



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

DEC 31 2015

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Jamie Southard  
Safety & Regulatory Director  
Effingham Equity  
201 West Roadway Avenue  
Effingham, Illinois 62401

Re: Effingham Equity, Effingham, Illinois, Consent Agreement and Final Order  
Docket No. **CAA-05-2016-0011**

Dear Mr. Southard:

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 other original CAFO with the Regional Hearing Clerk on December 31, 2015. Please pay the civil penalty in the amount of \$6,800 in the manner prescribed in paragraph(s) 28 thru 30 and reference your check with the number BD N/A and the docket number. In addition, your client must complete a Supplemental Environmental Project worth at least \$50,000 as prescribed in paragraphs 34 thru 36.

Please feel free to contact Silvia Palomo at (312) 353-2172 if you have any questions regarding the enclosed documents. Please direct any legal questions to Steven P. Kaiser, Associate Regional Counsel at (312) 353-3804. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosures Consent Agreement and Final Order

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

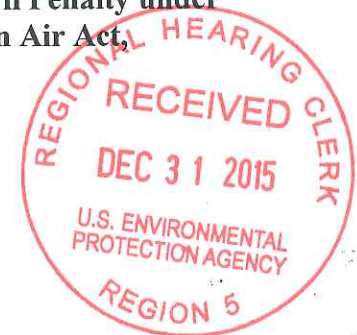
IN THE MATTER OF:

Effingham Equity, Inc.  
201 West Roadway Avenue  
Effingham, Illinois 60421

Respondent.

) Docket No. CAA-05-2016-0011  
)

) Proceeding to Assess a Civil Penalty under  
) Section 113(d) of the Clean Air Act,  
) 42 U.S.C. § 7413(d)  
)  
)



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 alleged 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 (EPA), Region 5, Chicago, Illinois.

3. The Respondent is Effingham Equity, Inc., a corporation doing business in the State of Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be simultaneously commenced and concluded 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. In accordance with Section 112(r) of the Act, on June 20, 1996, EPA promulgated regulations to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur. These regulations, known as the Risk Management Program regulations, are codified at 40 C.F.R. Part 68.

10. The Risk Management Program regulations apply to all stationary sources with processes that contain more than a threshold quantity of a regulated substance. The List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention is codified at 40 C.F.R. § 68.130.

11. Anhydrous ammonia is a “regulated substance,” as that term is defined in Section 112(r)(3) of the Act and 40 C.F.R. § 68.3. *See* 40 C.F.R. § 68.130, Table 1.

12. The “threshold quantity” (as that term is defined in 40 C.F.R. § 68.3) for anhydrous ammonia is 10,000 pounds in a process. *See* 40 C.F.R. § 68.130, Table 1.

13. The Risk Management Program regulations require that the owner or operator of a facility subject to the regulations develop and implement a Risk Management Plan (RMP) for

preventing accidental releases to the air and minimizing the consequences of releases that do occur. *See* 40 C.F.R. § 68.12.

14. A facility's RMP must, among other things, describe the stationary source and regulated substances handled at the facility. *See* 40 C.F.R. § 68.155(b).

15. A facility's RMP must be submitted no later than: June 21, 1999; three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or the date on which a regulated substance is first present in more than a threshold quantity in a process, whichever is later. *See* 40 C.F.R. §§ 68.10(a) and 68.150.

16. The owner or operator of a stationary source shall revise and update the RMP submitted under 40 C.F.R. § 68.150 at least once every five years from the date of the initial submission or most recent required update. *See* 40 C.F.R. § 68.190(b)(1)

17. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation, up to a total of \$270,000 for violations that occurred from March 15, 2004 through January 12, 2009; and may assess a civil penalty of up to \$37,500 per day of violation up to \$295,000 for violations that occurred after January 12, 2009, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

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

18. The Respondent owns and operates fourteen facilities in Illinois. These facilities are located at the following addresses: 2755 East 1100<sup>th</sup> Ave, Altamont, Illinois; 537 East County Road 200 North, Arcola, Illinois; 23801 East State Highway, Dieterich, Illinois; Route 37 North, Farina, Illinois; Rural Route 1, Gays, Illinois; Rural Route 2, Lovington, Illinois; 16990 North Second Street, Marshall, Illinois; 15910 North 2300<sup>th</sup> Street, Montrose, Illinois; 367 North 2500<sup>th</sup> East Road, Pana, Illinois; 14626 East 1050<sup>th</sup> Ave., Robinson, Illinois; 1864 State Route 16,

Rosamond, Illinois; 3533 Tonti Road, Salem, Illinois; 218 Vine Street, Stewardson, Illinois; and 3795 South Highway 130, West Liberty, Illinois.

19. At each of these facilities, the Respondent is engaged in the business of distributing seeds, fertilizers and other agricultural products.

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

21. Each facility is a "stationary source" as that term is defined at 40 C.F.R. § 68.3.

22. For purposes of the requirements at 40 C.F.R. Part 68, the Respondent is the "owner or operator" of these facilities as that term is defined at Section 112(a)(9) of the Act.

23. The Respondent stores more than 10,000 lbs. of anhydrous ammonia at each of these facilities. The anhydrous ammonia is stored and sold to farmers as fertilizer.

24. In the RMPs submitted by the Respondent in June 2009, the Respondent reported that each of its facilities store anhydrous ammonia.

25. On August 29, 2014, EPA sent requests for information to the Respondent's fourteen facilities under the authority of Section 114(a) of the Act, 42 U.S.C. § 7414(a). These requests were issued because EPA had not received from any of these facilities an updated RMP within the five year deadline as required by 40 C.F.R. § 68.190(b)(1).

26. The information submitted by the Respondent in response to EPA's request for information confirmed that each of the facilities had failed to submit a revised and updated RMP within five years of the initial submission or the submission of the most recent update in violation of as a 40 C.F.R. § 68.190.

**Civil Penalty**

27. Complainant has determined that an appropriate civil penalty to settle this action is \$6,800, an amount equal to twenty-five percent of the originally proposed settlement amount, \$27,200. In determining the penalty amount, Complainant has considered the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e); the facts and circumstances of this case; and other factors such as cooperation, prompt return to compliance, and Respondent's agreement to perform a supplemental environmental project as described below. Complainant has also considered U.S. EPA's guidance entitled, *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7)*, and 40 C.F.R. Part 68 (June 2012).

28. