



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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

06 SEP 26 PM 3:33

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**DOCKET NO:** CAA-07-2006-0214

**This ESA is issued to:** Gateway Cold Storage

**At:** 1800 N. Broadway, St. Louis, Missouri 63102

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

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The United States Environmental Protection Agency, Region 7 (EPA) and Gateway Cold Storage, 1800 N. Broadway, St. Louis, Missouri 63102 (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 Gateway Cold Storage, 1800 N. Broadway, St. Louis, 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 29, 2006, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 1800 N. Broadway, St. Louis, 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 **\$817.50**.

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 **\$817.50** 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-07-2006-0214, 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 5<sup>th</sup> 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 5<sup>th</sup> 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:

David L. Macheuca

Date: 8/31/06

Name (print): DAVID L. MACHEUCA

Title (print): PRESIDENT  
Gateway Cold Storage

FOR COMPLAINANT:

Carol Kather

Date: 9/21/06

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 Borroneo

Date: 9/26/06

~~Robert Patrick~~ Karina Borroneo  
Regional Judicial Officer

## RMP INSPECTION FINDINGS

Gateway Cold Storage  
1800 N. Broadway  
St. Louis, MO 63102

CAA 112(r) Violations

### VIOLATIONS

### PENALTY AMOUNT

#### **Hazard Assessment: Documentation [68.39]**

**\$300.00**

1. For worst-case scenarios: a description of the vessel or pipeline and substance selected, assumptions and parameters used, the rationale for selection, and anticipated effect of the administrative controls and passive mitigation on the release quantity and rate? [68.39(a)]

How was this addressed: Utilized EPA guidelines when Resubmitting R.M.P. on 4-10-2006

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#### **Hazard Assessment: Documentation [68.39]**

**\$300.00**

2. For alternative release scenarios: a description of the scenarios identified, assumptions and parameters used, the rationale for the selection of specific scenarios, and anticipated effect of the administrative controls and mitigation on the release quantity and rate? [68.39(b)]

How was this addressed: Utilized EPA Guidelines in conjunction with facility outline & design of equipment of equipment description. Process scenarios resubmitted with RMP on 4-10-2006

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#### **Prevention Program- Process Safety information [68.65]**

**\$300.00**

3. The owner or operator failed to document an evaluation of the consequences of deviation. [68.65(c)(1)(v)]

How was this addressed: Written procedure was implemented on 4-10-2006.

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**Prevention Program- Process Hazard Analysis [68.67]**

**\$750.00**

4. The PHA has not been updated and revalidated 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: The PHA was updated after April 2004 meeting to assure that it was current and schedule established to revalidate every five years.

**Prevention Program- Operating procedures [68.69]**

**\$750.00**

5. The owner or operator has not developed and implemented written operating procedures that provides instructions or steps for conducting activities associated with each covered process consistent with the safety information. [68.69(a)]
- a) Temporary operations. [68.69((a)(1)(iii)]
  - b) Startup following a turnaround, or after emergency shutdown. [68.69(a)(1)(vii)]
  - c) Consequences of deviations. [68.69(a)(2)(i)]
  - d) Steps required to correct or avoid deviation.[68.69(a)(2)(ii)]
  - e) The owner or operator shall ensure that the contractor has developed and implemented safe work practices to provide for the control of hazards during specific the opening of process equipment and piping. [68.69(d)]

How was this addressed: Written operating procedures were put in place as of April 2006 for all sighted violations. Written procedures are contained in Process Safety Management Manuals.

**Prevention Program- Operating procedures [68.69]**

**\$600.00**

6. The owner or operator has not certified annually that the operating procedures are current and accurate and that the procedures have been reviewed as often as necessary.[68.69(c)]

How was this addressed: Operating Procedures reviewed as of April 2006 and schedules have been established for annual review.

**Prevention Program - Compliance audits [68.79]**

**\$300.00**

7. The owner or operator has not certified 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: Procedures are now in place and prevention programs are written and scheduled.

**Prevention Program - Compliance audits [68.79]**

**\$150.00**

8. The owner or operator has not retained the two most recent compliance reports. [68.79(e)]

How was this addressed: New standard operating procedures are written & in place to retain 2 most recent compliance reports.

**Risk Management Plan [68.160 - 68.195]**

**\$2000.00**

9. 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/operator has not used most recent Census data, or other updated information to estimate the population. [68.30(c)]
  - b. The owner or operator shall provide offsite consequence analysis [68.165]

How was this addressed: New/updated RMP is submitted utilizing up to date census data to estimate the population. Offsite consequence analysis also updated in new 2006 RMP.

**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 6 – 20 and \* 1 – 5 times the threshold quantity listed in CFR 68.130 for the particular chemical use in process gives a multiplier factor of 0.15. Therefore, the multiplier for Gateway Cold Storage = 0.15.

**2nd** Adjusted Penalty = \$5450.00 (Unadjusted Penalty) X 0.15 (Size-Threshold Multiplier) Adjusted Penalty = \$817.50

**3rd** An Adjusted Penalty of \$817.50 would be assessed to Gateway Cold Storage for Violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

**TOTAL**

**\$817.50**

The approximate cost to correct the above items:

\$ 978<sup>75</sup>

Compliance staff name: DAVID L. MACHECA

Signed:

David L. Macheca

Date:

9/1/06

IN THE MATTER OF Gateway Cold Storage, Respondent  
Docket No. CAA-07-2006-0214

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:

Kent Johnson  
Senior Assistant Regional Counsel  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

David L. Machecha, President  
Gateway Cold Storage  
1800 N. Broadway  
St. Louis, Missouri 63102

9/26/06  
Dated

Kathy Rowman  
Hearing Clerk, Region 7