

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

2010 SEP 27 PM 1:42
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)	
)	
AGRIFOS FERTILIZER L.L.C.)	DOCKET NOs.
PASADENA, TEXAS)	EPCRA-06-2010-0506,
)	CAA-06-2010-3508, and
RESPONDENT)	CERCLA-06-2010-2901
_____)	

CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency (EPA), Region 6, the Director, Superfund Division, EPA, Region 6 (Complainants), and Agrifos Fertilizer L.L.C. (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Section 109(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609(a), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), 22.34, and 22.39.

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO.

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506, CAA-06-2010-3508, and CERCLA-06-2010-2901

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those causes of action which are set forth herein.

5. The Respondent consents to the issuance of this CAFO, and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

6. The Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

7. The Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, successors, and assigns.

8. The headings in this CAFO are for convenience of reference only and shall not affect the interpretation of this CAFO.

II. STATUTORY AND REGULATORY BACKGROUND

A. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

9. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that: (a) has ten or more full-time employees; (b) that is an establishment with a primary Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506, CAA-06-2010-3508, and CERCLA-06-2010-2901

established under Subsection 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity during that preceding calendar year.

10. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical “manufactured or processed,” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year. According to 40 C.F.R. § 372.28, the threshold amount for reporting lead compounds is 100 pounds, and the threshold amount for reporting mercury compounds is 10 pounds.

B. CLEAN AIR ACT

11. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), provides in pertinent part:

(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

* * * *

(B) (ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506, CAA-06-2010-3508, and CERCLA-06-2010-2901

stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection.

12. In accordance with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), EPA promulgated the Chemical Accident Prevention Provisions, which are codified at 40 C.F.R. Part 68. These regulations, commonly referred to as the “Risk Management Program” (RMP) regulations, contain requirements for owners or operators of stationary sources concerning the prevention of accidental chemical releases.

13. Pursuant to 40 C.F.R. § 68.10, the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the RMP regulations.

14. Pursuant to 40 C.F.R. § 68.12, the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the RMP regulations must, among other things, comply with the prevention requirements of 40 C.F.R. Part 68, Subpart D.

15. Pursuant to Section 112(r)(7)(E) of the CAA 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate any stationary source subject to the Risk Management Program requirements and regulations in violation of such requirements and regulations.

C. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT

16. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires that any person in charge of a vessel or an offshore or an onshore facility, as soon as he has knowledge of a release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to [42 U.S.C. § 9602] to immediately notify the National Response Center (NRC).

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506, CAA-06-2010-3508, and CERCLA-06-2010-2901

17. 40 C.F.R. § 302.6 provides that any person in charge of a vessel or an offshore or an onshore facility shall, as soon as she or she has knowledge of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the reportable quantity (RQ) as determined by 40 C.F.R. Part 302 in any 24-hour period, immediately notify the NRC.

18. The RQs for hazardous substances are set forth in 40 C.F.R. § 302.4.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. GENERAL PRELIMINARY ALLEGATIONS

19. The Respondent is a limited liability company formed under the laws of the State of Delaware, and authorized to do business in the State of Texas.

20. The Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Section 101(12) of CERCLA, 42 U.S.C. § 9601(12).

21. The Respondent owns and operates a phosphate fertilizer manufacturing complex located at 2001 Jackson Road, Pasadena, Texas 77506.

B. EPCRA PRELIMINARY ALLEGATIONS

22. The fertilizer manufacturing complex identified in Paragraph 21 is a "facility", as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

23. The Respondent's facility has ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

24. The Respondent's facility is in SIC Code 2874 (phosphate fertilizer manufacturing) which is equivalent to NAICS subsector or industry code 325312 (phosphate fertilizer manufacturing).

25. Chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride are “toxic chemicals” as that term is defined by 40 C.F.R. §§ 372.3 and 372.65.

26. During calendar years 2004 through 2007, the toxic chemical compounds, and hydrogen fluoride identified in Paragraph 25 were “manufactured, processed, or otherwise used,” as those terms are defined by 40 C.F.R. § 372.3, at the Respondent's facility.

C. EPCRA SECTION 313 VIOLATIONS

27. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that: (a) has ten or more full-time employees; (b) that is an establishment with a primary Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Subsection 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28 during the calendar year, to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity during that preceding calendar year.

