

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2019 OCT 31 PM 3: 27

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
New Cooperative, Inc.,) **Docket No. CAA-07-2019-0269**
)
Respondent.)
)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and New Cooperative, Inc. (Respondent) have agreed to a settlement of this action before the 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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Enforcement and Compliance Assurance Division, EPA, Region 7.

4. Respondent is New Cooperative, Inc., a corporation in good standing under the laws of the state of Iowa, and doing business in the state of Iowa, which owns and operates the New Cooperative, Badger Iowa facility located at 100 Center Avenue, Badger, Iowa 50516 (Respondent's Facility or Facility). At the Facility, Respondent operated an agriculture retail facility and receives, stores, and sells anhydrous ammonia.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

6. On June 20, 1996, the EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This rule requires owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

7. The regulations at 40 C.F.R. Part 68 set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a Risk Management Plan (RMP) that must be submitted to the EPA.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

9. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(g), a covered process is subject to Program 2 requirements if the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(f) and (h), respectively.

10. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil

Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$47,357 for violations that occur after November 2, 2015, and are assessed after February 6, 2019.

Definitions

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

12. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(c), and the regulations at 40 C.F.R. § 68.3 define “stationary source,” in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

14. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

15. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

General Factual Allegations

17. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. Respondent is the owner and operator of a facility that is a “stationary source” pursuant to 40 C.F.R. § 68.3.

19. Anhydrous Ammonia is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

20. On or about August 10, 2018, representatives of the EPA conducted an inspection of Respondent's Facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

21. Information gathered during the EPA inspection revealed that Respondent had the capacity to store 650,000 pounds of anhydrous ammonia at the Facility, and regularly stored greater than 300,000 pounds of anhydrous ammonia in a process at the Facility.

22. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

23. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to Program 2 prevention program requirements because pursuant to 40 C.F.R. § 68.10(g), the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(f) and (h), respectively.

24. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was required under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 2 requirements provided at 40 C.F.R. § 68.12(c) and detailed in Subpart C.

25. On November 2, 2016, an onsite anhydrous ammonia release occurred which resulted in an injury to a worker at their site. The worker received an ammonia burn to his hand and received medical treatment.

26. On May 16, 2017, a release of ammonia occurred Respondent's facility. Information reported in a local newspaper article stated that a citizen had smelled and observed an ammonia cloud, and the Webster County sheriff's department had responded and closed the road near the facility, and the local Badger volunteer fire department was dispatched as first responders. The cause of the release was determined to be leak from a fill valve on a nurse tank.

Allegations of Violation

27. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1 Failure to update and maintain management system

28. The facts stated in Paragraphs 17 through 26 above are herein incorporated.

29. The regulation at 40 C.F.R. § 68.15(a) requires owner or operator of a stationary source with processes subject to Program 2 to develop a management system to oversee the implementation of the risk management program elements.

30. The regulation at 40 C.F.R. § 68.15(b) requires the owner or operator to assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.

31. The regulation at 40 C.F.R. § 68.15(c) states that when responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under paragraph (b) of this section, the names or positions of these people shall be documented, and the lines of authority defined through an organization chart or similar document.

32. The EPA inspection and review of documentation revealed that Respondent had failed to update and maintain a management system for oversight and implementation of the risk management program elements as required by 40 C.F.R. § 68.15(a)-(c). Specifically, the management system and organizational chart provided by Respondent listed an individual listed who was no longer responsible for the Badger site, with no other designated lines of authority for any other individual.

33. Respondent's failure to update and maintain a management system for oversight and implementation of the risk management program elements per 40 C.F.R. §§ 68.15(a), violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2

Failure to comply with Program 2 prevention requirements

34. The facts stated in Paragraphs 17 through 26 above are herein incorporated.

35. The regulation at 40 C.F.R. § 68.12(c)(3) requires the owner or operator of a stationary source with a process subject to Program 2 to implement the Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60.

