



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA FEDERAL EXPRESS

Michael Davis
Barley Snyder, LLC
126 East King Street
Lancaster, PA 17602

June 8, 2009

Re: Farmer's Pride, Inc., Docket No. EPCRA-03-2009-0128

Dear Mr. Davis:

I have enclosed the final Consent Agreement and Final Order ("CA/FO") resolving the above-referenced matter. Pursuant to Paragraph 9 of the CA/FO, Respondent must pay the civil penalty, in accordance with the schedule specified in the CA/FO, no later than 180 calendar days after the date on which the CA/FO is mailed to Respondent.

Please contact me at (215) 814-2483 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Donovan".

Joseph Donovan,
Associate Regional Counsel
For Regulatory Enforcement

Enclosure

cc: Scott Sechler
President
Farmer's Pride, Inc.
154 West Main Street

03/09/2009 11:01:59

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of: :

Farmer's Pride, Inc. :
154 West Main Street :
P.O. Box 39 :
Fredericksburg, PA 17026 :

Respondent, :

Farmer's Pride, Inc. :
154 West Main Street :
P.O. Box 39 :
Fredericksburg, PA 17026 :

Facility. :

U.S. EPA Docket No.
EPCRA-03-2009-0128

CONSENT AGREEMENT

Proceeding under EPCRA
§ 325(c), 42 U.S.C. § 11045(c)

CONSENT AGREEMENT

Preliminary Statement

1. This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Farmer's Pride, Inc. ("Respondent" or "Farmer's Pride") pursuant to Section 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing EPCRA Section 313, as set forth at 40 C.F.R. Part 372, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Pursuant to 40 C.F.R. Sections 22.13(b) and 22.18(b)(2) and (3), this Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO") simultaneously commence and conclude this proceeding to resolve the violations of EPCRA Section 313, as alleged herein, by Respondent at its Facility located at 154 West Main Street, Fredericksburg, Pennsylvania.

2. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

3. Except as provided in paragraph 2, above, Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this CAFO.

4. Respondent agrees not to contest the jurisdiction of the U.S. Environmental Protection Agency ("EPA") with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.

5. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.

6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

7. Respondent shall bear its own costs and attorney's fees.

Findings of Fact and Conclusions of Law

8. Complainant has determined that Respondent has violated EPCRA Section 313. In accordance with Sections 22.13(b), 22.18(b)(2) and (3), and 22.14(a)(2) and (3) of the Consolidated Rules of Practice, Complainant adopts the following findings of fact and conclusions of law:

- A. Farmer's Pride does business in Pennsylvania and is a corporation, incorporated under the laws of the Commonwealth of Pennsylvania. As a Pennsylvania corporation, Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
- B. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. Sections 370.2 and 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures, and other stationary items that are located on a single site and that are owned or operated by the same person.
- C. Respondent owns and operates, and at the time of the violations alleged herein, owned and operated a processing facility located at 154 West Main Street, Fredericksburg, Pennsylvania (the "Facility").
- D. Respondent's Facility is a "facility" as defined in Section 329(4) of EPCRA and 40 C.F.R. Sections 370.2 and 372.3.
- E. Section 313 of EPCRA and 40 C.F.R. Section 372 require, *inter alia*, that the owner or operator of a facility that: 1) has 10 or more employees; 2) has a primary Standard Industrial Classification ("SIC") code (as in effect on July 1, 1985) between codes 20 and 39; and 3) manufactures, processes or otherwise uses a toxic chemical listed in 40 C.F.R. Section 372.65, in

excess of the threshold quantities set forth in Section 313(f) of EPCRA, 42 U.S.C. Section 11023(f), during the calendar year for which the form is required, to complete and submit a toxic chemical release form ("Form R") or appropriate alternative threshold report ("Form A") for each such toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year.

- F. Section 313(g) of EPCRA, 42 U.S.C. § 11023(g) and 40 C.F.R. § 372.85(b) require the owner or operator of the facility to accurately report its releases of toxic chemicals based upon reasonable estimates using data available to the preparer of the report on Form R and Form A.
- G. At the time of the violations alleged herein, Respondent employed 10 or more full-time employees at the Facility.
- H. At the time of the violations alleged herein, the Facility had an SIC code of 2015. This SIC code falls between the primary SIC codes of 20 (2000) and 39 (3900) (as in effect on July 1, 1985).
- I. For each toxic chemical listed in 40 C.F.R. § 372.65 manufactured and otherwise used by Respondent at its Facility in excess of the threshold quantity set forth in Section 313(f) of EPCRA during any calendar year, Respondent has been required by EPCRA Section 313, at all times relevant to this Consent Agreement, to complete and submit to EPA and the Commonwealth of Pennsylvania either a Form R or Form A by July 1 of the following calendar year.
- J. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides that any person who violates EPCRA Section 313 shall be liable to the United States for a civil penalty.
- K. Farmer's Pride self-disclosed violations of EPCRA Section 313 in its February 18, 2008 letter to EPA, pursuant to EPA's *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*, dated April 11, 2000 ("Self-Disclosure Policy").
- L. Respondent disclosed that it failed to submit its Forms R to the EPA and the Commonwealth of Pennsylvania by the July 1 deadline for Nitrate Compounds manufactured and Chlorine otherwise used during calendar years 2003 through 2005, and for Ammonia otherwise used during calendar year 2004.
- M. EPA evaluated Farmer's Pride's Self-Disclosure letter and subsequent

