

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

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Farmers Union Cooperative,) **Docket No. CAA-07-2021-0094**
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Farmers Union Cooperative (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 initiated 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 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, the Regional Administrator of Region 7, and the Enforcement and Compliance Assurance Division Director, is the Chief of the Air Branch, EPA, Region 7.

4. Respondent is Farmers Union Cooperative, a cooperative association in good standing under the laws of the state of Iowa, which owns and operates the Farmers Union Cooperative Postville facility located at 325 Co-op Drive, in Postville, IA (Respondent's Facility).

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 coordination of emergency response activities.

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(h), 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(g) and (i), 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 \$48,762 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 23, 2020.

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.

17. The regulations at 40 C.F.R. § 68.3 define “RMP” as the risk management plan required under the Risk Management Program regulations, located at 40 C.F.R. Subpart G.

General Factual Allegations

18. 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).

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

20. Anhydrous ammonia is a “regulated substance” pursuant to 40 C.F.R. § 68.3.

21. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

22. On or about November 4, 2020, representatives of the EPA sent an Information Request Letter pursuant to Section 114 of the CAA requesting information regarding Respondent’s facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

23. Representatives of the EPA received an answer to its Information Request Letter from Respondent on November 12, 2020 via e-mail.

24. On or about January 8, 2021, representatives of the EPA sent an e-mail to Respondent with additional questions to clarify responses provided to the November 4, 2020 Information Request Letter.

25. Representatives of the EPA received a response to its January 8, 2021 e-mail from Respondent on January 21, 2021 via e-mail.

26. Information gathered in response to the Information Request Letter and other e-mail(s) revealed that Respondent had greater than 10,000 pounds of anhydrous ammonia at its facility.

27. Information gathered in response to the Information Request Letter and other e-mail(s) revealed that Respondent stores and distributes agricultural products, including anhydrous ammonia at its facility, and therefore is engaged in a process at its facility.

28. 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.

29. 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(h), the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(g) and (i), respectively.

30. 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.

Allegations of Violation

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

Count 1

32. The facts stated in Paragraphs 18 through 30 above are herein incorporated.

33. The regulation at 40 C.F.R. § 68.12(a) requires the owner or operator of a stationary source to submit an RMP as provided in § 68.150. The regulations at 40 C.F.R. §§ 68.150(d) and 68.190 require the owner or operator of a stationary source to revise and update the RMP at least once every five years from the date of its initial submission.

34. Information gathered by the EPA revealed that Respondent failed to submit an updated RMP pursuant to the requirements of 40 C.F.R. § 68.190. Specifically:

- (a) Respondent submitted an RMP for the facility on June 12, 2013. Therefore, pursuant to 40 C.F.R. § 68.190, an updated RMP was required to be submitted on June 12, 2018.
- (b) Respondent submitted an updated RMP for the facility on November 10, 2020, twenty-eight months after it was due under 40 C.F.R. §§ 68, 150(d) and 68.190.

35. Respondent's failure to submit an updated RMP pursuant to the requirements of 40 C.F.R. §§ 68.150(d) and 68.190 is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2

36. The facts stated in Paragraphs 18 through 30 above are herein incorporated.

37. The regulation at 40 C.F.R. § 68.165 requires the owner or operator of a stationary source to include an offsite consequence analysis in its RMP. The regulation at 40 C.F.R. § 68.36 requires the owner or operator to review and update the offsite consequence analyses at least once every five years.

38. Information gathered by the EPA revealed that Respondent failed to review and update its offsite consequence analysis. Specifically:

- (a) Respondent submitted an offsite consequence analysis for the facility on June 12, 2013. Therefore, pursuant to 40 C.F.R. § 68.36, an updated offsite consequence analysis was required to be submitted along with the RMP on June 12, 2018.

- (b) Respondent submitted an updated offsite consequence analysis for the facility on December 10, 2020, twenty-nine months after it was due under 40 C.F.R. §68.36.

39. Respondent's failures to comply with 40 C.F.R. §§ 68.36 and 68.165 is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3

40. The facts stated in Paragraphs 18 through 30 above are herein incorporated.

41. 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 steps provided in §§ 68.48 through 68.60.

42. Information gathered by the EPA revealed that Respondent failed to implement the Program 2 prevention requirements of 40 C.F.R. §§ 68.48 through 68.60, as required by 40 C.F.R. § 68.12(c)(3). Specifically:

- (a) Respondent failed to revise or update the facility hazard review at least once every five years, as required by 40 C.F.R. § 68.50(d). Respondent's June 12, 2013 RMP states that the most recent hazard review was conducted on May 1, 2008. Therefore, pursuant to 40 C.F.R. § 68.50(d), Respondent was required to submit an updated hazard review on May 1, 2013. Respondent's November 10, 2020 RMP states that the next hazard review was conducted on November 10, 2020, which is ninety (90) months after it was due under 40 C.F.R. § 68.50(d).
- (b) Respondent failed to prepare written operating procedures as required by 40 C.F.R. § 68.52(a). Respondent's RMP from June 2013 states that the last revision of the operating procedures occurred on May 15, 2008. On December 16, 2020, the facility submitted updated operating procedures, one hundred and forty (140) months after they were due under 40 C.F.R. § 68.52(a).
- (c) Respondent failed to conduct, perform, and maintain the two most recent compliance audits as required by 40 C.F.R. § 68.58. Respondent provided information that a compliance audit had been performed on November 10, 2020, but could not provide the compliance audit. Respondent thereafter provided a compliance audit dated January 7, 2021, which is the only compliance audit Respondent demonstrated it had retained.

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

Count 4

44. The facts stated in Paragraphs 18 through 30 above are herein incorporated.

45. The regulation at 40 C.F.R. § 68.93(c) requires an owner or operator to document coordination with local authorities, including the names of individuals involved and their contact information (phone number, email address, and organizational affiliations); dates of coordination activities; and nature of coordination activities.

46. Information gathered by the EPA revealed that Respondent failed to document coordination with local authorities as required by 40 C.F.R. § 68.93(c). Specifically, Respondent failed to provide any documentation of communication with local authorities when such information was requested by the EPA.

47. Respondent's failure to comply with 40 C.F.R. § 68.93(c) is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

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

- (a) admits 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.

49. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

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

51. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail addresses: *vandermaaten@andersonlawdecorah.com* .

Penalty Payment

52. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of fifty-two thousand, two-hundred and twenty-one dollars and fifty-two cents (\$52,221.52).

53. 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>.

54. A copy of the check or other information confirming payment shall simultaneously be sent, either via mail or e-mail, to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
R7_Hearing_Clerk_Filings@epa.gov; and

Katherine Kacsur, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
kacsur.katherine@epa.gov.

55. Respondent understands that its failure to timely pay any portion of the civil penalty 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).

Effect of Settlement and Reservation of Rights

56. 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.

57. 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 the paragraph directly below.

58. 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.

59. 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.

60. This Consent Agreement and Final Order constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Combined Enforcement Response Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

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

General Provisions

62. 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.

63. 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.

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

65. This Consent Agreement and Final Order shall apply to and be binding upon 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.

RESPONDENT:
FARMERS UNION COOPERATIVE

Date: 10/8/2021


Signature

David Hemesath
Name

General Manager
Title

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

Date: _____

Tracey Casburn
Air Branch Chief
Enforcement and Compliance Assurance Division

Date: _____

Katherine Kacsur
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

Date

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 E-mail to Complainant:

kacsur.katherine@epa.gov

Copy via E-mail to Respondent:

*upc050@acegroup.cc; and
vandermaaten@andersonlawdecorah.com*

Dated this _____ day of _____, _____.

Signed