



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JAN 10 2020

REPLY TO THE ATTENTION OF

Jared D. Peterson  
Attorney  
Fafinski Mark & Johnson, P.A.  
700 North Minnesota Street, Suite B  
New Ulm, Minnesota 56073

Re: Farmers Mill & Elevator, Inc., Castle Rock, Minnesota Consent Agreement and Final Order

Docket No: CERCLA-05-2020-0001

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 original CAFO with the Regional Hearing Clerk on January 10, 2020.

Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$13,000 in the manner prescribed in paragraph 28, and reference the check with the docket number CERCLA-05-2020-0001 and the billing document number 2752030B002.

Your client's payment is due on February 10, 2020.

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 Cynthia Kawakami, Assistant Regional Counsel, at (312) 886-0564.

Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

cc: Steve Tomlyanovich (w/ enclosure)  
Division of Homeland Security  
and Emergency Management  
445 Minnesota Street, Suite 223  
St. Paul, Minnesota 55101



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

<b>In the Matter of:</b>	)	<b>Docket No. CERCLA-05-2020-0001</b>
	)	
<b>Farmers Mill &amp; Elevator, Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty Under</b>
<b>Castle Rock, Minnesota,</b>	)	<b>Section 109(b) of the Comprehensive</b>
	)	<b>Environmental Response, Compensation and</b>
<b>Respondent.</b>	)	<b>Liability Act</b>

**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 of the Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Farmers Mill & Elevator, Inc., a Minnesota 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 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 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 of 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 these statutory maximum penalties to \$32,500 per day of violation that occurred after March 15, 2004 through January 12, 2009, to \$37,500 per day of violation for

violations that occurred after January 12, 2009, and to \$57,317 per day of violation for violations that occurred after November 2, 2015 and assessed after February 6, 2019.

**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 CAFO, Respondent was in charge of the facility (a nurse tank) that came to be located at 0.25 miles west of 27920 Danville Avenue, Castle Rock, Minnesota.

14. Respondent’s facility consists of a building, structure, equipment, storage container, motor vehicle, rolling stock, or any site or area where a hazardous substance has been stored, placed, or otherwise come to be located.

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

16. Anhydrous 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).

17. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On October 31, 2018, at or about 7:30 p.m., Central Time, a release occurred from Respondent’s facility of approximately 4,202 pounds of anhydrous ammonia (the release).

19. In a 24-hour time period, the release of anhydrous ammonia exceeded 100 pounds.

20. During the release, approximately 4,202 pounds leaked, emitted, emptied, discharged, or escaped into the ambient air.

21. The release is a “release” as that term is defined under Section 101(22) of

CERCLA, 42 U.S.C. § 9601(22).

22. Respondent had knowledge of the release on October 31, 2018, at approximately 7:30 p.m., Central time.

23. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

24. Respondent notified the NRC of the release on October 31, 2018, at 10:35 p.m., Central Time.

25. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

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

#### **Civil Penalty**

27. Complainant has determined that an appropriate civil penalty to settle this action is \$13,000 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation 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).

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,000 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a

cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

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

For checks sent by express mail, by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Bank  
Government Lockbox 979076 U.S. EPA Superfund Payments  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must note the following: Farmers Mill & Elevator, Inc., the docket number of this CAFO and the billing document number 2752030B001.

29. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket number and the billing document number, if any, 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 Blvd.  
Chicago, IL 60604

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

Cynthia Kawakami (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

31. 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.

32. 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**

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

34. 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.

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

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



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

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

39. 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.

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

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

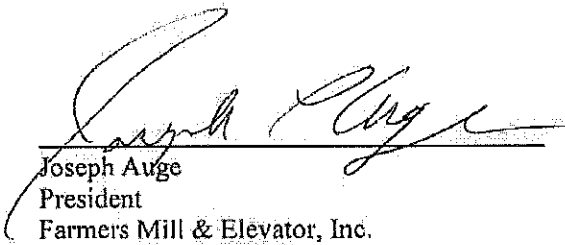
42. The parties' consent to service of this CAFO by e-mail at the following valid e-mail addresses: kawakami.cynthia@epa.gov (for Complainant), and jared.peterson@fmjlaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R.

§ 22.6.

**Farmers Mill & Elevator, Inc., Respondent**

Date

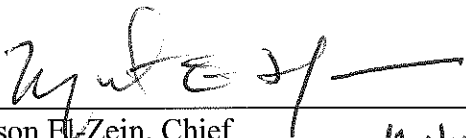
12/20/19

  
\_\_\_\_\_  
Joseph Auge  
President

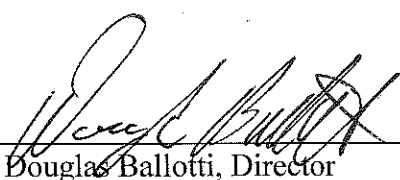
Farmers Mill & Elevator, Inc.

U.S. Environmental Protection Agency, Complainant

1-8-2020  
Date

  
Jason El-Zein, Chief  
Emergency Response Branch 1  
U.S. Environmental Protection Agency  
Region 5  
*Michael E. Hars for JEZ*

1/9/2020  
Date

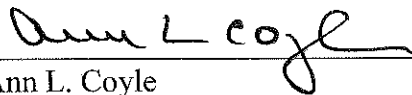
  
Douglas Ballotti, Director  
Superfund & Emergency Management Division  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Farmers Mill & Elevator, Inc., Castle Rock, Minnesota**  
**Docket No. CERCLA-05-2020-0001**

**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.

1/10/20  
Date

  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

In the Matter of: **Farmers Mill & Elevator, Inc., Castle Rock, Minnesota**  
Docket No. CERCLA-05-2020-0001

**Certificate of Service**

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on January 10, 2020 in the following manner to the addressees:

Copy by E-mail

Attorney for Respondent: Jared D. Peterson  
Attorney  
Fafinski Mark & Johnson, P.A.  
700 North Minnesota Street, Suite B  
New Ulm, Minnesota 56073  
(855)-806-1525  
[jared.peterson@fmjlaw.com](mailto:jared.peterson@fmjlaw.com)

Copy by E-mail  
For Respondent:

Joseph Auge  
President  
Farmers Mill & Elevator, Inc.  
[joeauge@farmersmill.com](mailto:joeauge@farmersmill.com)

Copy by E-mail to

Attorney for Complainant: Cynthia Kawakami  
[kawakami.cynthia@epa.gov](mailto:kawakami.cynthia@epa.gov)

Copy by E-mail to

Regional Judicial Officer: Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: January 10, 2020



LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5