Count I – Failure to File Form R's for Calendar Year 2004

28. During calendar year 2004, the Respondent “manufactured, processed, or otherwise used” chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506, CAA-06-2010-3508, and CERCLA-06-2010-2901

compounds, and hydrogen fluoride at the Respondent's facility in excess of the applicable threshold quantity.

29. The Respondent failed to file Form R's with EPA and the State of Texas for chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride by July 1, 2005.

30. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit complete and accurate Form R's for chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride to EPA and to the State of Texas by July 1, 2005 for calendar year 2004.

Count II – Failure to File Form R's for Calendar Year 2005

31. During calendar year 2005, the Respondent "manufactured, processed, or otherwise used" chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride at the Respondent's facility in excess of the applicable threshold quantity.

32. The Respondent failed to file Form R's with EPA and the State of Texas for chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride by July 1, 2006.

33. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit complete and accurate Form R's for chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride to EPA and to the State of Texas by July 1, 2006 for calendar year 2005.

Count III – Failure to File Form R’s for Calendar Year 2006

34. During calendar year 2006, the Respondent “manufactured, processed, or otherwise used” chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride at the Respondent’s facility in excess of the applicable threshold quantity.

35. The Respondent failed to file Form R’s with EPA and the State of Texas for chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride by July 1, 2007.

36. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit complete and accurate Form R’s for chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride to EPA and to the State of Texas by July 1, 2007 for calendar year 2006.

Count IV – Failure to File Form R’s for Calendar Year 2007

37. During calendar year 2007, the Respondent “manufactured, processed, or otherwise used” chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride at the Respondent’s facility in excess of the applicable threshold quantity.

38. The Respondent failed to file Form R’s with EPA and the State of Texas for chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride by July 1, 2008.

39. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit complete and accurate Form R’s for chromium

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506, CAA-06-2010-3508, and CERCLA-06-2010-2901

compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride to EPA and to the State of Texas by July 1, 2008 for calendar year 2007.

D. CLEAN AIR ACT PRELIMINARY ALLEGATIONS

40. The Respondent's phosphate fertilizer manufacturing complex identified in Paragraph 21 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

41. The Respondent is the owner and/or operator of the stationary source identified in Paragraphs 21 and 40.

42. Ammonia and chlorine are regulated substances. 40 C.F.R. § 68.130.

43. The Respondent has exceeded the threshold quantity for ammonia in its phosphate fertilizer manufacturing process, and exceeded the threshold quantity for chlorine in its water treatment and SAP Cooling Tower processes.

44. The Respondent's phosphate fertilizer manufacturing, water treatment, and SAP Cooling Tower processes are subject to the "Program 3" requirements of the RMP regulations and must, among other things, comply with the prevention requirements of 40 C.F.R. Part 68, Subpart D.

45. Section 113(d)(1) of the Act, authorizes EPA to bring an administrative action for penalties that exceed \$295,000¹ and/or the first alleged date of violation occurred more than

¹ The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$220,000 for violations occurring between January 30, 1997 and March 15, 2004, to \$270,000 for violations occurring between March 15, 2004 and January 12, 2009, and to \$295,000 for violations occurring after January 12, 2009.

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506, CAA-06-2010-3508, and CERCLA-06-2010-2901

twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

46. EPA and the U.S. Department of Justice have jointly determined that the Complainants can administratively assess a civil penalty even though the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

47. On or about June 24, 2009, an EPA inspector conducted an inspection of the Respondent's facility.

E. CLEAN AIR ACT VIOLATIONS

Count V - Failure to Develop and Implement a Risk Management Plan Management System

48. 40 C.F.R. § 68.15 requires that:

(a) The owner or operator of a stationary source with processes subject to Program 2 or Program 3 shall develop a management system to oversee the implementation of the risk management program elements.

(b) The owner or operator shall assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.

(c) When responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under paragraph (b) of this section, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

49. During the June 24, 2009 EPA inspection, the inspector received a copy of the RMP management organization from the Respondent.

50. The 14 Element "Organizational Chart", which the inspector received, did not identify the RMP Responsible Person, Emergency Contact, and several other RMP Responsibilities. Additionally, the chart did not define lines of authority.

