



REGION 6

DALLAS, TX 75270

6/5/2024

TRANSMITTAL VIA EMAIL:

keith.kirk@mcclanefs.com

Keith Kirk
Safety, QA, and Special Projects Mgr.
McLane Foodservice
2805 Midway Road
Carrollton, TX 75006

Re: Expedited Settlement Agreement (ESA) for Risk Management Program
Findings and Proposed Penalty
In the Matter of McLane Foodservice
Docket No. **CAA 06-2024-3353**

Dear Mr. Kirk:

The United States Environmental Protection Agency (EPA) has authority under Section 113 of the Clean Air Act (CAA) to pursue civil penalties for violations of the Section 112(r) Risk Management Program (RMP) regulations found at 40 C.F.R. Part 68. Enclosed is an ESA that addresses failure to submit an update to the Risk Management Plan within five years for the facility located at 330 Greens Landing Drive, Houston, TX 77308 in accordance with requirements described in 40 C.F.R. § 68.190(b)(1) of the enclosed RMP Findings.

The ESA complies with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits
40 C.F.R. Part 22 (2002).

The ESA contains a discounted, non-negotiable penalty amount of **\$2,000.00**, which is lower than the amount that would be derived from EPA's Combined Enforcement Policy for Section 112(r) of the CAA. You may resolve the cited violation by submitting payment as directed below, certifying the violation has been corrected, and by signing and returning the ESA within 30 days of your receipt of this letter.

EPA, at its discretion, may grant one 30-day extension for cause upon request. If you do not pay the penalty and return the ESA within 30 days of receipt, the ESA will be automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the cited violation which can result in penalties up to \$57,617 per day per violation.

Upon execution of the document, EPA will take no further civil penalty action against you for the violation cited in the ESA.

You are required in the ESA to certify that you have corrected the violation(s), provided a brief description of complying action(s), and paid the penalty. The payment for the penalty amount must be in the form of a certified check payable to the "Treasurer, United States of America", with the Docket Number of the ESA on the check. The Docket Number is located at the top of the ESA.

Payment of the penalty amount shall be sent via certified mail to:

U. S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979078
St. Louis, MO 63197-9000

Or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

Please return the signed ESA with a copy of the payment via electronic mail to:
torres.julia@epa.gov.

When signing the ESA, please indicate, in the appropriate space, the cost of all actions taken to correct the alleged violation.

By terms of the ESA, and upon EPA's receipt of the signed ESA, you waive your opportunity for a hearing pursuant to Section 113 of the CAA.

If you have any questions relating to this ESA, please contact Julia Torres at (214) 665-8532 or by e-mail to torres.julia@epa.gov.

Sincerely,

**JEFFREY
YURK**

Jeff Yurk
Manager
Waste and Chemical Enforcement Branch

Digitally signed by
JEFFREY YURK
Date: 2024.06.05
12:51:07 -05'00'

Enclosure



REGION 6
DALLAS, TX 75270

FILED

25 JUN 24 PM 01:34

REGIONAL HEARING CLERK
EPA REGION 6

6/5/2024

EXPEDITED SETTLEMENT AGREEMENT (ESA)

DOCKET NO: CAA 06-2024-3353

This ESA is issued to: McLane Foodservice

At: 330 Greens Landing Drive, Houston, TX 77308

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

The United States Environmental Protection Agency (EPA), through its delegated official, the Director of the Enforcement and Compliance Assurance Division, and McLane Foodservice (Respondent) have agreed to a settlement of this action before filing 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 and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22.

This ESA is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that cases which meet the criteria set forth in the EPA's policies¹ are appropriate for administrative penalty action.

ALLEGED VIOLATION

On September 6, 2022, EPA Risk Management Program Reporting Center sent a letter to Respondent, notifying Respondent of its failure to update the Risk Management Plan on file with the EPA for its facility located in Houston, Texas. Facilities subject to the Risk Management Program (RMP) regulations at 40 C.F.R. Part 68 are required to submit an updated Risk Management Plan at least once every five years. The EPA's review indicates that the update for the facility was not submitted by the required due date of August 2, 2022. The EPA has found that Respondent violated the RMP regulation and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), as follows:

- 1) **40 C.F.R. § 68.190(b)(1) Updates** - *The owner or operator shall review and update the RMP as specified in paragraph (b) of this section and submit it in the method and format to the central point specified by EPA as of the date of submission. (b) The owner or operator of a stationary source shall revise and update the RMP submitted under 40 C.F.R. § 68.150 as follows (1) At least once every five years from the date of its initial submission or most recent update required by paragraphs (b)(2) through (b)(7) of this section, whichever is later.*

SETTLEMENT

¹ "Use of Expedited Settlements in Addressing Violations of the Clean Air Act Chemical Accident Prevention Provisions, 40 C.F.R. Part 68" (2004); and "Changes to Restrictions on the Use of Expedited Settlements in Addressing Violations of the Clean Air Act Chemical Accident Prevention Provisions" (2013)

In consideration of the factors set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the criteria set forth in the EPA's policies¹, and upon consideration of the entire record, EPA and Respondent enter into this ESA to settle the violation, described above, for the total penalty amount of **\$2,000.00**.

This settlement is subject to the following terms and conditions:

Respondent, by signing below, waives any objections that it may have regarding jurisdiction, 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 CAA, 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 statement to the United States Government, that Respondent has corrected the violation listed above and has paid the full penalty of **\$2,000.00** by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979078
St. Louis, MO 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

The Docket Number of this ESA is **CAA-06-2024-3353** and must be included on the payment. **The signed ESA and a copy of the payment must be sent by email to: torres.julia@epa.gov.**

Full payment of the ESA penalty shall only resolve Respondent's civil liability for the violation alleged above. The EPA does not waive any other enforcement action by EPA for any other past, present, or future violations under the CAA or any other statute.

If the signed ESA with a copy of the payment is not returned to the EPA Region 6 at the above e-mail address in correct form by Respondent within 30 days of the date of the receipt of this ESA, the proposed ESA is withdrawn, without prejudice to EPA's ability to file additional enforcement actions for the violation identified in this ESA.

This ESA is binding on the EPA and Respondent and is effective upon filing with the Regional Hearing Clerk.

The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this ESA, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

To EPA: torres.julia@epa.gov

To Respondent: keith.kirk@mclanefs.com

SIGNATURE BY RESPONDENT:

Signature: 

Date: 6-14-24

Name (print): Chris Simonson

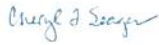
Title (print): G.M.

Cost of Corrective Actions: _____

Respondent's Brief Description of Complying Action: _____

If you need additional space or would like to provide additional supporting documentation, please attach to this document.

SIGNATURE BY EPA:



Digitally signed by
CHERYL SEAGER
Date: 2024.06.24
09:52:30 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

It is so ORDERED. This Order shall become effective upon filing of the fully executed ESA with the Regional Hearing Clerk.

**THOMAS
RUCKI**

Digitally signed by
THOMAS RUCKI
Date: 2024.06.25
10:21:02 -04'00'

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited Settlement Agreement was filed with me, the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the email addresses:

Copy via Email to EPA:

torres.julia@epa.gov

Copy via Email to Respondent:

keith.kirk@mclanefs.com

Keith Kirk
Safety QA, and Special Projects Mgr.
McLane Foodservice
2805 Midway Road
Carrollton, TX 75006

Copy via Email to Regional Hearing Clerk:

vaughn.loreana@epa.gov

A handwritten signature in blue ink, appearing to read "Lorena Vaughn", is written over a horizontal line.

Regional Hearing Clerk
U.S. EPA, Region 6