



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

**EXPEDITED SETTLEMENT AGREEMENT (ESA)**

**DOCKET NO.:** CAA-07-2012-0010

**This ESA is issued to:** Lincolnway Energy, LLC

**At:** 59511 West Lincoln Highway, Nevada, Iowa 50201

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

**UNITED STATES  
ENVIRONMENTAL  
PROTECTION AGENCY -**

**REGION 7**

**2012 SEP 27 AM/PM 8:18**

The United States Environmental Protection Agency, Region 7 (EPA) and Lincolnway 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).

The Complainant, by delegation of the Administrator of EPA, is the Director of the Air, and Waste Management Division. The Respondent is Lincolnway Energy, LLC, 59511 West Lincoln Highway, Nevada, Iowa 50201.

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 June 8, 2010, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 59511 West Lincoln Highway, Nevada, Iowa, 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 **\$6,720**.

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 **\$6,720** 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-07-2012-0010, 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 5<sup>th</sup> 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 5<sup>th</sup> 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.

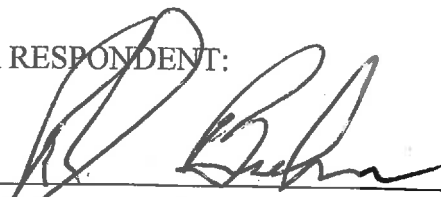
The EPA does not waive any other enforcement action for any other violations of the CAA or any other statute.

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:

  
\_\_\_\_\_

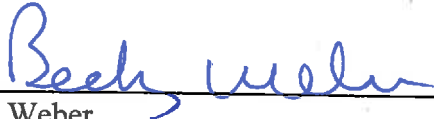
Date: 7-17-12

Name (print): RICHARD BREHM

Title (print): PRESIDENT

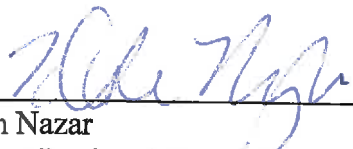
Lincolnway Energy, LLC

FOR COMPLAINANT:



\_\_\_\_\_  
Becky Weber  
Director  
Air and Waste Management Division  
EPA Region 7

Date: \_\_\_\_\_



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

Date: 7/13/12

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

Karina Borromeo

Karina Borromeo  
Regional Judicial Officer

Date: Sept. 26, 2012

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

Lincolnway Energy, LLC  
59511 West Lincoln Highway  
Nevada, Iowa 50201  
Docket No. CAA-07-2012-0010

**COMPLETE THIS FORM AND RETURN IT WITH THE ESA.**  
**VIOLATIONS**

**PENALTY AMOUNT**

Hazard Assessment

\$300

Documentation [§ 68.39(e)]

The owner or operator failed to maintain records on the offsite consequence analysis data used to estimate population and environmental receptors potentially affected.

*How was this addressed:*

Information for analysis was collected by Pinnacle Engineering using Landview 6 software.  
Copy enclosed

Prevention Program

\$1,500

Process Safety Information [§ 68.65(d)(2)]

The owner or operator failed to document that equipment complies with recognized and generally accepted good engineering practices. Specifically, lack of barriers around propane and ammonia tanks and updating the placard on the denaturant tank.

*How was this addressed:*

Lincolnway added barriers to Ammonia & Propane tanks and updated NFPA placard on Denaturant tank.

Pictures enclosed

Prevention Program

No Penalty Assessed

Process Hazard Analysis [§ 68.67(a)]

The owner or operator failed to perform an adequate initial process hazard analysis on processes covered by this part.

*How was this addressed:*

A new PHA was conducted on May 1<sup>st</sup>, 2011

VIOLATIONS

PENALTY AMOUNT

Prevention Program

\$1,500

Operating Procedures [§ 68.69(a)]

The owner or operator failed to develop and implement written operating procedures that provide instructions or steps for conducting activities involved in each covered process consistent with the safety information, specifically as follows:

§ 68.69(a)(2)(i): Consequences of deviation.

§ 68.69(a)(2)(ii): Steps required to correct or avoid deviation.

§ 68.69(a)(3)(ii): Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment.

§ 68.69(a)(3)(iii): Control measures to be taken if physical contact or airborne exposure occurs.

*How were these addressed:*

LWE updated SOP's in October 2011 to include the required information and reflect current operating procedures.

Copies of current SOPs enclosed

Prevention Program

\$1,200

Operating Procedures [§ 69.69(c)]

The owner or operator failed to certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary.

