



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JAN 10 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Aaron L. Peterson
President
Peterson Farms, Inc.
3104 West Baseline Road
Shelby, Michigan 49455-9633

Re: Peterson Farms, Inc., Shelby, Michigan, Consent Agreement and Final Order
Docket Nos. EPCRA-05-2011-0007

Dear Mr. Peterson:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on JAN 10 2011.

Please pay the civil penalty for the Emergency Planning and Community Right-to-Know Act alleged violations in the amount of \$183,431.00 in the manner prescribed in paragraph 137, and reference your check with the billing document number 2751144E005 and the docket number EPCRA-05-2011-0007.

Your payment is due on February 9, 2011 [within 30 days of filing date].

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert H. Smith, Associate Regional Counsel, at (312) 886-0765. Thank you for your assistance in resolving this matter.

Sincerely,


James A. Entzminger, Acting Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Captain Thomas Sands, Chairperson (w/ enclosure)
Susan Parker (w/ enclosure)
Michigan SERC

Matthew B. Eugster (w/ enclosure)
Partner
Varnum
333 Bridge Street NW
Grand Rapids, Michigan 49504 (certified)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. EPCRA-05-2011-0007
)	
Peterson Farms, Inc.)	Proceeding to Assess a Civil Penalty Under
Shelby, Michigan)	Sections 325(c)(1) and (c)(2) of the Emergency
)	Planning and Community Right-to-Know Act
Respondent.)	of 1986
_____)	

RECEIVED

JAN 10 2011

Consent Agreement and Final Order
Preliminary Statement

REGIONAL HEARING CLERK
USEPA
REGION 5

1. This is an administrative action commenced and concluded under Sections 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(c)(1) and (c)(2) and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Peterson Farms, Inc., a corporation doing business in the State of Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC), and the fire department with jurisdiction over the facility an MSDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, and for each extremely hazardous chemical present at the facility in an amount equal to or greater than 500 pounds, or the threshold planning quantity (TPQ), whichever is lower, or to submit a list of such chemicals. The owner or operator must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the OSHA

to prepare or have available an MSDS for a hazardous chemical, to submit to the SERC, community coordinator for the LEPC, and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

11. Section 311 of EPCRA, 42 U.S.C. § 11021, and Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

12. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

13. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous chemicals.

14. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes U.S. EPA to assess a civil penalty of up to \$10,000 for each EPCRA Section 311 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$11,000 per day of violation for

EPCRA 311 violations that occur on or after January 31, 1997 through January 12, 2009, and to \$16,000 per day of violations that occurred after January 12, 2009.

15. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

16. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 3104 West Baseline Road, Shelby, Michigan (facility).

18. At all times relevant to this CAFO, Respondent was an employer at the facility.

19. Respondent’s facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

20. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

21. Nitric acid (CAS #7697-37-2) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

22. Nitric acid (CAS #7697-37-2) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
23. Nitric acid (CAS #7697-37-2) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).
24. Nitric acid (CAS #7697-37-2) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.
25. Gasoline (CAS #86290-81-5) has a flash point that is less than 100 °F.
26. Gasoline (CAS #86290-81-5) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
27. Gasoline (CAS #86290-81-5) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.
28. Diesel (CAS #68476-34-6) has a flash point that is greater than 100 °F and less than 200 °F.
29. Diesel (CAS #68476-34-6) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
30. Diesel (CAS #68476-34-6) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.
31. Liquid Nitrogen (CAS #7727-37-9) has immediate health and pressure concerns listed on the MSDS.
32. Liquid nitrogen (CAS #7727-37-9) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
33. Liquid nitrogen (CAS #7727-37-9) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

34. Lead (CAS #7439-92-1) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.
35. Lead (CAS #7439-92-1) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
36. Lead (CAS #7439-92-1) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.
37. Propylene glycol (CAS #57-55-6) has chronic health effects listed on the MSDS.
38. Propylene glycol (CAS #57-55-6) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
39. Propylene glycol (CAS #57-55-6) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.
40. As of December 31, 2006, nitric acid was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.
41. As of December 31, 2006, gasoline was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.
42. As of December 31, 2006, diesel was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.
43. As of December 31, 2006, liquid nitrogen was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.
44. As of December 31, 2006, lead was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.
45. As of December 31, 2006, propylene glycol was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

46. During at least one period of time in calendar year 2006, nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol were present at the facility in an amount equal to or greater than the minimum threshold level.

47. During at least one period of time in calendar year 2007, nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol were present at the facility in an amount equal to or greater than the minimum threshold level.

48. During at least one period of time in calendar year 2008, nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol were present at the facility in an amount equal to or greater than the minimum threshold level.

49. OSHA requires Respondent to prepare, or have available, an MSDS for nitric acid.

50. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 30, 2007, an MSDS for nitric acid or a list including nitric acid.

51. OSHA requires Respondent to prepare, or have available, an MSDS for gasoline.

52. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 30, 2007, an MSDS for gasoline or a list including gasoline.

