 29 CFR 1910.119 in row format. The column titled "Recommendations" contains suggestions to improve programs that are compliant, but also ways that compliance gaps can be corrected. General comments can be found here as well for good program content. The column titled "Corrective action" will identify compliance gaps comparing the current plant program to the requirements of 29 CFR 1910.119.

Recommendations made to subparts that are considered compliant DO NOT need to be followed.

Compliance gaps are determined after review of the written program, supporting relevant safety programs, records, employee interviews, and discussions with management. "Zeroes" and "ones" are used to track compliance to each requirement of the PSM Standard. Requirements valued with "ones" are those the auditor views as being compliant. Requirements valued with "zeroes" are those viewed to have a compliance gap.

PSM is a performance standard and management system driven. The auditor looks for implementation of the management systems with reviews of documentation, employee interviews and field observations.

Interviews and Discussion:

Jeff Stutheit – Plant Manager

Dan Cook – Safety Coordinator

Others were interviewed as well from maintenance and operations, but not written down at the time in a formal certification letter as they have been since March 2011 for internal ADM PSM compliance audits.

Follow up:

Plant management was present for the closing conference and all compliance gaps were discussed at length. At the time, this conference and supporting email along with the audit document emailed to management was considered the certification process. As stated above, this is no longer the practice used.

Scoring:

Element scoring and overall program scores are used by ADM's Office of Compliance and Ethics (OCE) for company-wide performance metrics and goal setting. There is no weighting of the element subparts when calculating the overall PSM program score as all are considered equally important and required by the Standard.

Respectfully submitted and audit certified by,

Kenneth E. Tague

Ken Tague
Process Safety Manager
ADM Technology Center – Safety and Health
May 19, 2014

Process Safety Relevant Professional Background of Ken Tague

ADM Process Safety Manager

1981 – BS Chemical Engineering – Rose-Hulman Institute of Technology in Terre Haute, Indiana

- 21 years in the Chemical Processing Industry (vinyl chloride) in process engineering and plant management positions.
- Responsible for PSM program development and management at Borden Chemicals and Plastics (BCP) facilities in Illiopolis, IL, Geismar and Addis, LA 1992 - 2002
- ISO 9000 program development for BCP in Illiopolis, IL 1994 and management representative and lead for 1999 ISO 9000 program at BCP in Geismar, LA
- CMMS application engineer and IT application manager for ADM
- Assisted Nation Ford Chemical Fort Mill, SC in developing PSM program
- Completed the following courses from ABS Consulting on process safety:
 - Process Safety Management and Process Hazard Analysis Training
 - Process hazard Analysis Leader
 - Hazard Recognition and Control
 - Layer of Protection Analysis
- Certificate from the CCPS for e-course titled “Process Safety for the Biofuels Industry”.
- Participated in numerous HAZOP/LOPA sessions conducted by Dyadem for ADM Polymer, ABS Consulting for ADM Glycols, and ADM process engineering teams in BioProducts and several at BCP.
- Served as lead auditor in over 40 PSM program compliance audits for ADM.
- Served twice as a facilitator with ABS Consulting’s Process Hazard Analysis training conducted at ADM facilities.
- Conducted PSM auditor training for ADM internal PSM audit teams.
- ADM Process Safety Manager responsible for the tracking of all chemical programs in the company and Total Process Safety (TPS) initiatives.
- Trained colleagues on Total Process Safety (TPS) programs in Europe and Brazil.
- Member of the Center for Chemical Process Safety (CCPS) Technical Steering Committee (TSC)
- Member of the CCPS subcommittee for Hazard Identification web based training.
- Attended the last five CCPS Global Process Safety Conferences
- AIChE ELA 120 course on CCPS’ 20 Elements of Risk Based Process Safety
- AIChE ELA 109 course on Layer of Protection Analysis

IN THE MATTER Of ADM Milling Company, Respondent
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

nazar.kristen@epa.gov

Copy by First Class Mail to Respondent:

Jennifer L. Frey, Plant Superintendent
ADM Milling Company
540 South Street
Lincoln, Nebraska 68502

Dated: 6/9/14

A handwritten signature in black ink that reads "Kathy Robinson". The signature is written in a cursive style with a horizontal line underneath the name.

Kathy Robinson
Hearing Clerk, Region 7