

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2016 DEC 21 AM 10:13
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:

Koch Fertilizer Enid, LLC
Enid, Oklahoma

Respondent

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EPA Docket No.
CAA-06-2017-3323

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency ("EPA"), Region 6 ("Complainant") and Koch Fertilizer Enid, LLC ("Respondent") in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order ("CAFO").

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, as amended ("Act" or "CAA"), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3), and 22.34.

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations contained herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein, and waives all defenses, which have been raised or could have been raised to the claims set forth in this CAFO.

4. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for those violations and facts alleged in this CAFO.

5. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

II. ALLEGATIONS

6. Respondent is a limited liability company authorized to do business in the State of Oklahoma.

7. Respondent is primarily engaged in the production of anhydrous ammonia, urea fertilizer, and urea ammonium nitrate. Respondent's chemical production activities take place at 1619 South 78th Street in Enid, Oklahoma. ("Facility").

8. Respondent owns and operates the Facility, which includes two ammonia units (A1 and A2), a urea production unit, a UAN unit, and various ancillary units, including a carbon dioxide pipeline compressor station and a hydrogen recovery unit.

9. Respondent produces, processes, stores, or handles more than 10,000 pounds of anhydrous ammonia in multiple processes throughout the Facility.

10. Ammonia (anhydrous) is identified at 40 C.F.R. Part 68.130 as a toxic regulated substance with a threshold quantity of 10,000 pounds.

11. Respondent's Facility includes covered processes regulated by 112(r)(7) of the Clean Air Act ("CAA") and the implementing regulations at 40 C.F.R. Part 68 and

from which an accidental release of regulated or other extremely hazardous substances could occur.

12. On Tuesday, December 29, 2015, the East and West cold storage tank relief valves lifted resulting from a malfunctioning solenoid valve on the A1-105-J governor oil system causing the A1-105-J ammonia refrigeration compressor to shut down.

13. The malfunction was later determined to be the result of an undersized fuse designed to protect the safety interlock/instrumented system and the associated solenoid valve.

14. Facility operators, in attempting to restart the A1-105-J compressor to reduce cold storage tank system pressure, observed that the valve between the cold storage tank vapor line and the A1-105-J compressor had not closed as designed which contributed to the release, and upon discovery had to be manually closed.

15. Respondent reported a release of 11,000 pounds of anhydrous ammonia from the Facility to atmosphere as a result of the release.

16. Respondent is a "person" as that term is defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e).

17. The Facility is a "stationary source" as that term is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

18. Respondent is the "owner or operator" of the Facility, a stationary source.

19. At the Facility, Respondent produces, processes, handles, or stores substances listed in, or pursuant to, CAA § 112(r)(3) or other extremely hazardous substances identified as such due to toxicity, reactivity, flammability, volatility, or corrosivity.

20. The release of anhydrous ammonia at the Facility on December 29, 2015, constituted an "accidental release" as that term is defined by section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

21. Respondent failed to prevent an accidental release of a regulated substance by failing to ensure the proper fuse size was utilized in the AI-105 – J governor oil system. This failure contributed, in part, to the release of anhydrous ammonia on December 29, 2015. Respondent's failure was a violation of 40 C.F.R. § 68.73(f)(3).

22. Respondent failed to prevent or mitigate an accidental release of a regulated substance by failing to ensure that the motor operating valve between the cold storage tank vapor line and the AI-105-J compressor was fully functional. The valve failed to close properly on December 29, 2015, contributing, in part, to the release of anhydrous ammonia. Respondent's failure was a violation of 40 C.F.R. § 68.73(f)(2).

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

23. Pursuant to the authority granted in sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the Respondent's business, the economic impact of the penalty on the Respondent's business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation (if any), the economic benefit of noncompliance, and the seriousness of the violation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is \$ 75,000. Respondent has elected to undertake a Supplemental Environmental Project ("SEP") to mitigate the penalty associated with the alleged violations identified in this CAFO. The

initial penalty of \$75,000 shall be reduced by two-thirds or \$50,000 based on a SEP project being implemented by Respondent. Hence, the Respondent shall pay an assessed penalty of \$25,000 to the U.S. Treasury pursuant to later provisions of this CAFO.

Respondent shall undertake a SEP project, described in later provisions of this CAFO, which costs no less than \$200,000 to implement.

B. Supplemental Environmental Project

24. Respondent shall perform a SEP project as part of this settlement. The Respondent shall spend no less than \$200,000 to design, construct, and install fence-line monitoring at the Facility and remote monitoring at two off-site locations (airport and school). The purpose of the monitoring system is to make the Facility aware of catastrophic releases of anhydrous ammonia from the Facility and allow the Facility to track such releases and communicate dangers to surrounding communities and locations where people might be endangered by such releases. Respondent shall complete the SEP within 330 days of the effective date of this CAFO.

