



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**EXPEDITED SETTLEMENT AGREEMENT (ESA)**

**DOCKET NO.:** CAA-07-2008-0003

**This ESA is issued to:** Marzetti Frozen Pasta, Inc.

**At:** 803 8<sup>th</sup> Street SW, Altoona, Iowa 50009

**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 Marzetti Frozen Pasta, Inc., 803 8<sup>th</sup> Street SW, Altoona, Iowa 50009 (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, and Waste Management Division. The Respondent Marzetti Frozen Pasta, Inc., 803 8<sup>th</sup> Street SW, Altoona, Iowa 50009.

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 February 21, 2007, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 803 8<sup>th</sup> Street SW, Altoona, Iowa, 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 **\$630.00**.

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 **\$630.00** in payment of the full penalty amount to the following address:

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

The Docket Number of this ESA is CAA-07-2008-0003, 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:

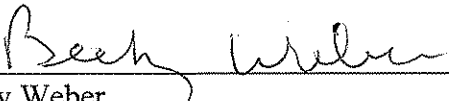
Ferry L. Warren

Date: 11-27-07


Name (print): FERRY L. WARREN

Title (print): VP OPERATIONS  
Marzetti Frozen Pasta, Inc.

FOR COMPLAINANT:

  
\_\_\_\_\_  
Becky Weber  
Director  
Air and Waste Management Division  
EPA Region 7

Date: 12/26/07

  
\_\_\_\_\_  
Sarah Thibos LaBoda  
Assistant Regional Counsel  
EPA Region 7

Date: 12/7/07

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

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

Date: Jan. 3, 2008

## Risk Management Program Inspection Findings

Marzetti Frozen Pasta, Inc.  
803 8<sup>th</sup> Street SW  
Altoona, Iowa 50009

### CAA § 112(r) Violations

#### VIOLATIONS

#### PENALTY AMOUNT

##### Prevention Program

##### Operating procedures [68.69]

\$600.00

The owner or operator shall certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary. [§ 68.69 (c)]

How was this addressed: ANNUAL REVIEW OF STANDARD OPERATING PROCEDURES COMPLETED 10/27 BY MAINT. MANAGER - DOCUMENTED IN SOP MANUAL OF

*PSM/RMP*

##### Prevention Program

##### Compliance audits [68.79]

\$300.00

The owner or operator shall certify that they have evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed. [§ 68.79(a)]

How was this addressed: THIS ITEM WAS ADDRESSED WITH AN UPDATED PSM/RMP IN OCTOBER OF 2006. NEXT SCHEDULED UPDATE OCT. 2009.

##### Total Penalty

\$900.00

##### Calculation of Adjusted Penalty

- 1<sup>st</sup> Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for private industry 5-10 times the threshold quantity and greater than 100 employees gives a multiplier factor of 0.7. Therefore, the multiplier for Marzetti Frozen Pasta, Inc. = 0.7.
- 2<sup>nd</sup> Adjusted Penalty = \$900 (Unadjusted Penalty) X 0.7 (Size-Threshold Multiplier)  
Adjusted Penalty = \$630.
- 3<sup>rd</sup> An Adjusted Penalty of \$630 would be assessed to Marzetti Frozen Pasta, Inc., for violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

##### Total Adjusted Penalty

\$630.00

IN THE MATTER OF Marzetti Frozen Pasta, Inc., Respondent  
Docket No. CAA-07-2008-0003

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:

Mr. Terry Warren  
Marzetti Frozen Pasta, Inc.  
803 8th Street SW  
Altoona, Iowa 50009

Dated: 1/31/08

  
Kathy Robinson  
Hearing Clerk, Region 7