



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 11 SEP -9 AM 8:31

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

EXPEDITED SETTLEMENT AGREEMENT (ESA)

DOCKET NO.: CAA-07-2011-0019

This ESA is issued to: Hy-Vee Perishables Warehouse
At: 21591 490th Street, Chariton, Iowa 50049
for violating Section 112(r)(7) of the Clean Air Act.

The United States Environmental Protection Agency, Region 7 (EPA) and Hy-Vee Perishables Warehouse (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 EPA, is the Director of the Air, and Waste Management Division. The Respondent is Hy-Vee Perishables Warehouse, 21591 490th Street, Chariton, Iowa 50049.

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 December 6-8, 2010, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 21591 490th Street, Chariton, Iowa, 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 \$5,100.

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 \$5,100 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-07-2011-0019, 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:

Deanna Smith
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

A copy of the check must also be sent to:

Kathy M. Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

Upon Respondent's submission of the signed original ESA, 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:

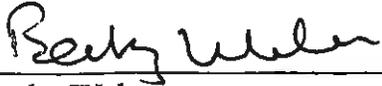


Date: 8/24/2011

Name (print): Tod B. Hockenson

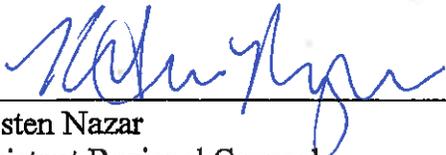
Title (print): Vice President, Distribution
Hy-Vee Perishables Warehouse

FOR COMPLAINANT:



Becky Weber
Director
Air and Waste Management Division
EPA Region 7

Date: 9/6/11



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

Date: 8/29/2011

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

Karina Borrromeo

Karina Borrromeo
Regional Judicial Officer

Date: Sept. 7, 2011

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

Hy-Vee Perishables Warehouse
21591 490th Street
Chariton, Iowa 50049
Docket No. CAA-07-2011-0019

COMPLETE THIS FORM AND RETURN IT WITH THE ESA.

VIOLATIONS

PENALTY AMOUNT

Prevention Program

\$1,500

Process Hazard Analysis [§ 68.67(e)]

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 were completed; and communicated the actions to operating, maintenance, and other employees whose work assignments were in the process and who may be affected by the recommendations.

How was this addressed:

The March 2010 PHA action items have all been reviewed and addressed.

Prevention Program

\$1,500

Management Of Change [§ 68.75(a)]

The owner or operator failed to establish and implement written procedures to manage changes for the 2007 ice plant addition that affected two covered processes.

How was this addressed:

A management of change policy and procedure has been established and the 2007 ice plant addition paperwork has been added to the file.

Prevention Program

\$1,200

Compliance Audit [§ 68.79(a)]

The owner or operator failed to certify that they have 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. Specifically, in 2007.

VIOLATIONS

PENALTY AMOUNT

How was this addressed:

A re-occurring reminder has been placed on the Microsoft outlook calendar of both the compliance manager and maintenance manager to annually check on the need to perform or plan for compliance audits in the next year.

Prevention Program

\$300

Compliance Audits [§ 68.79(d)]

The owner or operator failed to promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected. Specifically, in 2009.

How was this addressed:

Each of the action items from the 2009 compliance audit has been reviewed and addressed.

Prevention Program

\$600

Contractors [§ 68.87(c)(3)]

The owner or operator failed to periodically evaluate the performance of the contractor owner or operator in fulfilling their obligations. Specifically, the contractor owner or operator shall document that each contract employee has received and understood the training required by this section. The contract owner or operator shall prepare a record which contains the identity of the contract employee, the date of training, and the means used to verify that the employee understood the training.

How was this addressed:

All contractors working on our ammonia systems now provide written documentation of training and certifications of each employee working on site.

Other Requirements

No Penalty Assessed

Recordkeeping [§ 68.200]

The owner or operator failed to maintain records supporting the implementation of this part for five years.

How was this addressed:

All maintenance records are now on RTA, a computer maintenance management system and training and certifications records are on

VIOLATIONS

PENALTY AMOUNT

the training department data base.

Total Unadjusted Penalty

\$5,100

Calculation of Adjusted Penalty

- 1st Reference the multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the row for number of employees >100 and column for 1-5 times the threshold quantity of 10,000 pounds of anhydrous ammonia as listed in 40 C.F.R. Part 68.130 for the amount in a process gives a multiplier factor of 1.0. Therefore, the multiplier for Hy-Vee Perishables Warehouse = 1.0.
- 2nd No adjusted penalty since the multiplier is 1.0.

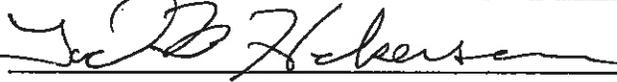
Total Penalty

\$5,100

This section must be also be completed and signed by Hy-Vee Perishables Warehouse:

The approximate cost to correct the above items: \$ 98,918.25

Compliance staff name: Tod B. Hockenson

Signed:  Date: 8/24/2011

IN THE MATTER OF Hy-Vee Perishables Warehouse, Respondent
Docket No. CAA-07-2011-0019

CERTIFICATE OF SERVICE

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

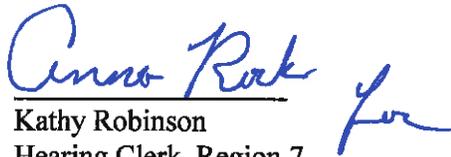
Copy hand delivered to
Attorney for Complainant:

Kristen Nazar
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Tod B. Hockenson
Vice-President, Distribution
Hy-Vee Perishables Warehouse
21591 490th Street
Chariton, Iowa 50049

Dated: 9/9/11


Kathy Robinson
Hearing Clerk, Region 7