



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

EXPEDITED SETTLEMENT AGREEMENT (ESA)

DOCKET NO.: CAA-07-2009-0013

This ESA is issued to: Farmers Union Cooperative

At: 102 University, Guide Rock, Nebraska 68942

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

The United States Environmental Protection Agency, Region 7 (EPA) and Farmers Union Cooperative, 102 University, Guide Rock, Nebraska 68942 (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 Farmers Union Cooperative, 102 University, Guide Rock, Nebraska 68942.

This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Department of Justice jointly determined that in cases where the first alleged date of violation occurred more than one year before initiation of an administrative action and 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 in the form of an expedited settlement agreement.

ALLEGED VIOLATIONS

On May 10, 2006, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 102 University, Guide Rock, Nebraska 68942, to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Clean Air Act. The EPA found that the Respondent had violated regulations implementing Section 112(r) of the Clean Air Act by failing to comply with the regulations as noted on the enclosed Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet (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 **\$1,455.00**.

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 Clean Air Act, 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 **\$1,455.00** 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-07-2009-0013, 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.

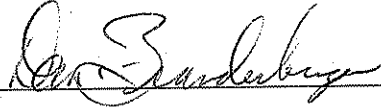
Upon Respondent's submission of the signed original ESA, EPA will take no further civil action against Respondent for the alleged violations of the Clean Air Act referenced in the RMP Findings. The EPA does not waive any other enforcement action for any other violations of the Clean Air Act or any other 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:

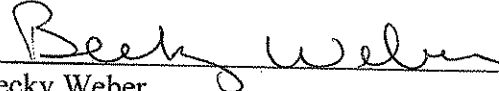


Date: 07-17-2009

Name (print): Dan Brandenburg


Title (print): Gen Manager
Farmers Union Cooperative

FOR COMPLAINANT:



Becky Weber
Director
Air and Waste Management Division
EPA Region 7

Date: 7/31/09



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

Date: 7/29/09

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

Karina Borromeo

Date: Aug. 1, 2009

Karina Borromeo
Regional Judicial Officer

Risk Management Program Inspection Findings

Farmers Union Cooperative
102 University
Guide Rock, Nebraska 68942
Docket No. CAA-07-2009-0013

CAA §112(r) Violations

COMPLETE THIS FORM AND RETURN IT WITH THE ESA.

VIOLATIONS

PENALTY AMOUNT

Hazard Assessment
Review and Update [§ 68.36(a)]

\$ 600.00

The owner or operator failed to view and update the offsite consequence analyses at least once every year.

How was this addressed: We have implemented an offsite analyses to correct this problem.

Prevention Program
Hazard Review [§ 68.50(d)]

\$ 750.00

The owner or operator failed to perform a hazard review and to document the results of the review and ensure that problems identified are resolved in a timely manner.

How was this addressed: I am currently doing periodic hazard reviews and correcting any problems found as soon as they can be resolved.

Prevention Program
Operating Procedures [§ 68.52(b)(7)]

\$ 600.00

The owner or operator failed to address consequences of deviations and steps required to correct or avoid deviations in the written operating procedures.

How was this addressed: We are currently implementing a hazard deviation program and procedures to correct any deviations in the procedures outlined in the prevention program.

VIOLATIONS

PENALTY AMOUNT

Prevention Program
Maintenance [§ 68.56(a)]

\$ 600.00

The owner or operator failed to prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. (Note - At the time of the inspection, piping and nurse tanks showed excessive rust. The generally accepted industry standard requires above ground containers and piping to have a reflective surface maintained in good condition.)

How was this addressed: regular inspections of equipment are being done. We have repainted the plumbing and nurse tanks this past year. (white)

Prevention Program
Compliance Audits [§ 68.58(a)]

\$ 300.00

The owner or operator failed to certify that they have evaluated compliance with the provisions of subpart C at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

How was this addressed: We have reevaluated compliance procedures and practices and implemented necessary corrections to any concerns that were found

Risk Management Plan [§ 68.190(b)(1)]

\$2,000.00

The owner or operator failed to review and update the RMP at least once every five years from the date of its initial submission or most recent update.

How was this addressed: Getting the RMP plan updated now.

TOTAL

\$4,850.00

Calculation of Adjusted Penalty

1st Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Number of Employees 6-20 column and the 5-10 times threshold amount column gives a multiplier factor of 0.3. Therefore, the multiplier for Farmers Union Cooperative = 0.3.

2nd Adjusted Penalty = \$4,850.00 (Unadjusted Penalty) X 0.3 (Size-Threshold Multiplier)
Adjusted Penalty = \$1,455.00.

3rd An Adjusted Penalty of \$1,455.00 would be assessed to Farmers Union Cooperative for violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).


TOTAL ADJUSTED PENALTY

\$1,455.00

PROVIDE THE COST TO THE FACILITY TO CORRECT THE ABOVE VIOLATIONS.

The approximate cost to correct the above items: \$ 20,210⁰⁰

Compliance staff name: Don Brandenburg

Signed:  Date: 7-22-2009

IN THE MATTER OF Farmers Union Cooperative, Respondent
Docket No. CAA-07-2009-0013

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:

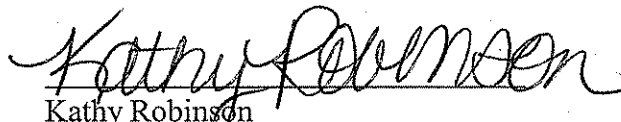
Copy hand delivered to
Attorney for Complainant:

Kristen Nazar
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Dan Brandenburger
General Manager
Farmers Union Cooperative
102 University
Guide Rock, Nebraska 68942

Dated: 8/3/09


Kathy Robinson
Hearing Clerk, Region 7