

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

DOCKET NO: CAA (112r)-09-2018-0012

This ESA is issued to: Penske Logistics, LLC
33400 Dowe Avenue
Union City, CA 90810

** FILED **
26SEP2018 - 03:18PM
U.S.EPA - Region 09

For: Violation of Section 112(r)(7) of the Clean Air Act.
At: HPA - Union City, 33400 Dowe Avenue, Union City, CA 90810

This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Enrique Manzanilla, Superfund Director, and Penske Logistics, LLC ("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, 2 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

Following its August 23, 2017 inspection, EPA alleges Respondent's failure to:

1. Process Safety Information (PSI), 40 CFR § 68.65

(d) Information pertaining to the equipment in the process.

(2) The owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

During the Facility walk-through, the inspectors observed inadequate and inconsistent labeling of the process piping and equipment throughout the Engine Room and rooftop. The Facility labeling is not consistent with IIAR Bulletin 114 and ASME B31.3, which specify RAGAGEP for identification of ammonia piping and equipment conditions. In its June 18, 2018 letter to EPA, Penske stated that it agreed with this finding indicating that its first date of noncompliance was on October 16, 2017. Penske also indicated that they would have a contractor evaluate and document conformance with IIAR Bulletin 114.

2. Process Safety Information, 40 CFR § 68.65

(d) Information pertaining to the equipment in the process.

(3) For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

Management of Change Form, MOC Number: 02-17, was completed "to bring the existing compressor room up to current ventilation code requirements." The technical basis listed on the form and the attached ventilation calculations referenced the 2013 California Mechanical Code and the 2012 International Mechanical Code. These codes were revised in 2016 and 2015, respectively. At the time of the inspection, the Facility did not document that the ventilation system was designed at current standards. In its June 18, 2018 letter to EPA, Penske stated that it agreed with this finding indicating that its first date on noncompliance was of October 16, 2017. Penske also provided documentation (dated June 18, 2018) that the ventilation system was designed at current standards.

3. Pre-startup Review (PSSR), 40 CFR § 68.77

(b) The pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process: ...

Three pre-startup review forms were emailed to Penske by HP for the Entire System, Room 1 and 2 Evaporators, and Diffusion Tank on September 14, 2017. Based on copy of the PSSR forms provided by Penske, the PSSRs were initiated by HP representatives and subsequently signed by a Penske representative on September 18, 2017. The PSSR form states that two signatures are required to authorize "change and startup." On September 19, 2017, the facility process was charged with more than 10,000 pounds of ammonia and operations began. Penske did not document that the PSSR requirements were confirmed prior to system startup.

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 **\$2,700**.

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 has 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 has sent a cashier's check or certified check** (payable to the Treasurer, United States of America) in the amount of **\$2,700** 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 EPA 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 and EPA has not granted an extension of its offer to settle, 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 – Penske Logistics, LLC

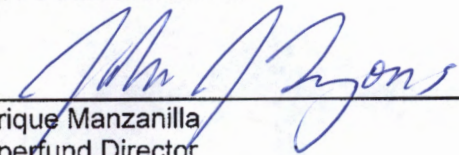
Signature:  _____

Date: 8/29/18

Name (print): ~~Clark Peterson~~ Chris Hawk

Title (print): Sr. Environmental Compliance Engineer
~~Manager – Area Facility Maintenance~~

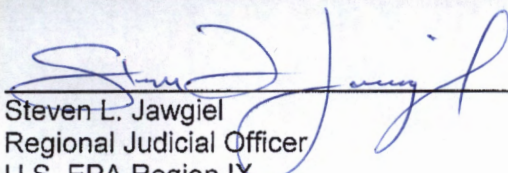
FOR COMPLAINANT:



Enrique Manzanilla
Superfund Director
U.S. EPA Region IX

Date: 9/14/18

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



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

Date: 09/26/18

CERTIFICATE OF SERVICE

This is to certify that a FINAL ORDER for the Consent Agreement and Final Order in the matter of Penske Logistics, LLC [Docket Number CAA(112R)-09-2018-0012], has been signed by the Regional Judicial Officer and has been filed with the Regional Hearing Clerk.

The Final Order has been served on Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:
(With Return Receipt)

Respondent -

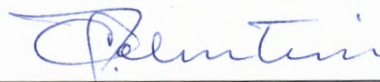
Mr. Chris Hawk
Sr. Environmental Compliance Engineer
Penske Logistics, LLC
33400 Dowe Avenue
Union City, CA 90810

HAND DELIVERED:

Complainant -
(By Counsel)

Andrew Helmlinger
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA. 94105

Dated at San Francisco, CA, 9/27, 2018;



FOR: Steven Armsey
Regional Hearing Clerk
EPA, Region 9