53. OSHA requires Respondent to prepare, or have available, an MSDS for diesel.

54. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 30, 2007, an MSDS for diesel or a list including diesel.

55. OSHA requires Respondent to prepare, or have available, an MSDS for liquid nitrogen.

56. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 30, 2007, an MSDS for liquid nitrogen or a list including liquid nitrogen.
57. OSHA requires Respondent to prepare, or have available, an MSDS for lead.
58. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 30, 2007, an MSDS for lead or a list including lead.
59. OSHA requires Respondent to prepare, or have available, an MSDS for propylene glycol.
60. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 30, 2007, an MSDS for propylene glycol or a list including propylene glycol.
61. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility a completed emergency and hazardous chemical inventory form including nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol on or before March 1, 2007, for calendar year 2006.
62. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility a completed emergency and hazardous chemical inventory form including nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol on or before March 1, 2008, for calendar year 2007.
63. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility a completed emergency and hazardous chemical

inventory form including nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol on or before March 1, 2009, for calendar year 2008.

64. At all times relevant to this CAFO, the Citizen-Community Emergency Response Coordinating Council was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

65. At all times relevant to this CAFO, the Oceana County LEPC was the LEPC for Oceana County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

66. At all times relevant to this CAFO, the Shelby-Benona Fire Department was the fire department with jurisdiction over the facility.

Count 1

67. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

68. On May 14, 2009, Respondent submitted to the SERC an MSDS for nitric acid or a list showing nitric acid.

69. Each day Respondent failed to submit to the SERC an MSDS or a list for nitric acid by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 2

70. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

71. On May 14, 2009, Respondent submitted to the LEPC an MSDS for nitric acid or a list showing nitric acid.

72. Each day Respondent failed to submit to the LEPC an MSDS or a list for nitric acid by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 3

73. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

74. On May 14, 2009, Respondent submitted to the Shelby-Benona Fire Department an MSDS for nitric acid or a list showing nitric acid.

75. Each day Respondent failed to submit to the Shelby-Benona Fire Department an MSDS or a list for nitric acid by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 4

76. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

77. On May 14, 2009, Respondent submitted to the SERC an MSDS for gasoline or a list showing gasoline.

78. Each day Respondent failed to submit to the SERC an MSDS or a list for gasoline by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 5

79. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

80. On May 14, 2009, Respondent submitted to the LEPC an MSDS for gasoline or a list showing gasoline.

81. Each day Respondent failed to submit to the LEPC an MSDS or a list for gasoline by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 6

82. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

83. On May 14, 2009, Respondent submitted to the Shelby-Benona Fire Department an MSDS for gasoline or a list showing gasoline.

84. Each day Respondent failed to submit to the Shelby-Benona Fire Department an MSDS or a list for gasoline by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 7

85. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

86. On May 14, 2009, Respondent submitted to the SERC an MSDS for diesel or a list showing diesel.

87. Each day Respondent failed to submit to the SERC an MSDS or a list for diesel March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 8

88. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

89. On May 14, 2009, Respondent submitted to the LEPC an MSDS for diesel or a list showing diesel.

90. Each day Respondent failed to submit to the LEPC an MSDS or a list for diesel by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 9

91. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

92. On May 14, 2009, Respondent had not submitted to the Shelby-Benona Fire Department an MSDS for diesel or a list showing diesel.

93. Each day Respondent failed to submit to the Shelby-Benona Fire Department an MSDS or a list for diesel by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 10

94. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

95. On May 14, 2009, Respondent submitted to the SERC an MSDS for liquid nitrogen or a list showing liquid nitrogen.

96. Each day Respondent failed to submit to the SERC an MSDS or a list for liquid nitrogen by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 11

97. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

98. On May 14, 2009, Respondent submitted to the LEPC an MSDS for liquid nitrogen or a list showing liquid nitrogen.

99. Each day Respondent failed to submit to the LEPC an MSDS or a list for liquid nitrogen by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 12

100. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

101. On May 14, 2009, Respondent submitted to the Shelby-Benona Fire Department an MSDS for liquid nitrogen or a list showing liquid nitrogen.

102. Each day Respondent failed to submit to the Shelby-Benona Fire Department an MSDS or a list for liquid nitrogen by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 13

103. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

104. On May 14, 2009, Respondent submitted to the SERC an MSDS for lead or a list showing lead.

105. Each day Respondent failed to submit to the SERC an MSDS or a list for lead by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 14

106. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

107. On May 14, 2009, Respondent submitted to the LEPC an MSDS for lead or a list showing lead.

108. Each day Respondent failed to submit to the LEPC an MSDS or a list for lead by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 15

109. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

110. On May 14, 2009, Respondent submitted to the Shelby-Benona Fire Department an MSDS for lead or a list showing lead.

111. Each day Respondent failed to submit to the Shelby-Benona Fire Department an MSDS or a list for lead by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 16

112. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

113. On May 14, 2009, Respondent submitted to the SERC an MSDS for propylene glycol or a list showing propylene glycol.

114. Each day Respondent failed to submit to the SERC an MSDS or a list for propylene glycol by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 17

115. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

116. On May 14, 2009, Respondent submitted to the LEPC an MSDS for propylene glycol or a list showing propylene glycol.

117. Each day Respondent failed to submit to the LEPC an MSDS or a list for propylene glycol by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 18

118. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

119. May 14, 2009, Respondent submitted to the Shelby-Benona Fire Department an MSDS for propylene glycol or a list showing propylene glycol.

