



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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DENVER, CO 80202-1129
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2010 JUL 26 PM 12:09

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2010-0012

IN THE MATTER OF:)	
)	
JBS SWIFT LAMB COMPANY)	FINAL ORDER
Greeley, CO)	
)	
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 Settlement Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 26th DAY OF July, 2010.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 JUL 26 PM 12: 09

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
JBS Swift Lamb Company) **EXPEDITED SETTLEMENT AGREEMENT**
Greeley, Colorado)
) (COMBINED COMPLAINT AND
) (CONSENT AGREEMENT)
Respondent) **DOCKET NO: CAA-08-2010-0012**

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 the JBS Swift Lamb Company (Respondent) pursuant to § 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). The EPA and the U.S. Department of Justice have determined, pursuant to § 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that the EPA may pursue this type of case through administrative enforcement action.

ALLEGED VIOLATIONS

On November 19, 2009, an authorized representative of the EPA conducted a compliance inspection of the JBS Swift Lamb Company facility, located at 920 North 7th Avenue in Greeley, Colorado to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under § 112(r) of the Act. The EPA found that the facility had violated regulations implementing § 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 \$1995. 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 § 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA, and consents to the EPA's approval of the ESA without further notice.
3. Each party to this action shall bear its own costs and attorney's 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 \$1995. **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

David Cobb
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.

Once Respondent receives a copy of the completely signed ESA, a copy of the Final Order issued by the Regional Judicial Officer in this matter, and Respondent pays in full the penalty assessment described above, then the EPA agrees to take no further civil action against the Respondent for any violations of requirements contained in the Risk Management Plan Penalty Checklist that may have occurred on or before November 19, 2009. The 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 Respondent fails to return the signed original ESA by the stated deadline, fails to timely submit the above-referenced payment, or fails to correct the violations no later than 60 days from the date the ESA is signed, a motion will be filed to withdraw the consent agreement and final order. EPA may then file an administrative or civil enforcement action against Respondent for the violations addressed herein.

This ESA is binding on the parties signing below.

JBS Swift Lamb Company Expedited Settlement Agreement

FOR RESPONDENT:

M J Dooley

Date: 7/2/10

Name (print): MARTIN J. DOOLEY

Title (print): PRES

JBS Swift Lamb Company

FOR COMPLAINANT:

for Michael T. Bisner

Date: 7/21/10

Andrew M. Gaydosh, Assistant Regional Administrator
Office of Enforcement, Compliance and Environmental Justice

RMP PROGRAM LEVEL 3 PROCESS CHECKLIST
ALLEGED VIOLATIONS & PENALTY ASSESSMENT

Facility Name: JBS Swift Lamb Company - Greeley, Colorado

INSPECTION DATE: 11/18/09

SECTION D: PREVENTION PROGRAM

PENALTY

Prevention Program – Process Hazard Analysis [68.67]

Has the owner or operator established a system to promptly address the team’s findings and recommendations; assured that the recommendations are resolved in a timely manner and documented; documented what actions are to be taken; completed actions as soon as possible; developed a written schedule of when these actions are to be completed; and communicated the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations? [68.67(e)] **No.**

- **No specific personnel were assigned to complete the recommendations in the PHA.**
- **Completion dates for recommendations were not specified.**

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Prevention Program – Mechanical Integrity [68.73]

Has the owner or operator established and implemented written procedures to maintain the on-going integrity of the process equipment listed in 68.73(a)? [68.73(b)] **No.**

- **There was no written procedure for dealing with scale on condensers and on pipes in vicinity of condensers.**
- **Corrosion was not addressed according to industry standards. There was no procedure for determining when to test for corrosion.**

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Has the owner or operator performed adequate checks and inspections to assure that equipment was installed properly and consistent with design specifications and the manufacturer’s instructions? [68.73(f)(2)] **No.**

- **Brackets which supported pressure relief line on upper south wall of machine room were removed. Brackets have not been replaced. Brackets should be replaced so that support of line is in compliance with ANSI/IIAR standards.**
- **Facility should provide calculations which show that single exhaust fan in engine room is adequate for emergency ventilation of engine room.**

450

Prevention Program – Compliance Audits [68.79]	
<p>Has the owner or operator promptly determined and documented an appropriate response to each of the findings of the audit and documented that deficiencies had been corrected? [68.79(d)] No.</p> <ul style="list-style-type: none"> • Personnel was not assigned to complete recommendations. Completion dates for recommendations were not assigned. • According to one compliance audit there were “no findings”. Compliance audit process may be too perfunctory. 	150
<p>Has the owner or operator retained the two most recent compliance audits? [68.79(e)] No. The 2005 Compliance Audit was not provided.</p>	150
SECTION E – EMERGENCY RESPONSE [68.90 – 68.95]	
<p>Does the emergency response plan contain procedures for the use of emergency response equipment and for its inspection, testing, and maintenance? [68.95(a)(2)] No. Documentation was not provided to confirm that testing of Type A suits was per regulations.</p>	600
BASE PENALTY	\$2850

RECOMMENDATIONS
<p>Document the Inspections of Chlorine Hoist: List the items checked and frequency of each test (Include in the log book for daily visual walk-through and/or develop check list for operators).</p>



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX
JBS Swift Lamb Company

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

$$\begin{aligned} \text{Adjusted Penalty} &= \$4700 \text{ (Unadjusted Penalty)} \times 0.4 \text{ (Size-Threshold Multiplier)} \\ \text{Adjusted Penalty} &= \$1880 \end{aligned}$$

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 – JBS Swift Lamb Company.**Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier**

$$\$1995 = \$2850 \times .7^*$$

* # of employees is 143. At least one covered chemical exceeds the listed threshold value by 5-10 times.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **JBS SWIFT LAMB COMPANY; DOCKET NO.: CAA-08-2010-0012**. The documents were filed with the Regional Hearing Clerk on July 26, 2010.

Further, the undersigned certifies that a true and correct copy of the documents were delivered David J. Janik, 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 July 26, 2010.

Rick Fulton, Supervisor
JBS Swift & Company
920 North 7th Avenue
Greeley, CO 80632-1480

E-mailed to:

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

July 26, 2010


Tina Artemis
Paralegal/Regional Hearing Clerk

