



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029

In the Matter of:)	
)	EPA Docket No.: CAA-03-2011-0026
JBS Souderton, Inc.)	
249 Allentown Road)	
Souderton, Pennsylvania)	
18964)	
)	Administrative Complaint and Opportunity
Respondent.)	for a Hearing filed under Sections 112(r) and
)	113(d) of the Clean Air Act, as amended,
)	42 U.S.C. §§ 7412(r), 7413(d)
JBS Souderton, Inc.)	
249 Allentown Road)	
Souderton, Pennsylvania)	
18964,)	
)	
Facility.)	
)	

ADMINISTRATIVE COMPLAINT

This Administrative Complaint and Notice of Opportunity for a Hearing (hereinafter "Complaint") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Sections 113(a)(3)(A) and 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(a)(3)(A), 7413(d), delegated to the Regional Administrator for EPA Region III by EPA Delegation No. 7-6-A, and redelegated to Complainant by EPA Region III Delegation No. 7-6-A. This Complaint is also being issued pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint as Attachment A. The Complainant is the Director of the Hazardous Site Cleanup Division for EPA Region III. The Respondent is JBS Souderton, Inc. ("Respondent" or "JBS"). Respondent is hereby notified of EPA's determination that Respondent has violated the requirements and prohibitions of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, 40 C.F.R. Part 68. In support of its Complaint, Complainant alleges the following:

GENERAL ALLEGATIONS

1. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), requires the Administrator of EPA, to promulgate a list of regulated substances, with threshold quantities, and define the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release-prevention, detection, and correction requirements for these listed regulated substances.

2. On June 20, 1996, EPA promulgated the Risk Management Program regulations (“RMP Regulations”), 40 C.F.R. Part 68, which implement Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). These regulations require each owner and operator of a stationary source to develop and implement a risk management program that includes a hazard review, a prevention program, and an emergency response program.

3. The RMP Regulations set forth the requirements for the risk management program that must be established at each stationary source. Each owner/operator of a stationary source must describe the risk management program for the source in a risk management plan, which must be submitted to EPA.

4. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the risk management plan must be submitted for all covered processes, by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

5. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), prohibits any person from operating a stationary source in violation of the RMP Regulations after the regulations’ effective date.

6. Pursuant to 40 C.F.R. § 68.10, the RMP Regulations are applicable to any owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

7. Respondent JBS is a Pennsylvania corporation with its principal place of business located at 249 Allentown Road in Souderton, Pennsylvania.

8. As a corporation, Respondent is a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

9. Upon information and belief, beginning on or about October 23, 2008, and at all times relevant to this Complaint, Respondent has owned and operated a beef processing facility located at 249 Allentown Road in Souderton, Pennsylvania (“JBS facility” or the “Facility”), within the meaning of Section 112(r)(7)(B)(ii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(ii), and 40 C.F.R. §§ 68.10, 68.12, and 68.150.

10. The JBS facility is a “stationary source” as that term is defined in Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

11. Since at least October 23, 2008, Respondent has handled, stored, and used, and continues to handle, store, and use, approximately 22,800 pounds of ammonia, Chemical Abstracts Service (“CAS”) No. 7664-41-7, in an ammonia refrigeration system at the JBS facility.

12. Ammonia, is a “regulated substance,” as defined by Section 112(r)(2)(B) and (3) of the CAA, 42 U.S.C. § 7412(r)(2)(B) and (3), and 40 C.F.R. § 68.3, and listed in Table 1 of 40 C.F.R. § 68.130.

13. The “threshold quantity,” as that term is defined by 40 C.F.R. § 68.3, and used in Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), for ammonia is 10,000 pounds, as listed in Table 1 of 40 C.F.R. § 68.130.

14. Respondent’s use of ammonia in an ammonia refrigeration system is a “process,” as defined by 40 C.F.R. § 68.3.

15. Respondent is subject to the RMP Regulations set forth at 40 C.F.R. Part 68.

16. On or about January 28, 2010, EPA conducted an inspection of the JBS facility to determine its compliance with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the RMP Regulations set forth at 40 C.F.R. Part 68.

**COUNT I – VIOLATION OF 40 C.F.R. § 68.190(b)(1) –
FAILURE TO UPDATE RISK MANAGEMENT PLAN**

17. The allegations contained in paragraphs 1 through 16 of this Complaint are incorporated by reference herein as though fully set forth at length.

18. Pursuant to 40 C.F.R. § 68.190(b)(1), the owner or operator of a stationary source is required to revise and update its risk management plan at least once every five years from the date of its initial submission or most recent update.

