



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 08 2011

REPLY TO THE ATTENTION OF:

SC-5J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

James Field  
ARBRE Farms Corporation  
6362 North 192<sup>nd</sup> Avenue  
Walkerville, Michigan 49459

Re: **ARBRE Farms Corporation, Walkerville, Michigan,**  
Consent Agreement and Final Order.  
Docket No. **CAA-05-2011-0043**

Dear Mr. Field:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on JUL 08 2011. Please pay the civil penalty in the amount of \$39,900 in the manner prescribed in paragraphs 37-42 and reference your check with the number BD 2751103A041 and docket number.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Louise Gross, Associate Regional Counsel, at (312) 886-6844. Thank you for your assistance in resolving this matter.

Sincerely yours,

A handwritten signature in black ink that reads "Bob Mayhugh".

Bob Mayhugh, Acting Chief  
Chemical Emergency  
Preparedness & Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
REGIONAL HEARING CLERK  
REGION 5  
2011 JUL -8 AM 10:06

<u>In the Matter of:</u>	)	
	)	
<b>ARBRE Farms Corporation</b>	)	
<b>6362 North 192<sup>nd</sup> Avenue</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Walkerville, Michigan 49459</b>	)	<b>Under Section 113(d) of the Clean Air</b>
	)	<b>Act, 42 U.S.C. § 7413(d)</b>
<b>EPA ID: 1000 0020 6029</b>	)	
	)	
<b>Respondent</b>	)	
	)	<b>Docket No. <u>CAA-05-2011-0043</u></b>

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 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, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations.
2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.
3. Respondent is ARBRE Farms Corporation (Respondent), 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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with 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 the 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 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that 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.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that 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 (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

15. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions.

16. “Stationary source” is defined to mean “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.” 40 C.F.R. § 68.3.

17. “Process” is defined to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.” 40 C.F.R. § 68.3.

18. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed anhydrous ammonia, CAS No. 7664-47-7, as a substance which, in the case of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The Administrator has further identified a threshold quantity of 10,000 lbs. of anhydrous ammonia for determining whether sources are subject to the Risk Management Program. 40 C.F.R. § 68.130, Table 1.

19. 40 C.F.R. § 68.115 provides that a “threshold quantity of a regulated substance listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”

20. 40 C.F.R. § 68.12 requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided in 40 C.F.R. §§ 150 through 185.

21. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirement of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

22. Section 113(d) of the Act 42 U.S.C. §7413(d) and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to \$32, 500 per day of

violation up to a total of \$270,000 for each violation of Section 112(r) of the Act that occurred from March 15, 2004 to January 12, 2009 and a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for each violation of Section 112(r) of the Act that occurred after January 12, 2009.

23. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

24. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

### **Factual Allegations and Alleged Violations**

25. Respondent is a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

26. Respondent owns and operates a facility, located at 6362 North 192<sup>nd</sup> Avenue, Walkerville, Michigan 49459, which 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 (Facility).

27. On February 1, 2010, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations, 40 C.F.R. Part 68, Respondent submitted to U.S. EPA an RMP for the Facility.

28. According to the RMP submitted to U.S. EPA by Respondent, the Facility:
- a. falls within NAICS Code 311411, as Frozen Fruit, Juice, and Vegetable Manufacturing;
  - b. used “anhydrous ammonia CAS No. 7664-47-7 as a process chemical during its operations; and
  - c. held 64,000 lbs. of anhydrous ammonia.
29. On June 10, 2010, authorized representatives of U.S. EPA conducted an inspection at the Facility to determine its compliance with 40 C.F.R. Part 68.
30. The Facility is a “stationary source,” as defined at 40 C.F.R. § 68.3.
31. On May 21, 2009, having held for use in its operations at the Facility 10,000 lbs. or more of anhydrous ammonia, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and became subject to 40 C.F.R. Part 68.
32. For purposes of compliance with 40 C.F.R. Part 68, in its RMP, Respondent acknowledged that it was required to meet Program 3 eligibility requirements.
33. Based on the inspection conducted on June 10, 2010, U.S. EPA identified the following alleged violations of RMP requirements:
- a. Failure to determine the worst-case release quantity to be the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity, as provided under 40 C.F.R. § 68.25(b)(1).
  - b. Failure to estimate in the Risk Management Plan (RMP) the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in 40 C.F.R. § 68.22(a), as provided under 40 C.F.R. § 68.30(a).
  - c. Failure to use the most recent Census data, or other updated information, to estimate the population potentially affected, as provided under 40 C.F.R. § 68.30(c).
  - d. Failure to rely on information provided on local U.S. Geological Survey (U.S.G.S.) maps, or on any data source containing U.S.G.S. data to identify environmental receptors, as provided under 40 C.F.R. § 68.33(b).

