



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**EXPEDITED SETTLEMENT AGREEMENT (ESA)**

**DOCKET NO.:** CAA-07-2009-0001

**This ESA is issued to:** Frenchman Valley Coop  
**At:** Burlington Northern Yards, McCook, Nebraska 69001  
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 Frenchman Valley Coop, Burlington Northern Yards, McCook, Nebraska 69001 (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 Frenchman Valley Coop, Burlington Northern Yards, McCook, Nebraska 69001.

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 August 20, 2008, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at the Burlington Northern Yards, McCook, Nebraska 69001, 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-07-2009-0001, 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 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:

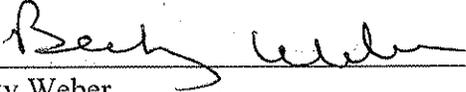
Richard Murphy

Date: 1-5-09

Name (print): RICHARD MURPHY

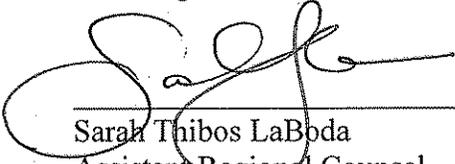
Title (print): SAFETY DIRECTOR  
Frenchman Valley Coop

FOR COMPLAINANT:



Becky Weber  
Director  
Air and Waste Management Division  
EPA Region 7

Date: 1/20/09



Sarah Thibos LaBoda  
Assistant Regional Counsel  
EPA Region 7

Date: 1/12/09

IN THE MATTER of Frenchman Valley Coop  
Docket No. CAA-07-2009-0001

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**

Frenchman Valley Coop  
Burlington Northern Yards  
McCook, Nebraska 69001

CAA § 112(r) Violations

**VIOLATIONS**

**PENALTY AMOUNT**

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

How was this addressed:

- Protection of process from vehicular damage:

INSTALLED VEHICLE IMPACT POSTS AT 4 FOOT SPACING AROUND STORAGE TANKS AND FACILITY PIPING AND PUMP AREAS.

- Emergency water/splash tank supply:

ADDED AN ADDITIONAL 150 GALLON SPLASH TANK TO FACILITY.

AT THIS FACILITY WE NOW HAVE 2- 150 GALLON SPLASH TANKS AS WELL AS A DELUGE SHOWER

- Tank #1 (saddle cracking):

GROUTED CRACKS IN SADDLE WITH CONCRETE SEALANT, WILL MONITOR ON A 6 MONTH BASIS TO ENSURE CRACKING DOES NOT GET ANY WORSE.

- Lighting (redirect):

REDIRECTED CURRENT LIGHT TO FACILITY.

ADDED TWO MORE LIGHTS TO FACILITY TO INCREASE SECURITY AT FACILITY.

Prevention Program

Hazard Review [§ 68.50(c)]

The owner or operator failed to document the results of the review.

\$150

How was this addressed:

COMPLETED A HAZARD REVIEW ON NOVEMBER 28, 2008. RESULTS OF HAZARD REVIEW AND DEFICIENCIES FOUND AS A RESULT OF THE HAZARD REVIEW WERE DOCUMENTED.

VIOLATIONS

PENALTY AMOUNT

Prevention Program

Hazard Review [§ 68.50(c)]

The owner or operator failed to ensure that problems identified were resolved in a timely manner.

\$300

How was this addressed:

PREVIOUS PROBLEMS THAT WERE IDENTIFIED HAVE BEEN RESOLVED.

PROBLEMS IDENTIFIED FROM HAZARD REVIEW ON NOVEMBER 29, 2009 ARE ON SCHEDULED TO BE RESOLVED IN A TIMELY MANNER.

Prevention Program

Operating Procedures [§ 68.52(a)]

The owner or operator failed to prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process.

\$750

How was this addressed:

OPERATING PROCEDURES WERE REVIEWED AND REVISED TO SAFELY CONDUCT ACTIVITIES WITH EACH COVERED PROCESS.

OPERATING PROCEDURES COVER ALL PROCEDURES STATED IN:  
68.52 (b) 1-8.

Prevention Program

Maintenance [§ 68.56(d)]

The owner or operator failed to perform or cause to be performed inspections and tests on process equipment.

\$300

VIOLATIONS

PENALTY AMOUNT

How was this addressed:

REVIEWED & REVISED ALL MAINTENANCE RECORDS FOR ALL  
INDIVIDUAL PIECES OF PROCESS EQUIPMENT.  
ALL MAINTENANCE RECORDS NOW INCLUDE:  
INSPECTION DATE  
DATE HOSES, VALVES ETC WERE CHANGED  
DATE WHEN HOSES, VALVES ETC ARE SCHEDULED TO CHANGE AGAIN.  
RECORDS MEET INSPECTIONS AND TESTS CRITERIAL AS STATED IN  
68.56 (d)

Prevention Program

Maintenance [§ 68.58(c)]

The owner or operator failed to develop a report of the audit findings. No Penalty Assessed  
(There was no report available for 2004. You must retain the two (2)  
most recent compliance audit reports – see § 68.58(e).)

How was this addressed:

PROCEDURES PUT IN PLACE TO RETAIN ALL AUDIT FINDINGS.

Prevention Program

Maintenance [§ 68.58(d)]

The owner or operator failed to promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected. \$150

How was this addressed:

PAST COMPLIANCE AUDITS A RESPONSE WAS DOCUMENTED.  
COMPLETED A COMPLIANCE AUDIT ON 11/29/2008, RESPONSES  
TO COMPLIANCE AUDIT WERE DOCUMENTED. DEFICIENCIES NOTED  
WERE DOCUMENTED AS COMPLETED OR ON SCHEDULED TO  
BE COMPLETED ON DATE AS NOTED

**VIOLATIONS**

**PENALTY AMOUNT**

Prevention Program

Maintenance [§ 68.58(e)]

The owner or operator failed to retain the two (2) most recent compliance audit reports.

\$150

How was this addressed:

PROCEDURES PUT IN PLACE TO RETAIN ALL  
COMPLIANCE AUDIT REPORTS AS STATED IN  
68.58 (e)

Total Unadjusted Penalty

\$2,550

Calculation of Adjusted Penalty

The number of employees at Frenchman Valley Coop is 15. The total amount of anhydrous ammonia present at the facility is 104,000 gallons, which is approximately 520,000 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 Frenchman Valley Coop 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: \$ 5660<sup>00</sup>

Compliance staff name: RICHARD MURPHY SAFETY DIRECTOR

Signed: Richard Murphy Date: 1-5-09

IN THE MATTER OF Frenchman Valley Coop, Respondent  
Docket No. CAA-07-2009-0001

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. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Richard Murphy  
Safety Director  
Frenchman Valley Coop  
Burlington Northern Yards  
McCook, Nebraska 69001

Dated: 3/9/09



Kathy Robinson  
Hearing Clerk, Region 7