

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
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BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
Nebraska Energy, LLC ) Docket No. CAA-07-2014-0011  
1205 South O Road )  
Aurora, Nebraska 68818 )  
)  
Respondent. )

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Nebraska Energy, LLC (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).

FACTUAL ALLEGATIONS

Jurisdiction

1. This 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 this matter, where the first date of alleged violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated the regulations governing Chemical Accident Prevention, and specifically 40 C.F.R. Part 68, and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

#### Parties

3. The Complainant, by delegation from the Administrator of EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Nebraska Energy, LLC, located at 1205 South O Road, Aurora, Nebraska 68818. Respondent's facility produces ethanol.

#### Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

6. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. These 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.

7. The regulations at 40 C.F.R. Part 68, set forth the requirements of a Risk Management Program that must be established at each stationary source. The Risk Management Program is described in a RMP that must be submitted to EPA.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process 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.

9. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004, and \$32,500 per day for each violation that occurs after March 15, 2004. For each violation of Section 112(r) of the CAA that occurs after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

### Definitions

10. The regulations at 40 C.F.R. § 68.3 define “stationary source” in part, as 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.

11. 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, as amended, 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.

12. The regulations at 40 C.F.R. § 68.115(b)(2) define how “concentrations of a regulated flammable substance in a mixture” shall be treated for purposes of determining whether a threshold quantity is present at the stationary source.

13. 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, as amended, in 40 C.F.R. § 68.130.

14. 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 the 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.

### Alleged Violations

15. EPA alleges that Respondent has violated the CAA and federal regulations, promulgated pursuant to the CAA, as follows:

16. Respondent is, and at all times referred to herein, was a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

17. Respondent’s facility, located at 1205 South O Road, Aurora, Nebraska, 68818, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

18. Pursuant to 40 C.F.R. § 68.115(b)(2), the entire weight of a mixture shall be treated as a regulated substance, unless the owner or operator can demonstrate that the mixture itself does not have a National Fire Protection Association (NFPA) rating of 4.

19. Respondent’s denaturant process contains a mixture with a NFPA rating of 4, and is therefore a flammable mixture as specified in 40 C.F.R. § 68.115(b)(2).

20. On or about May 2-3, 2012, EPA conducted an inspection of Respondent’s facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

21. Respondent’s denaturant process stores approximately 715,000 pounds, with the entire weight of the mixture being treated as a regulated substance.

22. Respondent is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

23. Respondent was required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a Risk Management Program that includes a hazard assessment, a prevention program, an emergency response program, and to file a Risk Management Plan.

24. Records collected during the inspection showed that Respondent failed to fully comply with 40 C.F.R. Part 68, specifically:

(i) Failure to implement the requirements of 40 C.F.R. §68.15. Specifically,

Nebraska Energy did not develop a management system to oversee the implementation of the risk management program elements.

- (ii) Failure to implement the requirements of 40 C.F.R. §68.155(d), §68.180 and §68.195. Specifically, Nebraska Energy failed to provide an executive summary that included a brief description of the five-year accident history, failed to submit an RMP that included information regarding the emergency response program, and failed to update emergency contact information within the RMP.
- (iii) Failure to document methodology used to determine distance to endpoints as required by 40 C.F.R. §68.39(d-e). Specifically, Nebraska Energy failed to document the methodology used to estimate distance to endpoints and data used to establish population and environmental receptors.
- (iv) Failure to implement the requirements of 40 C.F.R. §68.65(c)(1)(iv-v). Specifically, Nebraska Energy failed to document the safe upper and lower limits for the process and consequences of deviation from those limits.
- (v) Failure to implement the requirements of 40 C.F.R. §68.65(d)(2). Specifically, Nebraska Energy failed to document that equipment complies with recognized and generally accepted good engineering practices.
- (vi) Failure to implement the requirements of 40 C.F.R. §68.67(f) and (g). Specifically, Nebraska Energy failed to conduct a PHA every five years and failed to retain the process hazards analyses and updates and revalidations for the life of the process.

- (vii) Failure to implement the requirements of 40 C.F.R. §68.69(a).

Specifically, at the time of the inspection, Nebraska Energy failed to develop and implement written operating procedures that addressed all operating phases, such as initial start-up, temporary operations, emergency operations, emergency shutdown, and start-up after a shutdown.

- (viii) Failure to implement the requirements of 40 C.F.R. §68.69(d).

Specifically, Nebraska Energy failed to develop and implement safe work practices to provide for the control of hazards during opening process equipment or piping for safe work practices.

- (ix) Failure to implement the requirements of 40 C.F.R. §68.79(c-d).

Specifically, Nebraska Energy did not document the resolutions of recommendations for the October 2008 Compliance Audit.

25. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth above are all violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

#### CONSENT AGREEMENT

26. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

27. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

28. Respondent neither admits nor denies the factual allegations set forth above.

29. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CAFO.

30. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

31. This CAFO addresses all civil and administrative claims for the CAA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA or other applicable law.

32. Respondent will provide written notice to EPA of the date the facility re-starts operations. Within 120 days of that date, Respondent will submit a signed certification to EPA stating that to the best of Respondent's knowledge, Respondent's facility is in compliance with the requirements of Section 112(r) of the CAA, 43 U.S.C. 7412(r) and the regulations promulgated thereunder.

33. The effect of settlement described in paragraph 31 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 32, above, of this CAFO.

34. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental and/or public health benefits. Respondent shall donate emergency response equipment to the City of Aurora Fire Department, at a cost of no less than Twenty-Three Thousand Seven Hundred and Sixteen Dollars (\$23,716), in accordance with the Respondent's SEP Work Plan (attached hereto as Attachment A and incorporated by reference).

35. The total expenditure for the SEP shall be no less than \$23,716 and the SEP shall be completed no later than 90 days from effective date of the Final Order. All work required to



complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

36. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented; and
- (ii) Itemized costs, documented by copies of purchase orders, receipts, or canceled checks.
- (iii) All reports shall be directed to the following:

Christine Hoard  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

37. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

38. Respondent agrees to the payment of stipulated penalties as follows: In the event the Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP as set forth in paragraphs 34 and 35 of this CAFO and/or to the extent that the actual expenditures of the SEP does not equal or exceed the

cost of the SEP described in paragraphs 34 and 35 of this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraph (ii) and (iii) of this paragraph, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in paragraphs 34 and 35 of this CAFO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Twenty-Eight Thousand Four Hundred and Fifty-Nine Dollars (\$28,459), minus any documented expenditures determined by EPA to be acceptable for the SEP, for a total equal to 120% of the projected costs of the SEP.
- b. If Respondent fails to timely and completely submit the SEP Completion Report required by paragraph 36, Respondent shall be liable and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars (\$250).
- c. If the SEP is not completed in accordance with paragraphs 34 and 35 of this CAFO, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90% of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

39. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

40. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 1 of the Final Order portion of this CAFO.

41. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

42. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

43. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

44. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

45. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of

processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in paragraph 38 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full.

46. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

47. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the CAFO and to legally bind Respondent to it.

#### **FINAL ORDER**

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401 *et seq*, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Thirty-One Thousand Two Hundred and Twenty-Seven Dollars (\$31,227) within 30 days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

United State Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000.

The payments shall reference docket number CAA-07-2014-0011.

2. Copies of the checks should be sent to:

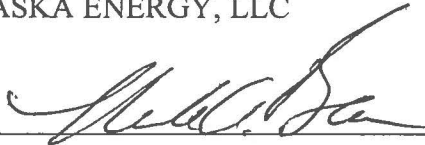
Regional Hearing Clerk  
United States Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and to:

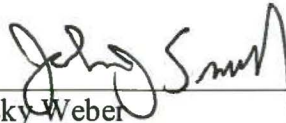
Kristen Nazar  
Assistant Regional Counsel  
United States Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT:  
NEBRASKA ENERGY, LLC

By   
Title CEO  
Date 7/17/14

COMPLAINANT:  
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date 8/5/14 By   
*for* Becky Weber  
Director  
Air and Waste Management Division

Date 8/4/14 By   
Kristen Nazar  
Assistant Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.

Date 8-12-14 By Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer



## Attachment A

Nebraska Energy will perform a Supplemental Environmental Project consisting of donations of emergency response equipment to the City of Aurora Fire Department. The total cost of the equipment is \$23,716.65. Nebraska Energy will purchase the following equipment within 90 days of the effective date of the Consent Agreement and Final Order:

- (1) Thirty-six new Cairns 1044 Defender helmets (and 39 shields) to meet NFPA standards including space for respirators and for lighting and other safety attachments, all of which improve visibility and safety for emergency response, at a cost of \$9,607.36;
- (2) A Bullard Eclipse LD thermal imaging camera to enhance safety and effectiveness in firefighting, including situations where smoke hinders emergency response, at a cost of \$10,215.10; and
- (3) A TFT Blitzfire ground monitor master stream that allows firefighters to lay down a stream of water, unmanned, when fighting a large or intense fire enhancing emergency response actions including evacuation and optimizing manpower, particularly in the case of a volunteer fire department, at a cost of \$3,894.19.

IN THE MATTER OF Nebraska Energy, LLC, Respondent  
Docket No. CAA-07-2014-0011

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

nazar.kristen@epa.gov

Copy by First Class Mail to:

Linda L. Rockwood, Partner  
FAEGRE BAKER DANIELS LLP  
3200 Wells Fargo Center  
1700 Lincoln Street  
Denver, Colorado 80203-4532

Dated: 8/12/14



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7