19. On or about June 16, 1999, an initial risk management plan was submitted for the Facility.

20. On or about July 7, 2004, a five-year update to the risk management plan was submitted for the Facility.

21. On or about November 19, 2008, JBS notified EPA that it had taken ownership of the Facility.

22. Pursuant to 40 C.F.R. § 68.190(b)(1), JBS was required to revise and update the risk management plan for the Facility by July 7, 2009.

23. Mr. John Vernon, Environmental Manager for the Facility is listed as the emergency contact for the Facility in JBS's November 19, 2008 notification that it had taken ownership of the Facility.

24. On the following dates, EPA sent reminders via electronic mail to Mr. Vernon, on behalf of JBS, that the Facility's five-year update was due on July 1, 2009: March 20, 2009; August 10, 2009; September 9, 2009; October 13, 2009; November 19, 2009; December 8, 2009; January 11, 2010; March 8, 2010; April 7, 2010; May 10, 2010; June 7, 2010; July 12, 2010; August 2, 2010; September 9, 2010; October 4, 2010; and October 12, 2010.

25. As of the date of filing of this Complaint, JBS has not submitted an updated risk management plan to EPA.

26. Respondent's failure to submit to EPA by July 1, 2009, an updated risk management plan, is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.190(b)(1), and is therefore subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

**COUNT II – VIOLATION OF 40 C.F.R. § 68.15(a) –
FAILURE TO DEVELOP A MANAGEMENT SYSTEM**

27. The allegations contained in paragraphs 1 through 26 of this Complaint are incorporated by reference herein as though fully set forth at length.

28. Pursuant to 40 C.F.R. § 68.15(a), the owner or operator of a stationary source subject to Program 2 or Program 3 requirements is required to develop a management system to oversee the implementation of the risk management program elements.

29. The RMP Regulations set forth different requirements for facilities depending on whether their regulated process is categorized as Program 1, Program 2, or Program 3 under the RMP Regulations. Pursuant to 40 C.F.R. § 68.10(d), a facility is eligible for consideration as a Program 3 if its regulated process is included in a particular North American Industry Classification System ("NAICS") code, or if the process is subject to the Occupation Safety and Health Administration ("OSHA") process safety management ("PSM") standard at 29 C.F.R. § 1910.119, and one or more of the following is true: (i) during the past five years, the process experienced an accidental release that resulted in death, injury, or response or restoration activities for an exposure of an environmental receptor; (ii) the distance to any public receptor is less than the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. Part 68 Subpart B and 40 C.F.R. § 68.25; or (iii) the stationary source and local emergency planning and response organizations have not coordinated emergency response procedures.

30. Pursuant to 29 C.F.R. § 1910.119(a)(1)(i) and Appendix A, a process is subject to OSHA PSM if it involves ammonia above 10,000 pounds.

31. Since JBS uses more than 10,000 pounds of ammonia in its ammonia refrigeration system, it is subject to OSHA PSM.

32. The distance to a public receptor is less than the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. Part 68 Subpart B and 40 C.F.R. § 68.25 for the JBS facility.

33. The ammonia refrigeration system at the JBS facility is subject to Program 3 requirements.

34. As the owner or operator of a stationary source with a process subject to Program 3 requirements, JBS is required to develop a management system to oversee the implementation of the risk management program elements in connection with the ammonia refrigeration system at the Facility.

35. JBS has not developed a management system to oversee the implementation of the risk management program elements in connection with the ammonia refrigeration system at the Facility.

36. JBS's failure to develop a management system to oversee the implementation of the risk management program elements in connection with the ammonia refrigeration system at the Facility is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.15(a), and is therefore subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

COUNT III – VIOLATION OF 40 C.F.R. § 68.25(a)(2) and (b)(1) – FAILURE TO MAKE A PROPER DETERMINATION OF WORST CASE RELEASE SCENARIO

37. The allegations contained in paragraphs 1 through 36 of this Complaint are incorporated by reference herein as though fully set forth at length.

38. Pursuant to 40 C.F.R. § 68.25(a)(2), the owner or operator of a stationary source is required, *inter alia*, to perform a worst-case release scenario to a toxic endpoint.

39. Pursuant to 40 C.F.R. § 68.25(b)(1), the worst-case release quantity for substances in a vessel shall be the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity.

40. JBS performed a worst-case release scenario to a toxic endpoint for the ammonia contained in the ammonia refrigeration system at the Facility, using 10,000 pounds as the worst-case release quantity.

41. Upon information and belief, the ammonia refrigeration system at the JBS facility holds 22,800 pounds of ammonia.

42. JBS improperly calculated its worst-case release scenario for the ammonia refrigeration system at the Facility using an incorrect worst-case release quantity.

