

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

IN THE MATTER OF: ) Docket No. CAA-07-2014-0001  
)  
Mid-Continent Fractionation and Storage, )  
LLC-Conway Underground East Storage Facility )  
1299 8<sup>th</sup> Avenue )  
Conway, Kansas 67460 ) ADMINISTRATIVE  
) COMPLIANCE ORDER  
) ON CONSENT  
RESPONDENT. )

**ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**

This Administrative Compliance Order on Consent (“Order” or “AOC”) is entered into by the United States Environmental Protection Agency (“EPA”) and Mid-Continent Fractionation and Storage, LLC-Conway Underground East Storage Facility (“Mid-Continent” or “Respondent”). This Order is issued pursuant to Section 113(a)(1)(A) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(1)(A), as amended.

EPA hereby orders Mid-Continent to comply with the requirements set forth below. All activities specified below shall be initiated and completed within the maximum time periods for their completion as specified herein. The terms of this AOC shall not be modified except by a subsequent written agreement between the parties.

**I. Statutory and Regulatory Background**

1. Section 110 of the Act, 42 U.S.C. § 7410, grants the Administrator of the EPA authority to approve a state plan which provides for implementation, maintenance, and enforcement of an air quality standard in each air quality control region within the state.
2. The Kansas Air Quality Regulations were adopted as part of the federally approved SIP.
3. The regulations appearing at K.A.R. 28-19-501, “*Operating Permits; Emission Limitations and Pollution Control Equipment For Class I and Class II Operating Permits; Conditions*,” K.A.R. 28-19-510 “*Class I Operating Permits; Application Time Table*,”; K.A.R. 28-19-543, “*Class II Operating Permits; Permit Term and Content; Operational Compliance*,”; and K.A.R. 28-19-544, “*Class II Operating Permits; Modification of Source or Operations*,” were incorporated into and part of the Kansas SIP at the time of the violation alleged in this

Order. All citations herein refer to the provisions of the Kansas SIP as applicable at the time of the violations alleged herein.

4. K.A.R. 28-19-501(d)(2) states, “except as otherwise authorized by the Kansas air quality regulations or the operating permit issued to the source, air pollution control equipment identified in an operating permit shall reduce the potential-to-emit of an emissions unit or stationary source, either alone or in conjunction with an operational restriction, if the owner or operator of the emission unit or stationary source: (2) develops, implements and maintains on-site a written maintenance plan to assure proper operation of the air pollution control equipment.”

5. K.A.R. 28-19-543 states, “A class II operating permit shall remain valid until modified, revoked or otherwise determined invalid. A stationary source for which a class II operating permit has been issued shall comply with all applicable air quality regulations, whether or not addressed in the class II operating permit, unless specific provision is made within the class II operating permit specifying the stationary source is not required to comply with an otherwise applicable regulation.”

6. K.A.R. 28-19-544(a) states, “Any stationary source operating pursuant to a class II operating permit shall not modify the stationary source in any manner which increases the potential-to-emit of any pollutant included in the categories listed at K.A.R. 28-19-500 without first obtaining a written approval from the department authorizing such modification pursuant to K.A.R. 28-19-300 et seq., construction permits and approvals.”

7. K.A.R. 28-19-544(b) states, “The owner or operator of a stationary source shall submit to the department a complete application for modification of a class II operating permit, including any applicable application fee, within 180 days of the initial startup of any modification if the modification increases the potential-to-emit of the stationary source.”

8. K.A.R. 28-19-510(e) states, “A complete application, including any applicable application fee, shall be submitted to the department by the owner or operator of any stationary source specified in subsection (a) of K.A.R. 28-19-500, within the following time schedules: within one year of the initial startup of any other stationary source which is required to obtain a class I operating permit.”

9. K.A.R. 28-19-500(a)(1) states, “(a) A stationary source shall obtain a class I operating permit in accordance with the provisions of K.A.R. 28-19-510 if the stationary source is: (1) a major source, except that a source is not required to obtain a permit if it would be classified as a major source solely because it has the potential-to-emit major amounts of a pollutant listed pursuant to section 112(r)(3) of the federal clean air act and is not otherwise required to obtain a permit under this regulation.”