120. Each day Respondent failed to submit to the Shelby-Benona Fire Department an MSDS or a list for propylene glycol by March 30, 2007, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 19

121. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

122. On May 15, 2009, Respondent submitted to the SERC, the LEPC, and the Shelby-Benona Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol for calendar year 2006.

123. Each day Respondent failed to submit to the SERC, the LEPC, and the Shelby-Benona Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol by March 1,

2007, for calendar year 2006 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 20

124. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

125. On May 15, 2009, Respondent submitted to the SERC, the LEPC, and the Shelby-Benona Fire Department a completed Emergency and Hazardous Chemical Inventory Form including nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol for calendar year 2007.

126. Each day Respondent failed to submit to the SERC, the LEPC, and the Shelby-Benona Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 21

127. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

128. May 14, 2009, Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol for calendar year 2008.

129. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including nitric acid, gasoline, diesel, liquid nitrogen, lead,

and propylene glycol by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 22

130. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

131. On May 14, 2009, Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol for calendar year 2008.

132. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 23

133. Complainant incorporates paragraphs 1 through 66 of this CAFO as if set forth in this paragraph.

134. On May 14, 2009, Respondent submitted to the Shelby-Benona Fire Department a completed Emergency and Hazardous Chemical Inventory Form including nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol for calendar year 2008.

135. Each day Respondent failed to submit to the Shelby-Benona Fire Department a completed Emergency and Hazardous Chemical Inventory Form including nitric acid, gasoline, diesel, liquid nitrogen, lead, and propylene glycol by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

136. In consideration of Respondent's cooperation, return to compliance and willingness to quickly resolve this matter, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$183,431.

137. Within 30 days after the effective date of this CAFO, Respondent must pay an \$183,431.00 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to: for checks sent by regular U.S. postal service

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

for checks sent by express mail

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Peterson Farms, Inc., the docket number of this CAFO and the billing document number 2751144E005.

for electronic funds transfer, Respondent must pay the penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: Peterson Farms, Inc., the docket number of this CAFO and the billing document number 2751144E005 for online payments using debit or credit card

Respondent must pay online using ACH debit or credit card. For payments online using ACH debit or credit card please visit www.pay.gov. Using the Search Public Forms option on the tool bar (left side of page), enter SFO 1.1 in the search field. Open the form and complete the information requested.

138. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

James Entzminger, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Robert H. Smith, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

139. This civil penalty is not deductible for federal tax purposes.

140. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment

penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

141. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

142. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

143. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

144. Respondent certifies that it is complying with Section 311 of EPCRA, 42 U.S.C. § 11021 and Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

145. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws, and regulations.

146. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Sections 311 and 312 of EPCRA.

147. The terms of this CAFO bind Respondent and its successors, and assigns.

148. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

149. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

150. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
Peterson Farms, Inc., Shelby, Michigan
Docket No. _____

Peterson Farms, Inc., Respondent

12/20/2010
Date

Aaron L. Peterson
Aaron L. Peterson
President
Peterson Farms, Inc.

U.S. Environmental Protection Agency, Complainant

1/5/11
Date

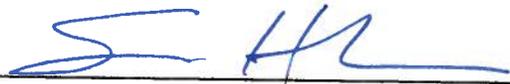
Richard C. Karl
Richard C. Karl
Director
Superfund Division

In the Matter of:
Peterson Farms, Inc., Shelby, Michigan
Docket No. EPCRA-05-2011-0007

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

1/7/11
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

RECEIVED
JAN 10 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

In the Matter of:
Peterson Farms, Inc., Shelby, Michigan
Docket No. EPCRA-05-2011-0007

Certificate of Service

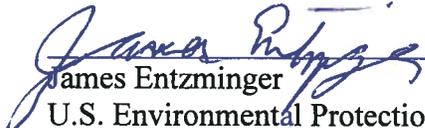
I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Peterson Farms, Inc. by placing them in the custody of the United States Postal Service addressed as follows:

Mr. Aaron L. Peterson
President
Peterson Farms, Inc.
3104 West Baseline Road
Shelby, Michigan 49455-9633

Matthew B. Eugster
Partner
Varnum
333 Bridge Street NW
Grand Rapids, Michigan 49504

RECEIVED
JAN 10 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

on the 10 day of January 2011


James Entzminger
U.S. Environmental Protection Agency
Region 5