

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	Civil No. 13-cv-2078 CM/GLR
)	
KOCH NITROGEN COMPANY, LLC,)	
)	
Defendant.)	
_____)	

STIPULATION OF SETTLEMENT AND JUDGMENT

1. The United States of America, acting at the request of the Administrator of the United States Environmental Protection Agency (EPA), filed a Complaint alleging violations of the Risk Management Program requirements of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 at two of Defendant’s fertilizer production facilities located at 3162 200th Street, Duncombe, Iowa, 111339 E. U.S. Hwy 50, Dodge City, Kansas, and one of Defendant’s fertilizer storage terminals located at 3046 Garwin Road, Marshalltown, Iowa.

2. The United States and Koch Nitrogen Company, LLC (collectively the Parties) agree that it is in the public interest to resolve this matter without litigation and have negotiated this Stipulation of Settlement and Judgment (Stipulation) in good faith to avoid expensive and protracted litigation.

3. Without adjudication or admission of any issue of fact or law, the Parties, by and through the undersigned, agree and stipulate as follows:

4. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over the

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Parties. Venue lies in this judicial district pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391 (b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district.

5. Solely for purposes of this Stipulation, or any action by the United States to enforce this Stipulation, Defendant consents to the Court's jurisdiction over this Stipulation, and any such action to enforce this Stipulation, and over Defendant, and consents to venue in this judicial district. Solely for purposes of this Stipulation, and without admitting any of the facts or violations alleged, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b).

6. The obligations of this Stipulation of Settlement and Judgment apply to and are binding upon the United States and upon the Defendant and its successors. Any change in the Defendant's ownership or corporate status shall not alter their obligations hereunder.

7. Within thirty days of entry by the Court of this Stipulation of Settlement and Judgment, the Defendant shall pay to the United States via electronic funds transfer (EFT) a civil penalty of \$380,000, in accordance with written instructions to be provided to Defendant, following entry of this Stipulation, by the Financial Litigation Unit of the Office of the United States Attorney for the District of Kansas. The EFT documents shall refer to DOJ case number 90-5-2-1-09892. Payments by EFT must be received at the Department of Justice lockbox bank by 4:00 P.M.

(Eastern Time) to be credited on that day. Copies of the payment and transmittal documents shall be mailed to:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611

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Re: DOJ No. 90-5-2-1-09892

and

Kent Johnson
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7 (CNSL)
11201 Renner Boulevard
Lenexa, KS 66219

8. In the event that the Defendant does not comply with the payment obligations of Paragraph 7 above, the Defendant shall pay a stipulated penalty to the United States in the amount of one thousand five hundred dollars (\$1,500) per day for each day that the civil penalty remains unpaid. Stipulated penalties shall be paid in the same manner as that provided for in Paragraph 7 above for payment of the civil penalty. Further, interest shall accrue on the unpaid balance of civil and/or stipulated penalties in accordance with 28 U.S.C. § 1961 commencing on the date that such penalties are due and continuing until paid. If payment specified in Paragraph 7 is not made when due, then, in addition to other remedies herein, the United States reserves the right to move this Court to vacate this Stipulation of Settlement and Judgment and reinstate this action.

9. Within ten business days of receipt of all amounts due under this Stipulation of Settlement and Judgment, the United States shall file a notice with the Court that full payment has been made.

10. The Defendant's payment of the civil penalty identified in Paragraph 7 above and any stipulated penalties and interest required by Paragraph 8 above shall constitute a complete settlement and shall be in full satisfaction of the United States' claims regarding the violations of the Clean Air Act alleged in the Complaint through the date of lodging. This Stipulation of Settlement and Judgment is limited to the civil claims under the Clean Air Act that are expressly

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alleged in the Complaint. This Stipulation of Settlement and Judgment is not intended to, nor shall it be construed to, operate in any way to resolve any civil claims other than those expressly alleged in the Complaint or any criminal liability of the Defendant.

11. Nothing in this Stipulation of Settlement and Judgment shall be construed to release the Defendant or its agents, successors, or assigns from their respective obligations to comply with any applicable Federal, State, or local law, regulation, or permit. Nothing contained herein shall be construed to prevent or limit the United States' rights to obtain penalties or injunctive relief under the Clean Air Act or any other law for other alleged violations, except as expressly specified in Paragraph 10.

12. Civil penalties and any stipulated penalties paid pursuant to this Stipulation of Settlement and Judgment are not deductible by the Defendant or any other person for federal, state, or local tax purposes.

13. This Stipulation of Settlement and Judgment shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment pursuant to 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Stipulation of Settlement and Judgment disclose facts or considerations indicating that the Stipulation of Settlement and Judgment is inappropriate, improper, or inadequate. The Defendant consents to the entry of this Stipulation of Settlement and Judgment without further notice and agrees not to withdraw from or oppose its entry by the Court or to challenge any provision herein, unless the United States has notified the Defendant in writing that it no longer supports entry of this Stipulation of Settlement and Judgment.

