



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

11 APR 27 AM 8:06  
ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

**EXPEDITED SETTLEMENT AGREEMENT (ESA)**

**DOCKET NO.:** CAA-07-2010-0031

**This ESA is issued to:** Creston Fertilizer Co., Inc.

**At:** South Tank, Creston, Nebraska 68631

**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 Creston Fertilizer Co., Inc., P.O. Box 40, Creston, Nebraska 68631 (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 Creston Fertilizer Co., Inc., P.O. Box 40, Creston, Nebraska 68631.

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**

Facilities that produce, handle, process, distribute, or store certain chemicals are required to develop a Risk Management Program, prepare a Risk Management Plan (RMP), and submit the RMP to EPA in accordance with 40 C.F.R. Part 68. Facilities must fully update and resubmit the RMP, at a minimum, every five years or deregister the RMP facility within 6 months that it is no longer covered by the regulation. The EPA Risk Management Database, RMPInfo, indicates that your South Tank facility has failed to resubmit or update the Risk Management Plan by February 7, 2010. Creston Fertilizer Co., Inc.'s failure to update and resubmit the RMP for this facility is a violation of 40 C.F.R. § 68.190.

**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 \$800.

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 \$800 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 the ESA 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:

Bill Oeltjen

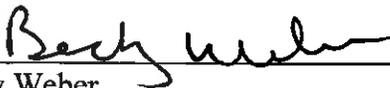
Date: 3-29-11

Name (print): BILL OELTJEN

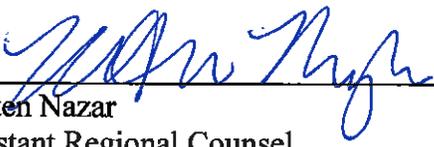
Title (print): PRES.

Creston Fertilizer Co., Inc.

FOR COMPLAINANT:

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

Date: 4/22/11

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

Date: 4/19/2011

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

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

Date: April 27, 2011

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

Creston Fertilizer Co., Inc.  
South Tank  
Creston, Nebraska 68631  
Docket No. CAA-07-2010-0031

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

**VIOLATIONS**

**PENALTY AMOUNT**

Risk Management Plan \$2,000  
Required Corrections [§ 68.190]  
The owner or operator failed to revise and update the RMP at least once every 5 years of its most recent submittal or deregister within 6 months indicating the facility is no longer covered by the RMP regulations as required at § 68.190.

*Please attach confirmation that the RMP resubmission/update has been received.*

Total Unadjusted Penalty \$2,000

**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 6-20 and column for greater than 10 times the threshold quantity of 10,000 pounds of a listed chemical as listed in 40 C.F.R. Part 68.130 for the amount in a process gives a multiplier factor of 0.4. Therefore, the multiplier for Creston Fertilizer Co., Inc = 0.4.
- 2<sup>nd</sup> Adjusted Penalty = \$2,000 (Unadjusted Penalty) X 0.4 (Size-Threshold Multiplier)  
Adjusted Penalty = \$800
- 3<sup>rd</sup> An Adjusted Penalty of \$800 would be assessed to Creston Fertilizer Co., Inc., for the violations found during the RMP submittal data review for the South Tank facility. This amount will be found in the Expedited Settlement Agreement.

Total Adjusted Penalty \$800

**A representative of Creston Fertilizer Co., Inc., must complete and sign the following section:**

The approximate cost to correct the above items: \$ \$ 3,000

Signed: Wm Oeltjen Date: 3-29-11

Printed name: BILL OELTJEN

IN THE MATTER OF Creston Fertilizer Co., Inc., Respondent  
Docket No. CAA-07-2010-0031

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 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Bill Oeltjen, President  
Creston Fertilizer Co., Inc.  
P.O. Box 40  
Creston, Nebraska 68631

Dated: 4/27/11

  
Kathy Robinson  
Hearing Clerk, Region 7