



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 APR 24 11:01

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

DOCKET NO.: CAA-08-2008-0016

IN THE MATTER OF:)	
)	
DPC INDUSTRIES)	FINAL ORDER
Billings, MT)	
)	
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 24th DAY OF April, 2008.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 APR 24 10:11 AM

IN THE MATTER OF:)	
)	EXPEDITED SETTLEMENT AGREEMENT
DPC Industries)	
Billings, Montana)	(COMBINED COMPLAINT AND
)	CONSENT AGREEMENT)
Respondent)	DOCKET NO. : CAA-08-2008-0016

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 DPC Industries ("Respondent") pursuant to sections 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 section 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 November 15, 2007, an authorized representative of EPA conducted a compliance inspection of the DPC Industries facility located at 41 Sugar Avenue, Billings, Montana, to determine compliance with the Risk Management Plan ("RMP") regulations promulgated at 40 C.F.R. part 68 under section 112(r) of the Act. EPA found that the facility had violated regulations implementing section 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 \$2400. 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 section 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 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 \$2400. 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

Cheryl Turcotte
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.

Upon Respondent's receipt of the signed ESA and Final Order by the Regional Judicial Officer and payment of the penalty as set forth in this ESA, EPA will take no further civil action against Respondent for the alleged violations of the Act referenced in the Risk Management Plan Penalty Checklist. 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.

DPC Industries Expedited Settlement Agreement

FOR RESPONDENT:

Joy Montanio

Date: 4/10/08

Name (print): Joy MONTANIO

Title (print): Environmental Affairs Manager
DPC Industries

FOR COMPLAINANT:

Acting Michael T. Braine
Assistant Regional Administrator
Office of Enforcement, Compliance and Environmental Justice

Date: 4/18/08

RMP PROGRAM LEVEL 3 PROCESS CHECKLIST
ALLEGED VIOLATIONS & PENALTY ASSESSMENT

Facility Name: DPC Industries – Billings, Montana

INSPECTION DATE: 11/15/2007

SECTION B: HAZARD ASSESSMENT - [68.20-68.42]

PENALTY

Hazard Assessment – Review and Update [68.36]

Has the owner or operator completed a revised off-site consequence analysis (OCA) and submitted a revised RMP within six months of a change in processes, quantities stored or handled, or any other aspect that might reasonably be expected to increase or decrease the distance to the endpoint by a factor of two or more [68.36(b)]? **No. The OCA was not revised as required after a process change that changed worst case scenario.**

5000

SECTION H: RISK MANAGEMENT PLAN [68.190-68.195]

Has the owner or operator reviewed and updated the RMP and submitted it to EPA within six months of a change requiring a revised PHA or hazard review [68.190(b)(5)] ? **No. A process change at the facility (removal of chlorine railcars) required that a new PHA be conducted. The new PHA was conducted but the RMP was not updated within six months of the revision.**

3000

BASE PENALTY

\$8000

Recommendations:

The facility should have NRC, SERC, and LEPC contact information available in one location in the facility incident response plan (and any other locations that may be helpful). The facility did list the numbers individually in two different facility response manuals but the contacts and numbers were not listed collectively anywhere. Since it would be a potential violation under EPCRA 304 and CERCLA 103 for failure to report within 15 minutes of knowledge of having a reportable release, the employees should have ready access to what type of release would be reportable and what numbers to call in the case of a reportable event.

Although the PHA contained all the required elements, some of the items under the “no packaging processes at this facility” sections appear to apply to past chlorine storage. It is recommended that the PHA be re-checked for accuracy and, if accurate, the checklist items that do not apply should be removed for clarification purposes.



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX
DPC Industries – Billings, MT

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

<i>(Amt of Chemical in process)</i> <i>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 – DPC Industries

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$2,400 = \$8,000 \times .3^*$$

* # of employees is 2. At least one covered chemical exceeds the listed threshold value by ten times.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **DPC INDUSTRIES; DOCKET NO.: CAA-08-2008-0016** was filed with the Regional Hearing Clerk on April 24, 2008.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to 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 on April 24, 2008, to:

Joy Montanio
DPC Industries, Inc.
PO Box 24600
Houston, Texas 77229-4600

E-mailed to:

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

April 24, 2008


Tina Artemis
Paralegal/Regional Hearing Clerk

