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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

**EXPEDITED SETTLEMENT AGREEMENT (ESA)**

**DOCKET NO.:** CAA-07-2015-0010  
**This ESA is issued to:** JBS USA  
**At:** 3435 Edward Babe Gomez Ave., Omaha, Nebraska 68107  
**For:** Violations of Section 112(r)(7) of the Clean Air Act

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The United States Environmental Protection Agency, Region 7 (EPA) and JBS USA – Omaha Beef Processing Facility, 3435 Edward Babe Gomez Ave., Omaha, Nebraska 68107 (Respondent), have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

The Complainant, by delegation of the Administrator of the EPA, is the Director of the Air and Waste Management Division. The Respondent is JBS USA – Omaha Beef Processing Facility, 3435 Edward Babe Gomez Ave., Omaha, Nebraska 68107.

This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that cases which meet the criteria set forth in EPA's policy entitled "Revised Guidance on the Use of Expedited Settlement Agreements," dated November 24, 2014, are appropriate for administrative penalty action.

**ALLEGED VIOLATIONS**

On June 8, 2012, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 3435 Edward Babe Gomez Ave., Omaha, Nebraska 68107, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the CAA. The EPA found that the Respondent had violated regulations implementing Section 112(r) of the CAA by failing to comply with the regulations as noted on the enclosed Risk Management Program Inspection Findings (RMP Findings), 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 RMP Findings, for the total penalty amount of \$7,450.

This settlement is subject to the following terms and conditions:

The 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 RMP Findings, 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 CAA, 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 the Respondent has corrected the violations listed in the enclosed RMP Findings and has sent a cashier's check or certified check (payable to the "United States Treasury") in the amount of \$7,450 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, Missouri 63197-9000

The Docket Number of this ESA is CAA-07-2015-0010, and must be included on the check.

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

Patricia Reitz  
Chemical Risk Information Branch  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

A copy of the check must also be sent to:

Kathy M. Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

Upon Respondent's submission of the signed original ESA, the EPA will take no further civil action against Respondent for the alleged violations of the CAA referenced in the RMP

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**Findings.** The EPA does not waive any other enforcement action for any other violations of the CAA or any other statute.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region 7 office at the above address in correct form by the 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 RMP Findings.

This ESA is binding on the parties signing below.

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

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FOR RESPONDENT:

Signature: 

Date: 3-9-15

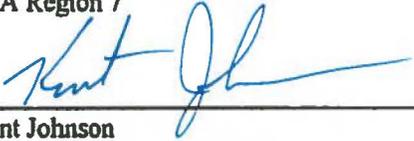
Name (print): Charles Paulsen

Title (print): General Manager

FOR COMPLAINANT:

  
\_\_\_\_\_  
Becky Weber  
Director  
Air and Waste Management Division  
EPA Region 7

Date: 3/25/15

  
\_\_\_\_\_  
Kent Johnson  
Assistant Regional Counsel  
Office of Regional Counsel  
EPA Region 7

Date: 3/25/15

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

Karina Borromeo

Karina Borromeo  
Regional Judicial Officer

Date: 3-30-2015

Risk Management Program Inspection Findings  
CAA § 112(r) Violations

JBS USA – Omaha Beef Processing Facility  
3435 Edward Babe Gomez Ave.  
Omaha, NE 68107  
Docket No. CAA-07-2015-0010

**COMPLETE THIS FORM AND RETURN IT WITH THE  
EXPEDITED SETTLEMENT AGREEMENT.**

**VIOLATIONS**

**PENALTY AMOUNT**

**Prevention Program**

**Process Hazard Analysis [68.67(f)]**

**\$2,500**

The owner or operator failed to update and revalidate the Process Hazard Analysis by a team every five years after the completion of the Initial Process Hazard Analysis to assure the that Process Hazard Analysis is consistent with the current process.

*How was this addressed?* See Attachment 1.

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**Prevention Program**

**Process Hazard Analysis [68.67(g)]**

**\$600**

The owner or operator failed to retain Process Hazard Analyses and updates or revalidations for each process covered, as well as the resolution of recommendations for the life of the process.

*How was this addressed?* See Attachment 1.

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**Prevention Program**

**Incident Investigation [68.81(e)]**

**\$1,200**

The owner or operator failed to establish a system to address and resolve incident investigation report findings and recommendations, and document the resolutions and corrective actions.

*How was this addressed?* See Attachment 1.

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**Prevention Program**

**Incident Investigation [68.81(f)]**

**\$1,200**

The owner or operator failed to review the incident investigation report with all affected personnel whose job tasks are relevant to the incident findings including contract employees, where applicable.

*How was this addressed?* See Attachment 1.

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**Subpart E – Emergency Response**

**Emergency Response Program [68.95(a)(1)(i)]**

**\$750**

The owner or operator failed to maintain an emergency response plan at the facility that contains procedures for informing the public and local emergency response agencies about accidental releases.

*How was this addressed?* See Attachment 1.

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**Subpart E – Emergency Response**

Emergency Response Program [68.95(a)(2)]

\$1,200

The owner or operator failed to maintain an emergency response plan at the facility that contains procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.

How was this addressed? See Attachment 1.

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\_\_\_\_\_  
\_\_\_\_\_

Total Penalty

\$7,450

Calculation of "Adjusted" Penalty

Reference the "Multiplier Factors for Calculating Proposed Penalties for Violations Found during RMP Inspection" Expedited Settlement Penalty Matrix.

Since JBS USA has more than 100 employees, the multiplier factor is 1.0\*.

\*No penalty adjustment, since multiplier is 1.0

**TOTAL PENALTY**

**\$7,450**

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**This section must be also completed and signed by JBS USA, LLC:**

The approximate cost to correct the above items: \$ Less than \$1,000\*

Compliance staff name: Charles Paulson, Omaha Plant Manager

Signed: \_\_\_\_\_

Date: 3-9-15

\*Employees address these items in the course of their normal duties.

## Attachment 1

### Introduction.

The beef plant at 3435 Edward Babe Gomez Avenue, Omaha, NE 68107 (the "Omaha plant") was owned by XL Four Star Beef ("XL"). JBS, through its subsidiary Swift Beef Company, acquired the Omaha plant from XL on April 8, 2013. The acquisition was an asset acquisition; JBS did not assume any liabilities of XL, including any liabilities for the alleged RMP violations. EPA inspected the Omaha plant on April 19 and 20, 2012. This inspection, and the alleged RMP violations are prior to JBS' acquisition of the Omaha plant. JBS has taken good faith efforts to address the alleged RMP violations that allegedly occurred while XL owned the Omaha plant.

### Alleged Violations.

1. Prevention Program – Process Hazard Analysis – 68.67(f): The PHA was revalidated by JBS on October 14-16, 2014. This was within 5 years of the November 2009 PHA conducted by XL. The JBS beef division has a manager in charge of ensuring that PHA revalidations are conducted within the 5-year timeframe. A copy of the PHA that was revalidated on October 14-16, 2014 is enclosed for reference.
2. Prevent Program – Process Hazard Analysis – 68.67(g): JBS is using a third-party database, namely APSM, for the RMP program. The 2009 and 2014 PHAs have been uploaded into APSM. The resolution of recommendations are also documented within APSM. This database allows for the PHAs and resolution of recommendations to be retained for the life of the process. A sample printout from the APSM database, which is used to document resolution of recommendations from the PHA, is enclosed for reference.
3. Prevention Program – Incident Investigation – 68.81(e): JBS has a corporate Incident Investigation procedure that includes a close out form to document the resolutions and corrective actions of any incident. Incidents are also tracked on a log and the plant must report their status on a quarterly basis. The Incident Investigation procedure and close out form is enclosed for reference.
4. Prevention Program – Incident Investigation – 68.81(f): The JBS Incident Investigation procedure includes a section to document the review of the incident investigation report with all affected personnel whose job tasks are relevant to the incident findings. The Incident Investigation procedure form, which is also referenced in 3 above, is enclosed for reference.
5. Subpart E – Emergency Response – 68.95(a)(1)(i): The JBS emergency response plan contains procedures for informing the public and local emergency response agencies about accidental releases. The emergency response plan, and emergency protocol for public direction, are enclosed for reference.

6. **Subpart E – Emergency Response – 68.95(a)(2):** The facility has procedures for the use of emergency response equipment and for its inspection, testing and maintenance. These procedures include Hazmat training. A checklist, used for inspection, testing and maintenance of emergency response equipment, is enclosed for reference.

IN THE MATTER OF JBS USA Respondent  
Docket No. CAA-07-2015-0010

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

johnson.kent@epa.gov

Copy by First Class Mail to:

Charles Paulson, General Manager  
JBS USA  
3435 Edward Babe Gomez Ave.  
Omaha, Nebraska 68107

Dated: 3/30/15

A handwritten signature in cursive script that reads "Kathy Robinson". The signature is written in black ink and is positioned above the printed name and title.

Kathy Robinson  
Hearing Clerk, Region 7