

FILED

Apr 18, 2024

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U.S. EPA REGION 4  
HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA-04-2023-0209(b)

This ESA is issued to: Kroger Memphis Distribution Center  
5079 Bledsoe Street  
Memphis, Tennessee 38141

for violating 40 C.F.R. § 68.65(d)(2), 40 C.F.R. § 68.69(c), 40 C.F.R. § 68.71(c), 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 Kroger Memphis Distribution Center (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 5079 Bledsoe Street, Memphis, Tennessee, on October 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:

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:

- Cardboard boxes, unsecured drums stacked on top of each other, buckets, and other combustible materials were found in the machinery room. American National Standards Institute/International Institute of Ammonia Refrigeration (ANSI/IIAR) 2-2014 section 6.4 states, "*Combustible materials or flammable liquids shall not be stored in machinery rooms outside of approved fire-rated storage containers.*"
- There was no signage associated with the audible and visual alarms in the engine room. ANSI/IIAR 2-2014 Section 17.6 states, "*Ammonia leak detection alarms shall be identified by signage adjacent to visual and audible alarm devices.*"
- The ammonia detectors in the engine room were set to 75 parts per million (ppm). ANSI/IIAR 2-2021 Section 6.13.2.2 states, "*Detection of ammonia concentrations equal to or exceeding 25 ppm shall activate visual*

*indicators, audible alarms, and provide a notice to a monitored location. The visual indicator and audible alarm shall be permitted to reset automatically if the ammonia concentration drops below 25 ppm.”*

- Some pipes on the roof had missing labels or labels that were faded and/or peeling off. ANSI/IIAR 2-2014 section 5.14.6 states, *“Ammonia piping mains, headers, and branches shall be identified with the following information: 1. “AMMONIA”; 2. Physical state of the ammonia; 3. Relative pressure level of ammonia, being low or high as applicable; 4. Pipe service, which shall be permitted to be abbreviated; and 5. Direction of flow. The marking system shall either be one established by a recognized model code or standard or one described and documented by the facility owner.”*

It certified annually that operating procedures are current and accurate, as required by 40 C.F.R. § 68.69(c), because facility representatives could not produce documentation of certification of operating procedures for 2020 and 2021.

It prepared a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training, as required by 40 C.F.R. § 68.71(c), because facility representatives told the inspection team that they perform on-the-job training (OJT) with new employees as initial training; however, facility representatives could not produce any documentation of the OJT.

## 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 violation cited above, for the total penalty amount of **\$3,300**.

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 violation 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 **\$3,300**. 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 must be included 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-standard mail delivery (e.g. FedEx, DHL, UPS, USPS certified, registered, etc.), the payment shall be sent to:

U.S. Environmental Protection Agency  
Government Lockbox 979078  
3180 Rider Trail S.  
Earth City, MO 63045

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, NY 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  
REX (Remittance Express): 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:

Regional Hearing Clerk  
R4\_Regional\_Hearing\_Clerk@epa.gov,

and

Jordan Noles, Case Development Officer  
noles.jordan@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 violation 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:



Date: 4/12/24

Name (print): Aaron Bennett

Title (print): Maintenance Manager  
Kroger Memphis Distribution Center

FOR COMPLAINANT:

\_\_\_\_\_  
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 Kroger Memphis Distribution Center Docket No. CAA-04-2023-0209(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:** Aaron Bennett, Environmental Manager  
Kroger Memphis Distribution Center  
Email: aaron.bennett@kroger.com Phone  
number: (901) 547-6453  
5079 Bledsoe Street  
Memphis, Tennessee 38141

**To EPA:** Jordan Noles, Case Development Officer  
noles.jordan@epa.gov  
Phone number: (404) 562-9105

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

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Shannon L. Richardson, Regional Hearing Clerk  
R4\_Regional\_Hearing\_Clerk@epa.gov