



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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

2014 OCT 20 AM 10:38  
FILED  
EPA REGION VIII  
HEARING CLERK

**DOCKET NO.: CAA-08-2015-0004**

**IN THE MATTER OF:**

**POOLE CHEMICAL COMPANY, INC.  
TEXLINE, TX  
POOLE CHEMICAL COMPANY, INC.  
Monte Vista, CO**

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**FINAL ORDER**

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 20th Day of October, 2014

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2014 OCT 20 AM 10:38

FILED  
EPA REGION VIII  
HEARINGS CLERK

IN THE MATTER OF: )

Pooler Chemical Company, Inc., )  
Texline, TX )  
Pooler Chemical Company, Inc. )  
Monte Vista, CO )

Respondent )

**EXPEDITED SETTLEMENT AGREEMENT**

DOCKET NO.: CAA-08-2015-0004  
(COMBINED COMPLAINT AND  
CONSENT AGREEMENT)

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 Pooler Chemical Company, 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 (DOJ) 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. DOJ has granted a blanket waiver under CAA section 113(d), 42 U.S.C. § 7413(d), for violations that have occurred more than one year before the initiation of an administrative action by the EPA.

RESPONDENT

2. The Respondent, Pooler Chemical Company, Inc. is a Texas corporation that does business in the State of Colorado.
3. The Respondent is a "person" under section 302(e) of the Act. 42 U.S.C. §§ 7602(e).

ALLEGED VIOLATIONS

4. On August 21, 2013, an authorized representative of the EPA conducted a compliance inspection of Respondent's facility located at 2060 South Road 5 East, Monte Vista, Colorado, 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 2 Process Checklist-Alleged Violations & Penalty*

Poole Chemical Company, Inc., Texline, TX  
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*Assessment* (Checklist and Penalty Assessment). The Checklist and Penalty Assessment is incorporated into this ESA.

### 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 \$7,200. 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 thirty (30) days after receiving the Final Order, the Respondent shall remit payment in the amount of \$7,200. **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  
Cincinnati Finance Center Box 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Craig Steffen, 513-487-2091

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”

Automated clearinghouse payments can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury Facility:  
5700 Rivertech Court  
Riverdale, MD 20737

US Treasury Contact Information:  
John Schmid: 202-874-7026  
Remittance Express (REX): 1-866-234-5681

Poole Chemical Company, Inc., Texline, TX  
Poole Chemical Company, Inc., Monte Vista, CO  
EXPEDITED SETTLEMENT AGREEMENT

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

A copy of the check, or notification that the payment has been made by one of the other methods listed above, shall be sent to:

Tina Artemis, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street [8RC]  
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.

Poole Chemical Company, Inc., Texline, TX  
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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.
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: Poole Chemical Company, Inc.:

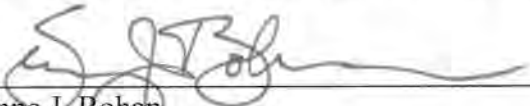
  
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Date: 9/26/14

Name (print): Danny Poole

Title (print): President

For Complainant: United States Environmental Protection Agency, Region 8:

  
\_\_\_\_\_

Date: 10/20/2014

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



**RMP PROGRAM LEVEL 2 PROCESS CHECKLIST  
ALLEGED VIOLATIONS & PENALTY ASSESSMENT**

Respondent: **Poole Chemical Company, Inc., Texline, TX**  
 Facility Name: Poole Chemical Company, Inc., Monte Vista, CO

**INSPECTION DATE: 8/21/2013**

**SUBPART C: PREVENTION PROGRAM [40 CFR §68.48 – 68.60]**

**PENALTY**

**Prevention Program – Safety Information [68.48]**

Has the owner or operator compiled and maintained safe upper and lower temperatures, pressures, flows and compositions related to the regulated substances, processes, and equipment? [68.48(a)(3)] No.

