



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

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EPA -- REGION 10

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA-10-2016-0065
This ESA is issued to: Jim's Fertilizer
690 West Main Street
Pomeroy, Washington 99347

This Expedited Settlement Agreement (ESA) is being entered into by the Complainant, U.S. Environmental Protection Agency Region 10 (EPA), and by Respondent pursuant to Section 113(a)(3) and (d) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). On October 14, 2014, EPA obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

EPA found that Respondent had violated regulations implementing Section 112(r) of the Act at 40 C.F.R. Part 68 by failing to comply with the regulations as noted on the enclosed Risk Management Plan Inspection Findings and Alleged Violations Summary, 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 Summary for the total penalty amount of \$2,080.

This settlement is subject to the following terms and conditions:

Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained herein and in the Summary, 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 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 Respondent has corrected the violations listed in the enclosed Summaries and has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$2,080 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, MO 63197-9000

The docket number of the ESA must be included on the check. (The docket number is located at the top of this ESA.)

This original ESA and a copy of the check must be sent by certified mail to:

Javier Morales, 112(r) Enforcement Coordinator
Office of Compliance and Enforcement
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop: OCE-101
Seattle, Washington 98101

Upon Respondent's submission of the signed original ESA, EPA will take no further civil action against Respondent for the alleged violations of the Act referenced in the Summary. EPA does not waive its right to 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 at the above address by 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 Summary.

This ESA is binding on the parties signing below.

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT:

Signature: Jim McKernan
Name (print): Jim McKernan
Title (print): owner
Cost to correct violation(s): 15,000.00

Date: 6/8/16

FOR COMPLAINANT:

Edward J. Kowalski
Edward J. Kowalski
Director
Office of Compliance and Enforcement

Date: 6/13/2016

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

M. Socorro Rodriguez
M. Socorro Rodriguez
Regional Judicial Officer

Date: 6/14/16



U.S. ENVIRONMENTAL PROTECTION AGENCY

Risk Management Program Inspection Findings and Alleged Violations Summary
Region 10

REASON FOR INSPECTION: This inspection is for the purpose of determining compliance with Section 112(r)(7) accidental release prevention requirements of the Clean Air Act, as amended 1990. The scope of this inspection may include, but is not limited to: reviewing and obtaining copies of documents and records; interviews and taking of statements; reviewing of chemical storage, handling, processing, and use; taking samples and photographs; and any other inspection activities necessary to determine compliance with the Act.

Facility Name: Jims Fertilizer
Facility Location: 690 W Main Street, Pomeroy, WA 99347
Mailing Address: 690 W Main Street, Pomeroy, WA 99347
Responsible Official: Jim McKeirnan, Owner
Inspector Name: Bob Hales, Peter Phillips, Terry Garcia
Inspector Signature: [Handwritten Signature]
Date: 3-1-15

INSPECTION FINDINGS

IS FACILITY SUBJECT TO RMP REGULATION (40 CFR 68)? [X] YES [] NO
DID FACILITY SUBMIT AN RMP AS PROVIDED IN 68.150 TO 68.185? [X] YES [] NO
DATE RMP FILED WITH EPA: 6/17/1999
DATE OF LATEST RMP UPDATE: 5/9/2011
1) PROCESS/NAICS CODE: 7664-41-7
REGULATED SUBSTANCE: Ammonia (concentration 20% or greater)
PROGRAM LEVEL: 1 [] 2 [X] 3 []
MAX. QUANTITY IN PROCESS: 93,000 (lbs)

