



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

FILED

Sep 18, 2023

4:12 pm

U.S. EPA REGION 1
HEARING CLERK

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA-01-2023-0024

This ESA is issued to: Pine Tree Propane, LLC, Rte #2, Hermon, ME 04401 for violating Section 112(r)(7) of the Clean Air Act.

This Expedited Settlement Agreement (“ESA”) is being entered into by the United States Environmental Protection Agency (“EPA”), Region 1, by its duly delegated official, the Acting Director of the Enforcement and Compliance Assurance Division, and by Pine Tree Propane, LLC (“Respondent”), pursuant to Sections 113(a)(3) and (d) of the Clean Air Act (“Act”), 42 U.S.C. §§ 7413(a)(3) and (d), and 40 C.F.R. § 22.13(b). EPA and the U.S. Department of Justice have jointly determined that this action is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

ALLEGED VIOLATIONS

On August 18, 2021, EPA began an Off-site Compliance Review at Respondent’s facility at Rte #2, Hermon, ME (“Facility”), when a comprehensive list of questions was sent to determine its compliance with the Risk Management Program (“RMP”) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Act. EPA found that Respondent had violated regulations implementing Section 112(r) of the Act, as noted on the attached “Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Form” (“Form”), which is hereby incorporated by reference.

SETTLEMENT

In consideration of Respondent’s size of business, compliance history, 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 attached Form, for the total penalty amount of \$10,320.

This settlement is subject to the following terms and conditions:

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 Form, 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 Act, 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 Respondent has corrected the violations listed in the attached Form. Respondent agrees to submit payment of the \$10,320 penalty within 30 days of receiving a fully

executed copy of this ESA. Respondent may pay the penalty by cashier's check, certified check, or wire transfer.

If payment is made by check, make payable to "Treasurer, United States of America," include Docket Number CAA-01-2023-0024, and send to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

If payment is made by wire transfer, include the Docket Number CAA-01-2023-0024 in Field Tag 6000 and "D 68010727 Environmental Protection Agency" in Field Tag 4200. The wire transfer account is:

Federal Reserve Bank of New York
33 Liberty Street
New York NY 10045
ABA: 021030004
Account: 68010727
SWIFT address: FRNYUS33

Respondent must also email a copy of the check or wire transfer receipt to:

Andrew Meyer, Environmental Scientist/Inspector
Meyer.drew@epa.gov

and

Wanda I. Santiago, Regional Hearing Clerk
R1_Hearing_Clerk_Filings@epa.gov

Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above and in the Form. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed ESA is not returned to the EPA Region 1 office at the address above by Respondent within 30 days of the date of receipt, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the cited violations. If you do not sign and return the ESA and pay the penalty on time, EPA may pursue more formal enforcement measures, including seeking civil penalties of up to \$55,808 per day for each violation. This ESA is binding on the parties signing below.

Pursuant to 40 C.F.R. § 22.31(b), a final order is effective upon filing.

Complainant and Respondent, by entering into this ESA, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed ESA, by electronic mail, to the following address: rtracy@rhfoster.com. Respondent understands that this e-mail address may be made public when the ESA and Certificate of Service are filed and uploaded to a searchable database. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing order, dated June 19, 2020. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

FOR RESPONDENT:

_____ Katie Foster

Date: 08/28/2023

Name (print): Katie Foster

Title (print): vice president

FOR COMPLAINANT:

James Chow, Acting Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 1

Date: _____

I hereby ratify the ESA resolving *In the Pine Tree Propane*, No. CAA-01-2023-0024 and incorporate it herein by reference. It is so ORDERED.