51. Therefore, the Respondent violated 40 C.F.R. § 68.15, by failing to develop and implement an adequate risk management plan management system.

Count VI - Failure to Adequately Document that It has Addressed PHA Findings in a Timely Manner

52. 40 C.F.R. § 68.67(a) and (e) provide the following:

(a) The owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by this part. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator shall determine and document the priority order for conducting process hazard analyses based on a rationale which includes such considerations as extent of the process hazards, number of potentially affected employees, age of the process, and operating history of the process. . . .

* * * *

(e) The owner or operator [to] establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

53. As of the June 24, 2009 inspection, the Respondent failed to document that it had completed the necessary actions to resolve the team's recommendations on certain process hazard analysis findings.

54. Therefore, the Respondent violated 40 C.F.R. § 68.67, by failing to document that it had completed the necessary actions to resolve the team's recommendations on certain process hazard analysis findings.

Count VII - Failure to Annually Certify that Operating Procedures are Current and Accurate

55. 40 C.F.R. § 68.69(a) and (c) require the following:

(a) The owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information. . . .

* * * *

(c) The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

56. As of the June 24, 2009 EPA inspection, the Respondent had failed to annually certify that its operating procedures were current and accurate.

57. Therefore, the Respondent has violated 40 C.F.R. § 68.69, by failing to annually certify that its operating procedures were current and accurate.

Count VIII - Failure to Provide Refresher Training to all Operators Every Three Years

58. 40 C.F.R. § 68.71(b) requires that refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.

59. As of the June 24, 2009 EPA inspection, the Respondent had two operators who had not received refresher training within the last three years.

60. Therefore, the Respondent violated 40 C.F.R. § 68.71(b) by failing to provide refresher training to two operators within the last three years.

Count IX - Failure to Timely Inspect and Test Certain Processes

61. 40 C.F.R. § 68.73(d)(1) - (3) requires that inspections and tests shall be performed on process equipment. Inspection and testing procedures shall follow recognized and generally accepted good engineering practices. The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

62. As of the June 24, 2009 EPA inspection, the Respondent had failed to timely conduct non-destructive testing of the ammonia tank piping.

63. The ammonia tank piping identified in Paragraph 62 is "process equipment" subject to the requirements of 40 C.F.R. § 68.73(a) - (f).

64. Therefore, the Respondent violated 40 C.F.R. § 68.73(d) by failing to conduct timely non-destructive testing of the ammonia tank piping.

Count X - Inadequate Emergency Response Program

65. 40 C.F.R. § 68.95(a) requires that owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment.

Such program shall include, among other things:

(1) An emergency response plan, which shall be maintained at the stationary source and contain at least the following elements:

- (i) Procedures for informing the public and local emergency response agencies about accidental releases;
- (ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and
- (iii) Procedures and measures for emergency response after an accidental release of a regulated substance;

* * * *

(3) Training for all employees in relevant procedures.

66. As of the June 24, 2009 inspection, the emergency response program for the facility did not contain documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures and training for employees.

67. Therefore, the Respondent violated 40 C.F.R. § 68.95(a) by failing to have an adequate emergency response plan.

Count XI - Failure to Include all Regulated Chemicals and Processes in the Risk Management Plan

68. 40 C.F.R. § 68.160(a) and (b) requires that the owner or operator shall complete a single registration form and include it in the RMP. The form shall cover all regulated substances handled in covered processes. The registration shall include the following data:

* * * *

(7) For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the five- or six-digit NAICS code that most closely corresponds to the process, and the Program level of the process.

69. Prior to the submission of its 2004 Risk Management Plan, the Respondent had more than 2500 pounds of chlorine at its water treatment process and SAP cooling tower process.

70. The threshold quantity for chlorine is 2500 pounds. 40 C.F.R. § 68.130.

71. The Respondent 2004 Risk Management Plan failed to identify the water treatment process and the SAP cooling tower process, the name and CAS number of each regulated substance held above the threshold quantity in each process (chlorine), the maximum quantity of chlorine in each process (in pounds) to two significant digits, the five- or six-digit NAICS code

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506, CAA-06-2010-3508, and CERCLA-06-2010-2901

that most closely corresponds to the water treatment process and the SAP cooling tower process, and the Program level of the water treatment process and the SAP cooling tower process.

