



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101
**EXPEDITED SETTLEMENT
AGREEMENT (ESA)**

06 SEP 18 PM 4:03

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

DOCKET NO: CAA-07-2006-0228

This ESA is issued to: Mid States Dairy Company

At: 6040 North Lindbergh, Hazelwood, Missouri 63042

for violating Section 112(r)(7) of the Clean Air Act.

The United States Environmental Protection Agency, Region 7 (EPA) and Mid States Dairy Company, 6040 North Lindbergh, Hazelwood, Missouri 63042 (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 EPA, is the Director of the Air, RCRA and Toxics Division. The Respondent is Mid States Dairy Company, 6040 North Lindbergh, Hazelwood, Missouri.

This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the total penalty exceeds \$270,000 or where the first alleged date of violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

ALLEGED VIOLATIONS

On March 30, 2006, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 6040 North Lindbergh, Hazelwood, Missouri, 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 EPA found that the Respondent had violated regulations implementing Section 112(r) of the Clean Air Act by failing to comply with the regulations as noted on the enclosed Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet (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 **\$2640.00**.

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 in 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 Clean Air 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 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 "Treasurer, United States of America") in the amount of **\$2640.00** in payment of the full penalty amount to the following address:

United States Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

The Docket Number of this ESA is CAA-07-2006-0228, 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:

Deanna Smith
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

A copy of the check must also be sent to:

Kathy M. Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

Upon Respondent's submission of the signed original ESA, EPA will take no further civil action against Respondent for the alleged violations of the Clean Air Act referenced in the RMP Findings. The EPA does not waive 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 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.

FOR RESPONDENT:

Richard O'Brien

Date: Aug 30, 2006

Name (print): RICHARD O'BRIEN

Title (print): PLANT ENGINEER
Mid States Dairy Company

FOR COMPLAINANT:

Carol Kather

Date: 9/13/06

Carol Kather
Acting Director
Air, RCRA and Toxics Division
EPA Region 7

Kent Johnson

Date: 9/11/06

Sarah Thibos
Assistant Regional Counsel
EPA Region 7

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

Karina Borromeo

Date: Sept. 18, 2006

~~Robert Patrick~~ Karina Borromeo
Regional Judicial Officer

RMP INSPECTION FINDINGS

Mid States Dairy Company
6040 North Lindbergh
Hazelwood, MO 63047

CAA 112(r) Violations

VIOLATIONS

PENALTY AMOUNT

Prevention Program- Process Hazard Analysis [68.67]

\$750.00

1. The owner or operator has failed to update or revalidate the PHA by a team every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process. [68.67(f)]

How was this addressed: PHA updated and completed
January 2005

Prevention Program- Operating procedures [68.69]

\$600.00

2. The owner or operator has failed to certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary. [68.69(c)]
 - a. The owner or operator failed to require contractor document the development and implementation of safe work practices to provide for the control of hazards during the opening of process equipment or piping. [68.69(d)]

How was this addressed: Annual operating procedure
certification established August 2006

Prevention Program - Management of Change [68.75]

\$750.00

3. The owner or operator has failed to establish or implement written procedures to manage changes to process chemicals, technology, equipment, procedures, and changes to stationary sources that affect a covered process. [68.75(a)]

How was this addressed: Management of Change procedure
implemented July 2006

Prevention Program - Compliance audits [68.79]

\$300.00

4. The owner or operator has failed to certify that the stationary source has evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed. [68.79(a)]

How was this addressed: Certification of Compliance
to RMP established Aug 2006

Section F - Contractors [68.87]

No Fine Assessed

5. The owner or operator failed to provide proof that their contractor had documented the identity of each employee(s), date of training, and means to verify training was understood as required. [68.87(c) (3)]

How was this addressed: Contracts documented employees
& training Aug 2006

Risk Management Plan [68.160 - 68.195]

\$2000.00

6. The owner or operator has not reviewed and updated the RMP and resubmitted it to EPA [68.190(a)], as a five-year update. [68.190(b)(1)]
 - a. The owner or operator has failed to review or update the off-site consequence analyses at least once every five years. [68.36(a)]
 - b. The owner or operator failed to use current data used to estimate population and environmental receptors potentially affected. [68.39(e)]

How was this addressed: New off-site analysis complete
with current data RMP update
sent to EPA April 2006

Calculation of Adjusted Penalty

1st Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for number of employees 21 - 50 and * > 10 times the threshold quantity listed in CFR 68.130 for the particular chemical use in

process gives a multiplier factor of 0.6. Therefore, the multiplier for Mid States Dairy, = 0.6.

2nd Adjusted Penalty = \$4400.00 (Unadjusted Penalty) X 0.6 (Size-Threshold Multiplier) Adjusted Penalty = \$2640.00.

3rd An Adjusted Penalty of \$2640.00 would be assessed to Mid States Dairy for Violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

TOTAL **\$2640.00**

The approximate cost to correct the above items: \$ 3,000

Compliance staff name: RICHARD O'BRIEN

Signed: Richard O'Brien Date: Aug 30, 2006

IN THE MATTER OF Mid States Dairy Company, Respondent
Docket No. CAA-07-2006-0228

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited Settlement Agreement (ESA) was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Sarah Thibos
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Richard O'Brien
Plant Engineer
Mid States Dairy Company
6040 North Lindbergh
Hazelwood, Missouri 63042

Dated: 9/18/06



Kathy Robinson
Hearing Clerk, Region 7