LeAnn Jensen
Regional Judicial Officer
U.S. EPA Region I

Date: _____

RMP Program Level 3 Process Checklist**Pine Tree Propane, Hermon, ME**
**U.S. ENVIRONMENTAL PROTECTION AGENCY
 RISK MANAGEMENT PROGRAM INSPECTION FINDINGS,
 ALLEGED VIOLATIONS AND PROPOSED PENALTY FORM**

REASON FOR INSPECTION: This inspection is for the purpose of determining compliance with the accidental release prevention requirements of Section 112(r)(7) of the Clean Air Act (Act), 42 U.S.C. sec. 7412(r)(7), and the regulations set forth at 40 C.F.R. Part 68. The scope of this inspection may include but is not limited to: reviewing and obtaining copies of documents and records; interviews and taking of statements; reviewing chemical storage, handling, processing, and use; taking samples and photographs; and any other inspection activities necessary to determine compliance with the Act.

FACILITY NAME: Pine Tree Propane, LLC	<input checked="" type="checkbox"/> PRIVATE <input type="checkbox"/> GOVERNMENTAL/MUNICIPAL # of EMPLOYEES: 2
FACILITY ADDRESS: 43 Propane Lane, Hermon, ME 04401	INSPECTION START DATE: August 18, 2021 (off-site inspection)
RESPONSIBLE OFFICIAL, TITLE, PHONE NUMBER: Robert Tracey, Executive Vice President R.H. Foster Energy, LLC rtracey@rhfoster.com	EPA FACILITY ID#: 1000 0017 5366
FACILITY REPRESENTATIVE(S), TITLE(S), PHONE NUMBER(S): Randy Legassie, Plant Supervisor (207) 848-2705 Levi Surette, Plant Manager lsurette@rhfoster.com Jill Smith, Safety Administrator jsmith@rhfoster.com	INSPECTOR NAME(S), TITLE: Drew Meyer, Inspector, EPA Region 1 Waste and Chemical Compliance Section

INSPECTION FINDINGS

IS FACILITY SUBJECT TO RMP REGULATION (40 CFR Part 68)? YES NO

DID FACILITY SUBMIT AN RMP AS PROVIDED IN 68.150 TO 68.185 AND UPDATE THE RMP AS PROVIDED IN 68.190 TO 69.195? YES NO

DATE RMP INITIALLY FILED WITH EPA: 4/18/06
 DATE OF RMP UPDATE(S): 4/8/11, 5/7/15, 9/1/21

RMP Program Level 3 Process Checklist**Pine Tree Propane, Hermon, ME**

1) PROCESS/NAICS CODE: 42471
 REGULATED SUBSTANCE: Propane Program Level 3
 MAX. QUANTITY IN PROCESS: 443,520 pounds

DID FACILITY CORRECTLY ASSIGN PROGRAM LEVELS TO PROCESSES? YES NO

ATTACHED CHECKLIST(S):

- PROGRAM LEVEL 1 PROCESS CHECKLIST PROGRAM LEVEL 2 PROCESS CHECKLIST
 PROGRAM LEVEL 3 PROCESS CHECKLIST

Section A: Management [68.15]

Management system developed and implemented as provided in 40 CFR 68.15?

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)]

The RMP provided to EPA for review did not have an organizational chart included in as part of the management system, as required by 68.15(c). Further, the facility's submittal of its RMP was late. The facility explained that the delay was because the facility did not have a certified official reported into the RMPSubmit system.

600

Section C: Prevention Program

Implemented the Program 3 prevention requirements as provided in 40 CFR 68.65 - 68.87?

Has the owner or operator performed an initial process hazard analysis (PHA), and has this analysis identified, evaluated, and controlled the hazards involved in the process? [68.67(a)]

- a. **The 2019 PHA states that the facility has a Fire Safety Analysis (FSA). During the Off-site Compliance Inspection (OCI), EPA requested to review Pine Tree’s FSA. Pine Tree Propane notified EPA that at least two FSAs had been conducted since beginning operations—but Respondent was unable to locate any record of them having been conducted and reviewed by Authorities Having Jurisdiction (AHJs). (After EPA’s off-site inspection, a FSA was completed in July of 2022).**

The FSA, required by fire code NFPA 58, is an extensive audit of the design and safety features of a propane facility and includes an assessment of whether the facility is equipped to minimize the potential for propane releases. The assessment also evaluates the capabilities of the local emergency responders and analyzes potentially hazardous exposures from the facility to the community.

