



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

NOV 17 2009

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Greg Throneberry  
Safety Director  
nexAir, LLC  
1385 Corporate Avenue  
Memphis, Tennessee 38132

SUBJECT: Expedited Settlement Agreement  
nexAir, LLC  
Docket No. CAA-04-2010-8001(b)

Dear Mr. Throneberry:

Enclosed please find an executed copy of the Expedited Settlement Agreement (ESA) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2010-8001(b)) involving nexAir, LLC. The ESA was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on today's date.

As required by the ESA, within thirty days of receipt of this letter, a cashier's check or certified check in the amount of \$4130, made out to the "Treasurer, United States of America," should be submitted to one of the following addresses:

For payment sent via U.S. Postal Service  
U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000; or

For payment sent via overnight mail service (FedEx, UPS)  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson @ 314-418-4087

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

The Docket No. should be included on the check. Also, a separate copy of the check and a written statement that payment has been made in accordance with this ESA should be sent to the following individuals:

Saundi Wilson  
U. S. EPA Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, Georgia 30303, and

Victor L. Weeks  
U. S. EPA Region 4  
EPCRA Enforcement Section  
61 Forsyth Street  
Atlanta, Georgia 30303.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. If you have any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Victor Weeks at (404) 562-9189.

Sincerely,



Caron B. Falconer  
Chief, EPCRA Enforcement Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**EXPEDITED SETTLEMENT  
AGREEMENT**

**DOCKET NO: CAA-04-2010-8001(b)**

**This ESA is issued to:**

**nexAir, LLC  
1211 North McLean Boulevard  
Memphis, TN 38108**

**for violating 40 CFR § 68.15, 40 CFR § 68.67, 40 CFR § 68.69, 40 CFR § 68.190 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 (EPA), Region 4, the Director of the Air, Pesticides and Toxics Management Division (Complainant), and by nexAir, LLC (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 pursuant to 40 CFR § 22.13(b).

**ALLEGED VIOLATIONS**

Based on a compliance monitoring inspection conducted at the Respondent's facility located at 1211 North McLean Boulevard, Memphis, Tennessee, on June 4, 2008, EPA alleges that the Respondent violated the Act's Chemical Accident Prevention Program when Respondent did not provide evidence that:

It has documented the names or positions of all persons responsible for implementing individual prevention program elements and defined the lines of authority through an organization chart or similar document as required by 40 CFR § 68.15(c);

Its 2006 process hazard analysis (pha) addressed stationary source siting as required by 40 CFR § 68.67(c)(5);

As part of the 2006 pha, it developed a written schedule of when pha action items were to be completed, and documented the completion of such action items as required by 40 CFR § 68.67(e);

It has annually certified that its operating procedures are current and accurate as required by 40 CFR § 68.69(c); and

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MEMPHIS, TN  
EPA REGION 4  
OFFICE OF CLEAN AIR

In accordance with 40 CFR § 68.195(a), it submitted an update to its Risk Management Plan five-year accident history, including information required at 40 CFR §§ 68.168, 68.170(j) and 68.175(l), within six months of the August 7, 2007, acetylene incident that occurred at its facility.

## SETTLEMENT

In consideration of Respondent's 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 the ESA in order to settle the violation cited above, for the total penalty amount of **\$4130**.

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 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 violation listed in this ESA. Respondent shall pay a civil penalty of **\$4130**. **Please note that payment should not be made until after Respondent receives a copy of the fully executed ESA.** Within fifteen (15) days of receiving a copy of the fully executed ESA, the Respondent shall send a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of **\$4130**, in payment of the full penalty amount to one of the following addresses:

For payment sent via U.S. Postal Service  
U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000; or

For payment sent via overnight mail service (FedEx, UPS)  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson @ 314-418-4087

**The Respondent's name and the Docket Number of this ESA must be included on the check.** The Docket Number is located at the top left corner of the first page of this ESA.

Atlanta, Georgia 30303, and

Victor L. Weeks  
U. S. EPA Region 4  
EPCRA Enforcement Section  
61 Forsyth Street  
Atlanta, Georgia 30303

Upon Respondent's correction of alleged violations and payment of the penalty, EPA will take no further civil action against Respondent for the alleged violation of the Act referenced in this ESA. EPA does not waive any other enforcement action for any other violations of the Act or any other statute.

The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Caron B. Falconer  
U. S. EPA - Region 4  
61 Forsyth St., S. W.  
Atlanta, Georgia 30303  
(404) 562-8451

This ESA is binding on the parties signing below.

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

FOR RESPONDENT:

Gregg Throubererry Date: 7-20-09  
Name (print): Gregg Throubererry  
Title (print): Safety Director  
nexAir, LLC

FOR COMPLAINANT:

Carol L. Kemker Date: 7/6/2009  
Carol L. Kemker  
Acting Director  
Air, Pesticides & Toxics  
Management Division  
Region 4

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

Susan B. Schub Date: November 16, 2009  
Susan B. Schub  
Regional Judicial Officer

Management Division  
61 Forsyth Street  
Atlanta, GA 30303

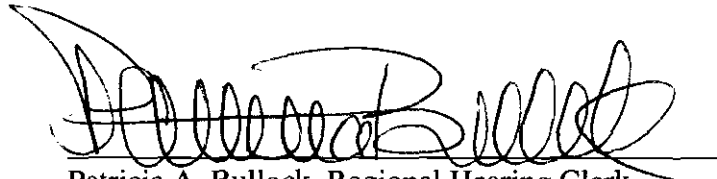
Ellen Rouch  
U. S. EPA - Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA's internal mail)

Mr. Greg Throneberry  
Safety Director  
nexAir, LLC  
1385 Corporate Avenue  
Memphis, Tennessee 38132

(Via Certified Mail -  
Return Receipt Requested)

Date: 11-17-09



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental Protection Agency  
Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303  
404-562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 11/12/09 (Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504 (Office) (Telephone Number)

- Non-SF Judicial Order/Consent Decree USAO COLLECTS
Administrative Order/Consent Agreement FMO COLLECTS PAYMENT
SF Judicial Order/Consent Decree DOJ COLLECTS
Oversight Billing - Cost Package required: Sent with bill
Other Receivable
Not sent with bill
This is an original debt
Oversight Billing - Cost Package not required
This is a modification

PAYEE: nexAir, LLC (Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 4135 (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CAF 04 2010 - 8001 (b)

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office:

The IFMS Accounts Receivable Control Number is: Date

If you have any questions, please call: of the Financial Management Section at:

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice RM 1647 P.O. Box 7611, Benjamin Franklin Station Washington, D.C. 20044
2. Originating Office (EAD)
3. Designated Program Office

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- 1. Originating Office
2. Regional Hearing Clerk
3. Designated Program Office
4. Regional Counsel (EAD)