43. JBS's failure to properly calculate its worst-case release scenario for the ammonia refrigeration system at the Facility using 22,800 pounds of ammonia, is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.25(a)(2) and (b)(1), and is therefore subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

COUNT IV – VIOLATION OF 40 C.F.R. § 68.69(c) – FAILURE TO ANNUALLY CERTIFY OPERATING PROCEDURES ARE CURRENT AND ACCURATE

44. The allegations contained in paragraphs 1 through 43 of this Complaint are incorporated by reference herein as though fully set forth at length.

45. Pursuant to 40 C.F.R. § 68.69(a), the owner or operator of a stationary source subject to the RMP Regulations is required to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved with each covered process.

46. Pursuant to 40 C.F.R. § 68.69(c), the owner or operator is required, *inter alia*, to certify annually that the operating procedures are current and accurate.

47. JBS failed to certify for 2009 that the operating procedures for the ammonia refrigeration system at the Facility are current and accurate.

48. JBS's failure to certify for 2009 that the operating procedures for the ammonia refrigeration system at the Facility are current and accurate is a violation of 40 C.F.R. § 68.69(c), and is therefore subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

PROPOSED PENALTY

Sections 113(a)(3)(A) and 113(d) of the CAA, 42 U.S.C. §§ 7413(a)(3)(A), 7413(d), authorize EPA to assess a penalty not to exceed \$25,000 per day of violation of Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68. Pursuant to the Debt Collection Improvement Act ("DCIA"), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75340, (Dec. 11, 2008), codified at 40 C.F.R. Part 19, ("Penalty Inflation Rule"), copies of which are enclosed with this Complaint as Attachment B, violations of Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68, which occur after January 12, 2009, are subject to a statutory maximum penalty of \$37,500 per violation.

Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits EPA's authority to assess a penalty for violation of the Act to matters where the total penalty does not exceed \$200,000¹, and the first alleged date of the violation occurred no more than 12 months prior to the initiation of the administrative action, unless the Administrator of EPA and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. By letter dated October 14, 2010, the Attorney General authorized EPA to undertake administrative enforcement action for the violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68, alleged above. See Attachment C.

Civil penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), may be assessed by Administrative Order and are to be assessed and collected in the same manner, and subject to the same provisions, as in the case of penalties assessed and collected after notice and opportunity for hearing on the record in accordance with Section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.

To develop the penalty proposed in this Complaint, Complainant has taken into account the statutory factors set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), which include: the size of the Respondent's business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by the Respondent of any penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and any other such matters as justice may require, with specific reference to EPA's Combined Enforcement Policy for Section 112(r) of the Clean Air Act, dated August 15, 2001 ("CEP"), a copy of which is enclosed with this Complaint as Attachment D. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty authorities described above to particular cases.

On the basis of the violations of the CAA described above, Complainant has determined that Respondent is subject to penalties for violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. §§ 68.190, 68.15(a), 68.25(a)(2) and (b)(1), and 68.69(c). Accordingly, Complainant proposes a civil penalty for these violations in the amount of \$66,185 pursuant to the authority of Section 113(a) and (d) of the CAA, 42 U.S.C. § 7413(a) and (d), as set forth below. This proposed penalty does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

Penalty Calculation:

Economic Benefit - The economic benefit of Respondent's noncompliance is based on the economic savings from the delayed and/or avoided costs required to comply with the regulations and any benefits other than cost savings. EPA determined that Respondent's noncompliance

¹ Pursuant to the Penalty Inflation Rule, this amount has been increased to \$295,000 for subsequent violations occurring after January 12, 2009.

with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68, alleged above, resulted in an economic benefit of \$201.00.

Gravity of Violation - The gravity of the violation depends on the following factors: seriousness of the violation (type of facility and extent of deviation), duration of the violation, size of violator, and adjustment factors. With respect to the seriousness of the violation, the JBS facility is a Program 3 facility. The Agency also determined that the “extent of deviation” for the violation was minor, since the facility has developed and implemented a risk management program and has an emergency response plan in place. EPA calculated the duration of the violation as sixteen (16) months. EPA determined that JBS had gross receipts of approximately \$59,100,000 for the purpose of determining the size of violator. EPA adjusted the penalty upward 25 percent for willfulness/negligence based Respondent’s continuing refusal to correct its violations despite numerous reminders.

Proposed Penalty Total: In light of the adjustments to penalties instituted by DCIA and the Penalty Inflation Rule, and the fact that the violation as alleged occurred after January 12, 2009, EPA has determined that Respondent’s violations as alleged in Counts I through IV of the Complaint merit a Penalty of \$66,185.