Accordingly, for propane distribution facilities, the FSA is an important component of the PHA without which the PHA incompletely identifies and evaluates hazards (unless the PHA separately incorporates all the questions and analyses in the FSA). Respondent’s PHA does not separately identify and evaluate many of the hazards that are evaluated in a FSA, so without the FSA, Respondent’s PHA did not fully identify and evaluate the hazards.

- b. **The 2019 PHA asks if “DOT stationary cylinders that are filled at the customers location are visually inspected after 12 years of manufacture and 5-years thereafter.” The PHA simply replies that “very few DOT cylinders or customer tanks are on-site,” which suggests that some tanks are on-site, but the answer is not responsive to whether they are visually inspected when meeting these ages. Accordingly, Pine Tree Propane did not adequately evaluate and control potential hazards associated with the cylinders.**

\$2,500 for 68.67(a)

- c. **The 2019 PHA asks whether the propane tanks have been internally inspected and then asserts in response that they are not being inspected under an API 510 program. However, the PHA does not then question whether external inspections have been completed that reduce the need for such internal inspections. This is a failure to identify and evaluate hazards.**

\$1,500 for 68.67(e)

Has the owner or operator established 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? [68.67(e)]

Information for the 2016 and 2019 Process Hazard Analysis (PHAs) used to document corrective actions for areas of concern determined in the PHAs indicates tracking documentation is deficient:

- d. **The 2016 PHA lists several items that were not in place, including not documenting training and visits from the Authority Having Jurisdiction (AHJ) and that pressure testing of piping and valves was not conducted regularly. However, the PHA does not include any documentation describing corrective measures, and the issue of documenting AHJ visits was still an issue when the 2019 PHA was conducted. Additionally, to EPA’s knowledge, as of 2019, the facility still had not done any mechanical testing of the piping (or internal testing of their two 60,000-gallon propane tanks) or demonstrated that such testing was not necessary.**
- e. **Both the 2016 and 2019 PHAs identify that no Contractor Program existed, indicating that issues that are identified are not adequately addressed upon identification in completed PHAs. This missing program element had also been identified in past RMP audits.**

RMP Program Level 3 Process Checklist

Pine Tree Propane, Hermon, ME

Prevention Program - Mechanical Integrity [68.73]

Ensured the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience? [68.73(d)(3)]

The facility does not conduct internal tank inspections on propane storage tanks every 10 years or 10-year thickness measurement piping inspections for Class 3 circuits, as required by API 510 (2014), Section 6.5.1.1, and API 570 (2016), Section 6.3.3. (There is no indication that Risk Based Inspections were conducted to authorize an alternative inspection schedule, as directed by API 510 (2014) Section 6.3 and API 570 (2016) Section 6.3.2). Therefore, the frequency of test and inspections is not in accordance with good engineering practices per 40 CFR 68.73(d)(3). The facility's propane storage tanks were installed and brought into service at the facility in 2002. In the 2019 PHA, the facility states "company does not participate in API 510 process," suggesting that the company may not use this RAGAGEP; however, the company did not identify other RAGAGEP for tank inspections or inquire, consistent with its mechanical integrity program description, whether external inspections had shown corrosion such that internal inspections were advisable.

900

Prevention Program - Compliance Audits [68.79]

Has the owner or operator certified 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? [68.79(a)]

Has the owner or operator promptly determined and documented an appropriate response to each of the findings of the audit and documented that deficiencies had been corrected? [68.79(d)]

The facility provided two DOT audits dated March 11, 2021 and March 10, 2020, but these audits were limited in scope, and did not look at many of the elements required in an RMP program. [See enclosed Program 3 checklist for the types of questions that a typical compliance audit would ask to ensure that it is covering all the RMP regulations.]