*How was this addressed:*

LWE will review and recertify the operating procedures in October 2012

Prevention Program

\$900

Operating Procedures [§ 68.69(d)]

The owner or operator failed to develop and implement safe work practices to provide for the control of hazards during specific operations.

*How was this addressed:*

LWE has updated its Emergency Shutdown procedures to reflect safe work practices



VIOLATIONS

PENALTY AMOUNT

Prevention Program

\$1,500

Mechanical Integrity [§ 68.73(b)]

The owner or operator failed to establish and implement written procedures to maintain the on-going integrity of the process equipment.

*How was this addressed:*

LWE has setup work orders for monthly inspections of tanks, piping and other equipment to maintain integrity of equipment

examples of work orders attached

Prevention Program

\$1,500

Management of Change [§ 68.75(a)]

The owner or operator failed to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process.

*How was this addressed:*

Pinnacle Engineering helped Lincolnrway implement procedures for Management of change

Example form enclosed

Prevention Program

\$1,200

Compliance Audits [§ 68.79(a)]

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

*How was this addressed:*

LWE evaluated compliance during five year resubmission in 2011. LWE will do a compliance audit in November 2012

Prevention Program

\$600

Employee Participation [§ 69.83(a)]

The owner or operator failed to develop a written plan of action regarding the implementation of employee participation required by this section.

VIOLATIONS

PENALTY AMOUNT

How was this addressed:

Copy of written plan to implement employee participation is enclosed

LWE has compiled a group of production, Maintenance and management staff to review and make changes.

Risk Management Plan [§ 68.155(f)]

No Penalty Assessed

The 2011 RMP states prevention program items instead of giving specific information on planned changes to improve safety.

How was this addressed:

LWE has a new plant engineer with experience in PSM and RMP who is working to implement new changes to improve safety. As these items are identified LWE will update the 2011 RMP submission

Risk Management Plan [§ 68.160(b)(11)]

No Penalty Assessed

Since the facility is subject to the risk management rule because it has more than a threshold quantity of a toxic substance listed under Section 112(r), anhydrous ammonia, the facility is also subject to EPCRA Section 302. The RMP needs to be updated to indicate "Yes" for this element.

How was this addressed:

LWE has corrected this section of the 2011 RMP submission

Risk Management Plan [§ 68.175(e)(1)]

No Penalty Assessed

The RMP needs to be updated to provide the expected date of completion of any changes resulting from the PHA for all processes.

How was this addressed:

LWE has corrected this section of RMP

Risk Management Plan [§ 68.175(k)]

No Penalty Assessed

The RMP needs to be updated to provide the expected date of completion of any changes resulting from the compliance audit for all processes.

**VIOLATIONS**

**PENALTY AMOUNT**

How was this addressed:

LWE will update this section after November compliance audit

Risk Management Plan [§ 68.195(b)]

\$1,000

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

How was this addressed:

LWE has current information on RMP for emergency contacts.

Total Unadjusted Penalty

\$11,200

**Calculation of Adjusted Penalty**

1<sup>st</sup> Reference the multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the row for number of employees >10 and column for 10 times the threshold quantity for both anhydrous ammonia and flammable mixtures as listed in 40 C.F.R. Part 68.130 for the amount in a process gives a multiplier factor of 0.6. Therefore, the multiplier for Lincolnway Energy, LLC = 0.6.

2<sup>nd</sup> Adjusted Penalty = \$11,200 (Unadjusted Penalty) X 0.6 (Size-Threshold Multiplier)  
Adjusted Penalty = \$6,720.

3<sup>rd</sup> An Adjusted Penalty of \$6,720 would be assessed to Lincolnway Energy, LLC, for violations found during the RMP Compliance Inspection. This amount will be found in the ESA.

Total Adjusted Penalty

\$6,720

This section must be also be completed and signed by Lincolnway Energy, LLC:

The approximate cost to correct the above items: \$ 10,000

Compliance staff name: Sarah Haugen

Signed: [Signature]

Date: 7-16-12

IN THE MATTER OF Lincolnway Energy, LLC, Respondent  
Docket No. CAA-07-2012-0010

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 hand delivered to  
Attorney for Complainant:

Kristen Nazar  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by First Class Certified Mail to:

Richard Brehm, President  
Lincolnway Energy, LLC  
59511 West Lindoln Highway  
Nevada, Iowa 50201

Dated: 9/27/12



Kathy Robinson  
Hearing Clerk, Region 7