



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2010 SEP 30 AM 10:14

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

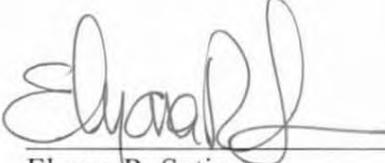
FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2010-0022

IN THE MATTER OF:)	
)	
SOUTH DAKOTA WHEAT GROWERS)	FINAL ORDER
Huron, South Dakota)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 30th DAY OF September, 2010.


 Elyana R. Sutin
 Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
South Dakota Wheat Growers) **EXPEDITED SETTLEMENT AGREEMENT**
Huron, South Dakota)
) (COMBINED COMPLAINT AND
) (CONSENT AGREEMENT)
Respondent)
_____) **DOCKET NO. : CAA-08-2010-0022**

This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter.

This ESA is being entered into by the United States Environmental Protection Agency (EPA), Region 8, by its duly delegated official, the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, and by the South Dakota Wheat Growers (Respondent) pursuant to § 113(a)(3) and (d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(3) and (d), and 40 C.F.R. § 22.13(b). The EPA and the U.S. Department of Justice have determined, pursuant to § 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that the EPA may pursue this type of case through administrative enforcement action.

ALLEGED VIOLATIONS

On April 29, 2010, an authorized representative of the EPA conducted a compliance inspection of the South Dakota Wheat Growers facility located at 1000 4th Street NW in Huron, South Dakota to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under § 112(r) of the Act. The EPA found that the facility had violated regulations implementing § 112(r) of the Act by failing to comply with the specific requirements outlined in the attached *RMP Program Level 2 Process Checklist-Alleged Violations & Penalty Assessment* (Checklist and Penalty Assessment).

SETTLEMENT

In consideration of Respondent's facility service size, 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 this ESA in order to settle the violations for the total penalty amount of \$1170. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.

This settlement is subject to the following terms and conditions:

1. The Respondent by signing below waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained in the Checklist and Penalty Assessment and consents to the assessment of the penalty as stated above.
2. Respondent waives its rights to a hearing afforded by § 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA, and consents to the EPA's approval of the ESA without further notice.
3. Each party to this action shall bear its own costs and attorney's fees, if any.
4. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent will correct the violations listed in the Checklist and Penalty Assessment no later than 60 days from the date the ESA is signed by the Respondent.

After the Regional Judicial Officer issues the Final Order, the Respondent will receive a fully executed copy of this ESA and the Final Order. Within twenty days (20) of receiving a signed Final Order, Respondent shall remit payment in the amount of \$1170. **The payment shall reference the name and docket number of this case** and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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 “

ACH Transactions:

PNC Bank/Remittance Express
ABA: 051036706
Account Number: 310006
CTX Format, Transaction Code 22, checking

There is now an On Line Payment Option, available through the US Department of Treasury. This payment option can be accessed from the information below:

www.PAY.GOV

A copy of the check, or notification that the payment has been made by one of the other methods listed above, shall be sent simultaneously to:

Tina Artemis, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8RC]
Denver, Colorado 80202-1129

and

David Cobb
EPCRA/RMP Enforcement Coordinator
US EPA, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

The penalty specified in this ESA shall not be deductible for purposes of State or Federal taxes.

Once Respondent receives a copy of the completely signed ESA, a copy of the Final Order issued by the Regional Judicial Officer in this matter, and Respondent pays in full the penalty assessment described above, then the EPA agrees to take no further civil action against the Respondent for any violations of requirements contained in the Risk Management Plan Penalty Checklist that may have occurred on or before April 29, 2010. The EPA does not waive its right to take enforcement action for other violations of the Clean Air Act or for violations of any other statute.

If Respondent fails to return the signed original ESA by the stated deadline, fails to timely submit the above-referenced payment, or fails to correct the violations no later than 60 days from the date the ESA is signed, a motion will be filed to withdraw the consent agreement and final

order. EPA may then file an administrative or civil enforcement action against Respondent for the violations addressed herein.

This ESA is binding on the parties signing below.

