



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 05 2012

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Pete Schmitz
General Manager
Farmers Cooperative Association
1204 St. Olaf Avenue North
P.O. Box 149
Canby, Minnesota 56220-0149

Re: Farmers Cooperative Association, Canby, Minnesota
Consent Agreement and Final Order
Docket No. CERCLA-05-2012-0005

Dear Mr. Schmitz:

Enclosed please find one fully executed original Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA filed the second original CAFO with the Regional Hearing Clerk on MAR 05 2012.

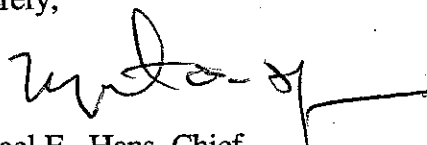
Please pay the EPCRA civil penalty in the amount of \$22,475 in the manner prescribed in paragraphs 30 and 31, and reference your check with the EPCRA billing document number 2751230B005 and the docket number CERCLA-05-2012-0005.

The payment is due on APR 05 2012.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jerome Kujawa, Associate Regional Counsel, at (312) 886-6731. Thank you for your assistance in resolving this matter.

Re: Farmers Cooperative Association, Canby, Minnesota
Consent Agreement and Final Order
Docket No.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Hans", with a long horizontal line extending to the right.

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Steve Tomylanovich
MN SERC Contact (w/enclosure)

RECEIVED

MAR 05 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
USEPA
REGION 5

In the Matter of:) Docket No. CERCLA-05-2012-0005
)
Farmers Cooperative Association) Proceeding to Assess a Civil Penalty Under
Canby, Minnesota) Section 109(b) of the Comprehensive
) Environmental Response, Compensation,
Respondent.) and Liability Act
)

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), 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 Chief, Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Farmers Cooperative Association, a corporation doing business in the State of Minnesota.

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 to the terms of this 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity for the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), provides a mechanism to alert federal agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the government's response to an emergency and pose serious threats to human health and the environment.

11. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at

40 C.F.R. Part 19 increased the statutory maximum penalty to \$32,500 per day of violation that occurred after March 15, 2004 through January 12, 2009.

Factual Allegations and Alleged Violations

12. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

13. At all times relevant to this Complaint, Respondent was in charge of the ammonia nurse tank located on a farmer’s field in Minnesota, Lyon County, Westerheim Township, Section 17 (Facility 1).

14. At all times relevant to this Complaint, Respondent was in charge of the ammonia nurse tank located on a farmer’s field in Minnesota, Yellow Medicine County, Werglund Township, Section 27 (Facility 2).

15. Respondent’s facilities consist of equipment, storage containers, motor vehicles, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

16. Respondent’s facilities are “facilities” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

17. Ammonia CAS #7664-41-7 is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

18. Ammonia CAS #7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

19. On October 31, 2008, at or about 5:00 p.m. Central Time (CT), a release occurred from Respondent’s facility of approximately 747 pounds of ammonia (Release 1).

20. In a 24 hour time period, the release of 747 pounds of ammonia exceeded the 100 pound reportable quantity for this substance.

21. During the release, approximately 747 pounds of ammonia spilled, leaked, pumped, poured, emitted, emptied, discharged, escaped, dumped, or disposed into ambient air.

22. Release 1 is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

23. Respondent had knowledge of Release 1 on October 31, 2008, at approximately 5:00 p.m. CT.

24. Respondent notified the NRC of Release 1 on November 3, 2008 at 4:40 p.m. CT.

25. On November 17, 2008, at or about 5:00 p.m. CT, a release occurred from Respondent's facility of approximately 2,812 pounds of ammonia (Release 2).

26. In a 24 hour time period, the release of 2,812 pounds of ammonia exceeded the 100 pound reportable quantity for this substance.

27. During the release, approximately 2,812 pounds of ammonia spilled, leaked, pumped, poured, emitted, emptied, discharged, escaped, dumped, or disposed into ambient air.

28. Release 2 is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

29. Respondent had knowledge of Release 2 on November 17, 2008, at approximately 5:00 p.m. CT.

30. Respondent notified the NRC of Release 2 on November 21, 2008 at 1:30 p.m. CT.

31. Respondent's failure to notify the NRC of the releases is a violation of Section 103(a) of CERCLA, 42 U.S.C. §9603(a).

Civil Penalty

32. Complainant has determined that an appropriate civil penalty to settle this action is \$22,475 for the CERCLA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

33. Within 30 days after the effective date of this CAFO, Respondent must pay a \$22,475 civil penalty for the CERCLA violations by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. EPA
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

The check must note the following: In the Matter of: Farmers Cooperative Association, the docket number of this CAFO, and the billing document number 2751230B004 ^{JK}

34. A transmittal letter, stating the Respondent's name, 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, IL 60604

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

Jerome Kujawa, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

36. 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.

37. 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

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

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

40. Respondent certifies that that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

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

42. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

44. 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.

45. Each party agrees to bear its own costs and attorney's fees in this action.

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

**In the Matter of: Farmers Cooperative Association, Canby, Minnesota
Docket Number**

SIGNATORIES

Farmers Cooperative Association, Respondent

02/09/2012

Date

Peter Schmitz
Peter Schmitz
General Manager
Farmers Cooperative Association

U.S. Environmental Protection Agency, Complainant

2/28/12

Date

Sharon Jaffess
Sharon Jaffess
Chief
Enforcement and Compliance Assurance Branch
Superfund Division
U.S. Environmental Protection Agency
Region 5

2-27-12

Date

Richard C. Karl
Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

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In the Matter of: Farmers Cooperative Association, Canby, Minnesota
Docket No. CERCLA-05-2012-0005

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.

2-29-12

Date



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

In the Matter of: Farmers Cooperative Association, Canby, Minnesota
Docket No. CERCLA-05-2012-0005

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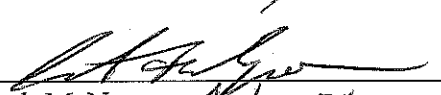
REGIONAL HEARING CLERK
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Certificate of Service

I, Ruth McNamara, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed a second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Pete Schmitz
General Manager
Farmers Co-op Association
1204 St. Olaf Avenue North
P.O. Box 149
Canby, Minnesota 56220-0149

on the 5th day of March, 2012.


Ruth McNamara *Anton Filayev*
U.S. Environmental Protection Agency
Region 5