- e. Failure to maintain records on the offsite consequence analysis that include for the worst-case scenario: a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, as provided under 40 C.F.R. § 68.39(a).
- f. Failure to maintain records on the offsite consequence analysis that include for the alternative release scenario: a description of the scenarios identified, assumptions and parameters used, and the rationale for the selection of specific scenarios, as provided under 40 C.F.R. § 68.39(b).
- g. Failure to maintain records on the data used to estimate population and environmental receptors potentially affected, as provided under 40 C.F.R. § 68.39(e).
- h. Failure to certify annually that operating procedures are current and accurate, as provided under 40 C.F.R. § 68.69(c).
- i. Failure to establish and implement written procedures to maintain the ongoing integrity of process equipment including: emergency shutdown systems, controls, and pumps, as provided under 40 C.F.R. § 68.73(b).
- j. Failure to inspect and test process equipment consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience, as provided under 40 C.F.R. § 68.73(d)(3).
- k. Failure to obtain and evaluate information regarding contract owner or operator's safety performance and programs, as provided under 40 C.F.R. § 68.87(b).
- l. Failure to file its initial RMP by May 21, 2009, the date on which the owner or operator had a regulated substance above a threshold quantity in a process, as provided under 40 C.F.R. § 68.150(b).
- m. Failure to identify its correct program level in its RMP, as required under 40 C.F.R. § 68.160(b)(7).

35. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.



36. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

**Civil Penalty**

37. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation and prompt compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$39,900.

38. Within 30 days after the effective date of this CAFO, Respondent must pay a \$39,900 civil penalty by sending a cashier's or certified check, by regular U.S. Postal Service mail, payable to the "Treasurer, United States of America," to:

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

The check must note "ARBRE Farms Corporation," the docket number of this CAFO and the billing document number.

39. A transmittal letter stating Respondent's name, 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:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Monika Chrzaszcz, (SC-5J)  
Chemical Emergency Preparedness and Prevention Section  
Superfund Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Louise Gross, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

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

41. If Respondent does not pay timely 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 under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

42. 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 overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

### **General Provisions**

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

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

45. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 43, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

46. Respondent certifies that it is complying fully with 40 C.F.R. Part 68.

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

48. 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.

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

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

51. The effective date of this CAFO is the date when this CAFO is filed with the Regional Hearing Clerk's office.

**CONSENT AGREEMENT AND FINAL ORDER**

REGIONAL HEARING CLERK  
SOUTHWEST REGION 5

**In the Matter of ARBRE Farms Corporation  
Docket No.**

2011 JUL -8 AM 10:07

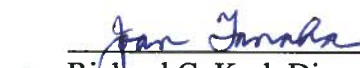
**ARBRE Farms Corporation, Respondent**

Date: 6-14-2011

By:   
James Field,  
ARBRE Farms Corporation

**United States Environmental Protection Agency, Complainant**

Date 7/5/11

  
for Richard C. Karl, Director  
Superfund Division

**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of ARBRE Farms Corporation**  
**Docket No. CAA-05-2011-0043**

REGIONAL HEARING CLERK  
U.S. EPA REGION 5  
2011 JUL -8 AM 10:06

**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.

7-6-11

\_\_\_\_\_  
Date



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

**Certificate of Service**

REGIONAL HEARING CLERK  
U.S. EPA REGION 5

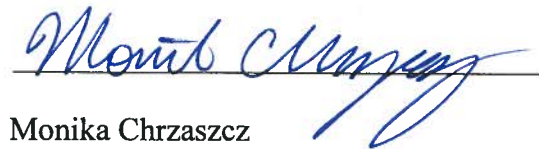
2011 JUL -8 AM 10:06

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

James Field  
ARBRE Farms Corporation  
6362 North 192<sup>nd</sup> Avenue  
Walkerville, Michigan 49459

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 8<sup>th</sup> day of July, 2011.



Monika Chrzaszcz  
U.S. Environmental Protection Agency  
Region 5

CAA-05-2011-0043