South Dakota Wheat Growers Expedited Settlement Agreement

FOR RESPONDENT:

Tom Walech

Date: 9/21/10

Name (print): Tom Walech

Title (print): EHS Specialist

South Dakota Wheat Growers

FOR COMPLAINANT:

Andrew M. Gaydosh

Date: 9/29/10

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 WASHINGTON, D.C. 20460

OFFICE OF
 ENFORCEMENT AND
 COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX
South Dakota Wheat Growers

MULTIPLIER FACTORS FOR CALCULATING PROPOSED PENALTIES FOR
VIOLATIONS FOUND DURING RMP INSPECTIONS

<i>(Amt of Chemical in process) divided by (Threshold Quantity)</i>		1-5*	5-10*	>10*
# of Employees	1-5	.1	.15	.3
	6-20	.15	.3	.4
	21-50	.3	.4	.6
	51-100	.4	.6	.7
	>100	.6	.7	1

*times the threshold quantity listed in CFR 68.130 for the particular chemical use in a process

PROPOSED PENALTY WORKSHEET

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

The Unadjusted Penalty is calculated by adding up all the penalties listed on the Risk Management Program Inspections Findings, Alleged Violations and Proposed Penalty Sheet.

The Size-Threshold Quantity multiplier is a factor that considers the size of the facility and the amount of regulated chemicals at the facility.

The Proposed Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the Total Penalty and the Size/Threshold Quantity multiplier.

Example:

XYZ Facility has 24 employees and 7 times the threshold amount for the particular chemical in question. After adding the penalty numbers in the Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet an unadjusted penalty of \$4700 is derived.

Calculation of Adjusted Penalty

1st Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for 21-50 employees and the row for 5- 10 times the threshold quantity amount gives a multiplier factor of 0.4. Therefore, the multiplier for XYZ Facility = 0.4.

2nd Use the Adjusted Penalty formula

$$\begin{aligned} \text{Adjusted Penalty} &= \$4700 \text{ (Unadjusted Penalty)} \times 0.4 \text{ (Size-Threshold Multiplier)} \\ \text{Adjusted Penalty} &= \$1880 \end{aligned}$$

3rd An Adjusted Penalty of \$1880 would be assessed to XYZ Facility for Violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

Calculation for Adjusted Penalty – South Dakota Wheat Growers.

Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier

$$\$1170 = \$1950 \times 0.6^*$$

* # of employees is 27. The covered chemical, anhydrous ammonia, exceeds the listed threshold value by >10 times.

**RMP PROGRAM LEVEL 2 PROCESS CHECKLIST
ALLEGED VIOLATIONS & PENALTY ASSESSMENT**

Facility Name: South Dakota Wheat Growers – Huron, South Dakota

INSPECTION DATE: 4/29/2010

SUBPART C: PREVENTION PROGRAM

PENALTY

Prevention Program – Safety Information [68.48]

Has the owner or operator ensured the process is designed in compliance with recognized and generally accepted good engineering practices? [68.48(b)]
No. The ammonia storage tanks are not properly labeled. In accordance with ANSI K61.1, each container shall be marked on at least two sides, which are visible with the words, ANHYDROUS AMMONIA. The nameplate for the vessel was painted over and illegible, out of compliance with ANSI K61.1.

750

Prevention Program – Operating Procedures [68.52]

Do the operating procedures address consequences of deviations and steps required to correct or avoid deviations? [68.52(b)(7)] **No. Normal Startup and Normal Shutdown Procedures do not address the consequence of deviation.**

600

Prevention Program – Maintenance [68.56]

Do inspection and testing procedures on process equipment follow recognized and generally accepted good engineering practices? [68.56(d)] **No. Thickness testing has not been performed on ammonia storage vessels as required by the NBIC, which the state of South Dakota has adopted.**

300

Prevention Program – Compliance Audits [68.58]

Has the owner or operator certified that compliance audits are conducted every three years to verify that the procedures and practices are adequate and are being followed? [68.58(a)] **No. No compliance audit was available during the inspection. After several attempts to retrieve the information, EPA received a copy of a compliance audit in the mail dated 7/15/08 and the only compliance audit available for review. The compliance audit indicated, “Audits have not been conducted every 3 years” in the comments section.**

300

BASE PENALTY

\$1950

RECOMMENDATIONS
Clarify the frequency of safety relief valve(s) inspection, testing, and/or replacement in the preventative maintenance program.
Clarify the type and frequency of testing inspection that needs to be conducted on equipment in the preventative maintenance program.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter of **SOUTH DAKOTA WHEAT GROWERS,; DOCKET NO.: CAA-08-2010-0022** was filed with the Regional Hearing Clerk on September 30, 2010.

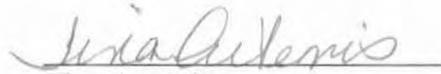
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, David Rochlin, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on September 30, 2010, to:

Matt Huls, Safety Manager
South Dakota Wheat Growers
1000 4th Street NW
Huron, SD 57030

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

September 30, 2010


Tina Artemis
Paralegal/Regional Hearing Clerk

