

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )

Frontier Cooperative Co. )  
410 East 3rd Street )  
Mead, Nebraska 68041 )

) Docket No. CAA-07-2008-0043  
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)  
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)  
)  
)

Respondent )

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Frontier Cooperative Company (Respondent) have agreed to a settlement of this action before filing 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).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the first date of alleged violation occurred more than 12

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 EPA has reason to believe that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirement to implement a Risk Management Plan as required by 40 C.F.R. Part 68 and Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the Clean Air Act, 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 Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

#### Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Frontier Cooperative Company, located at 410 East 3rd Street, Mead, Nebraska, 68041. The primary activity at Respondent's facility is the storage of anhydrous ammonia for sale to the public.

#### Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Section 112(r) to the Clean Air Act, 42 U.S.C. § 7412(r), which requires the Administrator of 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 the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

6. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Clean Air Act. These regulations require 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 EPA.

8. Pursuant to Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an 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. Section 113(d) of the Clean Air Act, 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 the Clean Air Act referenced therein, including Section 112(r)(7). Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997 through March 15, 2004, and \$32,500 per day for each violation that occurs after March 15, 2004.

#### Definitions

10. 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.

11. 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 Clean Air Act, as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

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

13. 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.

Alleged Violations

14. EPA alleges that Respondent has violated the Clean Air Act and federal regulations, promulgated pursuant to the Clean Air Act, as follows:

15. Respondent is, and was at all times referred to herein, a "person" as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

16. Respondent's facility located at 410 East 3rd Street, Mead, Nebraska 68041, is a "stationary source" pursuant to 40 C.F.R. § 68.3.

17. 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, Table 1, is 10,000 pounds.

18. On or about June 27, 2007, EPA conducted an inspection of Respondent's facility to determine its compliance with Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

19. Records collected during the inspection showed that Respondent had at least one 30,000 gallon and one 18,000 gallon ammonia storage tanks representing more than 200,000 pounds of anhydrous ammonia.

20. Respondent is subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

21. Respondent was required under Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

22. Records collected during the inspection showed that Respondent failed to implement a risk management program that included all the requirements of a management system and a prevention program. Specifically, Respondent failed to implement a hazard assessment and prevention program by failing to: (a) include all accidental releases from covered processes that resulted in sheltering in place as required by 40 C.F.R. § 68.42(a); (b) analyze and report in the RMP, one worst-case release scenario as required by 40 C.F.R. § 68.25(a)(2)(i); (c) document the results of the hazard review required by 40 C.F.R. § 68.50(c); and (d) timely investigate each incident which could reasonably have resulted in a catastrophic incident as required by 40 C.F.R. § 68.60.

23. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth in paragraph 22, above, is a violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and thus Respondent is subject to civil penalties under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

#### CONSENT AGREEMENT

24. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

25. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.

26. Respondent neither admits nor denies the factual allegations set forth above.

27. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

28. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

29. This Consent Agreement and Final Order addresses all civil and administrative claims for the Clean Air Act violations identified above, existing through the effective date of this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of the Clean Air Act or other applicable law.

30. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

31. The effect of settlement described in paragraph 29 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 30, above, of this Consent Agreement and Final Order.

32. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in paragraph 1 the Final Order.

33. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

34. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of the Consent Agreement and Final Order and to legally bind Respondent to it.

#### **SUPPLEMENTAL ENVIRONMENTAL PROJECT**

35. In response to the violations of the Clean Air Act in this Consent Agreement and Final Order and in settlement of this matter, although not required by the Clean Air Act any other federal, state or local law, Respondent agrees to implement a supplemental environmental project (SEP), as described below in paragraphs 36 and 37, which the parties agree is intended to secure significant environmental or public health protection and improvement.

