



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

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2014 NOV 25 AM 8:19

## EXPEDITED SETTLEMENT AGREEMENT (ESA)

**DOCKET NO.:** CAA-07-2014-0017

**This ESA is issued to:** Lowe Fertilizer Plant and Elevator

**At:** 6915 West Lowe, Garden City, Kansas 67846

**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 Lowe Fertilizer Plant and Elevator (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 the EPA, is the Director of the Air and Waste Management Division. The Respondent is Lowe Fertilizer Plant and Elevator, 6915 West Lowe, Garden City, Kansas 67846.

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 January 15, 2014, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 6915 West Lowe, Garden City, Kansas, 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 **\$2,800**.

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 **\$2,800** 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-07-2014-0017, 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:

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

A copy of the check must also be sent to:

Kathy M. Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

Upon Respondent's submission of the signed original ESA, the 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:

Kirby D. Bradley

Date: Oct 28, 2017

Name (print): Kirby D. Bradley

Title (print): Safety Director  
Lowe Fertilizer Plant and Elevator

FOR COMPLAINANT:



Date: 12/13/14

Becky Weber  
Director  
Air and Waste Management Division  
EPA Region 7



Date: 11/14/14

Kent Johnson  
Assistant Regional Counsel  
Office of Regional Counsel  
EPA Region 7

Smith  
For

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

Karina Borromeo

Karina Borromeo  
Regional Judicial Officer

Date: 11-24-14

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

Lowe Fertilizer Plant and Elevator  
6915 West Lowe  
Garden City, Kansas 67846  
Docket No. CAA-07-2014-0017

COMPLETE THIS FORM AND RETURN IT WITH THE ESA.

VIOLATIONS

PENALTY AMOUNT

Risk Management Plan

Updates [68.160(b)(1) and (7)]

\$1,000

The owner or operator failed to report the correct latitude and longitude of the storage tank, and the maximum quantity of the regulated substance in the process in pounds to two significant digits.

*Facility addressed this post inspection.*

Offsite consequence analysis [68.165(b)(7, 11 & 12)]

*No penalty assessed*

The owner or operator failed to submit in the RMP information worse-case release scenario data the correct release rate, distance to endpoint, and public receptors within the distance to endpoint.

*Facility addressed this post inspection.*

Prevention Program

Safety Information [68.48(a)(3)]

\$300

The owner or operator failed to compile and maintain up-to-date safety information related to the safe upper and lower temperatures and flows of the regulated substances and equipment.

*Facility addressed this post inspection.*

Safety Information [68.48(b)]

\$1,500

The owner or operator failed to ensure the process is designed in compliance with recognized and generally accepted and good engineering practices.

*Facility addressed this post inspection.*

Total Penalty

\$2,800

Calculation of Adjusted Penalty

1<sup>st</sup> Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for 10-100 employees and the row for >10 times the threshold quantity of 10,000 pounds 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 Lowe Fertilizer Plant and Elevator = 1.0.

*\*\*No adjusted penalty since multiplier is 1*

**Total Penalty**

**\$2,800**

**This section must be also completed and signed by Lowe Fertilizer Plant and Elevator:**

The approximate cost to correct the above items: \$ 4,000.<sup>00</sup>

Compliance staff name: Brandon Ochs

Signed: *Brandon Ochs* Date: 10/28/14

IN THE MATTER OF Lowe Fertilizer Plant and Elevator, Respondent  
Docket No. CAA-07-2014-0017

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:

hoard.christine@epa.gov

Copy by First Class Mail to:

Kirby D. Bradley, Safety Director  
Lowe Fertilizer Plant and Elevator  
6915 West Lowe  
Garden City, Kansas 67846

Dated: 11/25/14



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7