



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

RECEIVED  
2015 AUG 31 PM 12:52  
REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

IN THE MATTER OF: )

Elkhorn Investments, LLC )  
4613 E. 91<sup>st</sup> Street )  
Tulsa, OK 74137, )

and )

Elkhorn Gas Processing, LLC )  
4613 E. 91<sup>st</sup> Street )  
Tulsa, OK 74137, )

Respondents. )

Hurricane Gas Processing Plant )  
7222 State Route 34 )  
Hurricane, WV 25526, )

Keystone Natural Gas Processing Plant )  
1990 Zimmerman Hill Road )  
Clarendon, PA 16313, )

Roystone Gas Processing Plant )  
1911 Route 6 )  
Sheffield, PA 16347, )

Kane Natural Gas Processing Plant )  
6307 Route 6 East )  
Kane, PA 16735, )

Whitetail Gas Processing Plant )  
5456 Highland Road )  
Kane, PA 16735, )

Lewis Run Gas Processing Plant )  
1371 South Avenue )  
Bradford, PA 16701, )  
Facilities. )

EPA Docket No. CAA-03-2015-0097

Proceedings Pursuant to Sections 112(r)  
and 113 of the Clean Air Act, 42 U.S.C.  
§ 7412, 7413, and 40 C.F.R. § 22.13(b) and  
22.18(b)

## **CONSENT AGREEMENT**

### **STATUTORY AUTHORITY**

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7413(d), and under the authority provided by the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (“Part 22”). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III (“Complainant”).

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as “CA/FO”) as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

### **JURISDICTION**

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. § 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondents Elkhorn Investments, LLC, and Elkhorn Gas Processing, LLC (referred to collectively herein as “Respondents”) admit to the jurisdictional allegations in this Consent Agreement and agree not to contest EPA’s jurisdiction with respect to the execution or enforcement of this Consent Agreement.
4. With the exception of Paragraph 3, above, for the purpose of this proceeding, Respondents neither admit nor deny the EPA’s Findings of Fact and EPA’s Conclusions of Law set forth in this Consent Agreement, but expressly waive their rights to contest said allegations.

### **LEGISLATIVE AND REGULATORY HISTORY AND DEFINITIONS**

5. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).

6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance (“EHS”), have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. Section 112(r)(1) is hereinafter referred to as the “General Duty Clause.”

7. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires the Administrator of EPA to promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires the Administrator to set threshold quantities for listed regulated substances. The list of regulated substances and threshold levels can be found in 40 C.F.R. § 68.130.

8. The General Duty Clause applies to any stationary source producing, processing handling or storing regulated substances or any other EHS. An EHS is any chemical, which may, as a result of short-term exposures because of releases to the air, cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility or corrosivity. Senate Comm. of Environment and Public Works, Clean Air Act Amendments of 1989, Senate Rep. No. 228, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. 211 (1989). EHSs include, but are not limited to, regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, and chemicals listed on the list of extremely hazardous substances at 40 C.F.R. Part 355, Appendices A and B.

9. On June 20, 1996, EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). The regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program is described in a risk management plan that must be submitted to EPA. The risk management plan must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in response to an accidental release of a regulated substance, so as to protect human health and the environment.

10. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and its regulations at 40 C.F.R. §§ 68.10(a) and 68.150(a), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity must submit a risk management plan to EPA no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

11. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996, authorizes EPA to commence an administrative action to assess civil penalties of \$37,500 per day for each violation of Section 112(r) of the CAA that occurs after January 12, 2009.

12. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source” as, inter alia, any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.

13. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as including an individual, corporation, partnership, association, State, municipality, political subdivision of a State and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

14. The regulations at 40 C.F.R. § 68.3 define “natural gas processing plant (gas plant)” as any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both, classified as North American Industrial Classification System (NAICS) code 211112 (previously Standard Industrial Classification (SIC) code 1321).

15. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA in 40 C.F.R. § 68.130.

17. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

18. As used herein, the term “day” shall mean calendar day.

19. All terms not defined herein shall have the meanings set forth in the CAA.

### **EPA'S FINDINGS OF FACT**

20. Respondent, Elkhorn Investments, LLC is a limited liability company organized in the State of Oklahoma, with its principal place of business located at 4613 East 91st Street, in Tulsa, Oklahoma.

