



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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DENVER, CO 80202-1129
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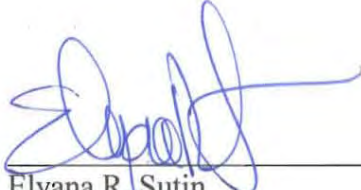
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2009-0028

IN THE MATTER OF:)	
)	
CREAM o' WEBER DAIRY, LLC.)	
Salt Lake City, Utah)	FINAL ORDER
)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §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 30th DAY OF July, 2009.



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 JUL 30 PM 12: 20

EPA REGION VIII
HEARINGS CLERK

IN THE MATTER OF:)
)
) **EXPEDITED SETTLEMENT AGREEMENT**
Cream o' Weber Dairy, LLC)
Salt Lake City, Utah) (COMBINED COMPLAINT AND
) (CONSENT AGREEMENT)
Respondent) **DOCKET NO.: CAA-08-2009-0028**
_____)

This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter.

This ESA 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 Cream o' Weber Dairy, LLC (Respondent) pursuant to § 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). EPA and the U.S. Department of Justice have determined, pursuant to § 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that EPA may pursue this type of case through administrative enforcement action.

ALLEGED VIOLATIONS

On April 16, 2009, an authorized representative of the EPA conducted a compliance inspection of the Cream o' Weber Dairy, LLC facility located at 1658 S 4370 W, Salt Lake City, Utah to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. § 68 under § 112(r) of the Act. EPA found that the facility had violated regulations implementing § 112(r) 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).

SETTLEMENT

In consideration of Respondent's facility service size, 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 this ESA in order to settle the violations for the total penalty amount of \$840. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.

This settlement is subject to the following terms and conditions:

1. 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.
2. Respondent waives its rights to a hearing afforded by § 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA, and consents to EPA's approval of the ESA without further notice.
3. Each party to this action shall bear its own costs and attorney's fees, if any.
4. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent will correct the violations listed in the Checklist and Penalty Assessment no later than 60 days from the date the ESA is signed by the Respondent.

After the Regional Judicial Officer issues the Final Order, the Respondent will receive a fully executed copy of this ESA and the Final Order. Within twenty days (20) of receiving a signed Final Order, Respondent shall remit payment in the amount of \$840. 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:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfers:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727

ACH Transactions:

PNC Bank/Remittance Express
ABA: 051036706
Account Number: 310006
CTX Format, Transaction Code 22, checking

There is now an On Line Payment Option, available through the US Department of Treasury. This payment option can be accessed from the information below:

www.PAY.GOV

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

Tina Artemis, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8RC]
Denver, Colorado 80202-1129

and

David Cobb
EPCRA/RMP Enforcement Coordinator
US EPA, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

The penalty specified in this ESA shall not be deductible for purposes of State or Federal taxes.

Once Respondent receives a copy of the completely signed ESA, a copy of the Final Order issued by the Regional Judicial Officer in this matter, and Respondent pays in full the penalty assessment described above, then EPA agrees to take no further civil action against the Respondent for any violations of requirements contained in the Risk Management Plan Penalty Checklist that may have occurred on or before April 16, 2009. The EPA does not waive its right to take enforcement action for other violations of the Clean Air Act or for violations of any other statute.

If the signed original ESA is not returned to the EPA Region 8 office at the above address in correct form by the Respondent in a timely manner, the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

In addition, if Respondent fails to comply with the provisions of this ESA, by either 1) failing to timely submit the above-referenced payment or 2) by failing to correct the violations no later than 60 days from the date the ESA is signed by the Respondent, the Respondent agrees

that this agreement shall become null and void, and that EPA may file an administrative or civil enforcement action against Respondent for the violations addressed herein.

This ESA is binding on the parties signing below.

Cream o' Weber Dairy, LLC Expedited Settlement Agreement

FOR RESPONDENT: Gordon P. Cresce

CREAM O'WEBER DAIRY, LLC

Date: 10 JUNE 09

Name (print): GORDON P. CRESCCI

Title (print): QUALITY ASSURANCE MGR
Cream o' Weber Dairy, LLC

FOR COMPLAINANT:

Eddie A. Sierra

Date: 07/20/09

Eddie A. Sierra, Acting Assistant Regional Administrator
Office of Enforcement, Compliance and Environmental Justice

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

Facility Name: Cream o'Weber Dairy, LLC – Salt Lake City, Utah

INSPECTION DATE: 4/16/2009

SECTION A: MANAGEMENT [68.15]

PENALTY

Management [68.15 (a)]

Has the owner or operator developed a management system to oversee the implementation of the risk management program elements? **[68.15(a)] No. The facility does not have a management system in place which documents who/what position oversees specific elements of the risk management program.**

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Management [68.15(c)]

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)] No. The facility did not document who is responsible for implementing individual requirements of the plan. (This requirement pertains to who is responsible for completing the task, not who oversees the plan, or element of the plan.)**

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SECTION C: PREVENTION PROGRAM

Prevention Program – Operating Procedures [68.69]

Has the owner or operator developed and implemented written operating procedures that provide instructions or steps for conducting activities associated with each covered process (the ammonia system) consistent with the safety information? **[68.69(a)] No. The facility did not have a standard operating procedure (SOP) for the calibration of the ammonia sensors. A SOP should be developed and employees trained on a specific procedure. The SOP should have a reference (industry standards, manufacturer's recommendations, etc.) as to the frequency of the procedure and method. For the AS series detectors, Greer recommends testing every six months, calibrating annually, replacing batteries every two years.**

750

Prevention Program – Training [68.71]	
<p>Has refresher training been provided at least every three years, or more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process? [68.71(b)] No. Several employees did not have refresher training documented at least every three years.</p>	750
BASE PENALTY	\$2100



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

**EXPEDITED SETTLEMENT PENALTY MATRIX
Cream o'Weber Dairy, LLC**

MULTIPLIER FACTORS FOR CALCULATING PROPOSED PENALTIES FOR
VIOLATIONS FOUND DURING RMP INSPECTIONS

<i>(Amt of Chemical in process) x (Threshold Quantity)</i>		1-5*	5-10*	>10*
# of Employees	1-5	.1	.15	.3
	6-20	.15	.3	.4
	21-50	.3	.4	.6
	51-100	.4	.6	.7
	>100	.6	.7	1

*times the threshold quantity listed in CFR 68.130 for the particular chemical use in a process

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 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 21-50 employees and the row for 5- 10 times the threshold quantity amount gives a multiplier factor of 0.4. Therefore, the multiplier for XYZ Facility = 0.4.
- 2nd Use the Adjusted Penalty formula

Adjusted Penalty = \$4700 (Unadjusted Penalty) X 0.4 (Size-Threshold Multiplier)
Adjusted Penalty = \$1880
- 3rd An Adjusted Penalty of \$1880 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 – Cream o’Weber Dairy, LLC

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$840 = \$2,100 \times .4^*$$

* # of employees is 80. At least one covered chemical exceeds the listed threshold value by 1-5 times.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **CREAM o' WEBER DAIRY, LLC.**; **DOCKET NO.: CAA-08-2009-0028** was filed with the Regional Hearing Clerk on July 30, 2009.


Further, the undersigned certifies that a true and correct copy of the documents were delivered David Rochlin, Senior 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 requested and e-mailed on July 30, 2009, to:

Pete Crese
Cream o' Weber Dairy, LLC.
1658 S. 4370 W.
Salt Lake City, UT 84104

E-mailed to:

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

July 30, 2009


Tina Artemis
Paralegal/Regional Hearing Clerk

