

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PA 19103-2029

EXPEDITED PENALTY
ACTION AND
CONSENT AGREEMENT
DOCKET NO. CAA-03-2014-0066

RESPONDENT

C&S Wholesale Grocers, Inc.
7 Corporate Drive
Keene, NH 03431

RECEIVED
2014 MAY 27 AM 9:09
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

FACILITY

C&S Wholesale Grocers
1000 Old Philadelphia Road
Aberdeen, MD 21001

On November 20, 2013, an authorized representative of the EPA conducted an inspection of the subject facility 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 Act or CAA). EPA found that the Respondent had violated regulations implementing Section 112(r) of the Act by failing to comply with the regulations, as more fully alleged in the attached RISK MANAGEMENT PROGRAM, INSPECTION FINDINGS, ALLEGED VIOLATIONS AND PROPOSED PENALTY SHEET (FORM), which is hereby incorporated by reference.

The parties enter into this Expedited Penalty Action to settle the civil violations set forth above for a penalty of **\$3,000.00**. This Expedited Penalty Action commences and concludes this action pursuant to Sections 22.13(b), and 22.18(b)(2), and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. § 22.13(b), and 22.18(b)(2), and (3). This Expedited Penalty Action and Consent Agreement is being entered into by the United States Environmental Protection Agency, Region 3 (EPA), by its duly delegated official, the Director, Hazardous Site Cleanup Division, and by Respondent pursuant to Section 113(a)(3) and (d) of the Act, 42 U.S.C. § 7413(a)(3) and (d).

The settlement is subject to the following terms and conditions.

The Respondent consents to the assessment of the penalty stated above. The settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the seriousness of the violations and the other factors provided in CAA Section 113(e)(1) and EPA's Combined Enforcement Policy for CAA Section 112(r) Risk Management Program dated June 20, 2012. The Respondent certifies that it has corrected the violations set forth in the Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet. The Respondent also certifies that, since its last Risk Management Plan update required pursuant to 40 C.F.R. § 68.190, it has not done either of the following: (a) introduced a new regulated substance at the facility in an amount greater than its threshold quantity; or (b) introduced a new process which uses a regulated substance in an amount greater than its threshold quantity. Further, the Respondent agrees that it shall, within 15 calendar days of receipt of an executed copy of this Expedited Penalty Action, make payment of **\$3,000.00** in one of two forms: 1) electronic funds transfer (EFT) or 2) a cashier's check or certified check payable to the "US Environmental Protection Agency", with the Docket Number, located at the top right-hand corner of the Expedited Penalty Action, and "Chemical Accident Prevention Provisions - 112(r)" referenced on the check.

Payment of the penalty amount by EFT to: 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 "D68010727 Environmental Protection Agency"

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Payment of the penalty amount by regular US Postal Service shall be sent via certified mail to:

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

Payment of the penalty amount by overnight mail (FedEx or other non-US Postal Service express mail) shall be sent to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The Respondent shall also send a copy of the EFT confirmation or check via certified mail to:

Michael Welsh, P.E.
RMP Coordinator
U.S. EPA, Region III (3HS61)
1650 Arch Street
Philadelphia, PA 19103-2029

Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

The payment made pursuant to this Expedited Penalty Action is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and, therefore, Respondent shall not claim it as a tax deductible expenditure for purposes of federal, state or local law. This Expedited Penalty Action resolves only the civil claims for the specific violations alleged in the attached Risk Management Program, Inspection Findings, Alleged Violations and Proposed Penalty Sheet. Furthermore, EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules. Further, EPA reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Expedited Penalty Action, following its filing with the Regional Hearing Clerk.

Respondent neither admits nor denies the allegations set forth in the attached Risk Management Program, Inspection Findings, Alleged Violations and Proposed Penalty Sheet, but admits that jurisdiction has been established for this Penalty Action. Also, upon EPA final approval of the Expedited Penalty Action, Respondent expressly waives its right to contest the allegations, to a hearing under Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this Order under Section 113 (d)(4) of the Act, 42 U.S.C. § 7413(d)(4). Moreover, in entering into this Consent Agreement, the Respondent agrees to bear its own costs and attorney's fees related to this Expedited Penalty Action.

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ACCEPT THE PROPOSED PENALTY

I/we consent to the proposed penalty.

DECLINE THE PROPOSED PENALTY

I/we decline the proposed penalty. If you choose to decline this proposed penalty, check the box. You may be subject to formal enforcement action and, in that event, will have an opportunity to a hearing related to any subsequent penalty assessment.

COST OF COMPLIANCE

Respondent certifies that it has expended \$16,457.21 to correct the alleged violations and to come into compliance. *

EFFECTIVE DATE

This Expedited Penalty Action will be effective upon filing.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Expedited Penalty Action and to legally bind the party whom he or she represents to this Expedited Penalty Action.

Signature

Date: 4/7/2014

Name and Title (print)

Bryan T. Granger, SVP Compliance + Administration

*This cost of compliance includes an estimate based upon the cost of internal resources needed for C&S associates to develop, deploy and attend the training.

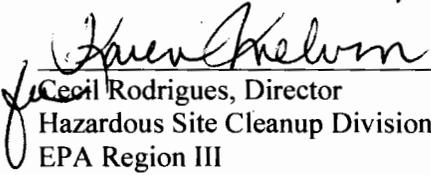
Violation 1 Cost: \$11,425.00

Violation 2 Cost: \$5,027.21

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SIGNATURE BY COMPLAINANT:



Cecil Rodrigues, Director
Hazardous Site Cleanup Division
EPA Region III

Date: APR 25 2014

FINAL ORDER

Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, and having relied upon the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based on a consideration of the factors set forth in CAA Section § 7413(d)(1) and EPA's Combined Enforcement Policy for CAA Section 112(r) Risk Management Program dated August 15, 2001.