DESCRIPTION OF ALLEGED VIOLATIONS

CAA Section 112(r) and its implementing regulations in 40 C.F.R. Part 68 require an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance (listed in § 68.130) in a process, to develop a Risk Management Plan (RMP) and Risk Management Program.
Three EPA representatives inspected the Jim's Fertilizer facility on August 13, 2015. Based upon this inspection the fertilizer sales facility is in violation of the following risk management program elements:
1. Jim' Fertilizer failed to compile and maintain up-to-date safety information, related to the regulated substances, processes, and equipment on the safe upper and lower temperatures, pressures, flows, and compositions as required by 40 C.F.R. § 68.48(a)(3). Jim's Fertilizer was unable to produce documentation for the aqua ammonia (20% concentration) storage process.
2. Jim' Fertilizer failed to compile and maintain up-to-date safety information, related to the regulated substances, processes, and equipment on the equipment specifications as required by 40 C.F.R. § 68.48(a)(4). Jim's Fertilizer was unable to produce documentation for the aqua ammonia (20% concentration) storage process equipment such as the storage tanks, valves, pumps, and hoses.
3. Jim' Fertilizer failed to compile and maintain up-to-date safety information, related to the regulated substances, processes, and equipment on the codes and standards used to design, build, and operate the process as required by 40 C.F.R. § 68.48(a)(5). Jim's Fertilizer was unable to produce documentation for the aqua ammonia (20% concentration) storage process.
4. Jim' Fertilizer failed to ensure the process is designed in compliance with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.48(b). Jim's Fertilizer was unable to produce documentation for the aqua ammonia (20% concentration) storage process to ensure the process is designed in compliance with recognized and generally accepted good engineering practices.
5. Jim's Fertilizer failed to perform or cause to perform inspections and tests on process equipment that follow recognized and generally accepted engineering practices as required by 40 C.F.R. § 68.56(d). Jim's Fertilizer was unable to produce documentation on the inspection and testing of process equipment for the aqua ammonia (20% concentration) storage process. Jim's Fertilizer May 9, 2011 RMP submission stated the equipment most recently inspected or tested were the storage tanks, dike, piping, and pumps with an equipment inspection date (The date of the most recent equipment inspection or test) of April 16, 2009.
6. Jim's Fertilizer failed to certify that compliance audits are conducted at least every three years to verify that the procedures and practices are adequate and are being followed as required by 40 C.F.R. § 68.58(a). Jim's Fertilizer was unable to produce documentation on an April 2015 Compliance Audit, April 2012 Compliance Audit and an April 2009 Compliance Audit for the aqua ammonia (20% concentration) storage process. Jim's Fertilizer May 9, 2011 RMP submission stated the compliance audit date (The date of the most recent compliance audit) was April 16, 2009 with an audit completion date (The expected or actual date of completion of all changes resulting from the compliance audit) of May 1, 2009.

7. Jim's Fertilizer failed to correctly report the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits for the aqua ammonia (20% concentration) storage process as required by 40 C.F.R. § 68.160(b)(7). Jim's Fertilizer did not calculate the amount of ammonia in solution for the maximum intended inventory. Jim's Fertilizer reported in their May 9, 2011 RMP submission a maximum intended inventory of 230,000 pounds of ammonia (20% concentration) solution (exceeds the threshold of 20,000 pounds of ammonia in solution). EPA General RMP Guidance –Chapter 1 explains how the amount of ammonia in solution should be calculated.

Other Areas of Concern:

1. During the inspection, Jim's Fertilizer provided refresher training documentation on the annual training of their operators on the aqua ammonia (20% concentration) storage process from 2012 to 2015. However, the training documentation does not specifically ensure the employee understands and adheres to the current operating procedures as required by 40 C.F.R. § 68.54(b). Jim's Fertilizer will need to improve their training policy and forms to properly document the refresher training. Jim's Fertilizer reported in their May 9, 2011 RMP submission that they will use on-the-job training and test the competency of their operators using demonstration and observation.

DID FACILITY CORRECTLY ASSIGN PROGRAM LEVELS TO PROCESSES?

YES NO

ATTACHED CHECKLIST(S):

PROGRAM LEVEL 1 PROCESS CHECKLIST PROGRAM LEVEL 2 PROCESS CHECKLIST PROGRAM LEVEL 3 PROCESS CHECKLIST

OTHER ATTACHMENTS: _____

Certificate of Service


The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: Jim's Fertilizer, Docket No.: CAA-10-2016-0065**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Javier Morales, RMP Coordinator
1200 Sixth Avenue, OCE-101
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Jim McKeirnan
Owner
Jim's Fertilizer
690 West Main Street
Pomeroy, Washington 99347

DATED this 16 day of June, 2016 
Teresa Luna
Regional Hearing Clerk
EPA Region 10