correspondence and determined that Farmer's Pride did not meet criteria D.3 and D.5 of the Self-Disclosure Policy, in that the Facility failed to disclose the violations within twenty-one (21) days of their discovery and failed to correct the violations within sixty (60) days from the date of discovery of the violations.

COUNT I - COUNT VII

- N. The chemical substances Nitrate Compounds, Chlorine and Ammonia are "toxic chemicals" as defined in EPCRA Section 313(c) - (d), 42 U.S.C. § 11023(c) - (d), and 40 C.F.R. 372.3, and are listed in 40 C.F.R. § 372.65.
- O. During the calendar years 2003 through 2005 the amount of Nitrate Compounds manufactured by Respondent exceeded the threshold quantity for reporting set forth in Section 313(f) of EPCRA, as that term is defined in EPCRA § 313(b)(1)(C)(ii), 42 U.S.C. § 11023(b)(1)(C)(ii), and 40 C.F.R. § 372.3.
- P. During the calendar years 2003 through 2005 the amount of Chlorine otherwise used by Respondent exceeded the threshold quantity for reporting set forth in Section 313(f) of EPCRA, as that term is defined in EPCRA § 313(b)(1)(C)(ii), 42 U.S.C. § 11023(b)(1)(C)(ii), and 40 C.F.R. § 372.3.
- Q. During the calendar year 2004, the amount of Ammonia otherwise used by Respondent exceeded the threshold quantity for reporting set forth in Section 313(f) of EPCRA, as that term is defined in EPCRA § 313(b)(1)(C)(ii), 42 U.S.C. § 11023(b)(1)(C)(ii), and 40 C.F.R. § 372.3.
- R. Respondent failed to submit to EPA and the Commonwealth of Pennsylvania, on or before July 1 of 2003, 2004 and 2005, Forms R for releases from the Facility that occurred during those calendar years.
- S. Respondent's failure to submit Forms R for Nitrate Compounds, Chlorine and Ammonia released at its Facility during calendar years 2003 through 2005 constitutes seven violations of Section 313 of EPCRA, for which Respondent is liable for a civil penalty pursuant to EPCRA Section 325(c).

CIVIL PENALTIES

- 9. Respondent agrees to pay a civil penalty in the amount of Seventy Four Thousand and

Seventy Five Dollars (\$74,075.00) and interest of three percent in satisfaction of all claims for civil penalties which Complainant may have under EPCRA § 313 for the violations alleged in Counts I through VII, above, of this CA/FO in a manner and over the specific time period specified below:

<u>Principal</u>	<u>Interest</u>	<u>Payment</u>	<u>Payment Deadline:</u>
\$12,345.83	0.00	12,345.83	30 Calendar Days after CAFO mailed or hand delivered to Respondent
\$12,345.83	152.21	12,498.04	60 Calendar Days after CAFO is mailed or hand delivered to Respondent
\$12,345.83	121.77	12,467.60	90 Calendar Days after CAFO is mailed or hand delivered to Respondent
\$12,345.83	91.33	12,437.16	120 Calendar Days after CAFO is mailed or hand delivered to Respondent
\$12,345.83	60.88	12,406.71	150 Calendar Days after CAFO is mailed or hand delivered to Respondent
\$12,345.85	30.44	12,376.29	180 Calendar Days after CAFO is mailed or hand delivered to Respondent

Pursuant to the above schedule, Respondent will remit total payments for the civil penalty in the amount of Seventy Four Thousand and Seventy Five Dollars (\$74,075) and total interest payments in the amount of Four Hundred and Fifty Six Dollars and Sixty Three Cents (\$456.63). Under the schedule set forth above, such civil penalty amount becomes due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO.

If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, the entire unpaid balance of the penalty and all accrued interest shall become due and payable immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described above in the event of any such failure or default.

10. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the particular facts and circumstances of this case and EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-know Act (1986)* (August 10, 1992), and the Self-Disclosure Policy. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA and 40 C.F.R. Section 372.

