

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 SEP 17 PM 1:48

IN THE MATTER OF:)

Sinton Dairy Foods Company, LLC)
Colorado Springs, Colorado)

Respondent)

DOCKET # CAA-08-2014-0011

EXPEDITED SETTLEMENT AGREEMENT

(COMBINED COMPLAINT AND
CONSENT AGREEMENT)

FILED
EPA REGION VIII
HEARING CLERK

AUTHORITY

1. This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA), intended to simultaneously commence and conclude this matter, 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 Sinton Dairy Foods Company, LLC (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) and 22.18. The 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 the EPA may pursue this type of case through administrative enforcement.

RESPONDENT

2. The Respondent is a Colorado limited liability company that does business in the State of Colorado.
3. The Respondent is a "person" under section 302(e) of the Act. 42 U.S.C. § 7602(e).

ALLEGED VIOLATIONS

4. On December 3, 2013, an authorized representative of the EPA conducted a compliance inspection of Respondent's facility located at 3801 Sinton Road, Colorado Springs, Colorado, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under section 112(r)(7) of the Act. The EPA found that the Respondent had violated regulations implementing section 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). The Checklist and Penalty Assessment is incorporated into this ESA.

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SETTLEMENT

5. In consideration of the factors contained in section 113(d)(1) of the Act and the entire record, the parties enter into this ESA in order to settle the violations for the total penalty amount of \$7,200. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.
6. 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. The 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.
 - c. Each party to this action shall bear its own cost and attorney fees, if any.
 - d. The Respondent certifies that the violations listed in the Checklist and Penalty Assessment have been corrected.
 - e. The Respondent waives any and all available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this ESA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
7. After the Final Order is issued by the Regional Judicial Officer, a fully executed copy of this ESA and the Final Order will be sent to the Respondent. Within twenty (20) days after receiving the Final Order, the Respondent shall remit payment in the amount of \$7,200. **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:

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

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Federal Express, Airborne, or other commercial carrier
(or when a physical address is required):

US Bank
U.S. EPA Fines & Penalties
Government Lockbox 979078
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
(314) 418-4087

Wire Transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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 (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact - Jesse White 301-887 6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account Number: 310006
CTX Format.

There is now an On Line Payment Option, available through the U.S. Department of Treasury. This payment option can be accessed from the information below:

www. PAY.GOV
(Enter sfo 1.1 in the search field
Open form and complete required fields)

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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
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

8. The penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
9. Once the Respondent receives a copy of the Final Order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against the Respondent for the violations alleged in the Checklist and Penalty Assessment, which has been incorporated herein.
10. This ESA does not pertain to any matters other than those expressly specified herein. The EPA reserves and this ESA is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to, the following:
 - a. claims based on a failure by the Respondent to meet a requirement of this ESA including any claims for costs which are caused by the Respondent's failure to comply with this Agreement;
 - b. claims based on criminal liability; and
 - c. claims based on any other violations of the Act or federal or state law.
11. If the Respondent fails to timely submit the above-referenced payment after receiving the Final Order, a motion may be filed to withdraw the ESA and Final Order. If that motion is granted, the EPA may then file an enforcement action against the Respondent for the violations addressed herein.
12. This ESA, upon incorporation into the Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this ESA. This ESA contains all terms of the settlement agreed to by parties.


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- 13. Nothing in this ESA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
- 14. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind the Respondent to the terms and condition of this ESA.
- 15. The parties agree to submit this ESA to the Regional Judicial Officer with a request that it be incorporated into a final order.

For Respondent Sinton Dairy Foods Company, LLC:


Date: 9-2-14
Name (print): MICHAEL MALONEY
Title (print): PLANT MANAGER

For Complainant United States Environmental Protection Agency, Region 8:


Date: SEP 17 2014
Suzanne J. Bohan
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 WASHINGTON, D.C. 20460
 OFFICE OF
 ENFORCEMENT AND
 COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX
 Sinton Dairy Foods Company, LLC
 Colorado Springs, CO

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

Private Industries

| # of Employees | 1 – 5* | >5 – 10* | > 10* |
|----------------|--------|----------|-------|
| 0 – 9 | 0.4 | 0.6 | 0.8 |
| 10 – 100 | 0.6 | 0.8 | 1.0 |
| > 100 | 1.0 | 1.0 | 1.0 |

* Largest Multiple of Threshold Quantity of any Regulated Chemical(s) on Site.

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 is a private company which 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 10-100 employees and the row for >5-10 times the threshold quantity amount gives a multiplier factor of 0.8.
- 2nd Use the Adjusted Penalty formula
- $$\text{Adjusted Penalty} = \$4700 (\text{Unadjusted Penalty}) \times 0.8 (\text{Size-Threshold Multiplier})$$
- $$\text{Adjusted Penalty} = \$3760$$
- 3rd An Adjusted Penalty of \$3760 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 – Sinton Dairy Foods Company

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$7,200 = \$7,200 \times 1^*$$

* # of employees is 192. The covered chemical, Anhydrous Ammonia, exceeds the listed threshold value by 1.9 times

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

Respondent: Sinton Dairy Foods Company, LLC (SDF)
Facility Name: Sinton Dairy Foods Company - Colorado Springs, Colorado

INSPECTION DATE: 12/3/13

SUBPART D: PREVENTION PROGRAM [40 CFR 68.65 – 68.87]

PENALTY

Prevention Program – Safety Information [68.65]

Has the owner or operator documented that equipment complies with recognized and generally accepted good engineering practices? [68.65(d)(2)] No.