36. The regulation at 40 C.F.R. § 68.48(b) requires that the owner or operator of a stationary source with a process subject to Program 2 to ensure that the process is designed in compliance with recognized and generally accepted good engineering practices.

37. The regulation at 40 C.F.R. § 68.50(d) requires that a review of the hazards associated with the regulated substance (in this case anhydrous ammonia) shall be updated at least once every five years. The owner or operator is also required to conduct hazard reviews whenever a major change in the process occurs and all issues identified in the review shall be resolved before startup of the changed process.

38. The regulation at 40 C.F.R. § 68.60(a) requires that the owner or operator of the owner or operator stationary source with a process subject to Program 2 to conduct an incident investigation for any incident that resulted in a catastrophic release (including when the affected

process is decommissioned or destroyed following, or as the result of, an incident); or could reasonably have resulted in a catastrophic release (i.e., was a near miss). The requirements for such incident investigations are set forth at 40 C.F.R. §§ 68.60(b)-(g).

39. The regulation at 40 C.F.R. § 68.3 defines “Catastrophic release” as a major uncontrolled emission, fire, or explosion, involving one or more regulated substances that presents imminent and substantial endangerment to public health and the environment.

40. The EPA inspection and review of documentation revealed that the Facility’s process was not designed or maintained in conformance with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.48(b). Specifically, EPA found: an inoperable emergency shutoff cable on supply vessel (ANSI/CGA G-2.1, para 5.10.8.1), inadequate emergency signage (para 6.8), a vessel needing corrosion protection (para 5.12), and an illegible data plate on a 26,000-gallon ammonia storage vessel (para 5.4.1).

41. The EPA inspection and review of documentation revealed that Respondent had failed to update the Facility’s hazard review document at least every five years as required by 40 C.F.R. § 68.50(d): The update on file during the EPA’s inspection was dated February 13, 2018, and the prior update was November 16, 2012 (5 years and 3 months).

42. The EPA inspection and review of documentation revealed that Respondent had failed to prepare a report or conduct an investigation for the November 2016 ammonia release, as required by 40 C.F.R. § 68.60(a)-(g). Because of the worker injury, the November 2016 accident met the requirements for a reportable accident for the RMP set forth at 40 C.F.R. § 68.42(a).

43. The EPA inspection and review of documentation revealed that Respondent had failed to acknowledge or record the May 2017 incident in the Facility’s RMP. Because the May 2017 release resulted in a response by first-responders (sheriff, deputy and local fire department) and could have resulted in a catastrophic release, the May 2017 incident required investigation, as set forth at 40 C.F.R. § 68.60(a).

44. Respondent’s failures to comply with Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60, as described above and as required by 40 C.F.R. § 68.12(c)(3), violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3

Failure to update RMP’s accident history and to correct RMP to reflect accidents

45. The facts stated in Paragraphs 17 through 26 above are herein incorporated

46. The regulation at 40 C.F.R. § 68.42 requires that the owner or operator shall include in the RMP’s five-year accident history a description of all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage

47. The regulation at 40 C.F.R. § 68.195(a) requires the owner or operator to update

the RMP within six months of an accidental release that meets the criteria of 40 C.F.R. § 68.42 (or by the time the RMP is updated under § 68.190).

48. Respondent failed to include the accident that occurred on November 2, 2016 in the RMP's five-year accident history and failed to document any of the required information as specified in 40 C.F.R. § 68.42.

49. Respondent failed to submit a correction to the Facility's RMP, based on new accident history information. Specifically, the facility had an RMP-reportable accident on November 2, 2016 but did not update their RMP within six months of the accident, in violation of 40 C.F.R. § 68.195(a).

50. Respondent's failures to update the Facility's RMP's accident history and to correct the RMP to reflect accidents, as required by 40 C.F.R. §§ 68.42 and 68.195(a), violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

51. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent(s):

- (a) admit(s) the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

52. Respondent consents to the issuance of this Consent Agreement and Final Order and consent/s for the purposes of settlement to the payment of the civil penalty specified herein and to completion of the SEP described below.

53. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

54. Respondent agrees that, in settlement of the claims alleged herein, Respondent / Respondents shall pay a civil penalty of Twenty Thousand Dollars (\$20,000), as set forth below, and shall perform a Supplemental Environmental Project (SEP) as set forth in this Consent Agreement and Final Order. The projected cost of the SEP is Eighty Thousand Dollars (\$80,000). The SEP is further described below.

55. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

56. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Howard Bunch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

57. Respondent understands that its failure to timely pay any portion of the civil penalty, or any portion of a stipulated penalty as stated in Paragraph 68, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Supplemental Environmental Project

58. In response to the violations of the CAA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by the CAA or any other federal, state, or local law, Respondent shall complete the SEP described in this Consent Agreement and Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvement.

59. Respondent shall complete the following SEP, for installing electronic emergency shut off devices at a number (estimated at 13 facilities) of Respondent New Cooperative's anhydrous ammonia facilities (See Appendix A to this Consent Agreement and Final Order). The SEP shall cost at least Eighty Thousand Dollars (\$80,000). Respondent agrees that the SEP shall be completed within Twelve (12) months of the Effective Date of this Consent Agreement and Final Order.

60. This SEP shall be performed in accordance with the requirements of this Consent Agreement and Final Order. Within six (6) months of the Effective Date of this Consent Agreement and Final Order, Respondent shall submit an Interim SEP Report that summarizes the work performed on the SEP through the date of the submittal, including a statement of what facilities that have had shut off devices installed.

61. Within Two months (2) of Completion of the SEP or within Fourteen (14) months of the Effective Date of this Consent Agreement and Final Order, whichever occurs first, Respondent shall submit a SEP Completion Report to the EPA contact identified in Paragraph 64 below. The SEP Completion Report shall be subject to EPA review and approval as provided in Paragraph 65 below. The SEP Completion Report shall contain the following information:

- (a) Detailed description of the SEP as implemented.
- (b) Description of any problems encountered in implementation of the projects and the solution thereto;
- (c) Description of the specific environmental and/or public health benefits resulting from implementation of the SEP. To the extent feasible, quantify the benefits associated with the project and provide a report setting forth how the benefits were measures or estimated; and
- (d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

62. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such

drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

63. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

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.

64. The SEP Completion Report shall be submitted on or before the due date specified above to:

Jodi Harper
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

65. SEP Completion Report Approval: The SEP Completion Report shall be reviewed in accordance with the procedures outlined in this paragraph. EPA will review the SEP Completion Report and may approve, approve with modifications, or disapprove and provide comments to Respondent. If the SEP Completion Report is disapproved with comments, Respondent shall incorporate EPA's comments and resubmit the SEP Completion Report within thirty (30) days of receipt of EPA's comments. If Respondent fails to revise the SEP Completion Report in accordance with EPA's comments, Respondent shall be subject to the stipulated penalties as set forth below.

66. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency to enforce federal laws.

67. With regards to the SEP, Respondent certifies the truth and accuracy of each of the following:

- (a) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$80,000;
- (b) That, as of the date of executing this Consent Agreement and Final Order,

Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- (c) That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order;
- (d) That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- (e) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- (f) That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
- (g) Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 59.

68. Stipulated penalties for failure to complete SEP/Failure to spend agreed-on amount.

- (a) In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this Consent Agreement and Final Order, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. If a SEP has not been completed satisfactorily and timely pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$60,000 minus any documented expenditures determined by EPA to be acceptable for the SEP.
 - ii. If the SEP is completed in accordance with this Consent Agreement and Final Order, but Respondent spent less than proposed SEP cost, Respondent shall pay a stipulated penalty to the United States which equals the difference between the proposed SEP amount as defined above and the actual cost of the SEP.
 - iii. For failure to submit the SEP Completion Report, Respondent shall

pay a stipulated penalty in the amount of \$250 for each day after the report was originally due until the report is submitted.