21. Respondent, Elkhorn Gas Processing, LLC is a limited liability company organized in the State of Oklahoma, with its principal place of business at 4613 East 91<sup>st</sup> Street, in Tulsa, Oklahoma.

22. Respondent Elkhorn Investments, LLC has had a substantial ownership interest in the six facilities referenced in the caption (hereafter "Facilities") as follows: Hurricane, since 2008; Keystone, since 1986; Roystone, since 1994; Kane, since 2002; Whitetail, since 2009; Lewis Run, since 1997.

23. Respondent Elkhorn Gas Processing, LLC has been the operator of the Facilities as follows: Hurricane, since 2007; Keystone, since 2007; Roystone, since 2007; Kane, since 2007; Whitetail, since 2009; Lewis Run, since 2007.

24. Each of the Facilities receives field gas from nearby wells, mechanically removes liquids, compresses the gas, removes water, extracts natural gas liquids via a propane refrigeration process, and, in some instances, injects the processed natural gas into an interstate gas pipeline system. More detailed information about each Facility follows:

- a. Hurricane is a 10 million cubic feet per day ("MMCFD"), straight refrigeration plant that operates a dual-tower fractionation process that produces propane and a butane/gasoline mix. The plant consists of a process skid with fractionation, two 900 horsepower ("HP") electric inlet compressors, one 600 HP refrigeration compressor, four 30,000-gallon bullet storage tanks storing liquefied petroleum gas ("LPG"), and one 100-barrel waste oil tank.
- b. Keystone is a 10.5 MMCFD mixed refrigeration plant with a three-tower fractionation process that produces propane, mixed butane and natural gasoline. The plant includes a refrigeration compressor driven by a 740 HP engine, three 30,000-gallon bullet storage tanks storing LPG, one 12,000-gallon bullet storage tank storing condensate and one 210-barrel waste oil tank.
- c. Roystone is a 9 MMCFD refrigeration Joule-Thomson plant with a three-tower fractionation process. The plant includes an 800 HP Ajax inlet compressor, a 280 HP Ajax refrigeration compressor, four 30,000-gallon bullet storage tanks storing LPG, one 30,000-gallon bullet storage tank storing condensate, one 6,000-gallon storage tank and one 100-barrel waste oil tank.

- d. Kane is a 10 MMCFD straight refrigeration plant with a three-tower fractionation process that produces propane, mixed butane and natural gasoline. The plant includes two 800 HP Ajax inlet compressors, one 360 HP Ajax refrigeration compressor, four 30,000-gallon bullet storage tanks storing LPG, one 30,000-gallon bullet storage tank storing condensate, and one 210-barrel waste oil tank.
- e. Whitetail is a 7 MMCFD propane refrigeration plant consisting of a single stabilizer producing y-grade natural gas liquid product. The plant consists of two 600 HP inlet units, a 300 HP refrigeration compressor, and one 210-barrel waste oil tank. Y-grade product storage consists of two 30,000-gallon bullet storage tanks and loading/offloading areas for truck transport.
- f. Lewis Run is a 6 MMCFD straight refrigeration plant with a dual-tower fractionation process that produces propane and a butane/gasoline mix. The plant consists of a 600 HP inlet compressor, a 180 HP refrigeration compressor, two 30,000-gallon bullet storage tanks storing LPG, and one 150-barrel waste oil tank.

25. EPA conducted an inspection of each of the Facilities to determine whether Respondents were in compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the Chemical Accident Prevention Provisions at 40 C.F.R. Part 68, on the following dates:

- a. Hurricane: March 29, 2012
- b. Keystone: April 10, 2012
- c. Roystone: April 11, 2012
- d. Kane: April 12, 2012
- e. Whitetail: August 9, 2012
- f. Lewis Run: August 2, 2010 and April 2012

26. At the time of the inspections, EPA inspectors observed that each of the Facilities stored flammable LPG in 30,000-gallon aboveground bullet storage tanks. The LPG consists of a mixture of highly flammable liquids, including a chemical listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), propane (Chemical Abstract Service No. 74-98-6) in a concentration, in some instances, of at least one percent. The weight of the liquids in each 30,000-gallon aboveground bullet storage tank containing LPG is greater than 10,000 pounds, at approximately 100,800 pounds, at 80% of capacity.