**300**

- **The safety information only listed the upper pressure of the tanks, pipes and hoses.**
- **The safety information did not define the safe upper and lower temperatures, flows and compositions related to the ammonia process equipment and the mobile reactor process for manufacturing 10-34-00.**
- **EPA’s General Guidance On Risk Management Programs For Chemical Accident Prevention, March 2009, Chapter 6: Prevention Program (Program 2), Section 6.2 Safety Information states, “The requirement to compile and maintain information on process flows and compositions will apply to you if you transfer substances through piping or hoses and if you mix or react the substance.”**

Has the owner or operator ensured that the process is designed in compliance with recognized and generally accepted good engineering practices? [68.48(b)]: No.

**1500**

- **The vapor fixed piping of the transfer system is not equipped with an emergency shut-off valve which can be remotely activated. In addition, the ammonia transfer piping is not supported by a concrete bulkhead or equipped with break-away fittings.**
- **This was a preliminary determination from the January 22, 2002 EPA Audit and was acknowledged to be completed on March 18, 2002 by Tom Hershey.**
- **According to ANSI K61.1, Sections 5.10.8.1 and 5.10.8.2:**
  - **All stationary storage installations with a water**

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| <b>Prevention Program – Maintenance [40 CFR 68.56]</b>   |             |
| <p>Has the owner or operator prepared and implemented procedures to maintain the on-going mechanical integrity of the process equipment. <b>68.56(a) No</b></p> <ul style="list-style-type: none"> <li>• <b>Poole did not prepare maintenance procedures for the process equipment.</b></li> <li>• <b>The only maintenance record Poole could provide to the EPA was a February 2011 statement that the PRVs on the vessel were replaced.</b></li> </ul>   | <b>1200</b> |
| <p>Has the owner or operator performed or cause to be performed inspections and test on process equipment that follow recognized and generally accepted good engineering practices? <b>[68.56(d)] No.</b></p> <ul style="list-style-type: none"> <li>• <b>Poole did not have any records of inspections and tests performed on the process equipment.</b></li> <li>• <b>Brian Foote from Triangle Insurance provided a blank form titled “Anhydrous Ammonia Storage Facility Inspection” and stated that Poole will start using this form. However, Poole should confirm this form includes all required inspections and tests on ammonia equipment and that they follow recognized and generally accepted good engineering practices. For example, this form does not include the required emergency shut-off valves. The myRMP Suite of Retail Guidance Materials sponsored by The Fertilizer Institute and supported by the EPA includes an online Maintenance Manual that may prove useful.</b></li> </ul> | <b>600</b>  |
| <b>Prevention Program – Compliance Audits [40 CFR 68.58]</b>   |             |
| <p>Has the owner or operator certified that compliance audits are conducted at least every three years to verify that the procedures and practices are adequate and are being followed? <b>[68.58(a)] No.</b></p> <ul style="list-style-type: none"> <li>• <b>Poole did not have any records of inspections and tests performed on the process equipment.</b></li> <li>• <b>Brian Foote from Triangle Insurance provided a blank form titled “Anhydrous Ammonia Storage Facility Inspection” and stated that Poole will start using this form. However, Poole should confirm this form includes all required inspections and tests on ammonia equipment and that they follow recognized</b></li> </ul>   | <b>1200</b> |



**Prevention Program – Operating Procedures [40 CFR §68.52]**

Do the operating procedures address the following?:

- (1) Initial startup
  - (2) Normal operations
  - (3) Temporary operations
  - (4) Emergency shutdown and operations
  - (5) Normal shutdown
  - (6) Startup following a normal or emergency shutdown or a major change that requires a hazard review
  - (7) Consequences of deviation and steps required to correct or avoid deviations
  - (8) Equipment inspections
- [68.52(b) No.**

- **Poole did not have operating procedures for emergency shutdown. [68.52(b)(4)]** **1200**
- **Poole did not have operating procedures for startup following an emergency shutdown. [68.52(b)(6)]** **1200**
- **The operating procedures for the mobile reactor do not address consequences of deviation and steps required to correct or avoid deviations. [68.52(b)(7)] One example is found in Step 22, which states, “Return to the control room, and set the position of the primary and secondary ammonia valves to maintain an operational pressure of 100 PSIG and maintain a total ammonia flow through the pipe reactor of between 150 pounds per minute and 170 pounds per minute as registered on the ammonia mass flow meter.”** **1200**
- **Poole did not have procedures for equipment inspections. [68.52(b)(8)]** **1200**

