

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
K.R.U., Ltd. d/b/a)	Docket Nos.
Feed Energy Company)	EPCRA-07-2008-0004
20160 Kelting Ave.)	CAA-07-2008-0024
Pacific Junction, Iowa 51561)	
)	
Respondent.)	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII ("EPA" or "Complainant") and Feed Energy Company (Respondent) have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the first date of alleged violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated EPCRA Section 313, 42 U.S.C. § 11023, and the regulations promulgated thereunder and codified at 40 C.F.R. Part 372; and the provisions governing the requirement to implement a Risk Management Plan as required by 40 C.F.R. Part 68 and CAA Section 112(r), 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement

and Final Order serves as notice pursuant to CAA Section 113(d)(2)(A), 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of EPA, and the Regional Administrator, EPA Region VII, is the Director, Air, Waste, and Management Division, EPA, Region VII.

4. The Respondent is K.R.U. Ltd. d/b/a Feed Energy Corporation, located at 3121 Dean Avenue, Des Moines, Iowa. Respondent is a company incorporated under the laws of Iowa.

Statutory and Regulatory Framework

5. EPCRA Section 313 and 40 C.F.R. §§ 372.22 and 372.30, require the owner or operator of a facility to complete and submit a toxic chemical release inventory form (Form R or Form A) to the Administrator of the EPA and/or his designee and to the State in which the subject facility is located by July 1 for the preceding calendar year for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during that preceding calendar year provided the following elements are satisfied:

a. The facility has 10 or more full-time employees; and

b. The facility is in a SIC code, which is defined as follows: major group 10 (except 1011, 1081, 1094); 12 (except 1241); 20-39; 4911, 4931, 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C, 42 U.S.C. § 6921 et seq.); 5169; 5171; and 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and

c. The facility manufactured, processed, or otherwise used a toxic chemical listed under EPCRA Section 313(c) and 40 C.F.R. § 372.65, in excess of the threshold quantity established under EPCRA Section 313(f) and 40 C.F.R. § 372.25, and/or 40 C.F.R. § 372.28, during the calendar year.

6. CAA Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection and correction requirements for listed regulated substances. The regulations at 40 C.F.R. Part 68, which implement CAA Section 112(r)(7), set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a risk management plan (RMP) that must be submitted to EPA. These regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program. The RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated

substance in a process no later than the latter of June 21, 1999; or the date on which a regulated substance is first present above the threshold quantity in a process.

7. EPCRA Section 325(b)(2) authorizes a civil penalty for violations of the requirements of EPCRA Section 313 of not more than \$25,000 per day for each day during which the violation continues. Under the Debt Collection Improvement Act of 1996 as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day for each day a violation continues may be assessed for violations of EPCRA Section 313 that occur after March 15, 2004.

8. CAA Section 113(d), 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the Clean Air Act referenced therein, including Section 112(r)(7). CAA Section 113(d), 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997 through March 15, 2004 and \$32,500 per day for each violation that occurs after March 15, 2004.

Violations

General Allegations

9. EPA alleges that Respondent has violated EPCRA Section 313, CAA Section 112(r), and the federal regulations promulgated pursuant to these statutes as follows:

10. Complainant hereby incorporates the allegations contained in paragraphs 1 through 8 above, as if fully set forth herein.

11. Respondent is, and at all times referred to herein, was a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

12. At all times relevant hereto, Respondent owned and operated and was in charge of Feed Energy Company located at 20160 Kelting Ave., Pacific Junction, Iowa.

13. Respondent manufactured, processed, or otherwise used the following chemicals, at the following facility, in the reporting years specified below:

FACILITY	CHEMICAL	REPORTING YEARS
Feed Energy Company 20160 Kelting Ave., Pacific Junction, Iowa	Anhydrous Ammonia	2003, 2004, 2005

14. Anhydrous ammonia is a toxic chemical pursuant to 40 C.F.R. § 372.3, and a regulated substance pursuant to 40 C.F.R. § 68.3.

Count 1 - EPCRA

15. Complainant hereby incorporates the allegations contained in paragraphs 1 through 14 above, as if fully set forth herein.

16. At the time of the violations alleged herein, Respondent had 10 or more full-time employees at the facility identified in Paragraph 13.

17. At the time of the violations alleged herein, Respondent's facility identified in Paragraph 13, was properly and primarily classified in the North American Industry Classification System (NAICS) Code of 31111, which is a covered NAICS Code as specified at 40 C.F.R. § 372.22(b).

18. As set forth at EPCRA Section 313(f) and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds, and the reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds.