10. K.A.R. 28-19-200(kk)(3) states that “major source” “include[s] a major stationary source of air pollutants, as defined in 42 U.S.C. § 7602 of the federal clean air act, that directly emits or has the potential-to-emit 100 tons per year or more of any air pollutant, including any major

source of fugitive emissions of any such pollutant from a federally designated fugitive emissions source. The fugitive emissions of a stationary source shall not be considered in determining whether or not it is a major stationary source, unless the source is a federally designated fugitive emissions source.”

11. Pursuant to Section 113 of the Act, 42 U.S.C. § 7413, the requirements of the Kansas SIP, as approved by the EPA, are enforceable by the EPA. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), states that once the Administrator finds that any person is in violation of any requirement of an applicable implementation plan or permit, the Administrator shall notify the person and the state in which the plan applies of such finding.

12. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), further provides that at any time after the expiration of 30 days following the date on which such notice of violation is issued, the Administrator may issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit.

## **II. Definitions**

13. Unless otherwise defined herein, terms used in this AOC shall have the meaning given to those terms in the CAA and the implementing regulations promulgated thereunder. The following terms used in this AOC shall be defined, solely for purposes of this AOC and the reports and documents submitted thereto, as follows:

- a. “Open Flame VCU” or “OF-VCU” shall mean a vapor combustion unit using an open (without enclosure) flame to facilitate combustion of volatile organic compounds.

## **III. Factual Background**

14. Mid-Continent Fractionation and Storage, LLC, located at 1299 8<sup>th</sup> Avenue, Conway, Kansas, 67460, is the owner and operator of an underground storage and loading facility in Conway, Kansas (hereinafter “Respondent’s Facility” or “Facility”). The Facility is an underground network of interconnected caverns used to store natural gas liquids (NGLs) and other hydrocarbons. NGLs are loaded and unloaded to and from caverns by tank truck and railcar. Vapors from the tank trucks and railcars resulting from loading operations involving low pressure vessels are captured and controlled by a flare.

15. On November 2, 2009, the Facility submitted an application for modification to its existing construction permit requesting an additional expansion of the railcar/truck loading capacity for the natural gasoline operations. The Facility subsequently submitted forms to modify the December 22, 2008 Class II operating permit. The Facility’s permit applications used a 98 percent vapor control efficiency (flare destruction efficiency), and this value was used to reduce the Facility’s potential-to-emit (PTE) volatile organic compounds (VOCs) below major source thresholds (100 tons per year).

16. On December 24, 2009, the state of Kansas issued a modified Class II Operating Permit to the Facility. The operating permit contains a "Permit Limitation Requirement" which states, "A written air pollution control equipment [flare] maintenance plan shall be developed, implemented, and maintained on-site to assure proper operation of the air pollution control equipment [flare]." [K.A.R. 28-19-501(d)(2)].

17. On April 24, 2012, representatives from the EPA conducted an inspection of the Facility. During the inspection, the EPA was informed by the Facility operations manager that the flare is equipped with one blower motor with a high and low setting. The EPA was also informed by the Facility operations manager that the Facility always operates the blower on the high setting due to mechanical problems occurring with automatic change from high to low setting.

18. Continuous operation of the blower in the high setting and at low VOC vapor flow results in a destruction efficiency below 98 percent and is not proper operation of the air pollution control device (flare).

19. Based on the revised permit application submitted by the Facility, if a 97 percent flare destruction efficiency is used, the PTE of the Facility is over 100 tons per year (tpy) VOCs. Calculations conducted by the EPA and shared with Mid-Continent demonstrate that for the majority of the possible various operating scenarios at the Facility, operating the blower on the high setting results in a flare destruction efficiency equal to or less than 97 percent VOCs. As a result, the Facility's potential-to-emit VOCs are over 100 tpy and, therefore, it is a major stationary source.