27. At the time of the inspections, EPA inspectors observed that several of the Facilities had aboveground bullet storage tanks containing condensate, a Class IB flammable liquid, as follows:

- a. Tank 1 (12,000 gallons) and Tank 5 (10,000 gallons) at Keystone,

- b. Tank 4 (30,000 gallons) at Roystone, and
- c. Tank 5 (30,000 gallons) at Kane.

According to the Material Safety Data Sheet for the condensate provided by Respondents to EPA, the condensate consists of at least 15% pentane and at least 21% iso-pentane, both of which are substances listed on the List of Regulated Flammable Substances, at 40 C.F.R. § 68.130, Table 3. The weight of the 30,000-gallon aboveground storage tanks containing flammable liquids at Kane and Roystone is approximately 139,000 pounds. The total weight of the liquids in the 12,000-gallon and the 10,000-gallon aboveground storage tanks at Keystone is approximately 102,000 pounds.

28. At the time of the inspections, EPA inspectors observed that all of the Facilities had a waste oil tank, called a “slop tank,” containing a mixture of glycol, lube oil, water and condensate. Facility personnel indicated to EPA during the inspections that the waste oil tanks present at the Facilities may periodically contain flammable liquids. Respondents later confirmed that the contents of the waste oil tanks periodically include Class IB flammable liquids, namely the condensate.

29. On September 10, 2014, EPA and Respondents entered into an Administrative Settlement Agreement and Order on Consent, EPA Docket No. CAA-03-2014-0063DA (“ASAOC”), pursuant to the authority of Sections 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B). The ASAOC required Respondents to take certain actions at the Facilities as specified in Paragraph 46.a of the ASAOC (hereafter the “Work”).

30. Respondents completed the Work under the ASAOC on May 20, 2015, and submitted a final report on June 25, 2015. The Final Report verified that Respondents fully complied with the requirements of Subparagraphs 46.a-b of the ASAOC, including the tasks set forth in Exhibit A thereto, in accordance with an EPA-approved Work Plan and Schedule. EPA approved the Final Report pursuant to Paragraph 46.e of the ASAOC, and provided a notice of termination, pursuant to Paragraph 70 of the ASAOC, by letter dated July 21, 2015.

**COUNTS 1-3**  
**EPA’S FINDINGS OF FACT AND**  
**ALLEGED VIOLATIONS OF SECTION 112(r)(1) OF THE CLEAN AIR ACT**

31. The findings of fact contained in Paragraphs 5 through 30 of this CA/FO are incorporated by reference herein as though fully set forth at length.

32. Applicable industry standards for the proper storage of flammable liquids include, as applicable, National Fire Protection Association 30, *Flammable and Combustible Liquid Code Handbook*, 8th ed. (2008) (“NFPA 30”). Chapter 2 of NFPA 30 includes provisions addressing the storage of flammable and combustible liquids. Section 22.7.1.1 of NFPA 30 states, “Every aboveground storage tank shall have emergency relief venting in the form of construction or a device or devices that will relieve excessive internal pressure caused by an exposure fire.”

33. Complainant further alleges that the waste oil tanks at three of the Facilities, Hurricane, Roystone and Lewis Run, lacked adequate emergency vents, consistent with the safety protection provided by NFPA 30.

**EPA'S CONCLUSIONS OF LAW RELATED TO THE  
ALLEGED VIOLATIONS OF SECTION 112(r)(1) OF THE CLEAN AIR ACT**

34. Each of the Respondents is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

35. At all times relevant to this CA/FO, Respondent Elkhorn Investments, LLC has been an owner of the natural gas processing plants Hurricane, Roystone and Lewis Run.

36. At all times relevant to this CA/FO, Respondent Elkhorn Gas Processing, LLC has been the operator of the natural gas processing plants Hurricane, Roystone and Lewis Run.

37. Each of the three Facilities, Hurricane, Roystone and Lewis Run, is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

38. The contents of the waste oil tanks at Hurricane, Roystone and Lewis Run, periodically include an extremely hazardous substance for purposes of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

39. Respondents are subject to the requirements of Section 112(r)(1) of the CAA, 40 U.S.C. § 7412(r)(1), at each of the Facilities, Hurricane, Roystone and Lewis Run, because each Respondent is an owner or operator of a stationary source, at which a listed substance is produced, processed, handled or stored.