72. Therefore, the Respondent violated 40 C.F.R. § 68.160 by failing to include all required information in its 2004 Risk Management Plan.

F. CERCLA PRELIMINARY ALLEGATIONS

73. The fertilizer manufacturing complex identified in Paragraph 21 is a “facility”, as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

G. CERCLA VIOLATIONS

Count XII - Failure to Timely Notify National Response Center

74. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires that any person in charge of a vessel or an offshore or an onshore facility, as soon as he has knowledge of a release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to [42 U.S.C. § 9602] to immediately notify the NRC.

75. 40 C.F.R. § 302.6 provides that any person in charge of a vessel or an offshore or an onshore facility shall, as soon as she or she has knowledge of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the RQ as determined by 40 C.F.R. Part 302 in any 24-hour period, immediately notify the NRC.

76. On or about the following dates, while Respondent was in charge of the facility identified in Paragraphs 21 and 73, there was a release of ammonia and phosphoric acid from that facility into the environment:

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506, CAA-06-2010-3508, and CERCLA-06-2010-2901

- A. August 16, 2007;
- B. August 17, 2007;
- C. August 18, 2007;
- D. August 19, 2007;
- E. August 20, 2007;
- F. September 2, 2007;
- G. September 3, 2007; and
- H. September 4, 2007.

77. Ammonia is a "hazardous substance" as defined at Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

78. Phosphoric acid is a "hazardous substance" as defined at Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

79. The RQ for ammonia is 100 pounds, as set forth in 40 C.F.R. § 302.4.

80. The RQ for phosphoric acid is 5000 pounds, as set forth in 40 C.F.R. § 302.4.

81. The releases identified in Paragraph 76 exceeded the RQ for ammonia and phosphoric acid during each 24 hour period identified in Paragraph 76.

82. The Respondent reported the releases identified in Paragraph 76 to the NRC on September 5, 2007 between 7:12 p.m. - 7:34 p.m.

83. Therefore, Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, by failing to provide notice to the NRC immediately after having knowledge that the releases met or exceeded the RQ.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

84. For the reasons set forth above, the Respondent has agreed to pay a civil penalty of **Five Hundred Thirty-Five Thousand, Two Hundred Six Dollars (\$535,206)**.

The penalty shall be paid in two payments as follows:

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506, CAA-06-2010-3508, and CERCLA-06-2010-2901

Payment No. 1 - \$267,603 within thirty (30) days of the effective date of this CAFO.

Payment No. 2 - \$268,922.69 (\$267,603 civil penalty plus interest of \$1319.69) within one hundred eighty (180) days of the effective date of this CAFO.

85. The Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the checks should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the checks should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted 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 "D 68010727 Environmental Protection Agency"

PLEASE NOTE: Docket numbers EPCRA-06-2010-0506, CAA-06-2010-3508, and

CERCLA-06-2010-2901 shall be clearly typed on the checks, or other method of payment, to

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506, CAA-06-2010-3508, and CERCLA-06-2010-2901

ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket numbers of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket numbers of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the checks, transmittal letters, or wire transfer instructions to the following:

Morton Wakeland
EPCRA 313 Enforcement Coordinator
Toxics Section (6PD-T)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Steve Mason
CERCLA/EPCRA Enforcement Coordinator
Emergency Readiness Section (6SF-PE)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Bob Goodfellow
Environmental Scientist/RMP Enforcement Officer
Superfund Prevention and Response Branch (6SF-PC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

86. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

87. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

88. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will 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. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. 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). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

89. EPA will also 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) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. RETENTION OF ENFORCEMENT RIGHTS

90. The EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

91. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372, Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, and Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. Part 302.

92. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

C. COSTS

93. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

D. COMPLIANCE

94. The Respondent hereby certifies that as of the date of the execution of this CAFO, to the best of its knowledge, the Respondent's facility is in compliance with the alleged causes of action described in Paragraphs 48 - 72 of this CAFO.

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506, CAA-06-2010-3508, and CERCLA-06-2010-2901

95. Within ninety (90) days of the effective date of this CAFO, the Respondent shall submit the following Form R's to EPA and the State of Texas for Reporting Years 2004 - 2008: chromium compounds, lead compounds, mercury compounds, vanadium compounds, zinc compounds, and hydrogen fluoride.

