



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
http://www.epa.gov/region08

2014 SEP 23 PM 4:47

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CAA-08-2014-0013

IN THE MATTER OF:

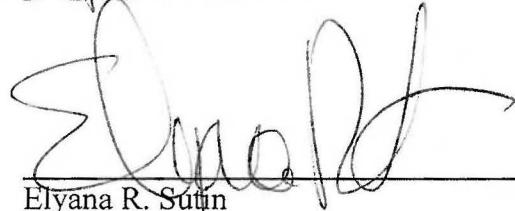
Agrium U.S. Inc. – Leal Terminal  
Rogers, North Dakota

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)**FINAL ORDER**  
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)

Respondent

Pursuant to 40 C.F.R. § 22.13(b) and § 22.18, of the EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 23<sup>rd</sup> Day of September, 2014.

  
\_\_\_\_\_  
Elyana R. Sutin  
Regional Judicial Officer

**IN THE MATTER OF: Agrium U.S. Inc. – Leal Terminal, Rogers, North Dakota**  
**DOCKET NO.: CAA-08-2014-0013**

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **COMBINED COMPLAINT/CONSENT AGREEMENT** in the matter of **Agrium U.S. Inc. – Leal Terminal, Rogers, North Dakota; DOCKET NO.: CAA-08-2014-0013**, was filed with the Regional Hearing Clerk on September 23, 2014; **THE FINAL ORDER** was filed on September 23, 2014


Further, the undersigned certifies that a true and correct copy of the document was delivered to Marc Weiner, Enforcement Attorney, U.S. Environmental Protection Agency – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail, domestic return receipt on

to:

Agrium U.S. Inc. – Leal Terminal  
Jesse Potratz, Terminal Supervisor  
2215 105<sup>th</sup> Avenue S.E.  
Rogers, ND 58479  
Certified Mail No.: 7008 3230 0003 0726 0412

And emailed to:

Kim White  
U.S. Environmental Protection Agency  
Cincinnati Finance Center  
26 West Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

  
for Tina Artemis  
Paralegal/Regional Hearing Clerk

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY 2014 SEP 23 PM 3: 21  
REGION 8

FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )

DOCKET No.: CAA-08-2014-0013

Agrium U.S. Inc. – Leal Terminal )  
Rogers, ND )

**EXPEDITED SETTLEMENT AGREEMENT**

Respondent )

(COMBINED COMPLAINT AND  
CONSENT AGREEMENT)

AUTHORITY

1. This Expedited Settlement Agreement (also known as a Combined Complaint and Consent Agreement, hereafter ESA), intended to simultaneously commence and conclude this matter, is being entered into by the United States Environmental Protection Agency (EPA), Region 8, by its duly delegated official, the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, and by the Agrium U.S. Inc. – Leal Terminal (Respondent) pursuant to sections 113(a)(3) and (d) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a)(3) and (d), and 40 C.F.R. §§ 22.13(b) and 22.18. The EPA and the U.S. Department of Justice have determined, pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that the EPA may pursue this type of case through administrative enforcement.

RESPONDENT

2. The Respondent is a Colorado corporation that does business in the State of North Dakota.
3. The Respondent is a “person” under section 302(e) of the Act. 42 U.S.C. § § 7602(e).

ALLEGED VIOLATIONS

4. On May 14, 2013, an authorized representative of the EPA conducted a compliance inspection of Respondent’s facility located at 2215 105<sup>th</sup> Avenue, SE in Rogers, North Dakota to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under section 112(r)(7) of the Act. The EPA found that the Respondent had violated regulations implementing section 112(r)(7) of the Act by failing to comply with the specific requirements outlined in the attached *RMP Program Level 3 Process Checklist-Alleged Violations & Penalty Assessment* (Checklist and Penalty Assessment). The Checklist and Penalty Assessment is incorporated into this ESA.

Agrium U.S. Inc. – Leal Terminal  
EXPEDITED SETTLEMENT AGREEMENT

SETTLEMENT

5. In consideration of the factors contained in section 113(d)(1) of the Act and the entire record, the parties enter into this ESA in order to settle the violations for the total penalty amount of \$2,960. An explanation for the penalty calculation is found in the attached *Expedited Settlement Penalty Matrix*.
6. This settlement is subject to the following terms and conditions:
  - a. The Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained in the Checklist and Penalty Assessment and consents to the assessment of the penalty as stated above.
  - b. The Respondent waives its rights to a hearing afforded by section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA.
  - c. Each party to this action shall bear its own cost and attorney fees, if any.
  - d. The Respondent certifies that the violations listed in the Checklist and Penalty Assessment have been corrected.
  - e. The Respondent waives any and all available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this ESA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
7. After the Final Order is issued by the Regional Judicial Officer, a fully executed copy of this ESA and the Final Order will be sent to the Respondent. Within twenty (20) days after receiving the Final Order, the Respondent shall remit payment in the amount of \$2,960. **The payment shall reference the name and docket number of this case** and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Agrium U.S. Inc. – Leal Terminal  
EXPEDITED SETTLEMENT AGREEMENT

Federal Express, Airborne, or other commercial carrier  
(or when a physical address is required):

US Bank  
U.S. EPA Fines & Penalties  
Government Lockbox 979078  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
(314) 418-4087

Wire Transfers:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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”

ACH Transactions (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact - Jesse White 301-887 6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account Number: 310006  
CTX Format.

