



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-07-2009-0002

This ESA is issued to: Midwest Farmers Cooperative

At: 5420 Anderson Drive, Nehawka, Nebraska 68413

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

The United States Environmental Protection Agency, Region 7 (EPA) and Midwest Farmers Cooperative, 5420 Anderson Drive, Nehawka, Nebraska 68413 (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 Midwest Farmers Cooperative, 5420 Anderson Drive, Nehawka, Nebraska 68413.

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 Attorney General jointly determined that this matter, where the total penalty exceeds \$270,000 or where the first alleged date of violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

ALLEGED VIOLATIONS

On May 22, 2008, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 5420 Anderson Drive, Nehawka, Nebraska 68413, 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 **\$1,020**.

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 in 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 **\$1,020** 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-07-2009-0002, 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:

DAVID A WEBB

Date: 1-7-2009

Name (print): DAVID A WEBB

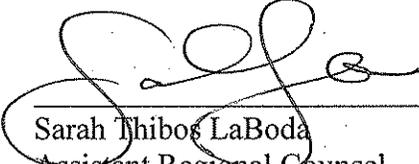
Title (print): Compliance Director
Midwest Farmers Cooperative

FOR COMPLAINANT:



Becky Weber
Director
Air and Waste Management Division
EPA Region 7

Date: 1/26/09

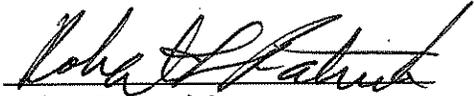


Sarah Thibos LaBoda
Assistant Regional Counsel
EPA Region 7

Date: 1/20/09

IN THE MATTER of Midwest Farmers Cooperative
Docket No. CAA-07-2009-0002

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



Robert L. Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

March 9, 2009
Date

Risk Management Program Inspection Findings

Midwest Farmers Cooperative
5420 Anderson Drive
Nehawka, Nebraska 68413

CAA § 112(r) Violations

VIOLATIONS

PENALTY AMOUNT

General

Management [§ 68.15(a)]

The owner or operator failed to develop a management system to oversee the implementation of the risk management program elements.

\$300

How was this addressed:

The written management system was written up and placed in the RMP manual.

Briefly, the plant manager has immediate responsibility, supervised by his location manager. The Compliance Manager will audit them both

Hazard Assessment

Offsite Consequence Analysis Parameters [§ 68.22(e)]

The owner or operator failed to use the appropriate topography.

\$150

How was this addressed:

Topography switched to "Urban" and will be reported as such at the next required update.

Prevention Program

Safety Information [§ 68.48(a)]

The owner or operator failed to compile and maintain the following up-to-date safety information related to the regulated substances, processes, and equipment:

VIOLATIONS

PENALTY AMOUNT

- (3) Safe upper and lower temperatures, pressures, flows, and compositions; \$150
- (4) Equipment specifications; \$150
- (5) Codes and standards used to design, build, and operate the process. \$150

How was this addressed:

Information was gathered and listed in BMP manual under Tab 1, Section 2.

re: Anhydrous Ammonia
(5) A copy of ANSI standard K61.6-1999 has been purchased and will be retained in the office for reference.

Prevention Program

Safety Information [§ 68.48(b)]

The owner or operator failed to ensure that the process is designed in compliance with recognized and generally accepted good engineering practices. \$750

(Note: Sections 5.3.6 and 6.7.1 of ANSI K61.1-1999, Requirements for the Storage and Handling of Anhydrous Ammonia. Owner or operator failed to remove debris from under ammonia and propane tanks, and failed to have barriers around the ammonia and propane tanks.)

How was this addressed:

Area has been mowed and cleared of vegetation. In the spring, sterilant will be applied to kill all vegetation within ten feet of tanks.

Barriers have been placed around piping of NH3 and propane tanks.

Construction of barriers around both tanks will continue and be completed in the spring of 2009.

Prevention Program

Hazard Review [§ 68.50(a)(1)]

The owner or operator failed to identify the hazards associated with the process and regulated substances. \$150

VIOLATIONS

PENALTY AMOUNT

How was this addressed:

"What if" scenarios have been added to the manual to address the issue of leaks or malfunctions at the propane plant

These scenarios include shut-down and evacuation procedures.

Prevention Program

Hazard Review [§68.50(c)]

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

\$150

How was this addressed:

Conducted and documented annual hazard review and placed in manual - Tab 3, Section 3

Deviations and corrections noted, signed and dated.

Prevention Program

Operating Procedures [§ 68.52(b)(7)]

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

\$600

How was this addressed:

Page added to manual to address consequences of deviations.

This includes the potential need for emergency shut-down and evacuation.

VIOLATIONS

PENALTY AMOUNT

Risk Management Plan

Executive Summary [§ 68.155(d)]

The owner or operator failed to provide in the RMP an executive summary that includes a brief description of the five-year accident history.

No Penalty Assessed

How was this addressed:

The release will be listed in the next Executive Summary at the 5 year update.

Total Unadjusted Penalty \$2,550

Calculation of Adjusted Penalty

The number of employees at Midwest Farmers Cooperative is 15. The total amount of anhydrous ammonia present at the facility is 323,935 pounds. The threshold quantity for liquid ammonia is 10,000 pounds. A size-threshold multiplier of 0.4 can be used for private industry that has 6-20 employees and greater than 10 times the threshold quantity listed in 40 C.F.R. § 68.130 for the particular chemical. Adjusted Penalty = \$2,550 (unadjusted penalty) X 0.4 (size-threshold multiplier) is \$1,020. An adjusted penalty of \$1,020 shall be assessed to Midwest Farmers Cooperative for violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

TOTAL ADJUSTED PENALTY \$1,020

The approximate cost to correct the above items: \$1,500-2,000

Compliance staff name: DAVID A WEBB

Signed: David A Webb Date: 1-7-2009

IN THE MATTER OF Midwest Farmers Cooperative, Respondent
Docket No. CAA-07-2009-0002

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:

Sarah Thibos LaBoda
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:

David E. Webb
Compliance Director
Midwest Farmers Cooperative
5420 Anderson Drive
Nehawka, Nebraska 68413

Dated: 3/9/09



Kathy Robinson
Hearing Clerk, Region 7