40. At the time of the inspections, Respondents had failed to provide emergency venting on the waste oil tanks at the Hurricane, Roystone and Lewis Run facilities to provide protection consistent with NFPA 30, § 22.7.1.1, in violation of the requirement of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to design and maintain a safe facility taking such steps as are necessary to prevent accidental releases, as follows:

- a. *Count 1 – Hurricane.* Failure to provide emergency venting on waste oil tank;
- b. *Count 2 – Roystone.* Failure to provide emergency venting on waste oil tank; and
- c. *Count 3 -- Lewis Run.* Failure to provide emergency venting on waste oil tank.

41. Complainant further alleges that Respondents are, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.



**COUNTS 4-8**  
**EPA'S FINDINGS OF FACT AND ALLEGED**  
**VIOLATIONS OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

42. The findings of fact contained in Paragraphs 5 through 41 of this CA/FO are incorporated by reference herein as though fully set forth at length.

43. Respondents submitted risk management plans for each of the following six Facilities to EPA on the following dates:

- a. Keystone: Initial, June 14, 1999; subsequent, June 15, 2004, June 1, 2007, April 23, 2009, March 16, 2014
- b. Roystone: Initial, June 14, 1999; subsequent, June 15, 2004, June 1, 2007, April 23, 2009, April 15, 2014
- c. Kane: Initial, August 5, 2002; subsequent, June 15, 2004, June 1, 2007, August 24, 2007, May 23, 2012
- d. Whitetail: Initial, November 10, 2009; subsequent, August 9, 2012
- e. Lewis Run: Initial, June 14, 1999; subsequent, June 15, 2003, May 23, 2005, June 7, 2007, June 14, 2010
- f. Hurricane: Initial, January 7, 2008; subsequent, March 13, 2012.

44. The Chemical Accident Prevention Provisions require an owner or operator to comply with process safety information requirements at 40 C.F.R. § 68.65(d)(1)(vi) and (d)(2), i.e. to compile process safety information pertaining to the equipment in the process including design codes and standards employed and to document that the equipment in the process complies with recognized and generally accepted good engineering practices.

45. "Design codes and standards" and "recognized and generally accepted good engineering practices," for purposes of 40 C.F.R. § 68.65, include, as applicable, the following:

- a. Chapter 22 of NFPA 30, which includes provisions addressing the storage of flammable and combustible liquids. Section 22.11 of NFPA 30 states, "Every tank that contains a Class I, Class II, or Class IIIA liquid shall be provided with means to prevent an accidental release of liquid from endangering important facilities and adjoining property or from reaching waterways."
- b. The American Petroleum Institute Standard 2510A, *Fire-Protection Considerations for the Design and Construction of Liquefied Petroleum Gas (LPG) Storage Facilities* (2nd Edition, December 1996) ("API 2510A"), which addresses "the design, operation, and maintenance of LPG storage facilities from the standpoints of prevention and control of releases, fire protection design, and fire-control measures." API 2510A, Section 1.1.1. API 2510A, Section 2.12.8, provides that truck loading

racks should be located and designed to minimize the possibility of a truck hitting LPG pipe or equipment.

46. EPA inspectors observed that the tanks containing LPG or condensate at the Keystone, Roystone and Kane Facilities lacked a means to “prevent an accidental release of liquid from endangering important facilities and adjoining property or from reaching waterways,” such as secondary containment, and that the design at these three Facilities did not provide protection consistent with that provided by NFPA 30.

47. Complainant further alleges that the bullet tanks containing LPG or condensate at the Keystone, Kane, Lewis Run and Whitetail Facilities were located adjacent to truck loading areas, and lacked design features to minimize the possibility of a truck hitting the LPG tanks, such as bollards, and that the design at these four Facilities did not provide protection consistent with that provided by NFPA 30.

**EPA’S CONCLUSIONS OF LAW RELATED TO THE  
ALLEGED VIOLATIONS OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

48. The findings of fact contained in Paragraphs 5 through 47 of this CA/FO are incorporated by reference herein as though fully set forth at length.