20. After the inspection, the EPA determined that the Facility did not develop, implement or maintain a written air pollution control equipment maintenance plan to assure proper operation of the flare.

21. The Facility has not applied for a modification to its Class II operating permit.

22. The Facility has not applied for a Class I operating permit.

23. On January 31, 2013, EPA issued a Notice of Violation to Mid-Continent.

#### **IV. Finding of Violation**

24. A written air pollution control equipment (flare) maintenance plan was not developed, implemented, and maintained on-site to assure proper operation of the air pollution control equipment (flare). Therefore, Mid-Continent is in violation of its Operating Permit and K.A.R. 28-19-501(d)(2).

25. The Facility's operations caused its potential-to-emit VOCs to exceed major source thresholds. Mid-Continent did not obtain an appropriate permit or permit modification, and therefore, violated K.A.R. 28-19-543, 28-19-544, and 28-19-510, of the federally approved

Kansas SIP, Section 110 of the Act, 42 U.S.C. § 7410; Subchapter V of the Act approved by EPA on February 29, 1996 (61 Fed. Reg. 2938); and the Act's implementing regulations.

**V. Compliance Order**

26. Pursuant to Section 113(a)(1)(A) of the Act, 42 U.S.C. § 7413(a)(1)(A), EPA hereby orders Respondent to comply with the requirements set forth below:

**A. Mitigation of VOC Emissions**

27. By no later than April 30, 2014, Respondent shall execute a purchase order for two (2) OF-VCUs for the destruction of captured VOC vapors displaced from tank trucks and railcars during product loading.

28. By no later than December 15, 2014, Respondent shall install two (2) vapor collection systems and two OF-VCUs to capture VOC vapors displaced from tank trucks and railcars, respectively (i.e., one (1) OF-VCU for truck operations and one (1) OF-VCU for railcar operations). During product loading, Respondent shall capture and route the vapors to the respective OF-VCU for destruction. The OF-VCUs shall be in operation at all times during tank truck and/or railcar product loading.

29. The OF-VCUs installed pursuant to paragraph 28, shall achieve a 98 percent destruction efficiency of captured VOCs as guaranteed by the manufacturer.

30. By no later than August 1, 2014, a written air pollution control equipment maintenance plan shall be developed, implemented, and maintained on-site to ensure proper operation of the OF-VCUs, in accordance with manufacturer's recommendations.

31. By no later than January 15, 2015, Respondent shall submit documentation and calculations that the OF-VCUs installed at the Facility's tank truck and railcar loading racks, pursuant to paragraph 28 above, complies with the applicable design and operating criteria in 40 C.F.R. 60.18 (c) through (f). The documentation submitted shall include, but not limited to, velocity calculations and the net heating value of the gas being combusted.

**B. Permitting**

32. By no later than January 15, 2015, Respondent shall submit a Class II operating permit application to the Kansas Department of Health and Environment requesting permit limitations or restrictions based on the documentation and calculations pursuant to paragraph 31, that will establish a Potential-to-Emit (PTE) threshold, below 100 tons per year of VOC emission from the facility. A copy of the permit application shall be provided to the EPA representative identified in paragraph 36.

### **C. Review and Approval of Submitted Documents**

33. Unless otherwise provided herein, and subject to the Dispute Resolution provisions, the provisions of this paragraph shall apply to EPA's review and approval of documents submitted pursuant to this Order. Upon receipt of a document subject to this paragraph, the EPA shall approve the document, approve the document with comments, or disapprove the document with comments. If the document is approved with comments, Respondent may proceed with any actions required by the document but must incorporate EPA's comments and resubmit the document within fourteen (14) days of receipt of comments. If the document is disapproved, Respondent shall incorporate any comments within fourteen (14) days of Respondent's receipt of such comments and resubmit the document. The EPA shall review the revised document and shall approve, approve with comments, or disapprove the document. Failure by Respondent to incorporate EPA's comments after one resubmission of a document shall be deemed a violation of this Order.

