

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PA 19103-2029

**EXPEDITED PENALTY
ACTION AND
CONSENT AGREEMENT**
DOCKET NO. CAA-03-2016-0163

2016 SEP 21 AM 7:03

RESPONDENT

The C.I. Thornburg Company, Inc.
4034 Altizer Avenue
Huntington, WV 25722

FACILITY

The C.I. Thornburg, Co., Inc.
4034 Altizer Avenue
Huntington, WV 25722

On May 17, 2016, an authorized representative of the EPA conducted an inspection of the subject facility to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Clean Air Act (the Act or CAA). EPA found that the Respondent had violated regulations implementing Section 112(r) of the Act by failing to comply with the regulations, as more fully alleged in the attached RISK MANAGEMENT PROGRAM, INSPECTION FINDINGS, ALLEGED VIOLATIONS AND PROPOSED PENALTY SHEET (FORM), which is hereby incorporated by reference.

The parties enter into this Expedited Penalty Action and Consent Agreement ("Consent Agreement") to settle the civil violations set forth above for a penalty of **\$2,400**. This Consent Agreement commences and 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 (Consolidated Rules of Practice), 40 C.F.R. §22.13(b), and 22.18(b)(2), and (3). This Consent Agreement is being entered into by the United States Environmental Protection Agency, Region 3 (EPA), by its duly delegated official, the Director, Hazardous Site Cleanup Division, and by Respondent pursuant to Section 113(a)(3) and (d) of the Act, 42 U.S.C. §7413(a)(3) and (d).

The settlement is subject to the following terms and conditions.

The Respondent consents to the assessment of the penalty stated above. The settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the seriousness of the violations and the other factors provided in CAA Section 113(e)(1) and EPA's Combined Enforcement Policy for CAA Section 112(r) Risk Management Program dated June 20, 2012. The Respondent certifies that it has corrected the violations set forth in the Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet. The Respondent also certifies that, since its last Risk Management Plan update required pursuant to 40 C.F.R. §68.190, it has not done either of the following: (a) introduced a new regulated substance at the facility in an amount greater than its threshold quantity; or (b) introduced a new process which uses a regulated substance in an amount greater than its threshold quantity. Further, the Respondent agrees that it shall, within 15 calendar days of receipt of an executed copy of this Consent Agreement, make payment of **\$2,400** in one of the following forms: 1) Electronic Funds Transfer (EFT), 2) Automated Clearinghouse, 3) Pay.Gov, or 4) a cashier's check or certified check payable to the "US Environmental Protection Agency", with the Docket Number, located at the top right-hand corner of the Consent Agreement, and "Chemical Accident Prevention Provisions - 112(r)" referenced on the check.

1) Payment of the penalty amount by EFT to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: Environmental Protection Agency

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2) Payment of the penalty amount by Automated Clearinghouse (ACH) to EPA can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of US Treasury Facility:

5700 Rivertech Court
Riverdale, MD 20737

3) Payments made through Pay.gov: Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments. Follow these steps to make a payment:

- a) You **DO NOT** need a user name and password or account.
- b) Enter **SFO 1.1** in the form search box on the top left side of the screen.
- c) Open the form and follow the on-screen instructions.
- d) Select your type of payment from the "Type of Payment" drop down menu.
- e) Based on your selection, the corresponding line will open and no longer be shaded gray.
- f) Enter the docket number, invoice number or other corresponding information into the field.

4) Payment of the penalty amount by regular US Postal Service shall be sent via certified mail to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

4) Payment of the penalty amount by overnight mail (FedEx or other non-US Postal Service express mail) shall be sent to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Within 24 hours of payment of the EPA Penalty, Respondent shall also send proof of payment to:

Michael Welsh
RMP Coordinator
U.S. EPA, Region III (3HS61)
1650 Arch Street
Philadelphia, PA 19103-2029
EMAIL ADDRESS

Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029
guy.lydia@epa.gov

The term "proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "EPA Docket No. **CAA-03-2016-0163**."

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The payment made pursuant to this Consent 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 it as a tax deductible expenditure for purposes of federal, state or local law. This Consent Agreement resolves only the civil claims for the specific violations alleged in the attached Risk Management Program, Inspection Findings, Alleged Violations and Proposed Penalty Sheet. Furthermore, EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules. Further, EPA reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Agreement, following its filing with the Regional Hearing Clerk.

Respondent neither admits nor denies the allegations set forth in the attached Risk Management Program, Inspection Findings, Alleged Violations and Proposed Penalty Sheet, but admits that jurisdiction has been established for this Penalty Action. Also, upon EPA final approval of the Consent Agreement, Respondent expressly waives its right to contest the allegations, to a hearing under Section 113(d)(2)(A) of the Act, 42 U.S.C. §7413(d)(2)(A), and to appeal this Order under Section 113 (d)(4) of the Act, 42 U.S.C. §7413(d)(4). Moreover, in entering into this Consent Agreement, the Respondent agrees to bear its own costs and attorney's fees related to this Consent Agreement.

ACCEPT THE PROPOSED PENALTY

I/we consent to the proposed penalty.

DECLINE THE PROPOSED PENALTY

I/we decline the proposed penalty. If you choose to decline this proposed penalty, check the box. 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.

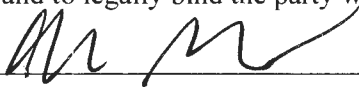
COST OF COMPLIANCE

Respondent certifies that it has expended \$4049.05 to correct the alleged violations and to come into compliance.

EFFECTIVE DATE

This Consent Agreement will be effective upon filing.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind the party whom he or she represents to this Consent Agreement.