11. EPA hereby agrees and acknowledges that the settlement of the proposed penalty as set forth above shall be a full and final satisfaction of all civil claims for penalties which Complainant may have under Section 313 of EPCRA for the violations alleged in the Consent Agreement.

12. Payment of the civil penalty amount required under the terms of Paragraph 9, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference its name and address and the Docket Number of this action (EPCRA-03-2009-0128).
- b. All checks shall be made payable to **“United States Treasury”**
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency B Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

- e. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read AD 68010727
Environmental Protection Agency

- f. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:
Automated Clearinghouse (ACH) for receiving US currency

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White, 301-887-6548

ABA = 051036706
Transaction Code 22 - Checking
Environmental Protection Agency
Account 310006
CTX Format

- g. On-Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

- h. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York) and
800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm

- i. At the same time that payment is made, Respondents shall mail copies of

any corresponding check, or written notification confirming any electronic wire transfer to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029;

and

Ms. Cheryl Jamieson
Associate Regional Counsel for Regulatory Enforcement
Office of Regional Counsel (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

13. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

14. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

15. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

16. A late payment penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

17. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

18. Failure by the Respondent to comply with the requirements of this CAFO pursuant to terms of the CAFO, may subject the Respondent to an additional enforcement action, including, but not limited to, the issuance of an Administrative Complaint and the imposition of penalties as provided by Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), or the accompanying final order.

Certifications

19. The individual who signs this Consent Agreement on behalf of Respondent certifies that the Facility referred to in this Consent Agreement is currently in compliance with all applicable requirements of EPCRA Section 313.

Other Applicable Laws

20. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

21. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under EPCRA and the regulations promulgated there under, to enforce the provisions of this CAFO and any other federal laws or regulations for which EPA has jurisdiction, following the filing of this CAFO with the Regional Hearing Clerk.

Full and Final Satisfaction

22. This CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 325 of EPCRA for the specific violations alleged in paragraphs 8.A through 8.S, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

Parties Bound

23. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

Effective Date

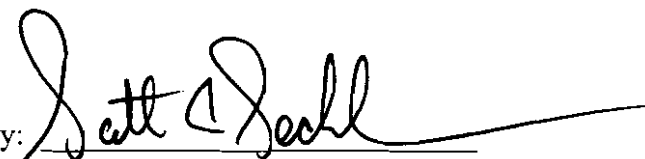
24. The effective date of this Consent Agreement and the accompanying Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA - Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

25. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

For Respondent:

Date: 5/1/09

By: 
Scott Sechler
President
Farmer's Pride, Inc.
154 West Main Street
Fredericksburg, PA 17026

For Complainant:

**U.S. Environmental Protection Agency
Region III**

Date: May 6 2009

By: Cheryl L. Jamieson
Cheryl L. Jamieson
Sr. Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 5/14/09

By: Abraham Ferdas
Abraham Ferdas, Director
Land and Chemicals Division
U.S. EPA Region III

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	
Farmer's Pride, Inc.	:	Docket No. EPCRA-03-2009-0128
154 West Main Street	:	
P.O. Box 39	:	
Fredericksburg, PA 17026	:	
	:	FINAL ORDER
Respondent,	:	
	:	
Farmer's Pride, Inc.	:	Proceeding under EPCRA § 325(c),
154 West Main Street	:	42 U.S.C. § 11045(c)
P.O. Box 39	:	
Fredericksburg, PA 17026	:	
	:	
Facility.	:	

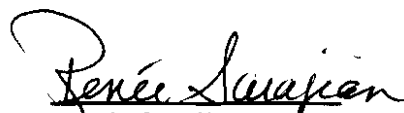
FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Farmer's Pride, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 325(c) of the Emergency Planning and Community Right-to-know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein was based upon a consideration of the EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-know Act (1986)* (August 10, 1992), IT IS HEREBY ORDERED that Respondent pay a civil penalty of Seventy Four Thousand and Seventy Five Dollars (\$74,075.00) plus interest, and comply with the terms and conditions of the Consent Agreement.

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.

Date: 6/8/09


Renée Sarajian
Regional Judicial Officer
U.S. EPA - Region III

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be sent the attached Consent Agreement and Final Order to the following parties:

Original By Hand Delivery to:

Regional Hearing Clerk, Region III,
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

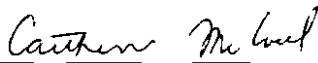
Copy by Hand Delivery to:

Regional Judicial Officer, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Copy by Federal Express:

Scott Sechler
President
Farmer's Pride, Inc.
154 West Main Street
Fredericksburg, Pennsylvania 17026

Date: 6/8/2009


Catherine Mc Cool
Catherine Mc Cool
Lead Paralegal Specialist