**Prevention Program – Training [40 CFR §68.54]**

Has the owner or operator ensured that each employee presently operating a process, and each employee newly assigned to a covered process has been trained or tested competent in the operating procedures that pertain to their duties? **[68.54(a)] No.**

**1500**

- **Poole did not provide training records for the transport truck drivers who transfer the anhydrous ammonia from the truck to the storage vessel at the facility.**

capacity greater than 4000 gallons shall have approved emergency shut-off valve(s) installed in the liquid and vapor fixed piping of the transfer system. The emergency shut-off valve(s) or back-flow check valves shall be installed in the plant piping so that any break resulting from a pull will occur on the hose or swivel-type piping side of the connection while retaining intact the valves and piping on the plant side of the connection. NOTE: This may be accomplished by concrete bulkheads or equivalent anchorage, or by the use of break-away fittings.

- An approved emergency shut-off valve shall incorporate a manually activated shut off from a remote location, and a manually activated shut off at the installed location.
- Emergency signage is not readily visible. The name and telephone number of the facility is painted on each long side of the ammonia storage tank. Emergency response personnel would have to approach the tank either from Hwy 160 or far inside the facility to view it. A legible sign with the name, address and telephone number near the entrance to the facility would be more readily visible.
- This was a preliminary determination from the January 22, 2002 EPA Audit and was acknowledged to be completed in August 2002 by Tom Hershey.
- According to ANSI K61.1, Section 6.8:
  - A legible sign shall be displayed on the premises at which a storage system is located, so as to be readily visible to emergency response personnel, stating the name, address, and telephone number of the nearest representative, agent, or owner of the storage system.

**Prevention Program – Hazard Review [40 CFR §68.50]**

Has the owner or operator conducted a review of the hazards associated with the regulated substances, process, and procedures? [68.50(a)] No.

- The HR does not review the hazards associated with the mobile reactor process whereby ammonia, phosphoric acid and water are mixed together under high pressure and temperature.

900

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| <b>and generally accepted good engineering practices. For example, this form does not include the required emergency shut-off valves. The myRMP Suite of Retail Guidance Materials sponsored by The Fertilizer Institute and supported by the EPA includes an online Maintenance Manual that may prove useful.</b> |                 |
| <b>BASE PENALTY</b>  | <b>\$12,000</b> |



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

EXPEDITED SETTLEMENT PENALTY MATRIX  
 Poole Chemical Company, Inc., Texline, TX  
 Poole Chemical Company, Inc., Monte Vista, CO

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

- 1<sup>st</sup> 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.
- 2<sup>nd</sup> Use the Adjusted Penalty formula  
  
Adjusted Penalty = \$4700 (Unadjusted Penalty) X 0.8(Size-Threshold Multiplier)  
Adjusted Penalty = \$3760
- 3<sup>rd</sup> 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 – Poole Chemical Company, Inc.

**Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier**

$$\$7,200 = \$12,000 \times 0.6^*$$

\* # of employees is 6. The covered chemical, anhydrous ammonia, exceeds the listed threshold value by 6.6 times

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT and FINAL ORDER** in the matter of **POOLE CHEMICAL COMPANY, INC TEXLINE, TX; POOLE CHEMICAL COMPANY, INC., MONTE VISTA CO; DOCKET NO.: CAA-08-2015-0004**, was filed with the Regional Hearing Clerk on October 20, 2014.

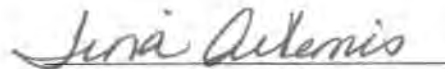
Further, the undersigned certifies that a true and correct copy of the document was delivered to Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail, domestic return receipt on October 20, 2014, to:

Scott Piercy, Safety Coordinator  
Poole Chemical Company, Inc.  
P. O. Box 10, 100 North 1<sup>st</sup>.  
Texline, TX 79087

And emailed to:

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

October 20, 2014



Tina Artemis  
Paralegal/Regional Hearing Clerk