Additionally, the facility provided RMP audits conducted in 2013 and 2019 but was missing the 2016 audit. The 2019 audit does not include any descriptions on how the facility intended to follow-up on identified issues, including: 1) a notation that alternate release scenarios need to be reviewed/updated; 2) a notation that no contractor safety forms have been completed in three years; and 3) the need to exercise with local fire department and how the facility intended to respond when the local fire department would not respond to the need to conduct an exercise at the facility.

300

Has the owner or operator retained the two most recent compliance reports? [68.79(e)]

300

Prevention Program - Incident Investigation [68.81]

RMP Program Level 3 Process Checklist Pine Tree Propane, Hermon, ME

Has the owner or operator investigated each incident that resulted in, or could reasonably have resulted in a catastrophic release of a regulated substance? [68.81(a)]

Management of Change screening forms from August 14, 2020, and March 9, 2021 indicate that pull-away incidents occurred where piping was damaged or broken. EPA requested all near-miss logs but none were provided for these events. These incidents appear to be near misses that would warrant an incident investigation report. The facility did not prepare incident investigations for these two near-miss events, as required by 68.81(a).

1200

Section F: Contractors [68.87]

1. Has the owner or operator obtained and evaluated information regarding the contract owner or operator's safety performance and programs when selecting a contractor? [68.87(b)(1)]

Both the 2016 and 2019 PHAs identify that no Contractor Program existed. Neither adequately described corrective measures that the facility intended to take to correct this missing element of the RMP program.

900

2. Informed contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process? [68.87(b)(2)]

900

3. Explained to the contract owner or operator the applicable provisions of the emergency response or the emergency action program? [68.87(b)(3)]

600

4. Developed and implemented safe work practices consistent with §68.69(d), to control the entrance, presence, and exit of the contract owner or operator and contract employees in the covered process areas? [68.87(b)(4)]

600

5. Periodically evaluated the performance of the contract owner or operator in fulfilling their obligations (as described at 68.87(c)(1) – (c)(5))? [68.87(b)(5)]

600

Section H: Risk Management Plan [40 CFR 68.190 – 68.195]

3. Has the owner or operator reviewed and updated the RMP and submitted it to EPA [68.190(a)]? Reason for update:

Five-year update. [68.190(b)(1)]

The facility's most recent RMP update was due to be updated by 5/17/2020 and was updated on 9/11/21. (Respondent has explained that there was confusion because RMPSubmit indicated that the plan was accepted, but that the plan was not certified—due to certification issues of the submitter--so was never accepted). Even so, the "un-certified plan" was late, because it was submitted in October 2020 (when it needed to be submitted by 5/17/20).

2,000

Total Unadjusted Program Level 3 Penalty: \$12,900

3. Size-Threshold Quantity Multiplier

The Size-Threshold Quantity multiplier is a factor that considers the size of the facility and the amount of regulated chemicals at the facility. Respondent has approximately 2 employees and over 800,000 lbs. of propane (more than 10x the multiple for the threshold quantity of propane).

Expedited Settlement Penalty Matrix: Private Industries

Largest Multiple of Threshold Quantity of any Regulated Chemical(s) on Site

# of Employees	1 – 5	>5 – 10	> 10
0 – 9 (2)	0.4	0.6	0.8

10 – 100	0.6	0.8	1.0
> 100	1.0	1.0	1.0

Size/Threshold Quantity multiplier from Expedited Settlement Penalty Matrix: **0.8**

3. Proposed Penalty

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.

$$\begin{array}{rcl}
 \text{Proposed Penalty} & = & \text{\$12,900 (Unadjusted Penalty)} & \times & \text{0.8} \\
 & & \text{(Size/Threshold Quantity Multiplier)} & = & \text{\underline{\underline{\$10,320}}}
 \end{array}$$