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14. The Court shall retain jurisdiction for the purposes of interpreting and enforcing this Stipulation of Settlement and Judgment through the date that payment is made in accordance with the provisions herein.

15. This Stipulation of Settlement and Judgment shall be considered an enforceable judgment solely for purposes of post-judgment collection of any unpaid civil and/or stipulated penalties and interest referred to in Paragraphs 7 and 8 above, in accordance with Rule 69 of the Federal Rules of Civil Procedure; the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3008; and any other applicable statutory authority without further order of this Court. In the event all or any portion of the civil penalty amount referred to in Paragraph 7 above is not paid in accordance with the provisions of this Stipulation of Settlement and Judgment, the Defendant shall be liable for attorneys' fees and costs incurred by the United States in collecting any amounts due thereunder.

16. Nothing in this Stipulation of Settlement and Judgment creates, nor shall it be construed as creating, any rights or claims in favor of any person not a Party to this Stipulation of Settlement and Judgment of Settlement.

17. Except as to those civil claims expressly alleged in the Complaint and resolved in this Stipulation of Settlement and Judgment, in any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties or other appropriate relief relating to the application of Risk Management Program requirements of 42 U.S.C. § 7412(r)(7) and 40 C.F.R. Part 68 at two of Defendant's fertilizer production facilities located at 3162 200th Street, Duncombe, Iowa, 111339 E. U.S. Hwy 50, Dodge City, Kansas, and at one fertilizer storage terminal located at 3046 Garwin Road, Marshalltown, Iowa, the Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res

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judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.

18. The undersigned representatives of the Defendant, the Deputy Chief of the Environmental Enforcement Section for the Environment and Natural Resources Division, and the Regional Counsel of EPA certify that each is fully authorized to enter into the terms and conditions of this Stipulation of Settlement and Judgment and to bind legally the party he or she represents to this document.

19. The Defendant hereby agrees to accept service of the complaint in this matter from the United States by first class mail directed to Stephen M. Richmond, Beveridge & Diamond, P.C. 15 Walnut Street, Suite 400, Wellesley, Massachusetts 02481-2133 and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons with the Complaint. The Parties agree that the Defendant will not separately answer the Complaint in this action unless and until thirty (30) days after either (i) the Court expressly declines to enter this Stipulation of Settlement and Judgment, or (ii) the United States has notified the Defendant in writing that it no longer supports entry pursuant to Paragraph 13. In such event, the Defendant will have a minimum of thirty (30) days from notice to move or plead in response to the Complaint.

20. The Defendant consents to the entry of this Stipulation of Settlement and Judgment without further notice.

21. Except as set forth in Paragraph 15 of this Stipulation of Settlement and Judgment, each party shall bear its own costs and attorneys' fees in this action.

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22. There are no separate agreements or understandings with respect to this matter that have not been set forth in this Stipulation of Settlement and Judgment.

23. This Stipulation of Settlement and Judgment may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

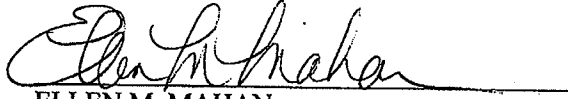
AS STIPULATED AND AGREED TO BY THE PARTIES, IT IS SO ORDERED AND ADJUGED THIS _____ DAY OF _____, 2013.

Hon. United States District Judge

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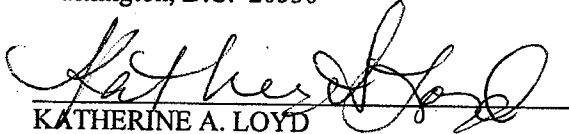
FOR THE UNITED STATES:

DATED: 2/12/13



ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

DATED: 2/13/13

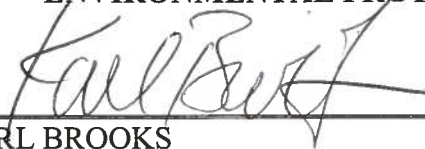


KATHERINE A. LOYD
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
999 18th St., Suite 370
Denver, CO 80202

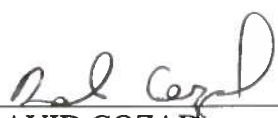
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**FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**


DATED: 1/18/13


KARL BROOKS
Regional Administrator
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219

DATED: 1/17/13


DAVID COZAD
Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219

DATED: 1/17/13


KENT JOHNSON
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219

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FOR KOCH NITROGEN COMPANY, LLC

DATED: 1/11/13

By: 
Its: Vice President of Operations and Compliance