1,500

- **The roof-top piping had many sections where the pipe labels were illegible or missing.**
- **All of the machinery (compressor) room doors did not open outward and were not equipped with panic type hardware.**
- **Production employees walk through the machinery room to access production areas from the office and break room area. During the inspection, the EPA observed several SDF employees who are not involved in operating the ammonia refrigeration process walk through the machinery room.**
- **ANSI/IIAR Standard 2-2008 Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems**
 - **Section 10.5 Pipe Marking: “All piping mains, headers and branches shall be identified as to the physical state of the refrigerant, the relative pressure level of the refrigerant, and the direction of flow.” Note: See IIAR Bulletin 114.**
 - **Section 13.3.3 Access and Egress: “Machinery rooms shall have tight fitting doors which open outward and are provided with panic type hardware.”**
 - **Section 13.1.1.7 Room layout design: “Access to the machinery room shall be restricted to authorized personnel.”**

| Prevention Program – Training [68.71] | |
|--|--------------|
| <p>Has the owner or operator provided refresher training at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process? [68.71 (b)]: No.</p> <ul style="list-style-type: none"> • There are no records that refresher training has been provided at least every three years, or more often if necessary. | 1,500 |
| <p>Has the owner or operator ascertained and documented in record that each employee involved in operating a process has received and understood the training required? [68.71 (c)]: No.</p> <ul style="list-style-type: none"> • There are no records that the employees operating the process received or understood training on the operating procedures. | 600 |
| <p>Does the prepared record contain the identity of the employee, the date of training, and the means used to verify that the employee understood the training? [68.71 (c)] No.</p> <ul style="list-style-type: none"> • This was a finding in the 2009 and 2012 compliance audits. This is still an open item from the 2012 audit. The finding from the 2009 audit was marked closed but SDF could not produce the supporting documents used to close the finding. | 600 |
| Prevention Program – Mechanical Integrity [68.73] | |
| <p>1. Has the owner or operator ensured that inspection and testing procedures follow recognized and generally accepted good engineering practices? (RAGAGEP) [68.73(d)(2)]: No.</p> <ul style="list-style-type: none"> • SDF does not inspect or test the Shut-off Valves or Control Valves of the ammonia refrigeration system. • During the inspection, the EPA observed several areas of piping with sections missing from the aluminum jacket and vapor retarder leaving the inner insulation exposed to the elements. This can lead to corrosion of the piping and possible release of ammonia. • IIAR Bulletin 110 (Revised 3/02) <u>Guidelines for: Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems</u> <ul style="list-style-type: none"> ▪ Section 6.6.1 Shut-off Valves: “Every six months, for valves with exposed stems, the condition of the stem and of the gland seal should be inspected and the stem cleaned and regreased. . . Externally inspect valves annually. . . Test all shut-off valves for function every five years.” | 900 |

- **Section 6.6.2 Control Valves: “Valves which are automatically controlled should be tested annually for correct function.”**
- **Section 6.7.2 Insulated Piping: “Any mechanical damage to insulation should be repaired immediately. Sections of insulation which are obviously in poor condition shall be removed and the integrity of the exposed piping determined with the aid of non-destructive testing techniques, as appropriate. Piping shall be replaced as necessary, and protective coatings, insulation and vapor seal re-applied.”**

Has the owner or operator documented each inspection and test that has been performed on process equipment? Does the documentation identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or identifier of the equipment, a description of the inspection or test performed, and the results of the inspection or test?

[68.73(d)(4)]: No

- **The only documentation SDF was able to produce for inspections that occurred prior to 2012 was a Mechanical Integrity Audit performed by Rocky Mountain Mechanical Systems (RMMS) in April 2009. SDF used MP2, a computerized maintenance management system, prior to 2012. Jim Muth stated SDF has not been able to access records in MP2 since a former employee left the company and could not verify what inspections were performed on the process equipment.**
- **Starting in January 2012, the maintenance personnel started using a monthly “Ammonia System Integrity Checklist” with a list of designated maintenance or inspection tasks and checkboxes to fill out with initials, date and if task was completed. The “Ammonia System Integrity Checklist” used by SDF in 2012- 2014 does not include the identifier of the equipment. This is especially problematic when the inspection tasks refer to a broad category of equipment. For example:**
 - **The July 2012 checklist includes the task “Inspect pipe insulation, brackets and hangers”**
 - **The November 2012 checklist includes the task “Vessel Testing”****Without including which vessels were tested or which piping section was inspected, it is difficult to verify that every vessel and piping section was actually inspected. This could lead to inadvertent gaps in maintaining the mechanical integrity of the process equipment.**
- **The “Ammonia System Integrity Checklist” used by SDF in 2012- 2014 does not include the results of the inspection or test.**

Has the owner or operator corrected deficiencies in equipment that were outside acceptable limits defined by the process safety information before further use or in a safe and timely manner when necessary means are taken to assure safe operation? **[68.73(e)]: No.**

900

900

| | |
|---|---|
| <ul style="list-style-type: none"> • Five ammonia detection sensors at SDF have not functioned properly since 3/11/2013. The five sensors are located in the compressor room, rack vault, hallway, main vault and ice cream vault. The 2013 quarterly bump tests performed by RMMS documented the ammonia sensors did not give a proper response. The semi-annual ammonia sensor calibration tests performed by RMMS on 11/25/13 also showed deficiencies in the same 5 sensors. There was a note written by the technician that stated, "Ammonia sensor system does not work. System out of date and can't get parts." | |
| 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 compliance audit, and documented that deficiencies have been corrected? [68.79(d)]: No</p> <ul style="list-style-type: none"> • The September 1-3, 2009 CA still had three findings open in 2013, closing one of them on June 10, 2013. • The September 4-5, 2012 CA has seven findings open as of September 20, 2013. | <p style="text-align: center;">300</p> |
| <p style="text-align: right;">BASE PENALTY</p> | <p style="text-align: center;">\$7,200</p> |