

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 NOV 18 PM 1:07

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Hawkins, Inc.)

Hawkins Water Treatment Group-Fargo)
Fargo, ND)

Respondent)

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

DOCKET NO.: CAA-08-2015-0006

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 Hawkins, 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 Minnesota corporation that does business in the State of North Dakota.
3. The Respondent is a "person" under section 302(e) of the Act. 42 U.S.C. § § 7602(e).

ALLEGED VIOLATIONS

4. On April 22, 2014, an authorized representative of the EPA conducted a compliance inspection of Respondent's facility located at 2001 Great Northern Drive, Fargo, North Dakota, 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 the 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.

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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 \$720. 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:
 - a. 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.
 - b. The 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 cost and attorney fees, if any.
 - d. The Respondent certifies that the violations listed in the Checklist and Penalty Assessment have been corrected.
 - e. The 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. §§ 701-708.
7. After the Final Order is issued by the Regional Judicial Officer, a fully executed copy of this ESA and the Final Order will be sent to the Respondent. Within twenty (20) days after receiving the Final Order, the Respondent shall remit payment in the amount of \$720. **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:

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

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Federal Express, Airborne, or other commercial carrier
(or when a physical address is required):

US Bank
U.S. EPA Fines & Penalties
Government Lockbox 979078
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
(314) 418-4087

Wire Transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read:
“ D 68010727 Environmental Protection Agency”

ACH Transactions (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887 6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account Number: 310006
CTX Format.

There is now an On Line Payment Option, available through the U.S. Department of Treasury. This payment option can be accessed from the information below:

www.PAY.GOV
(Enter sfo 1.1 in the search field
Open form and complete required fields)

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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

David Cobb
EPCRA/RMP Enforcement Coordinator
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

8. 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 the 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 the Respondent with respect to all other matters, including but not limited to, the following:
 - a. claims based on a failure by the 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 Respondent fails to timely submit the above-referenced payment after receiving the Final Order, a motion may be filed to withdraw the ESA and Final Order. If that motion is granted, the EPA may then file an enforcement action against the Respondent for the violations addressed herein.
12. This ESA, upon incorporation into the Final Order, applies to and is binding upon the EPA and upon 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.

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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 the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind the Respondent to the terms and condition of this ESA.
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 Hawkins, Inc.:

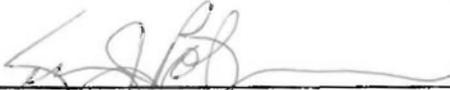


Date: 9 NOV 2014

Name (print): MICHAEL D. ANDERSON

Title (print): HSE MANAGER

For Complainant United States Environmental Protection Agency, Region 8:



Date: 11-18-2014

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

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

Respondent: Hawkins, Inc.
Facility Name: Hawkins Water Treatment Group-Fargo

INSPECTION DATE: 4/22/14

SUBPART A: MANAGEMENT [68.15]	PENALTY
<p>When responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under paragraph (b) of this section, has the owner or operator documented other persons responsible for implementing individual requirements of the risk management program and defined the lines of authority through an organization chart or similar document? [68.15(c)]: No.</p> <ul style="list-style-type: none"> • The management system does not include the names and positions of people responsible for implementing the individual requirements of the program. 	600
SUBPART D: PREVENTION PROGRAM [68.65-68.87]	
Process Hazard Analysis [68.67]	
<p>Does the process hazard analysis address consequences of failure of engineering and administrative controls? [68.67(c)(4)]: No.</p> <ul style="list-style-type: none"> • The 2009 PHA did not address the consequences of failure of fork lift failure while transporting a cylinder. 	600
<p>Does the process hazard analysis address human factors? [68.67(c)(6)]: No.</p> <ul style="list-style-type: none"> • The 2009 PHA did not address human factors. 	600
BASE PENALTY	\$1800



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

**EXPEDITED SETTLEMENT PENALTY MATRIX
Hawkins, Inc.
Hawkins Water Treatment Group-Fargo
Fargo, ND**

**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 Risk Management Program Inspections Findings, Alleged Violations and Proposed Penalty 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 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 -- Hawkins Water Treatment Group-Fargo

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$720 = \$1,800 \times 0.4^*$$

* # of employees is 8. The covered chemical, chlorine, meets the listed threshold value.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER**, in the matter of **HAWKINS, INC., HAWKINS WATER TREATMENT GROUP - FARGO; DOCKET NO.: CAA-08-2015-0006**, was filed with the Regional Hearing Clerk on November 18, 2014.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Marc Weiner, 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, domestic return receipt on November 18, 2014, to:

Michael Donaldson, EH&S Manager
Hawkins, Inc.
2381 Rosegate
Roseville, MN 55113

And emailed to:

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

November 18, 2014



Tina Artemis
Paralegal/Regional Hearing Clerk