36. Respondent agrees to relocate its Anhydrous Ammonia plant from 410 East 3rd Street, Mead, Nebraska, to 1551 County Road 11, Mead, Nebraska. The new location will significantly decrease the number of receptors to a worst-case scenario release of anhydrous ammonia. As part of the relocation of the plant, Respondent shall:

- (a) Purchase and install a 30,000 gallon tank at the new location.
- (b) Move and install an anhydrous ammonia tank from Respondent's Bruno, Nebraska, location to 1551 County Road 11.
- (c) Prepare the new location for the tanks and traffic around the tanks. As part of this activity, Respondent will perform, among other things, dozer work for leveling and cement work for drainage and footing (collectively "Groundwork").

37. Respondent shall expend a minimum of \$40,000 in approvable costs to perform the SEP. Approvable costs shall only include specific costs approved by EPA that are directly related to the implementation of the project pursuant to the requirements of this Final Order.



Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report.

38. Prior to implementation of the SEP, Respondent shall submit a SEP Implementation Plan to EPA for approval. This Plan shall include a detailed description of how Respondent will fulfill the requirements of paragraphs 36 and 37, a schedule for the performance of those requirements, and a copy of the contractor bids for identified activities. This Plan shall be submitted to EPA no later than December 31, 2008. Upon receipt of the Plan, EPA will approve, disapprove, and/or provide comments. Immediately upon EPA approval of the SEP Implementation Plan, Respondent shall implement the Plan in accordance with the schedule contained therein.

39. The EPA will review each submission of a plan or report by Respondent, and notify Respondent in writing of EPA's approval or disapproval of the plan or report, or any part thereof. If a submission is disapproved in whole or in part by EPA, EPA will provide written comments to Respondent explaining the basis for its decision. Within thirty (30) days of receipt of EPA's comments pertaining to any submission, or within such longer time as the parties may agree, Respondent shall amend/revise the disapproved submission, addressing all of EPA's comments, and resubmit same to EPA. If EPA disapproves the revised submission, EPA may modify and approve the same in accordance with its previous comments. In the event of such modification and approval, EPA will notify Respondent of the modification/approval.

40. Respondent shall begin implementation of the SEP on or before October 1, 2008, and complete the SEP no later than September 30, 2010. Respondent shall submit quarterly status reports to EPA (on or before December 31, 2008; March 31, 2009; June 30, 2009; September 30,

2009; December 31, 2009; March 31, 2010; and June 30, 2009). Such reports shall provide the status of the project, along with any encountered problems and/or expected delays.

41. Within sixty (60) days after the completion of the SEP, Respondent shall submit a Final SEP Report to EPA. The SEP Completion Report shall contain the following information:

- (a) A detailed description of the SEP as implemented;
- (b) A description of any problems encountered in implementation of the project and the solution thereto;
- (c) A description of the specific environmental and/or public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible);
- (d) Certification that the SEP has been fully implemented pursuant to the provisions of the Consent Agreement and Final Order; and
- (e) Itemized costs.

42. In itemizing its costs in the Quarterly SEP Reports and the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. 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. Canceled 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.

43. The Quarterly SEP Reports and the SEP Completion Report shall include the

following statement of Respondent, through an officer, signed and certifying under penalty of law:

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.

44. The Quarterly SEP Reports and the SEP Completion Report shall be submitted on or before the due date to:

Christine Hoard (AWMD/CRIB)  
U.S. Environmental Protection Agency, Region 7  
901 North 5th Street  
Kansas City, Kansas 66101.

45. Respondent agrees that failure to submit the Quarterly SEP Reports and the SEP Completion Report shall be deemed a violation of this Consent Agreement and Final Order and Respondent shall become liable for stipulated penalties pursuant to paragraph 50, below.

46. No portion of Respondent's expenditures on the SEP required under this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for state or local income tax purposes. Additionally, 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.

47. Respondent agrees that in any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP, Respondent shall include a statement that the SEP was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Air Act.