- iv. For failure to submit any other report required by this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report was originally due until the report is submitted.
- (b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- (c) Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity or other resolution under this Consent Agreement and Final Order.
- (d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the Penalty Payment section above. Interest and late charges shall be paid as stated in Paragraph 57 herein.
- (e) Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
- (f) The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

Effect of Settlement and Reservation of Rights

69. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

70. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

71. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations.

72. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

73. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

74. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

75. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

76. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

77. This Consent Agreement and Final Order shall apply to and be binding upon Respondent agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT:
NEW COOPERATIVE, INC.

Date: 10-21-2019

New Cooperative Inc. Frank Huseman
Signature

Frank Huseman
Name

Director of Operations
Title

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 10-28-2019



David Cozad
Director
Enforcement and Compliance Assurance Division

Date: 10-28-2019



Howard Bunch
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.


Karina Borromeo
Regional Judicial Officer

10-31-19
Date

Appendix A:
Supplemental Environmental Project

In order to enhance the safe handling of anhydrous ammonia and reduce the risk of a potential unintended anhydrous leak, NEW Cooperative will participate in a supplemental environmental project. This project will upgrade the emergency shut off systems on storage tanks at a number of our locations where tanks are in, or are in close proximity of the surrounding communities.

The installation of the electronic shutoff systems will include electronic emergency shut off valves, E-Stop emergency stop push buttons, and wireless remote stop button transmitters that can be placed at strategic locations around the site. Installation will also include a number of hand held wireless transmitters that can be worn by employees. These transmitters are designed to allow an employee to remotely shutdown an anhydrous ammonia storage tank in the event of an unintended product release. The range of the wireless E-Stops have a range of up to 400 feet over open ground.

NEW Cooperative anticipates investing \$100,000 to complete the SEP to the 13 facilities listed below. This includes approximately \$82,000 in equipment cost and \$18,000 in labor cost to install the equipment. I have attached an equipment description and estimate for installation from Dales Petroleum Service who will be assisting with the installation process.

The facilities slated for electronic shut off installation are as follows.

- | | |
|----------------------------------|---|
| 1. New Cooperative Blencoe IA | 300 Main Street, Blencoe, IA 51523 |
| 2. New Cooperative Badger IA | 100 Center Ave. Badger, IA 50516 |
| 3. New Cooperative Blairsburg IA | 501 Lake Street Blairsburg, IA 50034 |
| 4. New Cooperative Clare IA | 100 North Hood Street, Clare IA 50524 |
| 5. New Cooperative Dows IA | 304 Ellsworth, Dows, IA 50071 |
| 6. New Cooperative Glidden IA | 135 East 1 st Street, Glidden, IA 51443 |
| 7. New Cooperative Knierim IA | 101 Main Street, Knierim, IA 50552 |
| 8. New Cooperative Lanesboro IA | 200 North 1 st Street, Lanesboro, IA 51451 |
| 9. New Cooperative Lohrville IA | 1216 3 rd Street, Lohrville, IA 51453 |
| 10. New Cooperative LuVerne IA | 101 Peavey Drive, LuVerne, IA 50560 |
| 11. New Cooperative Palmer IA | 206 Main Street, Palmer, IA 50571 |
| 12. New Cooperative Pierson IA | 520 Front Street, Pierson, IA 51048 |
| 13. New Cooperative Vincent IA | 205 North 1 st Street, Vincent, IA 50594 |

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy via Email to Complainant:

Howard C. Bunch
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219

Copy via Certified Mail, Return Receipt Requested to Respondent:

Frank Huseman, Operations Manager
2626 1st Ave. South
Fort Dodge, Iowa 50501
fhuseman@newcoop.com

Dated this 29th day of October, 2019.


for Signed
Lisa Haugen
Region 7
Hearing Clerk