25. The Respondent is responsible for the satisfactory completion of the SEP. The total expenditure for the SEP described in Paragraph 24 shall be no less than \$200,000. The Respondent in good faith estimates that the cost to implement the SEP is \$200,000. Eligible SEP costs do not include inventory on hand, overhead, additional employee time and salary, administrative expenses, legal fees, and oversight of a contractor. The Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

26. The Respondent hereby certifies that as of the date of this CAFO, the Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is the Respondent required to perform or develop the SEP by any

other agreement, grant, or as injunctive relief in this or any other case. The Respondent further certifies that the SEP was not a project that the Respondent was planning or intending to construct, perform, or implement other than in settlement of this action. Finally, the Respondent certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action for this SEP, and that the Respondent will not receive reimbursement for any portion of the SEP from another person or entity.

27. The Respondent also certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 24.

28. Any public statement, oral or written, in print, film, or other media, made by the Respondent making reference to the SEP under this CAFO from the date of its execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action against Koch Fertilizer Enid, LLC taken on behalf of the EPA to enforce federal laws."

29. For federal income tax purposes, the Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

SEP Completion Report

30. The Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completion of the SEP. The SEP Completion Report shall contain the following information:

- A. A detailed description of the SEP as implemented;
- B. A description of any operating or logistical problems encountered and the solutions thereto;

- C. Itemized final costs with copies of receipts for all expenditures;
- D. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- E. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of this SEP.

31. The Respondent agrees that failure to timely submit the final SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties as specified below.

32. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

33. The Respondent shall submit the following certification in the SEP Completion Report, signed by a responsible corporate official:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

34. After receipt of the [SEP Completion Report](#) described in Paragraph 30 above, EPA will, within 30 days, notify the Respondent, in writing, regarding: (a) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties as specified below.

35. If EPA elects to exercise option (a) in Paragraph 34 above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency given pursuant to Paragraph 34 within ten (10) days of receipt of such notification. EPA and the Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon the Respondent. The Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event the SEP is not completed as reasonably contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA specified below.

Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-On Amount

36. In the event that the Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Paragraph

24 of this CAFO and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 24 above, the Respondent shall be liable for stipulated penalties according to the provisions set forth below:

A. Except as provided in subparagraph (B) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, the Respondent shall pay a stipulated penalty to the United States in the amount of \$50,000 (100% of the amount the penalty was mitigated).

B. If the SEP is not completed in accordance with Section III Terms of Settlement, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, the Respondent shall not be liable for any stipulated penalty.

C. If the SEP is completed in accordance with Paragraph 24, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, the Respondent shall pay a stipulated penalty to the United States in the amount of \$25,000 [50% of the amount by which the penalty was mitigated (\$50,000)].

D. If the SEP is completed in accordance with Paragraph 24 and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, the Respondent shall not be liable for any stipulated penalty.

E. If the Respondent fails to timely complete the SEP for any reason, the Respondent shall pay stipulated penalties as follows:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 1,000
16th through 30th day	\$ 2,500

31st day and beyond \$ 5,000

F. For failure to submit the SEP Completion Report required by Paragraph 31 above, the Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until the report is submitted.

37. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

38. Stipulated penalties for Paragraphs 36E and 36F above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

39. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Penalty Payment below. Interest and late charges shall be paid as stated in the Penalty Payment section below.

40. The EPA may, in its unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

C. PENALTY PAYMENT

41. Respondent shall pay the assessed penalty (\$25,000) within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of three ways: regular U.S. Postal mail (including certified mail), or U.S. Postal Service express mail - the check should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties

Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket number CAA-06-2017-3323 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter or wire transfer instructions to the following:

Samuel Tates
Chief, Chemical Accident Enforcement Section (6EN-AS)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received in the Region.

42. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

43. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

44. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt

be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R.

§ 901.9(d). Other penalties for failure to make a payment may also apply.

IV. PARTIES BOUND

45. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns.

The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

V. RETENTION OF ENFORCEMENT RIGHTS

46. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of federal or state laws, regulations, or permitting conditions other than the violations specifically alleged in this CAFO.

47. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

48. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under federal, state, or local laws or regulations.

49. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate

relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to this CAFO.

VI. COSTS

50. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

VII. EFFECTIVE DATE

51. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS
CONSENT AGREEMENT AND FINAL ORDER:**

FOR THE RESPONDENT:

12/20/16
Date

Mauc Foss PLANT MANAGER
Koch Fertilizer Enid, LLC

FOR THE COMPLAINANT:

12/20/2016
Date

Stacey B. Dwyer
Stacey B. Dwyer, P.E.
Acting Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 12/21/16



U.S. Environmental Protection Agency
Region 6

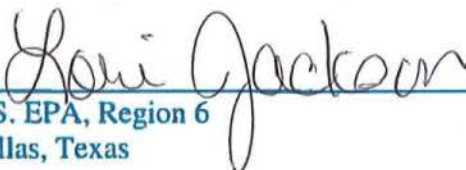
CERTIFICATE OF SERVICE

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 1014015000024540090

Mr. Marc Hoss
Koch Fertilizer Enid, LLC
Plant Manager
1619 South 78th Street
Enid, Oklahoma 73701

Date: 12/21/2016



U.S. EPA, Region 6
Dallas, Texas