THEREFORE, the foregoing Consent Agreement is hereby approved and incorporated by reference into the Final Order. The Respondent is Ordered and agrees to pay the civil penalty set forth above.



Regional Judicial Officer

Date: 5-15-14

See next page

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Cecil Rodrigues, Director
Hazardous Site Cleanup Division
EPA Region III

FINAL ORDER

Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, and having relied upon the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based on a consideration of the factors set forth in CAA Section § 7413(d)(1) and EPA's Combined Enforcement Policy for CAA Section 112(r) Risk Management Program dated June 20, 2012.

THEREFORE, the foregoing Consent Agreement is hereby approved and incorporated by reference into the Final Order. The Respondent is Ordered and agrees to pay the civil penalty set forth above.



Date: 5-15-14

Heather Gray, Regional Judicial Officer

**RISK MANAGEMENT PROGRAM PENALTY WORKSHEET
(ENCLOSURE #2-CONTINUED)**

Facility Name: C&S Wholesale Grocers-Aberdeen

PENALTY CALCULATION:

Calculation of Unadjusted Penalty

| Violations | Penalty Value |
|---|---------------|
| 1. The owner or operator failed to document that equipment complies with recognized and generally accepted good engineering practices. [68.65(d)(2)] | \$1,500.00 |
| 2. The owner or operator failed to establish and/or implement written procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process. [68.75(a)] | \$1,500.00 |
| Total | \$3,000.00 |

After totaling the penalty numbers from the Program 3 Penalty Schedule for the specified violations, an unadjusted penalty of \$3,000.00 is derived.

Calculation of Adjusted Penalty

- Reference the multiplying factor table for a private industry (shown above) to calculate the adjusted penalty. The facility has 386 employees and has approximately 42,000 pounds of anhydrous ammonia in a process. Using the appropriate row and column a multiplier of 1.0 is determined.
- Use the Adjusted Penalty formula

| Adjusted Penalty Calculation | | |
|------------------------------|--------------|--------------------|
| Unadjusted Penalty | X Multiplier | = Adjusted Penalty |
| \$3,000.00 | 1.0 | \$3,000.00 |

EXPEDITED SETTLEMENT PENALTY MATRIX

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

| Governmental Entities (Primarily public drinking water and wastewater systems) | | | |
|--|--------------------|-------------------------|-----------------------|
| Total Population Served | <u>1-5*</u> | <u>>5-10*</u> | <u>>10*</u> |
| 1-10,000 | <u>0.2</u> | <u>0.4</u> | <u>0.6</u> |
| 10,001-100,000 | <u>0.4</u> | <u>0.6</u> | <u>0.8</u> |
| >100,000 | <u>0.6</u> | <u>0.8</u> | <u>1.0</u> |

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

| Private Industries | | | |
|---------------------------|--------------------|-------------------------|-----------------------|
| # of Employees | <u>1-5*</u> | <u>>5-10*</u> | <u>>10*</u> |
| <u>0-9</u> | <u>0.4</u> | <u>0.6</u> | <u>0.8</u> |
| <u>10-100</u> | <u>0.6</u> | <u>0.8</u> | <u>1.0</u> |
| <u>>100</u> | <u>1.0</u> | <u>1.0</u> | <u>1.0</u> |

The Proposed Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the total penalty with the multiplier using the service size (population) as a guide.

**RISK MANAGEMENT PROGRAM, INSPECTION FINDINGS,
ALLEGED VIOLATIONS AND PROPOSED PENALTY SHEET (ENCLOSURE #2)
Program Level 3 Process Checklist**

Facility Name: C&S Wholesale Grocers-Aberdeen

| | |
|--|------------|
| Prevention Program- Safety information [68.65] | |
| The owner or operator failed to document that equipment complies with recognized and generally accepted good engineering practices. [68.65(d)(2)] | \$1,500.00 |
| Prevention Program - Management Of Change [68.75] | |
| The owner or operator failed to establish and/or implement written procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process. [68.75(a)] | \$1,500.00 |

Adjusted Penalty = Unadjusted Penalty X Multiplier

The Unadjusted Penalty is calculated by adding up all the penalties listed on the Risk Management Program, Alleged Violations and Proposed Penalty Sheet.

The service size (population)/multiplier are the factors that determine the adjusted penalty for government entities.

The Size-Threshold Quantity multiplier is a factor that considers the number of employees and how many times above the threshold quantity for private industry.



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 Philadelphia, Pennsylvania 19103-2029**

| | | |
|--------------------------------|---|------------------------------------|
| In the Matter of: |) | EPA Docket No.: |
| C&S Wholesale Grocers |) | CAA-03-2014-0066 |
| 7 Corporate Drive |) | |
| Keene, NH 03431 |) | |
| |) | |
| Respondent, |) | |
| |) | Proceedings under Section |
| C&S Wholesale Grocers-Aberdeen |) | 113(d)(1) of the Clean Air Act, 42 |
| 1000 Old Philadelphia Road |) | U.S.C. § 7413(d)(1). |
| Aberdeen, MD, 21001 |) | |
| |) | |
| Facility. |) | |
| |) | |

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Complainant's, the United States Environmental Protection Agency's, Expedited Settlement Agreement with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Expedited Settlement Agreement, were sent to:

Via certified mail, return receipt requested

5/27/14
Date


Michael Welsh (3HS61)