



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

2013 SEP 18 AM 10:08


FILED  
EPA REGION VII  
HEARING CLERK

DOCKET NO.: CAA-08-2013-0013

IN THE MATTER OF:	)	
	)	
<b>KUGLER OIL COMPANY, INC. d/b/a</b>	)	<b>FINAL ORDER</b>
<b>BURLINGTON RETAIL FERTILIZER CO.</b>	)	
<b>Burlington, Colorado</b>	)	
	)	
<b>RESPONDENT</b>	)	

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of 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 18<sup>th</sup> DAY OF September, 2013.

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

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2013 SEP 18 AM 8:09

IN THE MATTER OF: )

Kugler Oil Company dba )  
Burlington Retail Fertilizer Co. )  
Burlington, Colorado )

Respondent )

FILED  
EPA REGION VIII  
HEARING CLERK

**EXPEDITED SETTLEMENT AGREEMENT**

(COMBINED COMPLAINT AND  
CONSENT AGREEMENT)

DOCKET NO.: CAA-08-2013-0013

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 Kugler Oil Company (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, Kugler Oil Company, owns the Burlington Retail Fertilizer Co., and is a Nebraska corporation that does business in the State of Colorado.
3. The Respondent is a "person" under section 302(e) of the Act. 42 U.S.C. § § 7602(e).

ALLEGED VIOLATIONS

4. On March 27, 2013, an authorized representative of the EPA conducted a compliance inspection of Respondent's facility located at 18681 County Road 50 in Burlington, Colorado, 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 2 Process Checklist-Alleged Violations & Penalty Assessment* (Checklist and Penalty Assessment). The Checklist and Penalty Assessment is incorporated into this ESA.

Kugler Oil Company dba Burlington Retail Fertilizer Co.  
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 \$3,840. 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, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent will correct the violations listed in the Checklist and Penalty Assessment no later than sixty (60) days after receiving the Final Order.
  - 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 thirty (30) days after receiving the Final Order, the Respondent shall remit payment in the amount of \$3,840. **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

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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)

Kugler Oil Company dba Burlington Retail Fertilizer Co.  
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

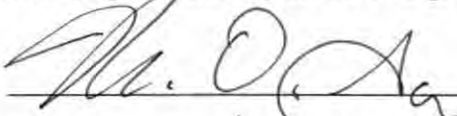
David Cobb  
EPCRA/RMP Enforcement Coordinator  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street [8ENF-AT]  
Denver, Colorado 80202-1129

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 or fails to correct the violations no later than sixty (60) days 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.

Kugler Oil Company dba Burlington Retail Fertilizer Co.  
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 Kugler Oil Company dba Burlington Retail Fertilizer Co.:


  
\_\_\_\_\_ Date: 8/26/13

Name (print): Michael D. Gapp

Title (print): Safety Director

For Complainant United States Environmental Protection Agency, Region 8:

  
\_\_\_\_\_ Date: 9/18/2013

 Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice



**RMP PROGRAM LEVEL 2 PROCESS CHECKLIST  
ALLEGED VIOLATIONS & PENALTY ASSESSMENT**

Respondent: **Kugler Oil Company, McCook, NE**  
 Facility Name: Burlington Retail Fertilizer Co. (BRFC) in Burlington, CO

**INSPECTION DATE: 3/27/2013**

**SUBPART C: PREVENTION PROGRAM [68.48 – 68.60]**

**PENALTY**

**Prevention Program – Safety Information [68.48]**

Has the owner or operator ensured that the process is designed in compliance with recognized and generally accepted good engineering practices? [40 CFR 68.48(b)]

