



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5<sup>TH</sup> STREET 09 AUG 26 AM 8:30

KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**EXPEDITED SETTLEMENT AGREEMENT (ESA)**

**DOCKET NO.:** CAA-07-2009-0010

**This ESA is issued to:** Troy Elevator, Inc.

**At:** 104 E. South Street, Blakesburg, Iowa 52536

**for violating Section 112(r)(7) of the Clean Air Act.**

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The United States Environmental Protection Agency, Region 7 (EPA) and Troy Elevator, Inc., 104 E. South Street, Blakesburg, Iowa 52536 (Respondent), have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

The Complainant, by delegation of the Administrator of EPA, is the Director of the Air, and Waste Management Division. The Respondent is Troy Elevator, Inc., 104 E. South Street, Blakesburg, Iowa 52536.

This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Department of Justice jointly determined that in cases where the first alleged date of violation occurred more than one year before initiation of an administrative action and which meet the criteria set forth in EPA's policy entitled "Use of Expedited Settlements in Addressing Violations of the Clean Air Act Chemical Accident Prevention Provision, 40 C.F.R. Part 68," dated January 5, 2004, are appropriate for administrative penalty action in the form of an expedited settlement agreement.

**ALLEGED VIOLATIONS**

On November 3, 2008, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 104 E. South Street, Blakesburg, Iowa 52536, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Clean Air Act. The EPA found that the Respondent had violated regulations implementing Section 112(r) of the Clean Air Act by failing to comply with the regulations as noted on the enclosed Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet (RMP Findings), which is hereby incorporated by reference.

SETTLEMENT

In consideration of Respondent's size of business, 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 violations, described in the enclosed RMP Findings, for the total penalty amount of **\$1,180.00**.

This settlement is subject to the following terms and conditions:

The Respondent by signing below waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained herein and in the RMP Findings, 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 Clean Air 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 the Respondent has corrected the violations listed in the enclosed RMP Findings and has sent a cashier's check or certified check (payable to the "United States Treasury") in the amount of **\$1,180.00** in payment of the full penalty amount to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

The Docket Number of this ESA is CAA-07-2009-0010, and must be included on the check.

This original ESA, a copy of the completed RMP Findings, and a copy of the check must be sent by certified mail to:

Deanna Smith  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

A copy of the check must also be sent to:

Kathy M. Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

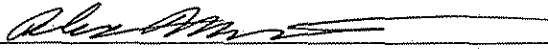
Upon Respondent's submission of the signed original ESA, EPA will take no further civil action against Respondent for the alleged violations of the Clean Air Act referenced in the RMP Findings. The EPA does not waive any other enforcement action for any other violations of the Clean Air Act or any other statute.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region 7 office at the above address in correct form by the Respondent within 45 days of the date of Respondent's receipt of it (90 days if an extension is granted), the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein and in the RMP Findings.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT:

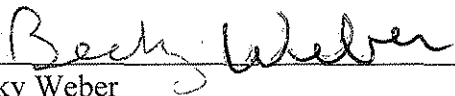


Date: 8-10-09

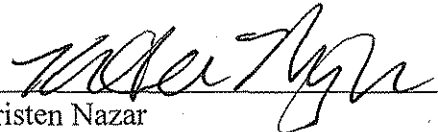
Name (print): Robert Newson

Title (print): President  
Troy Elevator, Inc.

FOR COMPLAINANT:

  
\_\_\_\_\_  
Becky Weber  
Director  
Air and Waste Management Division  
EPA Region 7

Date: 8/19/09

  
\_\_\_\_\_  
Kristen Nazar  
Assistant Regional Counsel  
Office of Regional Counsel  
EPA Region 7

Date: 9/17/09

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

Karina Borromeo

Karina Borromeo  
Regional Judicial Officer

Date: Aug. 26, 2009

**Risk Management Program Inspection Findings**

Troy Elevator, Inc.  
104 E. South Street  
Blakesburg, Iowa 52536  
Docket No. CAA-07-2009-0010

CAA § 112(r) Violations

*See attached list*

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

**VIOLATIONS**

**PENALTY AMOUNT**

Prevention Program

Hazard Review

§ 68.50(c) - The owner or operator failed to document the results of the review.

\$150.00

*How was this addressed:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prevention Program

Maintenance

§ 68.56(d) - The owner or operator failed to perform or cause to be performed inspections and tests on process equipment that follow recognized and generally accepted engineering practices.

\$300.00

*How were these addressed:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prevention Program

Compliance Audits

§ 68.58(d) - The owner or operator failed to promptly determine and document an appropriate response to each of the findings of the audit and document that deficiencies have been corrected.

\$150.00

§ 68.58(e) - The owner or operator failed to retain the two most recent compliance audit reports, unless more than five years old.