TOTAL PROPOSED PENALTY: \$66,185

EPA will consider, among other factors, Respondent’s ability to pay to adjust the proposed civil penalty assessed in this Complaint. The burden of raising and demonstrating an inability to pay rests with the Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in this Complaint.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Within 30 days of receipt of this Complaint, Respondent may request a hearing before an EPA Administrative Law Judge on the Complaint. At the hearing, Respondent may contest any material fact as well as the appropriateness of any penalty amount. To request a hearing, Respondent must file a written Answer within 30 days of receipt of this Complaint. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer should so state. Such a statement will be deemed to be a denial of the allegation. The Answer should also contain: the circumstances or arguments that are alleged to constitute the grounds of any defense; the facts that Respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure by Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of that allegation.

If Respondent fails to file a written Answer within 30 days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to file an Answer could result in the filing of a Motion for Default and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by Respondent shall be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is provided as Attachment A. Respondent must send any request for a hearing to:

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

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to Allison F. Gardner, Senior Assistant Regional Counsel, the attorney assigned to represent EPA in this matter, at:

Allison F. Gardner (3RC42)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Respondent's rights to appeal an Order assessing a CAA penalty are set forth in 40 C.F.R. § 22.30 and in Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(d)(4), which provides in relevant part that:

Any person . . . to whom a civil penalty order is issued under [Section 113(d)(1)] may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final . . . and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General.

QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a), Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If Respondent pays the specific penalty proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint, stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to Allison F. Gardner (3RC42), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

In accordance with 40 C.F.R. § 22.18(a)(3), upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations and to appeal the final order.

Payment shall be made by cashier's check, certified check, or electronic wire transfer. Payment of the civil penalty shall be made in the following manner:

- (1) All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;
- (2) All checks shall be made payable to **United States Treasury**;
- (3) All payments made by check and sent by regular mail shall be addressed to:

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

- (4) All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

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

- (5) All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- (6) All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

- (7) All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- (8) On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- (9) Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

At the same time payment is made, proof of payment shall be provided to the following:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103

Allison F. Gardner (3RC42)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested to discuss the facts of this case and to arrive at a settlement. To request an informal settlement conference, please write to or telephone:

Allison F. Gardner (3RC42)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2631

Please note that a request for, the scheduling of, or the participation in, an informal settlement conference does not extend the 30-day period during which a written Answer and Request for Hearing must be submitted as set forth above. The informal settlement conference procedure, however, may be pursued simultaneously with the adjudicatory hearing procedure.

EPA encourages all parties against whom a civil penalty is proposed to pursue settlement through an informal conference. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties and incorporated into a Final Order signed by the Regional Administrator or his designee.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following EPA offices, and the staffs thereof, are designated as the trial staff to represent EPA as a party in this case: The Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Office of the EPA Assistant Administrator for Solid Waste and Emergency Response; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer shall have any ex parte communication with the EPA trial staff or the Respondent on the merits of any issues involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, members of

the Environmental Appeals Board, Presiding Officer, Regional Administrator or Regional Judicial Officer, after issuance of a Complaint.


ATTACHMENTS

- A. Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22
- B. Debt Collection Improvement Act of 1996 (“DCIA”) and subsequent Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75340, (Dec. 11, 2009), 40 C.F.R. Part 19 (“Penalty Inflation Rule”)
- C. Letter from Robert D. Brook, U.S. Department of Justice, to Marcia Mulkey, U.S. Environmental Protection Agency, Region III, dated October 14, 2010, authorizing EPA to commence administrative action under Section 113(d)(1) of the CAA.
- D. Combined Enforcement Policy for Section 112(r) of the Clean Air Act, dated August 15, 2001.

GENERAL PROVISIONS

Issuance of this Complaint shall not constitute or be construed as a waiver by EPA of any of its rights against Respondent under the CAA or any other statute.

11/18/2010
DATE


Complainant
Ronald J. Borsellino, Director
Hazardous Site Cleanup Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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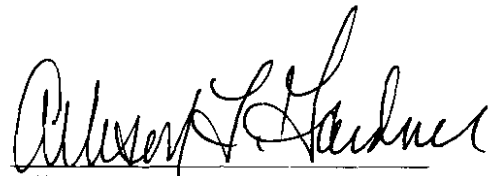
Facility.)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Administrative Complaint and Opportunity for a Hearing with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent by certified mail to:

Mr. Richard Vesta
President
JBS Souderton, Inc.
P.O. Box 449
Smithfield, Virginia 23431

11/19/10
DATE


Allison F. Gardner (3RC42)
Senior Assistant Regional Counsel
Counsel for Complainant
(215) 814-2631