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

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

**DOCKET NO.:** CAA-07-2015-0039

**This ESA is issued to:** Flint Hills Resources Menlo, LLC

**At:** 3363 Talon Avenue, Menlo, Iowa 50164

**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 Flint Hills Resources Menlo, 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 EPA, is the Director of the Air, and Waste Management Division. The Respondent is Flint Hills Resources Menlo, LLC, 3363 Talon Avenue, Menlo, Iowa, 50164.

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 19-20, 2012, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 3363 Talon Avenue, Menlo, Iowa, 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 **\$6,800**.

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 **\$6,800** 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-07-2015-0039, 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:

Jodi Harper  
Chemical Risk Information Branch  
Air & Waste Management Division  
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, 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 30 days of the date of Respondent's receipt of it (60 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:


Signed:  \_\_\_\_\_

Date: 9/25/15


Name (print): Todd Benton

Title (print): Plant Manager  
Flint Hills Resources Menlo, LLC

FOR COMPLAINANT:

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

Date: 9/30/15

  
\_\_\_\_\_  
Kent Johnson  
Assistant Regional Counsel  
Office of Regional Counsel  
EPA Region 7

Date: 9/30/15

In the Matter of Flint Hills Resources Menlo, LLC

Docket No. CAA-07-2015-0039

Page 6 of 6

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

Karina Borrromeo

Karina Borrromeo  
Regional Judicial Officer

Date: 9-30-15

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

Flint Hills Resources Menlo, LLC  
3363 Talon Avenue  
Menlo, IA 50164  
Docket No. CAA-07-2015-0039

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

**VIOLATIONS**

**PENALTY AMOUNT**

Hazard Assessment \$600  
Defining off-site impacts - Population [§ 68.30(c)]  
The owner or operator failed to use the most recent Census data, or other updated information to estimate the population, per 40 CFR 68.30(c).

Hazard Assessment \$300  
Documentation [§ 68.39(e)]  
The owner or operator failed to document the data used to estimate population and environmental receptors potentially affected by a release, per 40 CFR 68.39(e).

*How was this addressed:* Flint Hills Resources Menlo, LLC, updated their RMP post-inspection, as documented in their letter to EPA dated July 8, 2014. No further action is required.

Prevention Program \$600  
Process Hazard Analysis [§ 68.67(c)(1), (c)(5)]  
The owner or operator failed to identify in the Process Hazard Analysis all the hazards of the process, and stationary source siting, per 40 CFR 68.67(c)(1) and 40 CFR 68.67(c)(5).

*How was this addressed:* The January 2012 inspection report identified three items of concern related to FHR Menlo's January 2011 PHA; each of these concerns was related to information the inspector believed should have been included regarding anhydrous ammonia. In September 2014, FHR Menlo initiated an MOC to decommission the anhydrous ammonia system. Since then, equipment related to that system has been taken out of service and decommissioned. Ammonia piping (indoor and outdoor) has been removed and permanent blinds installed. Should the need arise for this system to be reactivated a new MOC will be initiated to address process hazards and include an evaluation of the three PHA items of concern from the inspection report.

Prevention Program \$1,200  
Operating Procedures [§ 68.69(a)(1)(ii) – (iii)]  
The operating procedures did not include all operating phases, including normal operations and temporary operations, per 40 CFR 68.69(a)(1).

Prevention Program \$1,200  
Operating Procedures [§ 68.69(a)(2)(i)]

**VIOLATIONS**

**PENALTY AMOUNT**

The operating procedures did not include operating limits with safe upper and lower limits or consequences of deviation, per 40 CFR 68.69(a)(2)(i).

Prevention Program

\$1,200

Operating Procedures [§ 68.69(a)(4)]

The operating procedures did not include safety systems and their functions, particularly in procedures covering anhydrous ammonia and the denaturant, per 40 CFR 68.69(a)(4).

*How was this addressed:* Per the letter to EPA dated July 8, 2014, Flint Hills Resources Menlo, LLC, completed the conversion of operating procedures from those used under the previous owner (which did not have all the required elements) to the format used by Flint Hills Resources facilities, which do have all of the required elements. No further action is required.

Prevention Program

\$900

Operating Procedures [§ 68.69(d)]

The owner or operator failed to develop and implement safe work practices to provide for the control of hazards during specific operations, such as lockout/tagout, or opening process equipment or piping, per 40 CFR 68.69(d).

*How was this addressed:* Per the letter to EPA dated July 8, 2014, Flint Hills Resources Menlo, LLC, has incorporated these procedures into its Safe Work Permit procedures, Line Break Permit, and a checklist aid for use by supervisors and employees in completing a line break permit. No further action is required.

Prevention Program

\$1,500

Training [§ 68.71(b)]

The owner or operator failed to provide refresher training at least every three years to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process, per 40 CFR 68.71(b).

*How was this addressed:* Per the letter to EPA dated July 8, 2014, Flint Hills Resources Menlo, LLC, has revised its training and implemented a new program that includes training on operating procedures. In addition, Flint Hills Resources Menlo, LLC, has switched to a software system for tracking dates and deadlines for refresher training. No further action is required.

Risk Management Plan

No Penalty

Emergency Response [§ 68.185]

The owner or operator failed to correctly identify in their RMP information required regarding the emergency response program, specifically that they will not respond to accidental releases of the regulated substance, per 40 CFR 68.185.

2014

*How was this addressed:* Per the letter to EPA dated July 8, 2015, Flint Hills Resources Menlo, LLC, has revised its Facility Response Plan to reflect employees' responsibilities during an emergency, clarifying that employees will not respond to accidental releases. The facility also revised its RMP to reflect that the facility is included in a written community emergency



**VIOLATIONS**

**PENALTY AMOUNT**

response plan. No further action is required.

Risk Management Plan

\$1,000

Emergency Contact [§ 68.195(b)]

The owner or operator failed to update the emergency contact information within 30 days of the change in contact.

How was this addressed: Per the letter to EPA dated July 8, 2014, Flint Hills Resources Menlo, LLC, has updated the emergency contact information using EPA's RMP\* eSubmit to reflect the current emergency contact. No further action is required.

Total Unadjusted Penalty

\$8,500

**Calculation of Adjusted Penalty**

- 1<sup>st</sup> Reference the multipliers for calculating proposed penalties for violations found during RMP inspection matrix. Finding the row for 10-100 employees (this facility employs approximately 50 FTE) and column for 5-10 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 Flint Hills Resources Menlo, LLC = 0.8.
- 2<sup>nd</sup> Adjusted Penalty = \$8,500 (Unadjusted Penalty) X 0.8 (Size-Threshold Multiplier)  
Adjusted Penalty = \$6,800.
- 3<sup>rd</sup> An Adjusted Penalty \$6,800 would be assessed to Flint Hills Resources Menlo, LLC. This amount will be found in the ESA.

**Total Adjusted Penalty**

**\$6,800**

**This section must be also be completed and signed by Flint Hills Resources Menlo, LLC.**

The approximate cost to correct the above items: \$ 127,200

Compliance staff name: Todd Benton - Plant Manager

Signed:  Date: 9/25/15

IN THE MATTER OF Flint Hills Resources Menlo, LLC, Respondent  
Docket No. CAA-07-2015-0039

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 by email to Attorney for Complainant:

hoard.christine@epa.gov

Copy by First Class mail to:

Todd Benton, Plant Manager  
Flint Hills Resources Menlo, LLC  
3363 Talon Avenue  
Menlo, Iowa 50164

Dated: 9/30/15



Kathy Robinson  
Hearing Clerk, Region 7