### **D. Submittals**

34. Every 90 days following entry of this Order, Respondent shall provide progress reports to EPA detailing actions Respondent has taken in furtherance of its obligations under this Order. Upon completion of each requirement detailed in paragraphs 27 through 32 above, Respondent shall provide verification in the progress report indicating that the requirement has been satisfied. Respondent's obligation under this paragraph shall continue until submission of the Certified Completion report as required by paragraph 35 of this Order.

35. Within 30 days of the completion of the requirements of paragraphs 27 through 32, Respondent shall submit a Certified Completion report to EPA indicating that Respondent has completed and complied with each of the requirements of this Order.

36. All documents required to be submitted to EPA by this Order shall contain the following certification, signed by an officer of Respondent:

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.

The submissions required by the above paragraphs and subparagraphs shall be made to:

For EPA:  
Bill Peterson  
Air Permitting & Compliance Branch  
U.S. EPA Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

37. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 CFR Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

#### **E. Force Majeure**

38. Respondent agrees to perform all requirements under this AOC within the time limits established under this AOC unless the performance is delayed by a force majeure. For the purposes of this AOC, a force majeure is defined as any event arising from causes beyond the control of Respondent, or any entity controlled by Respondent, or Respondent's contractors, which delays or prevents performance of any obligation under this AOC despite Respondent's best efforts to fulfill the obligation. The requirement that the Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address any potential force majeure event: (1) as it is occurring, and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force majeure does not include financial inability to complete the work described in paragraphs 27-32 of the AOC, increased cost of performance, changes in Respondent's business or economic circumstances, but may include significant delays caused by weather.

39. If an event occurs that may delay the performance of any obligation under this AOC, whether or not caused by a force majeure event, Respondent shall notify EPA in writing within five (5) days of when Respondent knew or should have known that the event might cause a delay. Such notice shall: (1) identify the event causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; (2) provide Respondent's rationale for attributing such delay to a force majeure event; (3) state the measures taken or to be taken to prevent or minimize the delay; (4) estimate the timetable for implementation of those measures; and (5) state whether, in the opinion of the Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondent shall undertake best efforts to avoid and minimize the delay. Failure to comply with the notice provisions of this Paragraph and to undertake best efforts to avoid and minimize delay shall preclude Respondent from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.

40. If EPA determines the delay in performance or anticipated delay in fulfilling a requirement of this AOC is or was attributable to a force majeure, then the time period for performance of the requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure, then EPA will notify Respondent, in writing, of the length of the extension, if any, for performance of such obligations affected by the force majeure. Any such extensions shall not alter Respondent's



obligation to perform or complete other tasks required by this AOC which are not directly affected by the force majeure.

41. If EPA disagrees with Respondent's assertion of a force majeure, then Respondent may elect to invoke the dispute resolution provision, and shall follow the procedures set forth in the Dispute Resolution section of this AOC. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that Respondent's best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Section. If Respondent satisfies this burden, then EPA will extend the time for performance as EPA determines is necessary.

#### **F. Modification of this AOC**

42. If at any time during the implementation of the work described in paragraphs 27-32, Respondent identifies a need for a compliance date or schedule modification, Respondent shall submit a memorandum documenting the need for the modification to the EPA representative identified in paragraph 57 below. EPA in its discretion will determine if the modification or revision is warranted and may provide written approval or disapproval. Any approved modified compliance date or schedule modification shall be incorporated by reference into this AOC.

43. Except for modification of any compliance date or schedule as provided for in paragraph 42, this AOC may only be modified by the mutual agreement of EPA and Respondent. The agreed modifications shall be in writing and signed by both parties. The effective date of any modification shall be the date on which it is signed by EPA. Any such written modification shall be incorporated into this AOC.

44. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain such formal approval as may be required by this AOC, and to comply with all requirements of this AOC unless it is modified in accordance with this Section. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this AOC are, upon approval by EPA, incorporated into and enforceable under this AOC.

