



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

11 AUG 2011 8:15
ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

EXPEDITED SETTLEMENT AGREEMENT (ESA)

DOCKET NO.: CAA-07-2011-0017

This ESA is issued to: Gage's Fertilizer & Grain, Inc.

At: 31019 E. 260 Avenue, Bethany, Missouri 64424

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

The United States Environmental Protection Agency, Region 7 (EPA) and Gage's Fertilizer & Grain, Inc. (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 Gage's Fertilizer & Grain, Inc., 31019 E. 260 Avenue, Bethany, Missouri 64424.

This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA). 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 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.

ALLEGED VIOLATIONS

On March 10, 2011, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 31019 E. 260 Avenue, Bethany, Missouri, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the CAA. The EPA found that the Respondent had violated regulations implementing Section 112(r) of the CAA by failing to comply with the regulations as noted on the enclosed Risk Management Program Inspection Findings (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 **\$2,000**.

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 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 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 **\$2,000** 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-07-2011-0017, 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 5th 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 5th 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 CAA referenced in the RMP Findings.

The EPA does not waive any other enforcement action for any other violations of the CAA 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

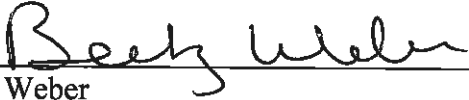


Date: 8/12/11

Name (print): Steve Gage

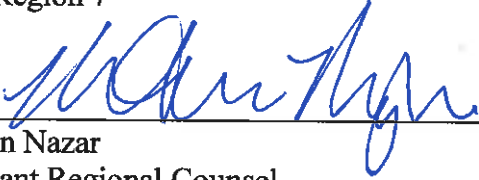
Title (print): President
Gage's Fertilizer & Grain, Inc.

FOR COMPLAINANT:



Becky Weber
Director
Air and Waste Management Division
EPA Region 7

Date: 8/19/11



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

Date: 8/16/2011

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

Karina Borrromeo
Karina Borrromeo
Regional Judicial Officer

Date: Aug. 23, 2011

Risk Management Program Inspection Findings
CAA § 112(r) Violations

Gage's Fertilizer & Grain, Inc.
31019 E. 260 Avenue
Bethany, Missouri 64424
Docket No. CAA-07-2011-0017

COMPLETE THIS FORM AND RETURN IT WITH THE ESA.

VIOLATIONS

PENALTY AMOUNT

Hazard Assessment

\$1,200

Review and Update [§ 68.36(a)]

The owner or operator failed to review and update the off-site consequence analyses at least once every five years.

How was this addressed:

This has been addressed and is currently in the procedures manual.

Prevention Program

\$ 300

Compliance Audits [§ 68.58(e)]

The owner or operator failed to retain the two most recent compliance audit reports less than five years old.

How was this addressed:

These audits are now in the procedures manual and are kept up to date.

Risk Management Plan [§ 68.195(b)]

\$1,000

The owner or operator failed to submit a correction of the emergency contact information required under § 68.160(b)(6) within one month of any change.

How was this addressed:

Has been corrected and noted in the procedures manual

VIOLATIONS

PENALTY AMOUNT

General Duty Clause [112.(r)(1)]

No Penalty Assessed

The owner or operator failed to address a normal operations procedure where nurse tanks are filled in the field directly from transport trailers still attached to the truck tractor. This procedure is required under the General Duty Clause.

How was this addressed:

This procedure has been wrote up and in place in our compliance manual and has been approved by the inspector

Total Unadjusted Penalty

\$2,500

Calculation of Adjusted Penalty

1st Reference the multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the row for number of employees 0-9 and column for greater than 10 times the threshold quantity of anhydrous ammonia as listed in 40 C.F.R. Part 68.130 for the amount in a process gives a multiplier factor of 0.8. Therefore, the multiplier for Gage's Fertilizer & Grain, Inc. = 0.8.

2nd Adjusted Penalty = \$2,500 (Unadjusted Penalty) X 0.8 (Size-Threshold Multiplier)
Adjusted Penalty = \$2,000

3rd An Adjusted Penalty of \$2,000 would be assessed to Gage's Fertilizer & Grain, Inc., for violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement.

Total Adjusted Penalty

\$2,000

This section must be also be completed and signed by Gage's Fertilizer & Grain, Inc.:

The approximate cost to correct the above items: \$ N/A

Compliance staff name: Bryan Wright

Signed:  Date: 8/12/11

IN THE MATTER OF Gage's Fertilizer & Grain, Inc., Respondent
Docket No. CAA-07-2011-0017

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 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Steve Gage, President
Gage's Fertilizer & Grain, Inc.
31019 E. 260 Avenue
Bethany, Missouri 64424

Dated: 8/24/11


Kathy Robinson
Hearing Clerk, Region 7