



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 13  
REGION 7  
901 NORTH 5<sup>TH</sup> STREET ENVIRONMENTAL PROTECTION  
KANSAS CITY, KANSAS 66101 AGENCY-REGION VII  
REGIONAL HEARING CLERK

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

**DOCKET NO.:** CAA-07-2010-0025

**This ESA is issued to:** Farmers Cooperative

**At:** 425 Elk Street, Elk Creek, Nebraska 68348

**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 Farmers Cooperative, 425 Elk Street, Elk Creek, Nebraska 68348 (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 Farmers Cooperative, 425 Elk Street, Elk Creek, Nebraska 68348.

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, 2007, are appropriate for administrative penalty action.

#### ALLEGED VIOLATIONS

On July 6, 2009, an authorized representative of the EPA conducted a compliance inspection of the Respondent's facility located at 425 Elk Street, Elk Creek, Nebraska 68348, 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 **\$1,380**.

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 **\$1,380** 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-07-2010-0025, 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  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

A copy of the check must also be sent to:

Kathy M. Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

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 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:

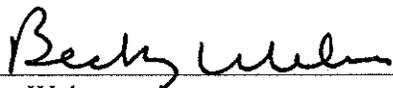
David H. Schneider  
Farmers Cooperative Company

Date: 8-5-10

Name (print): David H. Schneider

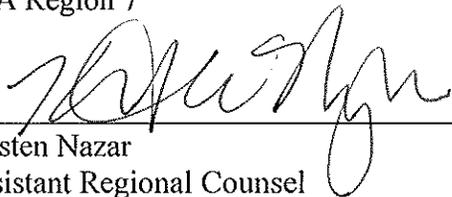
Title (print): President + General Management  
Farmers Cooperative

FOR COMPLAINANT:



Becky Weber  
Director  
Air and Waste Management Division  
EPA Region 7

Date: 8/18/10



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

Date: 8/10/10

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

Karina Borrromeo  
Karina Borrromeo  
Regional Judicial Officer

Date: Aug. 24, 2010

Risk Management Program Inspection Findings  
CAA § 112(r) Violations  
Farmers Cooperative Elk Creek  
425 Elk Street  
Elk Creek, Nebraska  
Docket No. CAA-07-2010-0025

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

**VIOLATIONS**

**PENALTY AMOUNT**

Hazard Assessment  
Management [§ 68.15(a)]

\$ 300

The owner or operator failed to develop a management system to oversee the implementation of the risk management program elements.

*How was this addressed:*

*An organization chart has been included in the program.*

Prevention Program  
Safety Information [§ 68.48(b)]

\$ 750

The owner or operator failed to ensure the process is designed in compliance with recognized and generally accepted good engineering practices.

*How was this addressed:*

*The plan includes raising and re-positioning the bulk tank in question to meet minimum clearances. Painting has been done.*

Prevention Program  
Operating Procedures [§ 68.52(b)(3)]

\$ 600

The owner or operator failed to address temporary operations in its written operating procedures.

*How was this addressed:*

*The plan includes diverting load-out activities to other co. locations in an emergency.*

VIOLATIONS

PENALTY AMOUNT

Prevention Program

\$ 600

Operating Procedures [§ 68.52(b)(7)]

The owner or operator failed to address the consequences of deviations and steps required to correct or avoid deviation in its written operating procedures.

How was this addressed:

*The consequences of deviations and steps to avoid them have been included in the plan.*

Prevention Program

\$ 600

Operating Procedures [§ 68.52(b)(8)]

The owner or operator failed to address equipment inspections in its written operating procedures.

How was this addressed:

*Equipment inspections have been included in the written procedures.*

Prevention Program

\$ 600

Maintenance [§ 68.56(a)]

The owner or operator failed to prepare and implement procedures to maintain the ongoing mechanical integrity of the process equipment.

How was this addressed:

*Individual tank maintenance records are being made part of the procedures.*

Total Unadjusted Penalty

\$ 3,450

**VIOLATIONS**

**PENALTY AMOUNT**

**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 6-20 employees and column for greater than 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 0.4. Therefore, the multiplier for Farmers Cooperative = 0.4.
- 2<sup>nd</sup> Adjusted Penalty = \$3,450 (Unadjusted Penalty) X 0.4 (Size-Threshold Multiplier)  
Adjusted Penalty = \$1,380.
- 3<sup>rd</sup> An Adjusted Penalty of \$1,380 would be assessed to Farmers Cooperative for violations found during the RMP Compliance Inspection. This amount will be found in the Expedited Settlement Agreement.

**Total Adjusted Penalty**

**\$ 1,380**

The approximate cost to correct the above items: \$ 6500<sup>00</sup>

Compliance staff name: Reo C. Weeks

Signed: Reo C. Weeks Date: 8-6-2010

IN THE MATTER OF Farmers Cooperative, Respondent  
Docket No. CAA-07-2010-0025

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited Settlement Agreement (ESA) was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Kristen Nazar  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

David H. Schneider  
President and General Management  
Farmers Cooperative  
425 Elk Street  
Elk Creek, Nebraska 68348

Dated: 8/25/10



Kathy Robinson  
Hearing Clerk, Region 7