



August 26, 2021

8:36 AM

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

**1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>**

Received by
EPA Region VIII
Hearing Clerk

DOCKET NO.: CAA-08-2021-0005

IN THE MATTER OF:)	
)	
FARMERS UNION COOPERATIVE)	FINAL ORDER
ASSOCIATION OF FERNEY)	
)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Expedited Settlement Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Expedited Settlement Agreement, effective immediately upon filing this Expedited Settlement Agreement and Final Order.

SO ORDERED THIS 26th **DAY OF** August, **2021.**

**KATHERIN
HALL** Digitally signed by
KATHERIN HALL
Date: 2021.08.26
08:34:20 -06'00'

Katherin E. Hall
Regional Judicial Officer

August 26, 2021

8:36 AM

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Received by
EPA Region VIII
Hearing Clerk

IN THE MATTER OF:)
)
Farmers Union Cooperative)
Association of Ferney)
PO Box 802)
Ferney, South Dakota 57439-0802)
)
)
Respondent.)
)
)

Docket No.: CAA-08-2021-0005

**EXPEDITED SETTLEMENT AGREEMENT
(CONSENT AGREEMENT and FINAL
ORDER)**

AUTHORITY

1. This Expedited Settlement Agreement (also known as a Consent Agreement and Final Order, hereafter ESA), intended to simultaneously commence and conclude this matter, is being entered into by the United States Environmental Protection Agency (EPA), Region 8, by its duly delegated official, the division director of the Enforcement and Compliance Assurance Division, and **Farmers Union Cooperative Association of Ferney** (Respondent). This matter is authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The EPA and Respondent agree that the EPA has jurisdiction over this matter pursuant to sections 113(a)(3) and (d) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a)(3) and (d).
3. The EPA and the U.S. Department of Justice have determined, pursuant to section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that the EPA may pursue this type of case through administrative enforcement.

RESPONDENT

4. The Respondent is a "person" under section 302(e) of the Act. 42 U.S.C. § 7602(e).
5. The Respondent is a South Dakota cooperative association that is authorized to do business in the state of South Dakota.
6. Respondent is the owner or operator of Farmers Union Cooperative Association of Ferney, a stationary source, located at Hwy 37, Ferney, South Dakota.

ALLEGED VIOLATIONS

7. On May 19, 2020 – August 12, 2021, an authorized representative of the EPA conducted an off-site compliance monitoring activity of Respondent's facility to determine compliance with the Risk Management Plan (RMP) regulations promulgated at 40 C.F.R. part 68 under section 112(r)(7) of the Act. Based on the off-site monitoring activity, the EPA has determined that Respondent failed to review and update their RMP submission as required.

8. Respondent was sent a notification letter by the EPA on or around 60 days before the RMP submission due date. The letter notified Respondent of upcoming due date for the RMP submission. Respondent was sent an overdue notification letter by the EPA no more than 30 days after the RMP submission due date. The letter notified Respondent the RMP update was past due. The latest RMP submission that the EPA has on file is dated May 19, 2020. The five-year update was due February 10, 2016. Respondent failed to submit an updated RMP to the EPA at least once every five years as required by § 68.190(a) and (b)(1).
9. The owner or operator must update the facility RMP emergency contact information required under § 68.160(b)(6) within one month of any change. Respondent failed to correct the RMP emergency contact information as required by 40 C.F.R. § 68.195(b) during 2016 to May 2020 and again in July 2021.

SETTLEMENT

10. In consideration of the factors contained in section 113(d)(1) of the Act and the entire record, the parties enter into this ESA in order to settle the violations referenced above for the total penalty amount of \$3,200.
11. This settlement is subject to the following terms and conditions with respect to the violations referenced above:
 - a. Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained in this ESA, and consents to the assessment of the penalty as stated above.
 - b. Respondent waives its rights to a hearing afforded by section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA.
 - c. Each party to this action shall bear its own costs and attorney fees, if any.
 - d. Respondent waives any and all available rights to judicial or administrative review or other remedies that the Respondent may have with respect to any issue of fact or law or any terms and conditions set forth in this ESA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
12. By signing this ESA Respondent certifies that (1) the alleged violations listed in paragraphs 8 through 9 have been corrected, and (2) Respondent is submitting payment of the civil penalty as described below:
 - a. Within 20 day of receipt of this ESA, Respondent must pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
 - b. **The following payment tracking number for this ESA must be included on either the check or as directed where to notate the EPA document number: EPA-R8-CAA**
 - c. Within 24 hours of payment, email proof of payment to Daniel Webster at Webster.Daniel@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been

made according to the EPA requirements, in the amount due, and identified with the docket number that appears on the final order).

13. Within 14 days the original signed ESA must be sent by certified mail to:

Daniel Webster, 8ENF-AT-P
US EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

14. Respondent agrees that the penalty specified in this ESA shall not be deductible for purposes of state or federal taxes.
15. Once the Respondent receives a copy of the final order and pays in full the penalty assessment described above, the EPA agrees not to take any further civil administrative penalty action against Respondent for the violations alleged in this ESA.
16. This ESA does not pertain to any matters other than those expressly specified herein. The EPA reserves, and this ESA is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following:
- a. Claims based on a failure by Respondent to meet a requirement of this ESA including any claims for costs that are caused by the Respondent's failure to comply with this Agreement
 - b. Claims based on criminal liability
 - c. Claims based on any other violations of the Act or federal or state law
17. If the signed original ESA with an attached copy of the check is not returned to the EPA Region 8 office at the above address in correct form by Respondent within 20 days of the date of Respondent's receipt of this ESA, the proposed ESA is withdrawn, without prejudice to the EPA's ability to file an enforcement action for the violations identified in this ESA.
18. This ESA, upon incorporation into the final order, applies to and is binding upon the EPA and Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this ESA. This ESA contains all terms of the settlement agreed to by the parties.
19. Nothing in this ESA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.
20. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this ESA and to bind Respondent to the terms and conditions of this ESA.
21. The parties consent to service of this ESA and final order by email at the following valid email addresses: weiner.marc@epa.gov (for Complainant), and michellef@fuoil.net (for Respondent).

22. The parties agree to submit this ESA to the regional judicial officer with a request that it be incorporated into a final order.

For Respondent, Farmers Union Cooperative Association of Ferney:



Name (Print) Fred Wangle Date: 8/24/21
Title (Print) General Manager

For Complainant, United States Environmental Protection Agency, Region 8:

Patefield, Scott Digitally signed by Patefield, Scott
Date: 2021.08.25 11:50:53 -06'00' Date: _____

Scott Patefield, Branch Chief
Air Enforcement and Toxics Branch
Enforcement and Compliance Assurance Division

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **EXPEDITED SETTLEMENT AGREEMENT** and the **FINAL ORDER** in the matter of **FARMERS UNION COOPERATIVE ASSOCIATION OF FERNEY; DOCKET NO.: CAA-08-2021-0005** was filed with the Regional Hearing Clerk on August 26, 2021.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney, and sent via certified receipt email on August 26, 2021, to:

Respondent

Fred Wangler, General Manager
Farmers Union Cooperative Association of Ferney
michellef@fuoil.net

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
Chalifoux.Jessica@epa.gov

August 26, 2021

Haniewicz,
Melissa

Digitally signed by
Haniewicz, Melissa
Date: 2021.08.26
10:41:35 -06'00'

Melissa Haniewicz
Regional Hearing Clerk