

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA-04-2023-0205(b)

**This ESA is issued to: Holcim Participations US Inc. d/b/a Firestone Building Products
8170 Holton Drive
Florence, Kentucky 41042**

for violating 40 C.F.R. § 68.39(a), 40 C.F.R. § 68.39(b), 40 C.F.R. § 68.65(d)(2), 40 C.F.R. § 68.67(d), 40 C.F.R. § 68.67(e), and Section 112(r)(7) of the Clean Air Act.

This Expedited Settlement Agreement (ESA) is being entered into by the United States Environmental Protection Agency, Region 4, Director of the Enforcement and Compliance Assurance Division (Complainant), and by Holcim Participations US Inc. d/b/a Firestone Building Products (Respondent), pursuant to Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), and pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGED VIOLATIONS

Based on a compliance monitoring inspection conducted at the Respondent's facility located at 8170 Holton Drive, Florence, Kentucky, on August 25, 2022, the EPA alleges that the Respondent violated the Act's Section 112(r)(7), Chemical Accident Prevention Provisions, 42 U.S.C. § 7412(r)(7), when at the time of inspection, Respondent did not provide evidence that:

1. It maintained offsite consequence analysis records for the worst-case scenario because the reviewed offsite consequence documentation for the facility's hazard assessment did not include a description of the vessel or pipeline, assumptions and parameters used, or the rationale for selection for the worst-case scenario, as required by 40 C.F.R. § 68.39(a);
2. It maintained offsite consequence analysis records for the alternative release scenarios because the reviewed offsite consequence documentation for the facility's hazard assessment did not include a description of the scenarios identified, assumptions and parameters used, or the rationale for selection for the alternate release scenarios, as required by 40 C.F.R. § 68.39(b);
3. It documented that equipment complies with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.65(d)(2), because:
 - a. The pentane piping sitting on the support bridge, nitrogen piping around the pentane storage tank, and air lines near the pentane storage tank were not adequately labeled to indicate contents, direction of flow, physical state (i.e.,

liquid or vapor), or pressure level (i.e., high or low). Additionally, many of the existing piping labels were weathered and illegible. Section 3.1 of the American Society of Mechanical Engineers (ASME) A13.1 (2015) states, “*Positive identification of the contents of a piping system shall be by lettered legend, giving the name of the contents in full or abbreviated form... Arrows shall be used to indicate direction of flow. Where flow can be in both directions, arrows in both directions shall be displayed. Contents shall be identified by a legend with sufficient additional details such as temperature, pressure, etc., as are necessary to identify the hazard.*”

- b. The National Fire Protection Association (NFPA) Hazard Identification Signs on the pentane storage tank were less than the minimum size required based on the distance at which they were legible. NFPA 704 Chapter 9.1 states, “*One of the systems delineated in Figure 9.1(a), Figure 9.1(b), or Figure 9.1(c) shall be used for the implementation of this standard.*” Figure 9.1(c) lists minimum size of hazard ratings required based on the distance at which the hazard ratings are legible.
 - c. Chocks behind the railcar are not used when storing or offloading. 49 C.F.R. § 173.31(g)(3) states, “*When placed for loading or unloading and before unsecuring any closure, a tank car must be protected against shifting or coupling as follow; at least one wheel on the tank car must be blocked against motion in both directions, and the hand brakes must be set. If multiple tank cars are coupled together, sufficient hand brakes must be set, and wheels blocked to prevent motion in both directions.*” Additionally, 49 C.F.R. § 174.67(a)(2) states, “*Each hazmat employee who is responsible for unloading must apply the handbrake and block at least one wheel to prevent motion in any direction. If multiple tank cars are coupled together, sufficient hand brakes must be set and wheels blocked to prevent motion in both directions.*”
4. The process hazard analysis (PHA) was performed by a team with expertise in engineering and process operations, and the team included at least one person who has experience and knowledge specific to the pentane process, as required by 40 C.F.R. § 68.67(d), because the August 2021 PHA is a spreadsheet with five nodes each with a different what-if scenario with associated consequences, safeguards and recommendations; however, the Respondent had no evidence of who developed these spreadsheets or their qualifications or knowledge of the pentane process; and
 5. It is resolving recommendations in a timely manner, as required by 40 C.F.R. § 68.67(e), because for example, Item 4 in Node 3 of the 2016 PHA spreadsheets states: “What if fire at OMS Skid?” and the recommendation is “Consider extending fire suppression system to OMS skid.” The response to this recommendation is included as Item 18 in the 2016 PHA Review Action Items spreadsheet and states: “Request for funding has been sent to corporate” with a close out date of November 1, 2016.

The same recommendation is again listed in Node 3, Item 4 of the 2021 PHA; however, a red line response indicates “to be completed by the end of 2021.

SETTLEMENT

In consideration of Respondent’s size, its full compliance history, its good faith efforts 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 cited above, for the total penalty amount of **\$4,800**.

This settlement is subject to the following terms and conditions: the Respondent by signing below admits the jurisdictional allegations contained herein, neither admits nor denies the specific factual allegations contained herein, 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 and Final Order or otherwise contest the allegations contained in this ESA; and each party to this action shall bear its own costs and fees, if any.

Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the alleged violations listed in this ESA.

Within **fifteen (15) days** of receiving a copy of the fully executed ESA, Respondent shall pay a civil penalty in the amount of **\$4,800**. Payment shall be made by cashier’s check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and **the Respondent’s name and docket number for this matter shall be referenced on the face of the check**. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Environmental Protection Agency
Government Lockbox 979078
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004

Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: Environmental Protection Agency

If paying by ACH, Respondent shall remit payment to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this ESA to:

R4_Regional_Hearing_Clerk@epa.gov and stark.justin@epa.gov.

The penalty specified in this ESA shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of State or Federal taxes.


Respondent's full compliance with this ESA shall only resolve Respondent's liability for Federal civil penalties for the violations alleged in this ESA. The EPA does not waive any other enforcement action for any other violations of the Act or any other statute.

This ESA is binding on the parties signing below. This ESA is effective upon filing with the Regional Hearing Clerk.

In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

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FOR RESPONDENT:


Name (print): Jesse Megehard

Date: 5/19/23

Title (print): Plant Manager
Holcim Participations US Inc. d/b/a Firestone Building Products

FOR COMPLAINANT:

Larry L. Lamberth
Acting Director
Enforcement and Compliance Assurance Division

FINAL ORDER

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

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Expedited Settlement Agreement and Final Order in the Matter of Holcim Participations US Inc. d/b/a Firestone Building Products, Docket No. CAA-04-2023-0205(b), were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Jesse Megenhardt, Plant Manager
Firestone Building Products
Email: megenhardtjesse@firestonebp.com
Phone number: (859) 655-3753
8170 Holton Drive
Florence, Kentucky 41042

To EPA: Justin Stark, Case Development Officer
stark.justin@epa.gov
Phone number: (404) 562-8305

Marirose Pratt, Associate Regional Counsel
Pratt.Marirose@epa.gov
Phone Number: (404) 562-9023

Shannon L. Richardson, Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960