



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

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2013 MAR 11 PM 12:30

### **EXPEDITED SETTLEMENT AGREEMENT (ESA)**

**DOCKET NO.:** CAA-07-2013-0010

**This ESA is issued to:** Bendena Ag, Inc.

**At:** 218 Railroad Street, Bendena, Kansas 66008

**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 Bendena Ag, 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 the EPA, is the Director of the Air and Waste Management Division. The Respondent is Bendena Ag, Inc., 218 Railroad Street, Bendena, Kansas 66008.

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 January 24, 2012, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 218 Railroad Street, Bendena, Kansas, 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 **\$2,800**.

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 **\$2,800** 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 this ESA is CAA-07-2013-0010, 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:

Deanna Smith  
Office of Regional Counsel  
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 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:

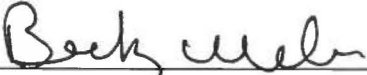
Patrick W. Urban

Date: 3-1-13

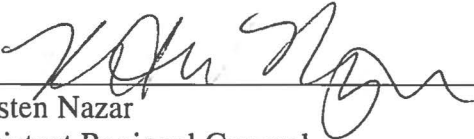
Name (print): Patrick W. Urban

Title (print): Owner  
Bendena Ag, Inc.

FOR COMPLAINANT:

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

Date: 3-8-13

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

Date: 3/5/13

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

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

Date: March 11, 2013

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

Bendena Ag., Inc.  
218 Railroad Street  
Bendena, KS 66008  
Docket No. CAA-07-2013-0010

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

**VIOLATIONS**

**PENALTY AMOUNT**

Prevention Program

Safety Information[§ 68.48(b)]

\$1,500

The owner or operator failed to ensure the process is designed in compliance with recognized and generally accepted good engineering practices. Specifically, the owner or operator failed to provide an emergency shutoff, breakaway couplers on hoses at the riser, and prevent rust from accumulating on bulk tanks.

*How was this addressed?*

We have had emergency shutoffs installed on NH3 Storage Tanks. We also had breakaway couplers installed on hoses at riser. We are in the process of painting the second NH3 tank to remove rust as weather permits.

Risk Management Plan

Update [§ 68.190(b)(1)]

\$2,000

The owner or operator failed to review and update the Risk Management Plan and submit to the EPA within 5 years of the previously submitted Risk Management Plan.

*How was this addressed?*

We now are contracted with RCI Communications to keep us up to date on our required filings.

Total Unadjusted Penalty

\$3,500

### 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 0-9 employees and row for <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 0.8. Therefore, the multiplier for Bendena Ag., Inc. = 0.8.
- 2<sup>nd</sup> Adjusted Penalty = \$3,500 (Unadjusted Penalty) X 0.8 (Size-Threshold Multiplier) = \$2,800.
- 3<sup>rd</sup> An Adjusted Penalty of \$2,800 would be assessed to Bendena Ag., Inc. for violations found during the RMP Compliance Inspection.

**Total Adjusted Penalty**

**\$2,800**

**This section must be also be completed and signed by Bendena Ag., Inc.:**

The approximate cost to correct the above items: \$ 27,635.37

Compliance staff name: Patrick W. Urban

Signed: Patrick W. Urban Date: 3-1-12



IN THE MATTER OF Bendena Ag, Inc., Respondent  
Docket No. CAA-07-2013-0010

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:

Kristen Nazar  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
11201 Renner Blvd.  
Lenexa, Kansas 66219

Copy by First Class Mail to:

Patrick W. Urban, Owner  
218 Railroad Street  
Bendena, Kansas 66008

Dated: 3/11/13



Kathy Robinson  
Hearing Clerk, Region 7