

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

FILED

2012 SEP 26 AM 9: 58

DOCKET NO: CAA (112r)-09-2012-0020

U.S. EPA. REGION IX
REGIONAL HEARING CLERK

This ESA is issued to: Shamrock Distribution AS/RS Warehouse Distribution Center

For: Violation of Section 112(r)(7) of the Clean Air Act.
At: 2540 North 29th Avenue, Phoenix, AZ 85009

This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Jane Diamond, Superfund Director, and Shamrock Distribution AS/RS Warehouse Distribution Center ("Respondent") pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). EPA has obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

The respondent failed to:

1) *Initiate an incident investigation no later than 48 hours following an incident as required by Section 112(r)(7) of the Clean Air Act (the Act), and 40 C.F.R. §68.81(b).*

An incident involving a release occurred at the facility on March 27 2011; however, the facility did not begin their incident investigation until March 31, 2011. This was four (4) days after the incident occurred.

2) *Develop and implement an emergency response program for the purpose of protecting public health and the environment. Such a program shall include the following elements as required Section 112(r)(7) of the Act, and 40 C.F.R. §68.95(a)(i), §68.95(a)(ii), and §68.95(a)(iii):*

(a) Procedures for informing the public and local emergency response agencies about accidental releases;

(b) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; end

(c) Procedures and measures for emergency response after an accidental release of a regulated substance.

Facility personnel conducted response actions to control the release which occurred on March 27, 2011. This is defined as an emergency response action and indicates this facility is actually a responding facility, as defined in NFPA 471 and NFPA 1600. Responding facilities must develop, implement and train staff under an emergency response plan.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, and other factors as justice may require, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of \$2,850.

This settlement is subject to the following terms and conditions:

The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, 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 attorney's fees and costs, 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 above and have sent an **Online Payment through the Department of Treasury: WWW.PAY.GOV** (Enter SFO 1.1 in search field. Open form and complete required fields) or alternatively send a cashier's check or certified check (payable to the Treasurer, United States of America) in the amount of **\$2,850** in payment of the full penalty amount to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check or online payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment going to the Cincinnati Finance Center.

This original ESA and a copy of the check or online receipt must also be sent by certified mail to:

Angie Proboszcz (SFD-9-3)
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

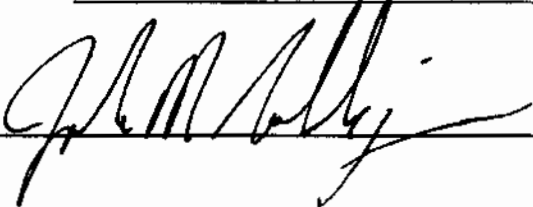
Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, 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 original ESA with an attached copy of the check is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 30 days of the date of Respondent's receipt of the proposed ESA, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT Shamrock Distribution AS/RS Warehouse Distribution Center

Signature: 

Date: 8-21-12

Name (print): John Colligan

Title (print): Facility Manager

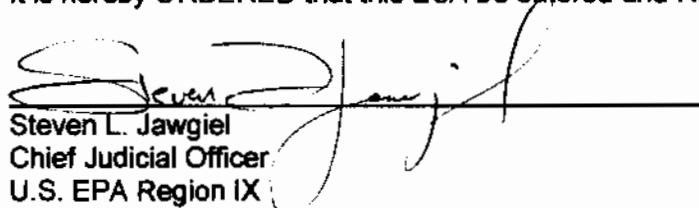
FOR COMPLAINANT:



Date: 9-13-12

For Jane Diamond
Superfund Director
U.S. EPA Region IX

It is hereby ORDERED that this ESA be entered and Respondent pays the above penalty.


Steven L. Jawgiel
Chief Judicial Officer
U.S. EPA Region IX

Date: 09/25/12

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of SHAMROCK DISTRIBUTION (Docket #: CAA(112r)-09-2012-0020) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

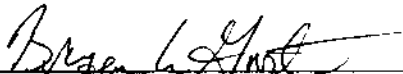
A copy was mailed via CERTIFIED MAIL to:

Mr. John Colligan
Facility Manager
Shamrock Distribution AS/RS Warehouse
2540 North 29th Avenue
Phoenix, AZ 85009

CERTIFIED MAIL NUMBER: 7011 0470 0002 9197 7395

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Thanne Cox, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/26/12

Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 9
75 Hawthorne Street, San Francisco, CA 94105

CERTIFIED MAIL NO: 7011 0470 0002 9197 7395
Return Receipt Requested

SEP 26 2012

Mr. John Colligan
Facility Manager
Shamrock Distribution AS/RS Warehouse Distribution Center
2540 North 29th Avenue
Phoenix, AZ 85009

Re: Shamrock Distribution AS/RS Warehouse Distribution Center
EPA Facility ID # 1000 0004 3106

Dear Mr. Colligan,

This letter transmits a copy of the fully executed Expedited Settlement Agreement that resolves the alleged violations of Clean Air Act (CAA) Section 112(r)(7) at Shamrock Distribution AS/RS Warehouse Distribution Center, 2540 North 29th Avenue, Phoenix, AZ 85009. The violations are for failure to:

1) *Initiate an incident investigation no later than 48 hours following an incident as required by Section 112(r)(7) of the Clean Air Act (the Act), and 40 C.F.R. §68.81(b).*

An incident involving a release occurred at the facility on March 27 2011; however, the facility did not begin their incident investigation until March 31, 2011. This was four (4) days after the incident occurred.

2) *Develop and implement an emergency response program for the purpose of protecting public health and the environment. Such a program shall include the following elements as required Section 112(r)(7) of the Act, and 40 C.F.R. §68.95(a)(i), §68.95(a)(ii), and §68.95(a)(iii):*

- (a) Procedures for informing the public and local emergency response agencies about accidental releases;*
- (b) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and*
- (c) Procedures and measures for emergency response after an accidental release of a regulated substance.*

Facility personnel conducted response actions to control the release which occurred on March 27, 2011. This is defined as an emergency response action and indicates this facility is actually a responding facility, as defined in National Fire Protection Association (NFPA) 471 and NFPA 1600. Responding facilities must develop, implement and train staff under an emergency response plan.

Thank you for your prompt attention to this matter. If you have any questions or need additional

information about the CAA Section 112(r)(7) requirements, please feel free to contact Angie Proboszcz of my staff at (415) 972-3077.

Sincerely,


Jane Diamond
Director, Superfund Division

Enclosures