



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7

2015 SEP 28 AM 9:50

**EXPEDITED SETTLEMENT AGREEMENT (ESA)**

**DOCKET NO.:** CAA-07-2015-0040

**This ESA is issued to:** Kaup Seed & Fertilizer, Inc.

**At:** 1101 South Beemer Street, West Point, Nebraska 68788

**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 Kaup Seed & Fertilizer, Inc. (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 Kaup Seed & Fertilizer, Inc., 1101 South Beemer Street, West Point, Nebraska, 68788.

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 August 28, 2014, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 1101 South Beemer Street, West Point, Nebraska, 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 **\$4,200**.

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 **\$4,200** 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-07-2015-0040, 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:

Jodi Harper  
Chemical Risk Information Branch  
Air & Waste Management Division  
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.

FOR RESPONDENT:

Signed: Jeff Wilmes

Date: 9-21-15

Name (print): Jeff Wilmes

Title (print): Gen Mgr  
Kaup Seed & Fertilizer, Inc.

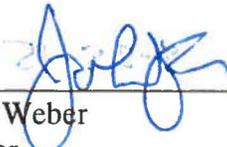
Upon Respondent's submission of the signed original ESA, EPA will take no further civil action against Respondent for the alleged violations of the CAA referenced in the RMP Findings. The EPA does not waive any other enforcement action for any other violations of the CAA or any other statute.

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 30 days of the date of Respondent's receipt of it (60 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 COMPLAINANT:

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

Date: 9/25/2015

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

Date: 9/25/2015

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

Karina Borromeo

Date: 9-28-15

Karina Borromeo  
Regional Judicial Officer

9/28/15



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

Kaup Seed & Fertilizer, Inc.  
1101 S. Beemer St.  
West Point, NE 68788  
Docket No. CAA-07-2015-0040

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

**VIOLATIONS**

**PENALTY AMOUNT**

Prevention Program

\$1,500

Safety Information [§ 68.48(b)]

The owner or operator failed to ensure the process is designed in compliance with recognized and generally accepted good engineering practices as specified in ANSI Standard K61.1 (1999) in that one anhydrous ammonia storage vessel exhibited signs of corrosion and the vessels lacked sufficient vehicle barriers, per 40 CFR 68.48(b).

*How was this addressed:* Kaup Seed & Fertilizer, Inc., provided documentation and photographs in their letter dated January 14, 2015, indicating that the tank's undercoat was intact and that the top finish coat of paint, which had been flaking off, was removed and the tank repainted. The letter also provided documentation and photographs of vehicle barriers installed around the vessels. No further action is required.

Prevention Program

\$300

Hazard Review [§ 68.50(a)(1)]

The owner or operator failed to identify in the hazard review all hazards associated with the process and regulated substances in failing to recognize the hazard posed by vehicular traffic and potential corrosion of vessels, per 40 CFR 68.48(b).

*How was this addressed:* Kaup Seed & Fertilizer, Inc., provided a copy of the most recent Hazard Review, as well as documentation of the review, a practice that the inspection report indicates had been verbal in the past. No further action is required.

Prevention Program

\$1,200

Operating Procedures [§ 68.52(b)]

The operating procedures failed to address initial startup, temporary operations, normal shutdown, and consequences of deviation, per 40 CFR 68.52(b).

*How was this addressed:* Kaup Seed & Fertilizer, Inc., provided a copy of the updated operating procedures in their letter to EPA dated January 14, 2015. The updated procedures address all required items. No further action is required.

Prevention Program

\$1,200

**VIOLATIONS**

**PENALTY AMOUNT**

**Compliance Audits [§ 68.58]**

The owner or operator failed to certify compliance audits are conducted at least every three years to verify that the procedures and practices are adequate and are being followed, failed to develop a report of the audit’s findings, failed to determine and document an appropriate response to each of the findings and document that deficiencies had been corrected, and failed to retain the two most recent compliance audit reports unless more than five years old.

*How was this addressed:* Kaup Seed & Fertilizer indicated that prior to the inspection on August 28, 2014, audits were not documented. The letter dated January 14, 2015, included a copy of the most recent certified audit conducted by the facility, post-inspection. No further action is needed.

**Emergency Response**

No Penalty

**Non-Responding Facility [§ 68.90]**

**Risk Management Plan**

No Penalty

**Emergency Response [§ 68.180]**

The owner or operator failed to correctly identify the facility as a non-responding facility, and filled out information in their RMP to indicate they have an emergency response program, when they will not respond to accidental releases of the regulated substance.

*How was this addressed:* Kaup Seed & Fertilizer included a copy of their updated RMP in their letter to EPA dated January 14, 2015. The updated RMP indicates that the facility does not have their own emergency response program, and they are part of the community response plan. In addition, they shared a copy of their RMP with the Cuming County LEPC during a site tour on October 30, 2014. No further action is required.

**Total Unadjusted Penalty**

**\$4,200**

**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 10-100 employees (this facility employs approximately 26 FTE year-round and an additional 10 seasonally) and column for more than 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 1.0. Therefore, the multiplier for Kaup Seed & Fertilizer, Inc. = 1.0.
- 2<sup>nd</sup> Adjusted Penalty = \$4,200 (Unadjusted Penalty) X 1.0 (Size-Threshold Multiplier)  
Adjusted Penalty = \$4,200.
- 3<sup>rd</sup> An Adjusted Penalty \$4,200 would be assessed to Kaup Seed & Fertilizer, Inc. This amount will be found in the ESA.

**Total Adjusted Penalty**

**\$4,200**

**VIOLATIONS**

**PENALTY AMOUNT**

**This section must be also be completed and signed by Kaup Seed & Fertilizer, Inc.**

The approximate cost to correct the above items: \$ 4200<sup>00</sup>

Compliance staff name: Jeff Wilmes

Signed: Jeff Wilmes Date: 9-21-15



IN THE MATTER OF Kaup Seed & Fertilizer, Inc., Respondent  
Docket No. CAA-07-2015-0040

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 and email to:

Jeff Wilmes, General Manager  
Kaup Seed & Fertilizer, Inc.  
1101 South Beemer Street  
West Point, Nebraska 68788

9/28/15



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7

