

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY **FILED**
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

2013 AUG -5 PM 1:15

DOCKET NO: CAA (112r)-09-2013-0003

This ESA is issued to: E & J Gallo Winery
18000 West River Road
Livingston, CA 95334

U.S. EPA - REGION IX
HEARING CLERK

For: Violation of Section 112(r)(7) of the Clean Air Act.
At: E & J Gallo Winery, 18000 West River Road, Livingston, CA 95334

This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Jane Diamond, Superfund Director, and E & J Gallo Winery ("Respondent") pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). EPA has 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

Failure to:

- 1) *Document that equipment complies with recognized and generally accepted good engineering practices as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.65(d)(2).*

During the facility walkthrough, it was apparent that ammonia system piping and component labeling and tagging was not in conformance with IIR Bulletin 114.

- 2) *Develop and implement written operating procedures that provide clear instructions for safely conducting activities in each covered process consistent with the process safety information and shall address at least the following elements... Steps for each operating phase, including temporary operations, as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.69(a)(1)(iii).*

The facility did not address steps for temporary operations as required by 40 C.F.R. §68.69(a)(1)(iii).

- 3) *Develop and implement written operating procedures that provide clear instructions for safely conducting activities in each covered process consistent with the process safety information and shall address at least the following elements... Safety and health considerations, such as precautions necessary to prevent exposure including engineering controls, and personal protective equipment, as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.69(a)(3)(ii).*

The facility's operating procedures did not specify safety considerations nor did it identify personal protective equipment needs.

- 4) *Certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.69(c).*

The facility was not able to demonstrate that it is annually certifying that the operating procedures are current and accurate and have been reviewed as necessary.

- 5) *Ensure the frequency of inspections and tests of process equipment is consistent with applicable*

manufacturers' recommendations, good engineering practices, and prior operating experience as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.73(d)(3).

Although the ion exchange system ammonia storage tank has been in service since the facility's opening (approximately 40 years), no thickness measurements have been made.

A review of the MI information indicated that two of 318 pressure relief valves (PRVs) were overdue for replacement. "Comp. 2A/2B" were indicated as due for replacement in January 2012. Pursuant to IIAR Bulletin 110, PRVs must be replaced at least every five years.

- 6) *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 as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.79(a).*

A compliance audit was due to be conducted by no later than November 2011, yet as of the time of the EPA inspection on April 4, 2012, it had not yet been conducted.

- 7) *Determine and document an appropriate response to each of the compliance audit findings and document that deficiencies have been corrected as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.79(d).*

The Facility provided copies of compliance audit reports from January 2006 and November 2008; however, the reports did not include determinations of appropriate responses to audit findings nor was there documentation that deficiencies had been corrected.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, and other factors as justice may require, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of \$7,500.

This settlement is subject to the following terms and conditions:

The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, 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 attorney's fees and costs, 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 above and has sent an **Online Payment through the Department of Treasury: WWW.PAY.GOV** (Enter SFO 1.1 in search field. Open form and complete required fields) **or alternatively has sent a cashier's check or certified check** (payable to the Treasurer, United States of America) in the amount of \$7,500 in payment of the full penalty amount to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check or online payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment going to the EPA Cincinnati Finance Center. This original ESA and a copy of the check or online receipt must also be sent by certified mail to:

Angie Proboszcz (SFD-9-3)
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 21 days of the date of Respondent's receipt of the proposed ESA, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT - E & J Gallo Winery

Signature: _____

Date: 6/28/13

Name (print): Dan Martin

Title (print): Facility Manager

FOR COMPLAINANT:

_____ for
Jane Diamond
Superfund Director
U.S. EPA Region IX

Date: 7/10/13

It is hereby ORDERED that this ESA be entered and Respondent pays the above penalty.

Steven L. Jawgiel
Chief Judicial Officer
U.S. EPA Region IX

Date: 08/02/13

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Expedited Settlement Agreement with E&J Gallo Winery (**Docket #: CAA(112r)-09-2013-0003**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

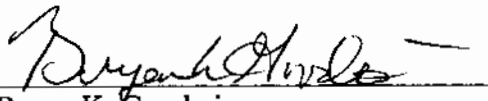
A copy was mailed via CERTIFIED MAIL to:

Mr. Dan Martin
E & J Gallo Winery
18000 West River Road
Livingston, CA 95334


CERTIFIED MAIL NUMBER: 7011 0470 0002 9197 6305

A copy was hand-delivered to the following U.S. EPA case attorney:

Thanne Berg, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX



Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 9
75 Hawthorne Street, San Francisco, CA 94105

CERTIFIED MAIL NO: 7011 0470 0002 9197 6305
Return Receipt Requested

AUG 05 2013

Mr. Pat Jeffreys
Facility Maintenance Manager
E & J Gallo Winery
18000 West River Road
Livingston, CA 95334

Re: E & J Gallo Winery, 18000 West River Road, Livingston, CA 95334
EPA Facility ID # 1000 0011 1648

Dear Mr. Jeffreys,

This letter transmits a copy of the fully executed Expedited Settlement Agreement that resolves the alleged violations of Clean Air Act (CAA) Section 112(r)(7) at E & J Gallo Winery, 18000 West River Road, Livingston, CA 95334. The violations are for failure to:

- 1) *Document that equipment complies with recognized and generally accepted good engineering practices as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.65(d)(2).*

During the facility walk-through it was apparent that ammonia system piping and component labeling and tagging were not in conformance with International Institute of Ammonia Refrigeration (IAR) Bulletin 114.

- 2) *Develop and implement written operating procedures that provide clear instructions for safely conducting activities in each covered process consistent with the safety information and shall address at least the following elements... steps for each operating phase, including temporary operations, as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.69(a)(1)(iii) .*

The Facility did not address steps for temporary operations.

- 3) *Develop and implement written operating procedures that provide clear instructions for safely conducting activities in each covered process consistent with the safety information and shall address at least the following elements... Safety and health considerations, such as precautions necessary to prevent exposure including engineering controls, and personal protective equipment, as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.69(a)(3)(ii).*

The operating procedures did not specify safety considerations nor did it identify personal protective equipment needs.

- 4) *Certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.69(c).*

The facility was not able to demonstrate that it is annually certifying its operating procedures.

- 5) *Ensure the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.73(d)(3).*

Although an ion exchange system ammonia storage tank had been in service since the Facility's opening (approx. 40 years), no thickness measurements had been made.

A review of the mechanical integrity information indicated that two of 318 pressure relief valves were overdue for replacement. "Comp. 2A/2B" were indicated as due for replacement in January 2012. Pursuant to IIAR Bulletin 110, PRVs must be replaced at least every five years.

- 6) *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 as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.79(a).*

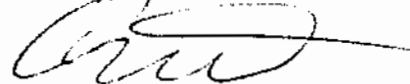
A compliance audit was due to be conducted no later than November 2011, yet as of the time of the EPA inspection on April 4, 2012, it had not yet been conducted.

- 7) *Determine and document an appropriate response to each of the compliance audit findings and document that deficiencies have been corrected as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.79(d).*

The Facility provided copies of compliance audit reports from January 2006 and November 2008; however, the reports did not include determinations of appropriate responses to audit findings nor was there documentation that deficiencies had been corrected.

Thank you for your prompt attention to this matter. If you have any questions or need additional information about the CAA Section 112(r)(7) requirements, please feel free to contact Angie Proboszcz of my staff at (415) 972-3077.

Sincerely,



Enrique Manzanilla
Director, Superfund Division

Enclosures