



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2015 APR -2 PM 1:04

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

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2015-0011

IN THE MATTER OF:)	
)	
AMERICAN CRYSTAL SUGAR COMPANY)	FINAL ORDER
HILLSBORO)	
Hillsboro, North Dakota)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.13(b) and 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 2nd DAY OF April, 2015.



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
American Crystal Sugar Company -)
Hillsboro)
Hillsboro, North Dakota)
)
)
)
)
)
Respondent)
_____)

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

DOCKET NO: CAA-08-2015-0011
PAYMENT DOCKET NO: ESA-R8-CAA-15-001

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 the American Crystal Sugar Company - Hillsboro (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 Cooperative Association 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 May 15, 2013, an authorized representative of the EPA conducted a compliance inspection of Respondent's facility located at 121 Highway 81 NE in Hillsboro, 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.

American Crystal Sugar Company – Hillsboro
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 \$7,100. 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 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. 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.

Respondent must send a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$7,100 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, MO 63197-9000

The Payment Docket No. of this ESA must be included on the check. (The Payment Docket No. is located at the top left corner of this ESA.)

American Crystal Sugar Company – Hillsboro
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. 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 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 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.

American Crystal Sugar Company – Hillsboro
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: American Crystal Sugar Company - Hillsboro

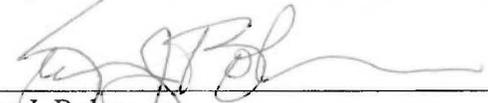


Date: 3-24-15

Name (print): Thomas Astrup

Title (print): V.P. Operations

For Complainant United States Environmental Protection Agency, Region 8:



Date: 3/31/15

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

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

Respondent: American Crystal Sugar Company – Hillsboro (ACSH)
Facility Name: American Crystal Sugar Company – Hillsboro, Hillsboro ND

INSPECTION DATE: 5/15/2013

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

PENALTY

Prevention Program – Safety Information [68.65]

Has the owner or operator ensured that the process safety information contains the following for the equipment in the process:

- Materials of construction? [68.65(d)(1)(i)] No;
- Relief system design and design basis? [68.65(d)(1)(iv)] No;
- Ventilation system design? [68.65(d)(1)(v)] No.

- **The materials of construction were not available for SO₂ piping inside the main process building.**
- **The relief system design and design basis were not available.**
- **The ventilation system design was not available for the main process building.**

600

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

- **The pressure relief system was not in compliance with recognized and generally accepted good engineering practices. The pressure relief system vent pipe opening was next to the personnel platform on the SO₂ storage tank. If a pressure relief valve was to release from over-pressure and a worker was on the platform, the worker could be harmed by the escaping SO₂ gas. CGA S-1.3-2008 Stationary Storage Containers for Compressed Gases section 5.2 states: “Pressure relief systems shall be arranged to prevent any impingement of escaping gas or liquid upon the container, jacket, control devices, structural parts, or operating personnel.”**
- **The SO₂ storage tank was not in compliance with recognized and generally accepted good engineering practices. The SO₂ storage tank did not have a NFPA 704 placard. NFPA 400 Hazardous Materials Code section 6.1.8.2.1 states, “Visible hazard identification signs in accordance with NFPA 704 shall be placed . . . on stationary aboveground tanks.” In addition, there is the**

1,500

Prevention Program – Compliance Audits [68.79]	
<p>Has the owner or operator promptly determined and documented an appropriate response to each of the findings of the compliance audit, and documented that deficiencies have been corrected? [68.79(d)] No.</p> <ul style="list-style-type: none"> • The 5/8/08 CA had deficiencies (Questions 2 and 52) that did not have a documented response or correction. • The 3/24/11 CA had a deficiency (Question 51) that did not have a documented response or correction. 	300
Prevention Program – Incident Investigation [68.81]	
<p>Has the owner or operator ensured that all incident investigations were initiated not later than 48 hours following the incident? [68.81(b)] No.</p> <ul style="list-style-type: none"> • Three SO₂ incidents were reviewed: 8/21/2007, 6/18/2008 and 6/27/2008. There is no documentation that confirms the investigations were initiated not later than 48 hours following these three incidents. • The 6/18/2008 incident resulted in a release of 738 lbs of SO₂ and injured 21 people on site. Among the records for the 6/18/2008 incident, there were two types of incident forms. <ul style="list-style-type: none"> - American Crystal Sugar Company Evacuation Checklist Hillsboro Factory: This form has instructions that it is to be completed within 24 hours after the event of a spill or accidental release of hazardous materials. It was signed and dated by Craig Smith on 6/30/08. - American Crystal Sugar Company Incident Investigation form: This was incomplete with no times or dates of the investigation. 	600
Prevention Program – Contractors [68.87]	
<p>Has the owner or operator periodically evaluated the performance of the contract owner or operator in fulfilling their obligations? [68.87(b)(5)] No.</p> <ul style="list-style-type: none"> • ACSH does not periodically evaluate the performance of contractor owners or operators. 	600

SUBPART G: RISK MANAGEMENT PLAN [40 CFR 68.160 – 68.165]

If the owner or operator experienced an accidental release that met the five-year accident history reporting criteria (as described at 68.42) subsequent to April 9, 2004, did the owner or operator submit the information required with respect to that accident within six months of the release or by the time the RMP was updated, whichever was earlier? [68.195(a)]

- **The accidental release that occurred on June 18, 2008 met the five-year accident history reporting criteria. ACSH submitted the required data for that accident on June 17, 2009 when the RMP was updated. This was later than six months after the release.**

2,000

BASE PENALTY

\$7,100



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

EXPEDITED SETTLEMENT PENALTY MATRIX
American Crystal Sugar Company - Hillsboro
Hillsboro, 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 – American Crystal Sugar Company - Hillsboro.

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$7,100 = \$7,100 \times 1^*$$

* # of employees is 225. The covered chemical, sulfur dioxide, exceeds the listed threshold value by 47.8 times

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER** in the matter **AMERICAN CRYSTAL SUGAR COMPANY; DOCKET NO.: CAA-08-2015-0011** was filed with the Regional Hearing Clerk on April 2, 2015.

Further, the undersigned certifies that a true and correct copy of the documents were emailed 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 certified/return receipt on April 2, 2015 to:

Douglas Emerson
American Crystal Sugar Company
101 North 3rd Street
Moorehead, MN 56560

And emailed to:

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

April 2, 2015



Tina Artemis
Paralegal/Regional Hearing Clerk