There is now an On Line Payment Option, available through the U.S. Department of Treasury. This payment option can be accessed from the information below:

[www. PAY.GOV](http://www.PAY.GOV)  
(Enter sfo 1.1 in the search field  
Open form and complete required fields)

Agrium U.S. Inc. – Leal Terminal  
EXPEDITED SETTLEMENT AGREEMENT

A copy of the check, or notification that the payment has been made by one of the other methods listed above, shall be sent simultaneously to:

Tina Artemis, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street [8RC]  
Denver, Colorado 80202-1129

and

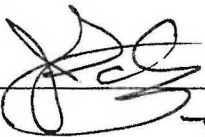
David Cobb  
EPCRA/RMP Enforcement Coordinator  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street [8ENF-AT]  
Denver, Colorado 80202-1129

8. The penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
9. Once the Respondent receives a copy of the Final Order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against the Respondent for the violations alleged in the Checklist and Penalty Assessment, which has been incorporated herein.
10. This ESA does not pertain to any matters other than those expressly specified herein. The EPA reserves and this ESA is without prejudice to, all rights against the Respondent with respect to all other matters, including but not limited to, the following:
  - a. claims based on a failure by the Respondent to meet a requirement of this ESA including any claims for costs which are caused by the Respondent's failure to comply with this Agreement;
  - b. claims based on criminal liability; and
  - c. claims based on any other violations of the Act or federal or state law.
11. If the Respondent fails to timely submit the above-referenced payment after receiving the Final Order, a motion may be filed to withdraw the ESA and Final Order. If that motion is granted, the EPA may then file an enforcement action against the Respondent for the violations addressed herein.
12. This ESA, upon incorporation into the Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this ESA. This ESA contains all terms of the settlement agreed to by parties.

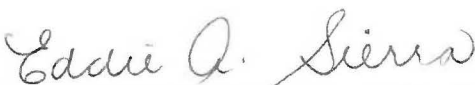
Agrium U.S. Inc. – Leal Terminal  
EXPEDITED SETTLEMENT AGREEMENT

- 13. Nothing in this ESA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
- 14. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind the Respondent to the terms and condition of this ESA.
- 15. The parties agree to submit this ESA to the Regional Judicial Officer with a request that it be incorporated into a final order.

For Respondent Agrium U.S. Inc. – Leal Terminal:

  
\_\_\_\_\_  
Name (print): Jesse Potratz  
Title (print): Leal Distribution Terminal Supervisor  
Date: 9/18/14

For Complainant United States Environmental Protection Agency, Region 8:

  
\_\_\_\_\_  
Date: SEP 23 2014  
710Z 23 SEP  
*for* Suzanne J. Bohan  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
 WASHINGTON, D.C. 20460  
 OFFICE OF  
 ENFORCEMENT AND  
 COMPLIANCE ASSURANCE

EXPEDITED SETTLEMENT PENALTY MATRIX  
 Agrium U.S.  
 Agrium U.S. Inc. – Leal Terminal  
 Rogers, ND

MULTIPLIER FACTORS FOR CALCULATING PROPOSED PENALTIES FOR VIOLATIONS  
 FOUND DURING RMP INSPECTIONS

**Private Industries**

# of Employees	1 – 5*	>5 – 10*	> 10*
0 – 9	0.4	0.6	0.8
10 – 100	0.6	0.8	1.0
> 100	1.0	1.0	1.0

\* Largest Multiple of Threshold Quantity of any Regulated Chemical(s) on Site.

**PROPOSED PENALTY WORKSHEET**

**Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier**

The Unadjusted Penalty is calculated by adding up all the penalties listed on the Risk Management Program Inspections Findings, Alleged Violations and Proposed Penalty Sheet.

The Size-Threshold Quantity multiplier is a factor that considers the size of the facility and the amount of regulated chemicals at the facility.

The Proposed Penalty is the amount of the non-negotiable penalty that is calculated by multiplying the Total Penalty and the Size/Threshold Quantity multiplier.

