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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

**EXPEDITED SETTLEMENT AGREEMENT (ESA)**

**DOCKET NO.:** CAA-07-2014-0006

**This ESA is issued to:** Cornhusker Energy Lexington  
**At:** 1111 East Industrial Drive, Lexington, Nebraska 68850  
**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 Cornhusker Energy Lexington, LLC (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 the EPA, is the Director of the Air and Waste Management Division. The Respondent is Cornhusker Energy Lexington LLC, 1111 East Industrial Drive, Lexington, Nebraska 68850.

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 May 1, 2013, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 1111 East Industrial Drive, Lexington, 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 **\$10,600**.

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 **\$10,600** 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 this ESA is CAA-07-2014-0006, 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:

Christine Hoard  
Chemical Risk Information Branch  
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.

Upon Respondent's submission of the signed original ESA, the EPA will take no further civil action against Respondent for the alleged violations of the CAA referenced in the RMP

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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:




Date: 3-3-2014

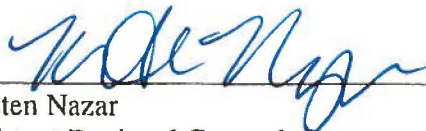
Name (print): Tydd Rohrbough

Title (print): CEO  
Cornhusker Energy Lexington LLC

FOR COMPLAINANT:

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

Date: 3/31/14

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

Date: 3/31/14

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

Karina Borrromeo  
Karina Borrromeo  
Regional Judicial Officer

Date: 4-2-14

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

Cornhusker Energy Lexington LLC  
1111 East Industrial Drive  
P.O. Box 814  
Lexington, Nebraska 68850  
Docket No. CAA-07-2014-0006

COMPLETE THIS FORM AND RETURN IT WITH THE ESA.

VIOLATIONS

PENALTY AMOUNT

Prevention Program Safety Information [68.65(c)(1)(iii, iv, v)] The owner or operator failed to provide maximum intended inventory, safe upper and lower limits and consequences of deviation to support their technology of the process. <i>Facility addressed this post inspection.</i>	\$600
Prevention Program Process Hazard Analysis [68.67(e)] The owner or operator failed to establish a system to promptly address the team's findings and recommendations and failed to communicate the actions to operating, maintenance, and other employees whose work assignments were in the process and who may be affected by the recommendations. <i>Facility addressed this post inspection.</i>	\$1,500
Process Hazard Analysis [68.67(f)] The owner or operator failed to update and revalidate the PHA every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process. <i>How was this addressed: PHA is revalidated through our management of change process and we have updated with new info as needed when changes were made. In addition we did a stand alone PHA revalidate review to address this claim.</i>	\$2,500
Prevention Program Operating Procedures [68.69(a)(1-2)] The owner or operator failed to address initial startup, temporary operations, emergency operations and startup following a shutdown and operating limits. <i>Facility addressed this post inspection.</i>	\$1,500

Prevention Program  
Operating Procedures [68.69(c)] \$1,200  
The owner or operator failed to certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary.  
*Facility addressed this post inspection.*

Prevention Program  
Training [68.71(b)] \$1,500  
The owner or operator failed to provide documentation that employees received refresher training at least every three years.  
*Facility addressed this post inspection.*

Prevention Program  
Compliance Audits [68.79(a-b)] \$1,200  
The owner or operator failed to certify that the stationary source has evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed. Has the audit been completed by at least one person knowledgeable in the process.  
*Facility addressed this post inspection.*

Contractors [68.87(c)(3)] \$600  
The owner or operator failed to supply information that their contractors documented employee ID, date of training and means of verifying training.  
*Facility addressed this post inspection.*

Total Penalty \$10,600



Calculation of Adjusted Penalty

1<sup>st</sup> Reference the Multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the column for 10-100 employees and the row for >10 times the threshold quantity of 10,000 pounds of flammable mixture 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 Cornhusker Energy Lexington LLC = 1.0

*\*\*No adjusted penalty since multiplier is 1*

**Total Penalty**

**\$10,600**

**This section must be also completed and signed by Cornhusker Energy Lexington LLC:**

The approximate cost to correct the above items: \$ ~\$200,000 per year additional

Compliance staff name: Tyde Kohrbough CEO

Signed:  Date: 3-13-2014

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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 emailed to Attorney for Complainant:

nazar.kristen@epa.gov

Copy by First Class Mail to Respondent:

Tydd Rohrbough  
Bldg A, Suite 101A  
11011 Q Street  
Omaha, Nebraska 68137

Dated: 4/2/14

  
Kathy Robinson  
Hearing Clerk, Region 7