



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 7

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

**EXPEDITED SETTLEMENT  
AGREEMENT (ESA)**

07 OCT 10 AM 9:11

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**DOCKET NO:** CAA-07-2007-0042

**This ESA is issued to:** Creekstone Farms Premium Beef, LLC

**At:** 604 Goff Industrial Park Road, Arkansas City, Kansas 67005

**for violating Section 112(r)(7) of the Clean Air Act.**

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The United States Environmental Protection Agency, Region 7 (EPA) and Creekstone Farms Premium Beef, LLC, 604 Goff Industrial Park Road, Arkansas City, Kansas 67005 (Respondent), have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

The Complainant, by delegation of the Administrator of EPA, is the Director of the Air, RCRA and Toxics Division. The Respondent is Creekstone Farms Premium Beef, LLC, 604 Goff Industrial Park Road, Arkansas City, Kansas.

This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the total penalty exceeds \$270,000 or where the first alleged date of violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

**ALLEGED VIOLATIONS**

On April 26, 2006, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 604 Goff Industrial Park Road, Arkansas City, Kansas, 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 EPA found that the Respondent had violated regulations implementing Section 112(r) of the Clean Air Act by failing to comply with the regulations as noted on the enclosed Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet (RMP Findings), which is hereby incorporated by reference.

**SETTLEMENT**

In consideration of Respondent's size of business, 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 the ESA in order to settle the violations, described in the enclosed RMP Findings, for the total penalty amount of **\$1575.00**.

This settlement is subject to the following terms and conditions:

The Respondent by signing below waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained in herein and in the RMP Findings, 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 Clean Air Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own costs and fees, 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 in the enclosed RMP Findings and has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of **\$1575.00** in payment of the full penalty amount to the following address:

United States Environmental Protection Agency  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251.

The Docket Number of this ESA is CAA-07-2007-0042, and must be included on the check.

This original ESA, a copy of the completed RMP Findings, and a copy of the check must be sent by certified mail to:

Deanna Smith  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

A copy of the check must also be sent to:

Kathy M. Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

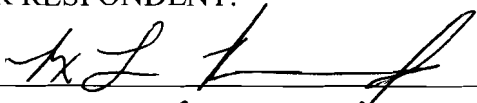
Upon Respondent's submission of the signed original ESA, EPA will take no further civil action against Respondent for the alleged violations of the Clean Air Act referenced in the RMP Findings. The EPA does not waive any other enforcement action for any other violations of the Clean Air Act or any other statute.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region 7 office at the above address in correct form by the Respondent within 45 days of the date of Respondent's receipt of it (90 days if an extension is granted), the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein and in the RMP Findings.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT:

  
Date: 09/04/07

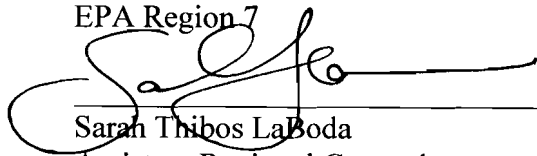
Name (print): Rex L. Komesburg Jr.

Title (print): Safety Manager  
Creekstone Farms Premium Beef, LLC

FOR COMPLAINANT:

  
Date: 9/27/07

Becky Weber  
Director  
Air, RCRA and Toxics Division  
EPA Region 7

  
Date: 9/17/07

Sarah Thibos LaBoda  
Assistant Regional Counsel  
EPA Region 7

I hereby ratify the ESA and incorporate it herein by reference. It is so ORDERED.

  
Date: 10/10/07

Karina Borromeo  
Regional Judicial Officer

## RMP INSPECTION FINDINGS

Creekstone Farms Premium Beef LLC  
604 W. Goff Industrial Park Road  
Arkansas City, Kansas 67005

CAA 112(r) Violations

### VIOLATIONS

### PENALTY AMOUNT

#### **Hazard Assessment – Offsite Consequence Analysis [68.22]**

**\$150.00**

1. The owner or operator failed to use appropriate surface roughness values for the release analysis. [68.22(e)]

How was this addressed: We had Terracon come survey and produce our topographical map to represent surface roughness.

#### **Prevention Program – Process Hazard Analysis [68.67]**

**\$750.00**

2. The owner or operator failed to perform an initial process hazard analysis. [68.67(a)]

How was this addressed: Creekstone Farms and McNeil Refrigeration performed a PHA and identified hazards.

#### **Prevention Program – Process Hazard Analysis [68.67]**

**\$750.00**

3. The owner or operator failed to establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions. [68.67(e)]

How was this addressed: We implemented a recommendation form which allows the employees to document recommendations, they are then entered on an action register with dates and status.

**Prevention Program – Operating Procedures [68.69]**

**\$600.00**

- 4. The owner or operator failed to certify annually that operating procedures are current and accurate. [68.69(c)]
  
- 5. The contract owner or operator failed to document that each contract employee has received and understood the training required by this section. The contract owner or operator failed to prepare a record which contained the identity of the contract employee, the date of training, and the means used to verify that the employee understood the training. [68.87(c)(3)]

How was this addressed: Every Contractor that works in our plant has gone through our contractor orientation and receive a written test.

**TOTAL**

**\$2250.00**

**Calculation of Adjusted Penalty**

**1st** Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for >100 employees and the row for 5-10 times the Threshold Quantity amount gives a multiplier factor of 0.7. Therefore, the multiplier for Creekstone Farms Premium Beef LLC = 0.7.

**2nd** Adjusted Penalty = \$22500.00 (Unadjusted Penalty) X .7 (Size-Threshold Multiplier)  
Adjusted Penalty = \$1575.00

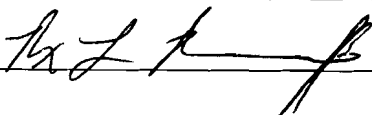
**3rd** An Adjusted Penalty of \$1575.00 would be assessed to Creekstone Farms Premium Beef LLC for Violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

**TOTAL ADJUSTED PENALTY**

**\$1575.00**

The approximate cost to correct the above items: \$ 80,000

Compliance staff name: Rex L. Romesburg Jr.

Signed:  Date: 09/04/07

IN THE MATTER OF Creekstone Farms Premium Beef, LLC, Respondent  
Docket No. CAA-07-2007-0042

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited Settlement Agreement (ESA) was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Sarah Thibos LaBoda  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Russell P. Wright  
Creekstone Farms Premium Beef, LLC  
604 Goff Industrial Park Road  
Arkansas City, Kansas 67005

Dated: 10/10/07

  
Kathy Robinson  
Hearing Clerk, Region 7