#### **G. Dispute Resolution**

45. Respondent shall raise any disputes concerning the work described in paragraphs 27-32 required under this AOC to EPA in writing, within fifteen (15) business days after receiving written notice from EPA regarding any aspect of the work required in paragraphs 27-32 of this AOC that Respondent disputes. EPA and Respondent shall expeditiously and informally attempt to resolve any disagreements as follows:

- a. EPA and Respondent shall first confer in an effort to resolve the dispute.



- b. If EPA and Respondent are unable to informally resolve the dispute within three (3) business days of the first conference, Respondent shall notify EPA, within five (5) business days, in writing of its objections.
  - c. Written objections shall identify Respondent's objections, state the basis for those objections, and provide all data, analysis and information relied upon by Respondent.
  - d. EPA and Respondent then have an additional fourteen (14) business days from EPA's receipt of the objections to reach agreement. If an agreement is not reached within the fourteen (14) business days, Respondent may request in writing, within five (5) business days a determination resolving the dispute by EPA Region 7's Regional Judicial Officer (RJO).
  - e. The request should provide all information that Respondent believes is relevant to the dispute. EPA may also submit to the RJO all information that the EPA believes is relevant to the dispute. If Respondent's request is submitted within five (5) business days, the RJO shall issue a determination in writing which will be EPA's final decision.
  - f. EPA's final decision shall be incorporated into and become an enforceable part of this AOC and shall no longer be subject to dispute pursuant to this AOC. Respondent shall proceed in accordance with the RJO's decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision.
  - g. If Respondent does not perform the work described in paragraphs 27-32 in accordance with EPA's decision, EPA reserves the right in its sole discretion to seek enforcement of this AOC, seek stipulated penalties, and/or any other appropriate relief.
  - h. Any disputes arising under this AOC are not subject to judicial review until such time as EPA seeks to enforce this AOC, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of the AOC.
46. If EPA and Respondent reach agreement on the dispute at any state, the agreement shall be set forth in writing and shall, upon signature of both parties, be incorporated into and become an enforceable part of this AOC.
47. The existence of a dispute and EPA's consideration of matters placed in dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this AOC during the pendency of the dispute resolution process except as agreed by EPA in writing. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this AOC.

#### **H. Stipulated Penalties**

48. Respondent shall be liable for stipulated penalties to the United States in the amounts set forth in subparagraphs (a) through (g) below for failure to comply with the requirements of this Order.
- a. The following stipulated penalties shall accrue per violation per day for failure to install any equipment or otherwise comply with the limits and requirements as set forth in paragraphs 28-29 of this AOC:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1000	1 <sup>st</sup> through 15 <sup>th</sup> day
\$2000	16 <sup>th</sup> day and beyond

- b. The following stipulated penalties shall accrue per violation per day for failure to submit the OF-VCU documentation as required by paragraph 31 of this AOC:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$200	1 <sup>st</sup> through 15 <sup>th</sup> day
\$500	16 <sup>th</sup> day and beyond

- c. The following stipulated penalties shall accrue per day for failure to submit a Class II operating permit application to the Kansas Department of Health and Environment as required by paragraph 32 of this AOC:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 <sup>st</sup> through 15 <sup>th</sup> day
\$1000	16 <sup>th</sup> day and beyond

- d. The following stipulated penalties shall accrue per day for failure to submit the progress reports as required by paragraph 34 of this AOC:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$200	1 <sup>st</sup> through 15 <sup>th</sup> day
\$500	16 <sup>th</sup> day and beyond

- e. The following stipulated penalties shall accrue per day for failure to submit the Certified Completion Report as required by paragraph 35 of this AOC:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 <sup>st</sup> through 15 <sup>th</sup> day
\$1000	16 <sup>th</sup> day and beyond

- f. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

- g. The payment of penalties under this Order shall not alter Respondent's obligations to comply with the provisions of this Order. Where a violation of this AOC is also a violation of relevant statutory or regulatory requirements,

Respondent shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

- h. All penalties accruing under this section shall be due and payable to the United States within 30 days of Respondent's receipt from EPA of a demand for payment of penalties. All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "Treasurer, United States of America" and remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties -CFC  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

- i. Failure to pay any portion of the stipulated penalties on the date upon which they are due will result in the accrual of interest on the unpaid portion of the stipulated penalties at the rate of two percent (2%) per annum.

