



August 29, 2024 @ 7:39 am  
USEPA – Region II  
Regional Hearing Clerk

**REGION 2**

NEW YORK, N.Y. 10007

**EXPEDITED SETTLEMENT AGREEMENT**

**DOCKET NO:** CAA-02-2024-1205

**This ESA is issued to:** Wal-Mart Stores East, LP  
702 SW 8<sup>th</sup> Street  
Bentonville, AR 72716

This Expedited Settlement Agreement (“ESA”) is being entered into by the U.S. Environmental Protection Agency, Region 2 (“EPA”), by its duly delegated official, and by Wal-Mart Stores East, LP (“Respondent”) pursuant to Sections 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). EPA and the United States Department of Justice have jointly determined that EPA may pursue this type of case as an administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. §7413(d)(1).

**ALLEGED VIOLATIONS**

On May 17-18, 2022, EPA conducted an onsite inspection at Respondent’s facility, the Walmart Distribution Center #6096, located at 300 Enterprise Road in Johnstown, New York to determine compliance with the Act’s Risk Management Program regulations, promulgated at 40 C.F.R. Part 68 pursuant to Section 112(r) of the Act. Pursuant to the inspection, EPA has determined that Respondent violated the RMP regulations described in the attached Risk Management Program Findings (“Findings”). EPA described the violations in a letter sent by email to a representative of the Walmart Distribution Center #6096 dated June 8, 2023.

**SETTLEMENT**

In consideration of the penalty assessment factors set forth in Section 113(e) of the Act, 42 U.S.C. §7413(e), and upon consideration of the entire record, the parties enter into the ESA in order to settle the violations described in the Findings for the total penalty amount of **eight thousand and one hundred dollars (\$8,100)**.

For purposes of this proceeding, Respondent agrees to the following: it waives any objections that it may have regarding jurisdiction; it neither admits nor denies the specific factual allegations contained in the Findings; it consents to the assessment of the penalty as stated herein; and it waives its rights to contest the allegations contained herein, or 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. Each party to this action shall bear its own costs and

fees, if any.

Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the violations described in the Findings.

After signature, a scanned copy of the signed ESA must be sent by email to Francesco Maimone at the following email address: [Maimone.Francesco@epa.gov](mailto:Maimone.Francesco@epa.gov). The original, signed ESA must be sent by certified mail to:

Francesco Maimone, Physical Scientist  
Air Compliance Branch  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007-1866

The ESA, when executed by both parties and the Regional Judicial Officer and filed with the Regional Hearing Clerk, is binding on EPA and Respondent. Upon such filing and Respondent's timely payment of the penalty, EPA agrees it will not take any further civil penalty action against Respondent for the alleged violations of the Act referenced herein.

Nothing in this ESA shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This ESA does not relieve, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations promulgated or permits issued thereunder.

If the signed ESA is not returned to EPA Region 2 as instructed herein by Respondent within forty-five (45) days of the date of Respondent's receipt of it (or within ninety (90) days if an extension is requested and granted), the proposed ESA is withdrawn, without any prejudice regarding EPA's ability to file an enforcement action for the alleged violations identified herein.

Respondent agrees to submit a payment in full of \$8,100 within thirty (30) days of the filing of a fully executed copy of this ESA with the Regional Hearing Clerk.

#### PAYMENT INSTRUCTIONS

EPA requests that payments be made through the <https://Pay.gov> website using the following link: <https://www.pay.gov/public/form/start/11751879>.

Please ensure that the following information is included on the payment form:

- i. Amount of payment: \$8,100
- ii. Name of Respondent: Wal-Mart Stores East, LP
- iii. Docket No.: CAA-02-2024-1205

To ensure your payment is recorded properly, you are required to notify EPA contemporaneously with the payment. Please send an email message or letter, preferably electronically, that references the date of the payment, the payment amount, the docket number, and your name and address to the following: Francesco Maimone, at his email or address, shown above, and to:

Jean Regna  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17th Floor  
New York, NY 10007-1866  
email: [Regna.Jean@epa.gov](mailto:Regna.Jean@epa.gov)

Milton Wise  
U.S. Environmental Protection Agency  
26 W. Martin Luther King Drive  
Attention: FINANCE  
MS: NWD  
Cincinnati, OH 45268  
emails: [Wise.Milton@epa.gov](mailto:Wise.Milton@epa.gov) and [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov)

and

Karen Maples, Regional Hearing Clerk  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
email: [Maples.Karen@epa.gov](mailto:Maples.Karen@epa.gov)

Failure to pay the penalty when due may subject Respondent to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. §7413(d)(5), to collect the penalty, including accrued interest, attorney's fees, collection costs, and nonpayment penalties.

For purposes of the requirements of 26 U.S.C. §162(f) of the Internal Revenue Code, the cost of actions taken to come into compliance with the violations identified herein are "restitution or paid to come into compliance with law."

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

FOR RESPONDENT:

Signature: \_\_\_\_\_ *Michael Trusty* \_\_\_\_\_

Date: \_\_\_\_\_ August 22, 2024 | 15:23 CDT

Name (print): \_\_\_\_\_ Michael Trusty \_\_\_\_\_

Title (print): \_\_\_\_\_ Senior Director \_\_\_\_\_

FOR COMPLAINANT:

\_\_\_\_\_  
Kathleen Anderson, Director  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 2

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Helen Ferrara  
Regional Judicial Officer  
U.S. EPA, Region 2

Date: \_\_\_\_\_

Risk Management Program Findings  
CAA §112(r) Violations

Walmart Distribution Center #6096  
Walmart Stores, Inc.  
300 Enterprise Road  
Johnstown, NY 12095

**COMPLETE THIS FORM AND RETURN IT WITH THE ESA**

<u><b>VIOLATION</b></u>	<u><b>PENALTY AMOUNT</b></u>
<u>Subpart D Prevention Program</u>	
<i>Hazard Assessment [68.39(a)&amp;(b)]</i> The owner or operator failed to document descriptions of the worst case and alternative case release scenarios.	<i>\$1,200</i>
<i>Process Safety Information [68.65(d)(2)]</i> The owner or operator failed to document that equipment complies with recognized and generally accepted good engineering practices.	<i>\$1,500</i>
<i>Process Hazard Analysis [68.67(e)]</i> The owner or operator failed to establish a system to promptly address findings and recommendations.	<i>\$1,500</i>
<i>Mechanical Integrity [68.73(d)(2)]</i> The owner or operator failed to follow recognized and generally accepted good engineering practices for inspection and testing procedures.	<i>\$900</i>
<i>Pre-Startup Review [68.77]</i> The owner or operator failed to perform a pre-startup review.	<i>\$1,500</i>
<i>Incident Investigation [68.81(d)(5)]</i> The owner or operator’s report failed to include recommendations resulting from the investigation.	<i>\$300</i>
<i>Incident Investigation [68.81(d)(5)]</i> The owner or operator failed to establish a system to address and resolve report findings and recommendations.	<i>\$1,200</i>
<b>Total Penalty</b>	<b>\$8,100</b>

The approximate cost to correct the above items: \$ \_\_\_\_\_

Compliance staff name: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_