48. Respondent hereby certifies that, as of the date of 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; nor is the Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

49. After receipt of the SEP Completion Report described in paragraph 41, above, EPA will notify the Respondent, in writing, regarding: (a) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily, or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 50 herein.

**50. Stipulated Penalties:**

(a) In the event Respondent fails to satisfactorily complete the SEP identified in paragraphs 36 and 37, 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 paragraphs 36 and 37, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (b) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in an amount not to exceed \$18,000.

(ii) If the SEP is not completed in accordance with Paragraphs 36 and 37, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the

amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(iii) In the event the Respondent satisfactorily completes the SEP, but fails to spend at least 90% of the amount required for total SEP expenditures, the Respondent shall pay a stipulated penalty not to exceed \$3,000.

(iv) If Respondent fails to timely and completely submit the Quarterly SEP Reports or the SEP Completion Report required by Paragraphs 40 and 41, Respondent shall be liable for and shall pay a stipulated penalty in the amount of \$100.00 for each day after the due date until a complete report is submitted.

(b) 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,

(c) 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 within the sole discretion of the EPA.

(d) Respondent shall pay any stipulated penalties within fifteen (15) days after the date of receipt of a written demand from EPA for payment. The method of payment shall be in accordance with the provisions of paragraphs 2 and 3 of the Final Order. Interest and penalty on any failure to pay a demanded stipulated penalty shall be calculated in accordance with paragraph 55.

51. 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.

52. This Consent Agreement and Final Order shall apply to and be binding upon EPA and Respondent and Respondent's 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.

**53. Payment Provision:** Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and a handling delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate. A charge of fifteen dollars (\$15.00) will be assessed to cover the costs of debt collection, including processing and handling costs. In addition, 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. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

FINAL ORDER

Pursuant to the provisions of the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$6,000.

2. Payment of the penalty shall be by cashier or certified check made payable to the “United States Treasury” and remitted to:

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

3. The Respondent shall reference the Docket Number CAA 07-2008-0043 and **In the Matter of Frontier Cooperative Company** on the check. A copy of the check shall also be mailed to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
901 North 5th Street  
Kansas City, Kansas 66101; and

Demetra O. Salisbury  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

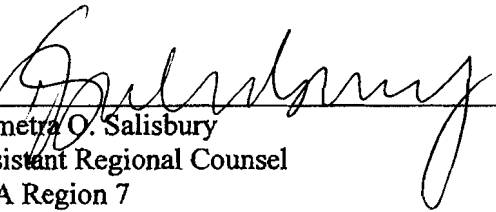
5. This Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

6. This Consent Agreement and Final Order shall be effective upon the entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

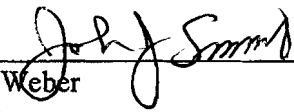
7. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.



COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

By   
Demetra O. Salisbury  
Assistant Regional Counsel  
EPA Region 7

Date Sept. 29, 2008

for By   
Becky Weber  
Director  
Air and Waste Management Division  
EPA Region 7

Date 9/29/08

RESPONDENT:

By Brady Adams

Title President & General Manager

Date 09-25-2008

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IT IS SO ORDERED. This Final Order shall become effective immediately.

By Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

Date Sept. 30, 2008

IN THE MATTER OF Frontier Cooperative Co., Respondent  
Docket No. FIFRA-07-2008-0043

CERTIFICATE OF SERVICE

I certify 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:

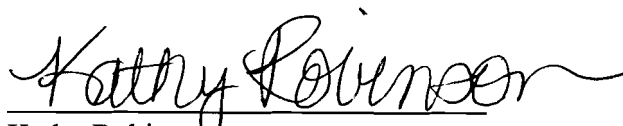
Copy hand delivered to  
Attorney for Complainant:

Demetra O. Salisbury  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Roberta Christiancy  
Frontier Cooperative Co  
410 East 3rd Street  
Mead, Nebraska 68041

Dated: 9/30/08

  
Kathy Robinson  
Hearing Clerk, Region 7