**Example:**

XYZ Facility is a private company which has 24 employees and 7 times the threshold amount for the particular chemical in question. After adding the penalty numbers in the Risk Management Program Inspection Findings, Alleged Violations and Proposed Penalty Sheet an unadjusted penalty of \$4700 is derived.



### 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 >5- 10 times the threshold quantity amount gives a multiplier factor of 0.8.
- 2<sup>nd</sup> Use the Adjusted Penalty formula
- $$\text{Adjusted Penalty} = \$4700 (\text{Unadjusted Penalty}) \times 0.8 (\text{Size-Threshold Multiplier})$$
- $$\text{Adjusted Penalty} = \$3760$$
- 3<sup>rd</sup> An Adjusted Penalty of \$3760 would be assessed to XYZ Facility for Violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement (ESA).

### Calculation for Adjusted Penalty – Agrium U.S. Inc. – Leal Terminal

**Adjusted Penalty = Unadjusted Penalty X Size-Threshold Quantity Multiplier**

$$\$2,960 = \$3,700 \times 0.8^*$$

\* # of employees is 4. The covered chemical, anhydrous ammonia, exceeds the listed threshold value by 8485.048 times

**RMP PROGRAM LEVEL 3 PROCESS CHECKLIST  
ALLEGED VIOLATIONS & PENALTY ASSESSMENT**

Respondent: Agrium U.S. Inc.  
Facility Name: Agrium U.S. Inc. – Leal Terminal

**INSPECTION DATE: 5/14/2013**

**SUBPART D: PREVENTION PROGRAM [68.65 – 68.87]**

**PENALTY**

**Prevention Program – Safety Information [68.65]**

Has the owner or operator documented electrical classification for the equipment in the process? [68.65(d)(1)(iii)] No.

**600**

- **Agrium has not documented electrical classification for the equipment in the process.**

**Note: In accordance with the schedule set forth in 40 C.F.R. § 68.67, the owner or operator shall complete a compilation of written process safety information, including electrical classification, before conducting any process hazard analysis required by 40 C.F.R. part 68. Agrium created a draft electrical classification drawing on June 21, 2013, approximately 5 weeks after the EPA inspection.**

Has the owner or operator documented relief system design and design basis for the equipment in the process? [68.65(d)(1)(iv)] No.

**600**

- **Agrium has not documented relief system design and design basis for the equipment in the process.**

Has the owner or operator documented that the equipment complies with recognized and generally accepted good engineering practices (RAGAGEP's)? [68.65(d)(2)] No.

**1500**

- **Pressure relief devices were not were not vented such that persons will not be harmed, in accordance with ANSI K61.1 § 6.3.1.2.**
- **Emergency shutoff valves at the truck unloading stations did not comply with ANSI K61.1 § 5.10.2. Existing valves are not capable of being operated remotely with cables or pneumatic hook-ups. Emergency valves such as Fisher Type N550 valves (AKA**

<p>“Snappy Joes”), equipped with remote releases, have not been installed. According to ANSI K61.1, “Capability shall be provided to halt the transfer of liquids in the event of an emergency”.</p> <ul style="list-style-type: none"> <li>• Valves were not labeled in accordance with <i>ANSI/ASHRAE Standard 15 § 11.2.2</i>. According to ANSI/ASHRAE, “Systems containing more than 110 lb of refrigerant shall be provided with durable signs having letters not less than 0.5 inches in height designating: <ul style="list-style-type: none"> <li>a) Valves or switches for controlling the refrigerant flow, the ventilation, and the refrigeration compressor(s), and</li> <li>b) The kind of refrigerant or secondary coolant contained in the exposed piping outside the machinery room. Valves or piping adjacent to valves shall be identified in accordance with ANSI A13.1, Scheme for Identification of Piping Systems.</li> </ul> </li> <li>• Ammonia pipe labeling is not in compliance with ANSI/ASME A13.1, or other applicable industry standard. Labeling does not communicate the contents of the piping (i.e. “anhydrous ammonia”). Labeling does not contain directional arrows. Labeling is not black on yellow. Labeling is not located so as to be readily visible to personnel from the point of normal approach. Labeling does not contain lettering of the height recommended by the standard. Labeling does not contain color-fields of the length recommended by the standard.</li> </ul>	
<b>SUBPART G: RISK MANAGEMENT PLAN [68.160 – 68.195]</b>	
<p>Does the online registration form include, for each covered process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits? [68.160(b)(7)] No.</p> <ul style="list-style-type: none"> <li>• Agrium has not considered railcars containing ammonia that are stored onsite when calculating the maximum quantity of each regulated substance in the process. calculated the maximum-quantity of onsite-ammonia correctly</li> </ul>	<b>1000</b>
<b>BASE PENALTY</b>	<b>3700</b>