#### **I. Potential Liability**

49. Section 113(a)(1) of the Act grants EPA the authority to issue an order to any person found in violation of the Act and the regulations promulgated pursuant thereto.

50. Section 113(a)(3) of the Act provides that whenever EPA finds that any person has violated, or is in violation of an order issued under Section 113(a)(1), the EPA Administrator may issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to \$25,000 per day for each violation; or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$25,000 per day for each violation. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and the Civil Monetary Penalty Inflation Adjustment Rule, this penalty maximum was increased to \$32,500 per day for violations occurring on or after March 15, 2004. In addition, Respondent may be subject to an administrative or civil action for similar penalties and/or injunctive relief, pursuant to Sections 113(b) and (d) of the Act, based on the violations addressed by this Order. Furthermore, for any person who knowingly violates the provisions of the Clean Air Act as set forth in Section 113(c) of the Act, Section 113(c) provides for criminal penalties or imprisonment, or both.

51. This Order shall not relieve Respondent of its obligation to comply with all applicable federal, State, and local laws, regulations and other legal requirements, including but not limited to the Act, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit.

52. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which Respondent may have, with respect to any

issue of fact or law or any terms and conditions set forth in this Consent Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

53. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, other extremely hazardous substance, or other substance on, at, or from the Facility. EPA reserves the right to bring an action against Respondent assessing or seeking penalties and/or other relief for any violations, including, without limitation, the violations referred to in the Factual Background and Conclusions of Law set forth above.

54. This Order shall not constitute or be construed as a release of any liability that the Respondent or any other person has under the Act, the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26, the Clean Water Act, 33 U.S.C. §§ 1251-1387, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001-11050, or any other law. EPA does not, by its consent to the entry of this Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Order will result in compliance with provisions of the Act, SDWA, CWA, CERCLA, RCRA, or EPCRA, or with any other provisions of federal, state, or local laws, regulations, or permits. EPA also reserves all of its rights to obtain access to the Facility and require Respondent's submission of information to EPA.

**J. Effective Date: Opportunity For A Conference**

55. This Order shall become effective immediately upon receipt unless, within five (5) business days of receipt hereof, Respondent requests a conference with EPA concerning the violations alleged in, and the requirements of, this Order. In such event, the effective date of the Order shall be extended until the date of such conference or to a time established by EPA. Respondent has the right to be represented by counsel at such a conference. If a conference is held, this Order shall become effective the day after the conference, unless the effective date is extended by EPA.

56. In the event this Order is signed by both EPA and Respondent, the Order shall become effective immediately upon signature by both EPA and Respondent. Signature of the Order by Respondent shall indicate that Respondent waives its right to a conference with EPA as described in paragraph 55 above and that Respondent neither admits nor denies the allegations in paragraphs 14 – 25 of this Order.

57. The request for a conference and other inquiries regarding this Order shall be addressed to:

Julie L. Murray  
Assistant Regional Counsel  
U.S. EPA Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
Phone: (913) 551-7748  
Fax: (913) 551-7925

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:


Date 4/28/14

  
Becky Weber  
Director  
Air and Waste Management Division

FOR THE RESPONDENT:

Mid-Continent Fractionation & Storage, LLC  
Conway, Kansas

Date 4/7/14

  
Name: Cheryl J. Humphries  
Title: VP + GM





IN THE MATTER OF Mid-Continent Fractionation and Storage, LLC - Conway Underground  
East Storage Facility, Respondent  
Docket No. CAA-07-2014-0001

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:

[murray.julie@epa.gov](mailto:murray.julie@epa.gov)

Copy by First Class Mail to Respondent:

Garry L. Keele, II  
Hall Estill Attorneys At Law  
320 South Boston Avenue, Suite 200  
Tulsa, Oklahoma 74103-3706

Dated: 4/30/14



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7