96. The Respondent shall submit the Form R's required by Paragraph 95 to the following:

A. To EPA:

TRI Data Processing Center
P.O. Box 10163
Fairfax, VA 22038

B. To the State of Texas:

U.S. Postal Service Delivery including Certified Mail

Ita Ufot
Toxics Release Inventory Program, MC 164
Texas Commission On Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Overnight Express Mail Only

Ita Ufot
Toxics Release Inventory Program, MC 164
Texas Commission On Environmental Quality
12100 Park 35 Circle, Bldg. E., Second Floor
Austin, Texas 78753

Note: The TCEQ receives all TRI reports electronically from the EPA. Facilities reporting electronically do not need to submit TRI reports to the TCEQ. The State of Texas (TCEQ) also collects a fee of \$25 per Form R (not for Form A Certification Statements) up to a maximum of \$250 per facility. The TCEQ mails invoices for fees directly to the facilities. Facilities should mail fees back to TCEQ, and not submit fees with the TRI forms.

C. To the Complainants:

Morton Wakeland
EPCRA 313 Enforcement Coordinator
Toxics Section (6PD-T)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

E. STIPULATED PENALTIES

97. If the Respondent fails to timely submit a Form R or a revised Form R for a toxic chemical identified in Paragraph 95, the Respondent shall pay stipulated penalties in the following amounts for each day that each individual Form R is late:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$ 500
16th through 30th day	\$ 1,000
31st day and beyond	\$ 2,500

Stipulated penalties shall not accrue for any alleged error in a Form R or revised Form R submitted by the Respondent under Paragraph 95. Penalties shall accrue from the date of the noncompliance until the date the violation is corrected, as determined by EPA.

98. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 85 herein. Interest and late charges shall be paid as stated in Paragraphs 88 - 89 herein.

99. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CAFO or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506,
CAA-06-2010-3508, and CERCLA-06-2010-2901

F. MODIFICATION

100. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except as otherwise specified in this CAFO, or upon the written agreement of both parties, and approved by the Regional Judicial Officer, and such modification or amendment being filed with the Regional Hearing Clerk.

G. TERMINATION

101. At such time as the Respondent believes that it has complied with all terms and conditions of this CAFO, it may request that EPA concur whether the requirements of this CAFO have been satisfied. Such request shall be in writing and shall provide the necessary documentation to establish whether there has been full compliance with the terms and conditions of this CAFO. EPA will respond to said request in writing as expeditiously as possible. This CAFO shall terminate when all actions required to be taken by this CAFO have been completed, and the Respondent has been notified by the EPA in writing that this CAFO has been satisfied and terminated.


H. EFFECTIVE DATE

102. This CAFO, and any subsequent modifications, become effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 21 September 2010

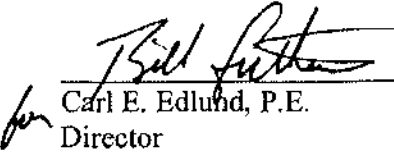


Agrifos Fertilizer L.L.C.

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506,
CAA-06-2010-3508, and CERCLA-06-2010-2901

FOR THE COMPLAINANTS:

Date: 9/23/10



Carl E. Edlund, P.E.
Director
Multimedia Planning and
Permitting Division
U.S. EPA - Region 6

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506,
CAA-06-2010-3508, and CERCLA-06-2010-2901

Date: Sept 23, 2010

Samuel Coleman, P.E.
Director
Superfund Division
U.S. EPA - Region 6

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506,
CAA-06-2010-3508, and CERCLA-06-2010-2901

V. FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 109 of CERCLA, 42 U.S.C. § 9609, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, directors, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated September 27, 2010



Michael J. Barra
Regional Judicial Officer

In the Matter of Agrifos Fertilizer L.L.C. - Docket Nos. EPCRA-06-2010-0506,
CAA-06-2010-3508, and CERCLA-06-2010-2901

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of September, 2010, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7000 0780 0000 0295 8502

Allison Exall
Curran Tomko Tarski L.L.P.
2001 Bryan Street
Suite 2050
Dallas, TX 75201