19. The toxic chemical identified above, in Paragraph 13, was manufactured, processed, or otherwise used, in excess of the applicable threshold quantity established under EPCRA Section 313(f) and 40 C.F.R. § 372.25, and/or 40 C.F.R. § 372.28, during the calendar years specified.

20. Respondent is subject to the requirements of EPCRA Section 313 and 40 C.F.R. §§ 372.22 and 372.30, because it is an owner and operator of a facility which is classified in a covered NAICS code, that employed more than 10 full-time employees, and manufactured, processed, or otherwise used a toxic chemical in excess of the threshold quantity of that chemical.

21. Respondent failed to timely submit a Form R for the chemicals and years specified in Paragraph 13 to the Administrator of EPA by July 1 of the applicable years.

22. Respondent's failure to timely submit complete and accurate Form Rs for the chemicals, reporting years, and facility specified above in Paragraph 13 is a violation of EPCRA Section 313, and of the requirements of 40 C.F.R. Part 372.

Count 2 – CAA

23. Complainant hereby incorporates the allegations contained in paragraphs 1 through 22 above, as if fully set forth herein.

24. Respondent's Pacific Junction, Iowa facility is a "stationary source" pursuant to 40 C.F.R. § 68.3.

25. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Clean Air Act, as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

26. The regulations at 40 C.F.R. § 68.3 define "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

27. Anhydrous ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

28. Respondent is subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

29. Respondent was required under Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

30. Respondent failed to: submit their five year update as required by 40 C.F.R. § 68.190 (a)(1); conduct at least one Compliance Audit as required by 40 C.F.R. § 68.58; or provide hazard review documentation or hazard assessment documentation as required by 40 C.F.R. §§ 68.22, 68.25, 68.36, 68.39, and 68.50. Respondent also failed to timely update its Emergency Contact information as required by 40 C.F.R. § 68.195.

31. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth above is a violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all EPCRA and Clean Air Act civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.
2. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.
3. Respondent neither admits nor denies the factual allegations set forth above.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.
5. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.
6. This Consent Agreement and Final Order addresses all civil and administrative claims for the EPCRA and Clean Air Act violations identified above, existing through the effective date of this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of the EPCRA and Clean Air Act or other applicable law.
7. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of EPCRA and Clean Air Act alleged in this document.
8. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 313 of EPCRA, 42 U.S.C. § 11023; and Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.
9. The effect of settlement described in paragraph 7 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 8, above, of this Consent Agreement and Final Order.
10. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a

civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

11. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the Consent Agreement and Final Order and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11001 et seq., and Clean Air Act, 42 U.S.C. § 7401 et seq., and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Forty-two Thousand One Hundred Eighty-one Dollars (\$42,181), within thirty (30) days of the effective date of this Final Order. Payment shall be by two (2) cashier's or certified checks, one (1) in the amount of: Twenty-nine Thousand Five Hundred Fifty-one Dollars (\$29,551) and one (1) in the amount of Twelve Thousand Six Hundred Thirty Dollars (\$12,630).

The first check, in the amount of \$29,551, should be made payable to the "Treasurer, United States of America," shall reference docket number CAA-07-2008-0024, and be remitted to:

**Regional Hearing Clerk
United States Environmental Protection Agency
Region VII,
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077,
St. Louis, Missouri 63197-9000.**

The second check, in the amount of \$12,630, should be made payable to the "Treasurer, United States of America," shall reference docket number EPCRA-07-2008-0004, and be remitted to:

**Regional Hearing Clerk
United States Environmental Protection Agency
Region VII,
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077,
St. Louis, Missouri 63197-9000.**

2. A copy of each check shall be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

and to:

Demetra O. Salisbury
Assistant Regional Counsel
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

5. This executed Consent Agreement and Final Order shall be returned to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By Becky Weber
Becky Weber
Division Director, Air Waste Management Division

Date 6/9/08

By Demetra O. Salisbury
Demetra O. Salisbury
Assistant Regional Counsel

Date May 30, 2008

RESPONDENT:
K.R.U. Ltd. d/b/a Feed Energy Company
Des Moines, Iowa

By Sam Schuster
Title Chief Operating Officer
Date 5-19-08

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Date June 17, 2008

IN THE MATTER OF K.R.U. Ltd. d/b/a Feed Energy Company, Respondent
Docket Nos. EPCRA-07-2008-0004 and CAA-07-2008-0024

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Demetra O. Salisbury
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Joseph G. Gamble
Duncan, Green, Brown & Langeness
A Professional Corporation
400 Locust Street, Suite 380
Des Moines, Iowa 50309

Dated: 6/18/08



Kathy Robinson
Hearing Clerk, Region 7