



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2014 MAY -1 PM 1:43

EXPEDITED SETTLEMENT AGREEMENT (ESA)

DOCKET NO.: CAA-07-2014-0008

This ESA is issued to: Dillons Distribution Center
At: 2700 East 4th Avenue, Hutchinson, Kansas 67501
for violating Section 112(r)(7) of the Clean Air Act.

The United States Environmental Protection Agency, Region 7 (EPA) and Dillons Distribution Center (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 the EPA, is the Director of the Air and Waste Management Division. The Respondent is *Dillons Distribution Center, 2700 East 4th Avenue, Hutchinson, Kansas 67501. * Dillon Companies, Inc.,

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 July 9 and 10, 2013, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 2700 East 4th Avenue, Hutchinson, Kansas, 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 **\$8,400**.

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 **\$8,400** 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-07-2014-0008, 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:

Christine Hoard
Chemical Risk Information Branch
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

A copy of the check must also be sent to:

Kathy M. Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Upon Respondent's submission of the signed original ESA, the EPA will take no further civil action against Respondent for the alleged violations of the CAA referenced in the RMP

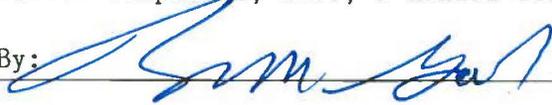
Findings. The EPA does not waive any other enforcement action for any other violations of the CAA or any other statute.

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:
Dillon Companies, Inc., a Kansas corporation

By: 

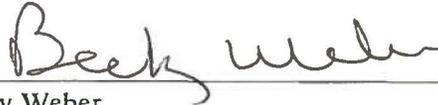
Date: April 21, 2014

Name (print): Bruce Gack
Vice President

Title (print): _____
re: Dillons Distribution Center



FOR COMPLAINANT:



Becky Weber
Director
Air and Waste Management Division
EPA Region 7

Date: 4-29-14



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

Date: 4/23/14

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

Karina Borrromeo
Karina Borrromeo
Regional Judicial Officer

Date: 5-1-14

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

Dillons Distribution Center
2700 East 4th Avenue
Hutchinson, Kansas 67501
Docket No. CAA-07-2014-0008

COMPLETE THIS FORM AND RETURN IT WITH THE ESA.

VIOLATIONS

PENALTY AMOUNT

Risk Management Plan [68.190(b)(1)] \$2,000
The owner or operator shall review and update the RMP and submit it to EPA; Failure to file a five year update.
RMP submitted July 2, 2013

Hazard Assessment
Documentation [68.39(e)] \$300
The owner or operator failed to maintain records on offsite consequence analysis, in that data used to estimate population and environmental receptors potentially affected was not available
Facility addressed this post inspection.

Prevention Program
Safety Information [68.65(d)(1)(vi)] \$600
The owner or operator failed to compile and maintain process safety information regarding the design codes and standards employed.
Facility addressed this post inspection.

Prevention Program
Process Hazard Analysis [68.67(e)] \$1,500
The owner or operator failed to establish a system to promptly address the team's findings and recommendations and failed to communicate the actions to operation, maintenance, and other employees whose work assignments were in the process and who may be affected by the recommendations.
Facility addressed this post inspection.

Prevention Program
Process Hazard Analysis [68.67(f)] \$2,500
The owner or operator failed to update and revalidate the PHA every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process.
Facility addressed this post inspection.

Prevention Program
Operating Procedures [68.69(a)(1)(i, iii, v and vii)] \$1,500
The owner or operator failed to address initial startup, temporary operations, emergency
operations and startup following a shutdown.
Facility addressed this post inspection.

TOTAL \$8,400

Calculation of Adjusted Penalty

1st Reference the Multipliers for calculating proposed penalties for violations found during
RMP inspection matrix. Finding the column for > 100 employees and the row 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 Dillons
Distribution Center = 1.0

***No adjusted penalty since multiplier is 1*

TOTAL \$8,400

This section must be also completed and signed by Dillons Distribution Center:

The approximate cost to correct the above items: \$ 0

Compliance staff name: Tim Herrman

Signed: Tim Herrman Date: 4-15-2014

IN THE MATTER OF Dillons Distribution Center, Respondent
Docket No. CAA-07-2014-0008

CERTIFICATE OF SERVICE

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

Copy emailed to Attorney for Complainant:

nazar.kristen@epa.gov

Copy by First Class Mail to Respondent:

Aine M Baldwin, Corporate Counsel
The Kroger Co.
Law Department
1014 Vine Street
Cincinnati, Ohio 45202

Dated: 5/11/14



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7