- **The two ammonia stationary storage tanks are not equipped with emergency shut-off valves which can be remotely activated. The remote shut-off cable on the east tank needs to be replaced because it is broken off close to the valve. The remote shut-off cable on the west tank does not operate smoothly – installing it through conduit may help with this problem. According to ANSI K61.1, Section 5.10.8.2:**
  - **An approved emergency shut-off valve shall incorporate a manually activated shut off from a remote location and a manually activated shut off at the installed location.**
- **Emergency signage is not readily visible. Emergency signage is installed on the chemical warehouse but the signage is not readily visible until one has entered the facility beyond the ammonia vessels. The sign is missing the address. According to ANSI K61.1, Section 6.8:**
  - **A legible sign shall be displayed on the premises at which a storage system is located, so as to be readily visible to emergency response personnel, stating the name, address, and telephone number of the nearest representative, agent, or owner of the storage system.**
- **The west ammonia stationary storage tank is missing visible ANHYDROUS AMMONIA stickers and INHALATION HAZARD stickers. According to ANSI K61.1, Section 6.6:**
  - **Each container or group of containers shall be marked on at least two sides, which are visible with the words, ANHYDROUS AMMONIA. . . .**
  - **Each container or group of containers shall be marked with a hazard warning label complying with 29 CFR 1910.1200[7].**

1500

<b>Prevention Program – Hazard Review (HR) [40 CFR 68.50]</b>	
<p>Has the owner or operator conducted a review of the hazards associated with the regulated substances, process, and procedures? [68.50(a)]</p> <ul style="list-style-type: none"> <li>• <b>The HR does not address the hazards associated with the process of mixing chemicals in the T-reactor.</b></li> </ul>	<b>900</b>
<p>Has the owner or operator updated the hazard review at least once every five years or whenever a major change in the process occurred? [68.50(d)]</p> <ul style="list-style-type: none"> <li>• <b>The HR has not been updated every five years. The most recent HR is dated 1/16/2007.</b></li> </ul>	<b>1500</b>
<b>Prevention Program – Maintenance [40 CFR 68.56]</b>	
<p>Has the owner or operator performed or cause to be performed inspections and tests on process equipment that follow recognized and generally accepted good engineering practices? [68.56(d)]</p> <ul style="list-style-type: none"> <li>• <b>The only maintenance documentation available prior to 2012 was the Equipment Maintenance Schedule signed by the RMP officer on 1/16/07. In August 2012, Kugler Company hired consultants to assist BRFC with developing a PSM program. Since then, BRFC has developed procedures for inspecting the PRVs and Piping. BRFC provided documentation that the Pressure Relief System was inspected November 2012 with the comment “Replaced PR Valves”. The Colorado Dept of Agriculture inspected BRFC on 3/7/2013 and rejected the West Bulk Anhydrous Ammonia tank in part because two PRV’s expired 12/11 &amp; 9/11.</b></li> </ul>	<b>600</b>
<b>Prevention Program – Compliance Audits [40 CFR 68.58]</b>	
<p>Has the owner or operator certified that compliance audits (CA) are conducted at least every three years to verify that the procedures and practices are adequate and are being followed? [68.58(a)] Has the owner or operator retained the two most recent compliance audit reports? [68.58(e)]</p> <ul style="list-style-type: none"> <li>• <b>No documentation was available that a CA was conducted at least every three years.</b></li> </ul>	<b>300</b>
<b>BASE PENALTY</b>	<b>4,800</b>





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

EXPEDITED SETTLEMENT PENALTY MATRIX  
Kugler Oil Company, McCook NE dba  
Burlington Retail Fertilizer Co.  
Burlington, CO

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 – Burlington Retail Fertilizer Co.

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

$$\$3840 = \$4800 \times 0.8^*$$

\* # of employees is 4. The covered chemical, anhydrous ammonia, exceeds the listed threshold value by 75 times.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT and FINAL ORDER** in the matter **KUGLER OIL COMPANY D/B/A BURLINGTON RETAIL FERTILIZER CO.; DOCKET NO.: CAA-08-2013-0013**. The **EXPEDITED SETTLEMENT AGREEMANS** was filed with the Regional Hearing Clerk on September 18, 2013.

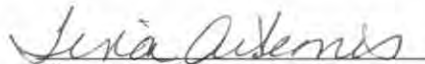
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were sent and placed in the United States mail certified/return receipt on September 18, 2013 to:

Mike Gapp, Safety Director  
Kugler Oil Company  
d/b/a Burlington Retail Fertilizer Co.  
P. O. Box 1748  
McCook, NE 69001-1748

And emailed to:

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

September 18, 2013

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