49. Each of the five Facilities, Keystone, Roystone, Kane, Lewis Run and Whitetail (referred to hereafter as “RMP Facilities”), is a “stationary source” pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

50. Each of the five RMP Facilities constitutes a natural gas processing plant, as defined at 40 C.F.R. § 68.3.

51. At least one constituent of the LPG, propane, in one or more of the aboveground bullet storage tanks at the RMP Facilities is a “regulated substance” for purposes of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), because it is listed pursuant to Section 112(r)(3) of the CAA, at 40 C.F.R. § 68.130, Table 3, as a regulated flammable substance.

52. The total quantity of the LPG at each of the RMP Facilities is counted when determining whether more than a threshold quantity of a regulated substance is present in a process, pursuant to 40 C.F.R. § 68.115(b)(2). The estimated total quantity of LPG at each of the RMP Facilities, using the following conversion method -- gallons x density of water (8.34 lbs/gal) x specific gravity of LPG x allowable capacity (80%) -- is as follows:

- a. Keystone: 3 bullet tanks @ 30,000 gallons = 90,000 gallons = 396,000 lbs
- b. Roystone: 4 bullet tanks @ 30,000 gallons = 120,000 gallons = 528,000 lbs
- c. Kane: 4 bullet tanks @ 30,000 gallons = 120,000 gallons = 528,000 lbs
- d. Whitetail: 2 bullet tanks @ 30,000 gallons = 60,000 gallons = 264,000 lbs
- e. Lewis Run: 3 bullet tanks @ 30,000 gallons = 90,000 gallons = 396,000 lbs

53. The threshold quantity for a mixture of flammable substances containing the regulated substance propane at a concentration greater than one percent is 10,000 pounds, pursuant to 40 C.F.R. § 68.115(b)(2) and 68.130, Table 3.

54. The aboveground bullet storage tanks, including Tanks 1 and 5 at Keystone, Tank 5 at Roystone, and Tank 5 at Kane, contain or periodically contained condensate consisting of at least 1% each of the flammable substances pentane and iso-pentane.

55. The total quantity of the condensate contained in the bullet tanks at each Facility is counted in determining whether the condensate is subject to the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68, according to 40 C.F.R. § 68.115(b)(2). The total quantity of condensate at the Facilities is as follows:

- a. Keystone: 1 bullet tank @ 12,000 gallons + 1 bullet tank @ 10,000 gallons = 22,000 gallons = 102,000 lbs
- b. Roystone: 1 bullet tank @ 30,000 gallons = 139,000 lbs
- c. Kane: 1 bullet tanks @ 30,000 gallons = 139,000 lbs

56. The storage and handling of the condensate in the aboveground bullet storage tanks at the three Facilities, Keystone, Roystone and Kane, constitutes a process within the meaning of the Section 68.3 of the Chemical Accident Prevention Provisions, 40 C.F.R. § 68.3.

57. At all times relevant to this Consent Agreement, more than a threshold quantity of a regulated substance has been present in a process at each of the RMP Facilities.

58. Each of the RMP Facilities is a Program 3 Facility under the Chemical Accident Prevention Provisions, in accordance with 40 C.F.R. § 68.10(d).

59. Respondent, Elkhorn Investments, LLC, is subject to the requirements of Section 112(r)(7) of the CAA, 40 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68, at each of the RMP Facilities because Respondent is an owner of a stationary source that has more than a threshold quantity of a regulated substance in a process.

60. Respondent, Elkhorn Gas Processing, LLC, is subject to the requirements of Section 112(r)(7) of the CAA, 40 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68, at each of the RMP Facilities because Respondent is an operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

61. At the time of the inspections, Respondents failed to comply with the process safety information requirements at 40 C.F.R. § 68.65(d)(1)(vi) and (d)(2) at each of the RMP Facilities, *i.e.*, to compile process safety information pertaining to design codes and standards relevant to the equipment, particularly NFPA 30, Chapter 22, for spill containment, and API 2510A, § 2.12.8 for vehicular protection, and to document that the equipment in the process complies with recognized and generally accepted good engineering practices, as follows:

- a. *Count 4 - Keystone.* Inadequate spill containment for aboveground bullet storage tanks containing Class I, Class II or Class IIA flammable or combustible liquids, and inadequate vehicular protection for LPG tanks.
- b. *Count 5 - Roystone.* Inadequate spill containment for aboveground bullet storage tanks containing Class I, Class II or Class IIA flammable or combustible liquids and inadequate vehicular protection for LPG tanks.
- c. *Count 6 - Kane.* Inadequate spill containment for aboveground bullet storage tanks containing Class I, Class II or Class IIA flammable or combustible liquids and inadequate vehicular protection for LPG tanks.
- d. *Count 7 - Lewis Run.* Inadequate vehicular protection for LPG tanks.
- e. *Count 8 - Whitetail.* Inadequate vehicular protection for LPG tanks.