Signature  Date: 9/6/2016

Name and Title (print) Allen Gibbs VP, Operations

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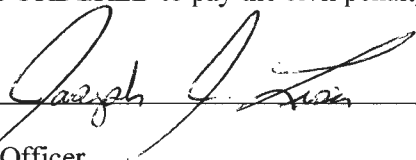
SIGNATURE BY COMPLAINANT:


Date: SEP 16 2016
Karen Melvin, Director
Hazardous Site Cleanup Division

FINAL ORDER

Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. §7413(d)(1), and in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, and having relied upon the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based on a consideration of the factors set forth in CAA Section §7413(e)(1) and EPA's Combined Enforcement Policy for CAA Section 112(r) Risk Management Program dated June 20, 2012.

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


Date: Sept. 20, 2016
Joseph J. Lisa
Regional Judicial Officer

**RISK MANAGEMENT PROGRAM, INSPECTION FINDINGS,
ALLEGED VIOLATIONS AND PROPOSED PENALTY SHEET (ENCLOSURE #2)
Program Level 3 Process Checklist**

Facility Name: The C.I. Thornburg, Co., Inc.

Subpart D – Program 3 Prevention Program [40 CFR 68.65 - 68.87]

1) Has the owner or operator documented that equipment complies with recognized and generally accepted good engineering practices in accordance with 40 CFR 68.65(d)(2)? Ventilation in the Chlorine and Sulfur Dioxide storage room was not installed in accordance with industry codes or standards.	No
2) Ensured the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience? [68.73(d)(3)] - Testing of Chlorine and Sulfur Dioxide detectors was not in accordance with manufacturer's recommendations.	No

Adjusted Penalty = Unadjusted Penalty X Multiplier

The Unadjusted Penalty is calculated by adding up all the penalties listed on the Risk Management Program, Alleged Violations and Proposed Penalty Sheet.

The service size (population)/multiplier are the factors that determine the adjusted penalty for government entities.

The Size-Threshold Quantity multiplier is a factor that considers the number of employees and how many times above the threshold quantity for private industry.

**RISK MANAGEMENT PROGRAM PENALTY WORKSHEET
(ENCLOSURE #2)**

Facility Name: The C.I. Thornburg, Co., Inc.

EXPEDITED SETTLEMENT PENALTY MATRIX

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

<u>Governmental Entities</u> (Primarily public drinking water and wastewater systems)			
Total Population Served	<u>1-5*</u>	<u>>5-10*</u>	<u>>10*</u>
1-10,000	<u>0.2</u>	<u>0.4</u>	<u>0.6</u>
10,001-100,000	<u>0.4</u>	<u>0.6</u>	<u>0.8</u>
>100,000	<u>0.6</u>	<u>0.8</u>	<u>1.0</u>

***Largest Multiple of Threshold Quantity of any Regulated Chemical(s) on Site.**

<u>Private Industries</u>			
# of Employees	<u>1-5*</u>	<u>>5-10*</u>	<u>>10*</u>
<u>0-9</u>	<u>0.4</u>	<u>0.6</u>	<u>0.8</u>
<u>10-100</u>	<u>0.6</u>	<u>0.8</u>	<u>1.0</u>
<u>>100</u>	<u>1.0</u>	<u>1.0</u>	<u>1.0</u>

The Proposed Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the total penalty with the multiplier using the service size (population) as a guide.

RISK MANAGEMENT PROGRAM PENALTY WORKSHEET
(ENCLOSURE #2-CONTINUED)

Facility Name: The C.I. Thornburg, Co., Inc.

PENALTY CALCULATION:

Calculation of Unadjusted Penalty

Violations	Penalty Value
1) The owner or operator has not documented that equipment complies with recognized and generally accepted good engineering practices. [68.65(d)(2)] Ventilation in the Chlorine and Sulfur Dioxide storage room was not installed in accordance with industry codes or standards.	\$1,500.00
2) The owner or operator has not insured that the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience? [68.73(d)(3)] - Testing of Chlorine and Sulfur Dioxide detectors was not in accordance with manufacturer's recommendations.	\$900.00
Total	\$2,400.00

After totaling the penalty numbers from the Program 3 Penalty Schedule for the specified violations, an unadjusted penalty of \$2,400.00 is derived.

Calculation of Adjusted Penalty

- Reference the multiplying factor table for a private industry (shown above) to calculate the adjusted penalty. The facility has 55 employees and has approximately 43,600 pounds of Chlorine in a process. Using the appropriate row and column a multiplier of 1.0 is determined.
- Use the Adjusted Penalty formula

Adjusted Penalty Calculation		
Unadjusted Penalty	X Multiplier	= Adjusted Penalty
\$2,400	1.0	\$2,400



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1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

2016 SEP 21 AM 7:03

DATE: 09/21/16

In the Matter of:)	EPA Docket No.:
The C.I. Thornburg, Co., Inc.)	CAA-03-2016-0163
P.O. Box 2163)	
Huntington, WV 25722)	
)	
Respondent,)	
)	Proceedings under Section
The C.I. Thornburg, Co., Inc.)	113(d)(1) of the Clean Air Act, 42
4034 Altizer Avenue)	U.S.C. § 7413(d)(1).
Huntington, WV, 25722)	
)	
Facility.)	
)	

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Complainant's, the United States Environmental Protection Agency's, Expedited Penalty Action and Consent Agreement ("Consent Agreement") with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement, were sent to:

Via Certified Mail, Return Receipt Requested

Allen Gibbs, V.P. of Operations
The C.I. Thornburg, Co., Inc.
P.O. Box 2163
Huntington, WV 25722

9/21/16
Date

Michael Welsh
Michael Welsh, P.E. (3HS61)