

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2011 MAR 22 PM 12:22

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2011-0008

IN THE MATTER OF:

AMERICAN PACIFIC CORPORATION

Cedar City, UT

RESPONDENT

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)

FINAL ORDER

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 Fina Order.

SO ORDERED THIS 22nd DAY OF March, 2011.



Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2011 MAR 22 PM 12: 22

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
American Pacific Corporation)
 Cedar City, Utah)
)
)
Respondent)
_____)

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

DOCKET NO. : CAA-08-2011-0008

1. 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.
2. 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 American Pacific Corporation (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

3. On September 14, 2010, an authorized representative of the EPA conducted a compliance inspection of the American Pacific Corporation facility, located at 10622 West 6400 North in Cedar City, Utah, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under § 112(r)(7) of the Act. The EPA found that the facility had violated regulations implementing § 112(r)(7) 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

4. 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 **\$2,250**. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.

5. This settlement is subject to the following terms and conditions:
- A. 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.
 - B. 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.
 - C. Each party to this action shall bear its own costs and attorney's fees, if any.
 - D. 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.
 - E. If the undersigned is a representative of the Respondent, he/she certifies that he/she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement and to bind the parties he/she represents to the terms and conditions of this Complaint and Consent Agreement.
 - F. Nothing in this Complaint and Consent Agreement shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
6. 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 \$2,250. **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
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727
Environmental Protection Agency "

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

7. Respondent agrees that it shall never claim or use the penalty described above as a federal or other tax deduction or credit.
8. 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, corrects all violations listed in the ESA, and 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 Checklist and Penalty Assessment that may have occurred on or before September 14, 2010.

9. 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.

10.

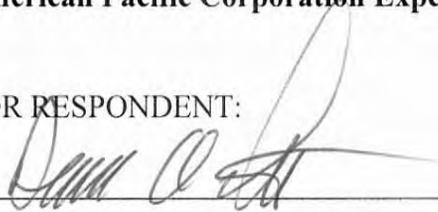
If the signed original ESA is not returned to the EPA Region 8 office at the above address in correct form by the Respondent in a timely manner, the proposed ESA is withdrawn, without prejudice to the EPA's ability to file an enforcement action for the violations identified herein.

11. 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:

American Pacific Corporation Expedited Settlement Agreement

FOR RESPONDENT:

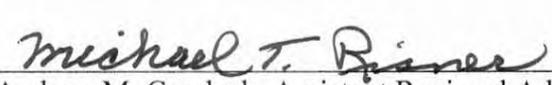


Date: 3/11/11

Name (print): DAVE A THAYER

Title (print): V.P. GENERAL MANAGER
American Pacific Corporation

FOR COMPLAINANT:


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

Date: 3/18/11

**RMP PROGRAM LEVEL 3 PROCESS CHECKLIST
ALLEGED VIOLATIONS & PENALTY ASSESSMENT**

Facility Name: American Pacific Corporation - Cedar City, Utah

INSPECTION DATE: 9/14/10

SUBPART D: PREVENTION PROGRAM [68.65-68.87]

PENALTY

Prevention Program – Training [68.71]

Has the owner or operator trained each employee in an overview of the process and in the operating procedures as specified in § 68.69? This training shall include an emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks. The owner or operator shall maintain training documentation as required by § 68.71(c). **[68.71(a)(1)]: No. Training documentation was not available for review to confirm proper initial training has been provided to each employee.**

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Has the owner or operator provided refresher training, at least every three years, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process? The owner or operator shall maintain training documentation as required by § 68.71(c)? **[68.71(b)]: No. Training documentation was not available for review to confirm proper refresher training has been provided to each employee.**

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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.**

- **Written procedures to maintain the integrity of pressure vessels and process piping were not available for review during the inspection.**
- **Testing had not been performed on ammonia piping.**
- **UT testing had been performed in the past but the data was not analyzed in accordance with recognized and generally accepted good engineering practices (RAGAGEP).**

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- | | |
|--|--|
| <ul style="list-style-type: none">▪ AMPAC personnel indicated that thickness monitoring locations (TMLs) have just been established on pressure vessels because the previous ones were painted over. | |
|--|--|

	BASE PENALTY
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	\$2,250
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX
American Pacific Corporation

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 – American Pacific Corporation

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$2250 = \$2250 \times 1^*$$

* # of employees is 153. At least one covered chemical exceeds the listed threshold value by 10 times.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT, CONSENT AGREEMENT and FINAL ORDER** in the matter of **AMERICAN PACIFIC CORP.; DOCKET NO.: CAA-08-2011-0008** was filed with the Regional Hearing Clerk on March 22, 2011.

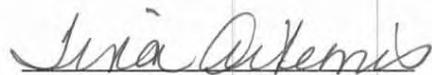
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Dana Stotsky, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on March 22, 2011 to:

David Thayer, Vice President
American Pacific Corp.
10622 West 6400 North
Cedar City, UT 84721

E-mailed to:

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

March 22, 2011



Tina Artemis
Paralegal/Regional Hearing Clerk

