

FILED

September 29, 2023

8:35AM

U.S. EPA REGION 7
HEARING CLERK

**CLEAN AIR ACT STATIONARY SOURCE
EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER**

DOCKET NO.: CAA-07-2023-0094
Respondent: Waste Management of Nebraska, Inc.

1. The U.S. Environmental Protection Agency (EPA) and Waste Management of Nebraska, Inc. (Respondent) enter into this Clean Air Act Stationary Source Expedited Settlement Agreement (Agreement) to settle the civil violation set forth in the enclosed Clean Air Act Stationary Source Inspection Findings, Alleged Violations, and Proposed Penalty Form (the Form), pursuant to Section 113 of the Clean Air Act (CAA), 42 U.S.C. § 7413, and 40 C.F.R. § 22.13(b) for a penalty of **\$12,078** (Assessed Penalty).
2. Respondent admits to being subject to the CAA and its associated regulations and that the EPA has jurisdiction over Respondent and Respondent's conduct described in Table 2 of the Form.
3. Respondent neither admits nor denies the alleged violation specified in the Form and waives any objections Respondent may have to the EPA's jurisdiction.
4. Respondent acknowledges that there are significant penalties for submitting false information to the United States Government, including the possibility of a fine or imprisonment for knowing violations pursuant to Section 113(c)(2) of the CAA, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.
5. Respondent agrees to pay the Assessed Penalty and agrees to submit proof of payment to the EPA within 30 calendar days of receipt of a copy of the ratified Agreement and Final Order.
6. The Assessed Penalty is based upon the EPA's consideration of the factors provided in CAA Section 113(e), 42 U.S.C. § 7413(e), and the EPA's Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991.¹
7. The payment made by Respondent pursuant to this Agreement is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and, therefore, Respondent shall not claim the payment as a tax-deductible expenditure for purposes of federal, state, or local law.
8. If Respondent fails to pay the Assessed Penalty in full within 30 calendar days of receipt of a copy of the ratified Agreement and Final Order, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. Interest shall be at rates established pursuant to 26 U.S.C. § 6621(a)(2) from the date of the Final Order. 42 U.S.C. § 7413(d)(5).
9. If Respondent fails to timely pay the Assessed Penalty, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

¹ See "Amendments to the EPA's Civil Penalty Policy to Account for Inflation (effective January 15, 2022) and Transmittal of the 2022 Civil Monetary Penalty Inflation Adjustment Rule" January 12, 2022 memorandum. See also "Civil Monetary Penalty Inflation Adjustment Rule" January 6, 2023 memorandum.

10. By signature below, the EPA confirms the alleged violation set forth in Table 2 in the Form. Upon signing and returning this Agreement to the EPA, Respondent consents to the terms of this Agreement without further notice.
11. Respondent acknowledges that this Agreement is binding on the parties signing below and becomes effective on the date of filing with the Regional Hearing Clerk, after ratification of the Agreement and Final Order by the Regional Judicial Officer.
12. This Agreement, upon approval and incorporation in the Final Order, concludes this action pursuant to Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
13. Full payment of the Assessed Penalty shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the Assessed Penalty shall only resolve Respondent's liability for federal civil penalties for the violation alleged in this Agreement and the Form.
14. The EPA reserves the right to commence action against any person, including Respondent, in response to any condition which the EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment.
15. Nothing in this Agreement and Final Order should be construed to limit the authority of the United States to pursue criminal sanctions.
16. This settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c).
17. The EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder, and any other federal laws or regulations for which the EPA has jurisdiction, to enforce the provisions of this ESA and accompanying Final Order following its filing with the Regional Hearing Clerk.
18. Nothing in this Agreement relieves Respondent's obligation to comply with all applicable provisions of the CAA, 42 U.S.C § 7401 *et. seq.*, and the regulations promulgated thereunder.
19. The EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d), that this matter, although it involves an alleged violation that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.
20. Upon the EPA's final approval of the ESA, Respondent expressly waives its right to contest the allegations. Moreover, in entering into this Agreement, Respondent agrees to bear its own costs and attorney fees related to this Agreement.

21. Respondent consents to electronic service of the filed Expedited Settlement Agreement and Final Order to the following email address: *sniehoff@wm.com*. Respondent understands that the Expedited Settlement Agreement and Final Order will become publicly available upon filing.

ACCEPT THE PROPOSED PENALTY

I/we (Respondent) consent to the proposed penalty.

DECLINE THE PROPOSED PENALTY

I/we (Respondent) decline the proposed penalty. If you choose to decline this proposed penalty, you may be subject to formal enforcement action and, in that event, will have an opportunity to a hearing related to any subsequent penalty assessment.

COST OF COMPLIANCE

Respondent certifies that it has expended \$ Not Applicable to correct the alleged violation and to come into compliance.

APPROVED BY EPA:

Signature: _____ Date: _____
David Cozad
Director
Enforcement and Compliance Assurance Division

APPROVED BY RESPONDENT:

Signature: Brad Pollock Date: 9/25/2023

Name and Title (print): Brad Pollock, President

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and having relied upon the representations of the parties set forth in the Expedited Settlement Agreement, I have determined that the penalty assessed herein is based on a consideration of the EPA's Clean Air Act Stationary Source Civil Penalty Policy dated October 25, 1991 and the Expedited Settlement Agreement Pilot Program for the Clean Air Act Stationary Source Enforcement Program, and is consistent with the penalty assessment criteria set forth in in CAA Section 113(e), 42 U.S.C. § 7413(e).

THEREFORE, the foregoing Expedited Settlement Agreement is hereby approved and incorporated by reference into the Final Order. Respondent is ORDERED, as set forth above, to pay the civil penalty.

Signature _____
Karina Borromeo
Regional Judicial Officer
United States Environmental Protection Agency
Region 7

Date: _____

CERTIFICATE OF SERVICE
(for EPA use only)

I certify that a true and correct copy of the foregoing Expedited Settlement Agreement and Final Order in the matter of Waste Management of Nebraska, Inc., EPA Docket No.: CAA-07-2023-0094, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Kasey Barton
Office of Regional Counsel
barton.kasey@epa.gov

Christopher Appier
Enforcement and Compliance Assurance Division
appier.christopher@epa.gov

Milady Peters
Office of Regional Counsel
peters.milady@epa.gov

Copy via Email to Respondent:

Steve Niehoff
Director of Air Programs
720 E Butterfield Road
Lombard, Illinois 60148
sniehoff@wm.com

Dated this _____ day of _____, _____.

Signed _____