62. Complainant further alleges Respondents are, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

63. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

#### **SETTLEMENT**

64. In accordance with 40 C.F.R. § 22.18(c), and in full and final settlement and resolution of all allegations referenced in the foregoing EPA's Findings of Fact and EPA's Conclusions of Law set forth above, and in full satisfaction of any and all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondents consent to the assessment of a civil penalty for the violations of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), set forth above, in the amount of \$50,221 ("CAA Penalty").

#### **PAYMENT TERMS**

65. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondents agree to:

- a. Within thirty (30) days of the Effective Date of this CA/FO (the "Final Due Date"), pay the CAA Penalty of \$50,221 referencing "EPA Docket No. CAA-03-2015-0097," and using one of the methods identified in Subparagraphs 65.b-e, below:
- b. *Check.*
  - (i) All checks shall be made payable to United States Treasury;
  - (ii) All payments made by check and sent by regular mail shall be

addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Heather Russell, 513-487-2044

- (iii) All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: 314-418-1028

- (iv) All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 M.L. King Drive  
Cincinnati, OH 45268-0001

- c. *Electronic Wire Transfer.* All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
D 68010727 Environmental Protection Agency

- d. *ACH.* All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury Lisby Facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

e. *On-Line Payment Option.*

WWW.PAY.GOV/PAYGOV  
Enter sfo 1.1 in the search field. Open and complete the form.

f. Additional payment guidance is available at:  
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

g. Within 24 hours of payment of the CAA Penalty, Respondents shall send proof of payment to:

Cynthia T. Weiss  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street (3RC42)  
Philadelphia, PA 19103-2029

and

Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street (3RC00)  
Philadelphia, PA 19103-2029

The term “proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “EPA Docket No. CAA-03-2015-0097.”

66. The CAA Penalty stated herein is based upon Complainant’s consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June

2012).

67. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the CAA Penalty by the Final Due Date shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

68. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will waive interest on any amount of the civil penalty that is paid by the Final Due Date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

69. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the Final Due Date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

70. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

#### **GENERAL PROVISIONS**

71. For the purpose of this proceeding, each Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2).

72. The provisions of the CA/FO shall be binding upon each Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of each Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

73. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including either Respondent, in response to any condition which Complainant

determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

74. By signing this Consent Agreement, the undersigned representative of each Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

75. By signing this Consent Agreement, all parties agree that each party's obligations under this Consent Agreement and accompanying Final Order constitute sufficient consideration for the other party's obligations.

76. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

77. Each party to this action shall bear its own costs and attorney's fees.

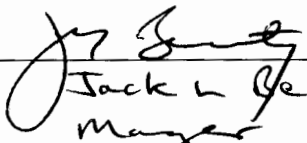
78. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

79. Nothing in this Consent Agreement shall relieve either Respondent of the duty to comply with all applicable provisions of the CAA, and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

80. Nothing herein shall be construed to limit the power of EPA to undertake any action against either Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment, nor, in such case, shall this Consent Agreement be construed so as to limit any defense that Respondents may have under the CAA or otherwise.

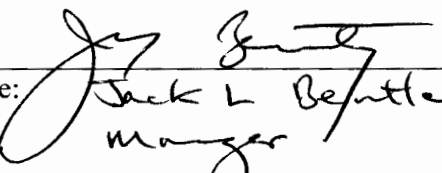


FOR RESPONDENT ELKHORN INVESTMENTS, LLC:

Name:   
Title: Jack L Bentley  
manager

Date: 8-18-15

FOR RESPONDENT ELKHORN GAS PROCESSING, LLC:

Name:   
Title: Jack L Bentley  
manager

Date: 8-18-15

FOR COMPLAINANT:

8/27/2015  
DATE

Cecil Rodrigues  
Cecil Rodrigues, Director  
Hazardous Site Cleanup Division  
U.S. Environmental Protection Agency, Region 3

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**IN THE MATTER OF:** )  
 )  
**Elkhorn Investments, LLC** ) **EPA Docket No. CAA-03-2015-0097**  
**4613 E. 91<sup>st</sup> Street** )  
**Tulsa, OK 74137,** )  
 )  
**and** )  
 )  
**Elkhorn Gas Processing, LLC** )  
**4613 E. 91<sup>st</sup> Street** )  
**Tulsa, OK 74137,** )  
 )  
**Respondents.** ) **FINAL ORDER**  
 )  
**Hurricane Gas Processing Plant** )  
**7222 State Route 34** )  
**Hurricane, WV 25526,** )  
 )  
**Keystone Natural Gas Processing Plant** ) **Proceedings Pursuant to Sections 112(r)**  
**1990 Zimmerman Hill Road** ) **and 113 of the Clean Air Act, 42 U.S.C.**  
**Clarendon, PA 16313,** ) **§ 7412, 7413, and 40 C.F.R. § 22.13(b) and**  
 ) **22.18(b)**  
**Roystone Gas Processing Plant** )  
**1911 Route 6** )  
**Sheffield, PA 16347,** )  
 )  
**Kane Natural Gas Processing Plant** )  
**6307 Route 6 East** )  
**Kane, PA 16735,** )  
 )  
**Whitetail Gas Processing Plant** )  
**5456 Highland Road** )  
**Kane, PA 16735,** )  
 )  
**Lewis Run Gas Processing Plant** )  
**1371 South Avenue** )  
**Bradford, PA 16701,** )  
**Facilities.** )

---

**FINAL ORDER**

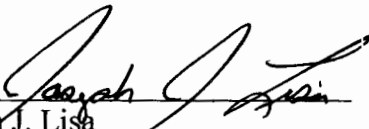
Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondents, Elkhorn Investments, LLC, and Elkhorn Gas Processing, LLC, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific references to Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to herein is consistent with 40 C.F.R. Part 19, and is based upon consideration of, *inter alia*, EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (June 2012), and the statutory factors set forth in Section 113(e) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(e).

**NOW, THEREFORE, PURSUANT TO** Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **FIFTY THOUSAND TWO HUNDRED TWENTY-ONE DOLLARS (\$50,221)**, plus any applicable interest, and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: Aug. 31, 2015

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial Officer  
U.S. EPA, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 ARCH STREET  
PHILADELPHIA, PA 19103-2029

RECEIVED  
2015 AUG 31 PM 12:52  
REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

IN THE MATTER OF: )

Elkhorn Investments, LLC )  
4613 E. 91<sup>st</sup> Street )  
Tulsa, OK 74127, )

and )

Elkhorn Gas Processing, LLC )  
4613 E. 91<sup>st</sup> Street )  
Tulsa, OK 74127, )

Respondents. )

Hurricane Gas Processing Plant )  
7222 State Route 34 )  
Hurricane, WV 25526, )

Keystone Natural Gas Processing Plant )  
1990 Zimmerman Hill Road )  
Clarendon, PA 16313, )

Roystone Gas Processing Plant )  
1911 Route 6 )  
Sheffield, PA 16347, )

Kane Natural Gas Processing Plant )  
6307 Route 6 East )  
Kane, PA 16735, )

Whitetail Gas Processing Plant )  
5456 Highland Road )  
Kane, PA 16735, )

Lewis Run Gas Processing Plant )  
1371 South Avenue )  
Bradford, PA 16701, )

Facilities. )

EPA Docket Number  
CAA-03-2014-0218DA

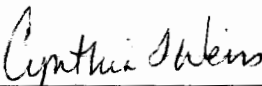
CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the Consent Agreement and Final Order with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order, along with its enclosures and/or attachments, were sent via overnight mail, to:

Peter T. Stinson, Esq.  
Dickie, McCamey & Chilcote, P.C.  
Two PPG Place, Suite 400  
Pittsburgh, PA 15222-5432

Date:     AUG 31 2015    

  
\_\_\_\_\_  
Cynthia T. Weiss  
Senior Assistant Regional Counsel  
Counsel for Complainant  
(215) 814-2659