



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

EXPEDITED SETTLEMENT AGREEMENT (ESA)

DOCKET NO.: CAA-07-2011-0012

This ESA is issued to: Otte Oil & Propane

At: 14th & Agnew Road, Davey, Nebraska 68338

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

The United States Environmental Protection Agency, Region 7 (EPA), and Otte Oil & Propane, 14th & Agnew Road, Davey, Nebraska 68338 (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 Otte Oil & Propane, 14th & Agnew Road, Davey, Nebraska 68338.

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 Davey Plant located at 14th & Agnew Road, Davey, Nebraska, has failed to resubmit or update the Risk Management Plan by October 4, 2010. Otte Oil & Propane's failure to update and resubmit the RMP for the Davey Plant located at 14th & Agnew Road, Davey, Nebraska, 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 violation, described in the enclosed RMP Findings, for the total penalty amount of **\$600**.

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 **\$600** 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 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 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:

Jessica Korthanke

Date: 3-22-11

Name (print): Jessica Korthanke

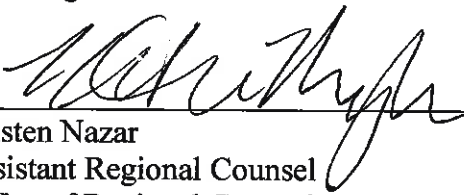
Title (print): Admin. Assistant
Otte Oil & Propane

FOR COMPLAINANT:



Becky Weber
Director
Air and Waste Management Division
EPA Region 7

Date: 3-30-11



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

Date: 3/28/11

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

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

Date: April 4, 2011

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

Otte Oil & Propane
Davey Plant
14th & Agnew Road
Davey, Nebraska 68336
RMP ID#1000 0015 2693
Docket No. CAA-07-201-0012

COMPLETE THIS FORM AND RETURN IT WITH THE ESA.

VIOLATIONS

PENALTY AMOUNT

Risk Management Plan
Required Corrections [§ 68.190] \$2,000
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

- 1st Reference the multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the row for number of employees 1-5 and column greater 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 0.3. Therefore, the multiplier for Otte Oil & Propane, Davey Plant = 0.3.
- 2nd Adjusted Penalty = \$2,000 (Unadjusted Penalty) X 0.3 (Size-Threshold Multiplier)
Adjusted Penalty = \$600.
- 3rd An Adjusted Penalty of \$600 would be assessed to Otte Oil & Propane, Davey Plant for the violations found during the RMP submittal data review. This amount will be found in the Expedited Settlement Agreement.

Total Adjusted Penalty \$600

A representative of Otte Oil & Propane must complete and sign the following section:

The approximate cost to correct the above items: \$ 600.00

Signed: Jessica Korthanck Date: 3-21-11

Printed name: Jessica Korthanck

IN THE MATTER OF Otte Oil & Propane, Respondent
Docket No. CAA-07-2011-0012

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. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Jessica Korthanke
Administrative Assistant
Otte Oil & Propane
14th & Agnew Road
Davey, Nebraska 68338

Dated: 4/4/11


Kathy Robinson
Hearing Clerk, Region 7