\$150.00

**VIOLATIONS**

**PENALTY AMOUNT**

*How was this addressed:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Prevention Program

Incident Investigation

§ 68.60(a) - The owner or operator failed to promptly determine and document an appropriate response to each of the findings of the audit and document that deficiencies have been corrected. \$600.00

§ 68.60(d) - The owner or operator failed to retain the two most recent compliance audit reports, unless more than five years old. \$600.00

*How was this addressed:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Risk Management Plan

§ 68.195(b) - The owner or operator failed to correct the emergency contact information, beginning June 21, 2004, within one month of any change in that information required under § 68.160(b)6. \$1,000.00

*How was this addressed:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Total Unadjusted Penalty \$2,950.00

Calculation of Adjusted Penalty

Reference the multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for 6-20 employees and the row for >10 times the threshold quantity amount gives a multiplier factor of 0.4 for Troy Elevator, Inc. The adjusted penalty = \$2,950 (unadjusted penalty) X 0.4 (size-threshold multiplier) = \$1,180.00 (adjusted penalty). An adjusted penalty of \$1,180.00 would be assessed to Troy Elevator, Inc., for violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

Total Adjusted Penalty \$1,180.00

PROVIDE THE COST TO THE FACILITY TO CORRECT THE ABOVE VIOLATIONS.

The approximate cost to correct the above items: \$ 2500

Compliance staff name: Alan Gaffney

Signed: Alan Gaffney Date: 8-11-09

Responses to:

1. Prevention Program Hazard Review §68.50(c) – The owner or operator failed to document the results of the review.

This was addressed by conducting a Hazard Review on or about November 9, 2007. The review was conducted on behalf of Troy Elevator, Inc. by Dale Huddleson, an associate consultant with Compass, Inc., Anamosa, Iowa. Personnel with Troy Elevator, Inc. were involved with Huddleson during the Review process.

2. Prevention Program Maintenance §68.56(d) – The owner or operator failed to perform or cause to be performed inspections and tests on process equipment that follow recognized and generally accepted engineering practices.

This condition was addressed by:

Troy Elevator, Inc. has a notebook in which each piece of anhydrous ammonia equipment is listed and a record of maintenance and repairs is listed indicating the date of repairs, replacement of pressure relief valves, hoses, and other equipment. This record will continue to be maintained so that necessary replacement of fail-safe equipment is made as required by the regulations.

3. Prevention Program Compliance Audits §68.58(d) – The owner or operator failed to promptly determine and document an appropriate response to each of the findings of the audit and document that deficiencies have been corrected.

This condition was addressed by: See response to §68.58(e) below.

§68.58(e) – The owner or operator failed to retain the two most recent compliance audit reports, unless more than five years old.

This condition was addressed by completing a Compliance Audit conducted by Dale Huddleson, an associate consultant with Compass, Inc., Anamosa, Iowa on or about November 9, 2007. Troy Elevator, Inc. personnel participated in the Compliance Audit. Troy Elevator, Inc. assumed ownership of the Blakesburg, Iowa facilities from Roerman Feed and Grain in 2007. Roerman Feed and Grain had sold the facility to Farmers Coop in 2002. Farmers Coop went bankrupt in 2004 at which time Roerman Feed and Grain took the facility back. Unfortunately and as a result of the various changes in ownership and/or control of the facilities there were no records of previous Compliance Audits or Hazard Reviews that were available for distribution to Troy Elevator, Inc. Therefore no records of compliance reports could be presented at the time of

the most recent Risk Management Program inspection. Troy Elevator, Inc. will make it a routine practice to conduct the Hazard Review and Compliance Audits as specified in the regulations.

4. Prevention Program Incident Investigation §68.60(a) – The owner or operator failed to promptly determine and document an appropriate response to each of the findings of the audit and document that deficiencies have been corrected.

§68.60(d) – The owner or operator failed to retain the two most recent compliance audit reports, unless more than five years old.

These conditions were addressed by: Reference the response to §68.58(e) as discussed in item #3 herein. The circumstances associated with numerous changes in ownership/control also contributed to this condition. Troy Elevator, Inc. will comply with the requirement to conduct Hazard Reviews and Compliance Audits as specified in the regulations.

5. Risk management Plan §68.195(b) – The owner or operator failed to correct the emergency contact information, beginning June 21, 2004, within one month of any change in that information required under §68.160(b)(6).

This condition was corrected by taking the necessary steps to update the Risk Management Plan within the prescribed timeframe specified at the completion of the most recent Risk Management program investigation. The emergency contact information was corrected by submission of a revised Risk Management Plan. Troy Elevator, Inc. will take the steps necessary to make timely adjustments to the Risk Management Plan for the facility when and if there are personnel changes which affect Emergency Contacts for the facility.

IN THE MATTER OF Troy Elevator, Inc., Respondent  
Docket No. CAA-07-2009-0010

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited Settlement Agreement (ESA) was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Kristen Nazar  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Eric Wuthrich  
Troy Elevator, Inc.  
104 E. South Street  
Blakesburg, Iowa 52536

Dated: 8/25/09

  
Kathy Robinson  
Hearing Clerk, Region 7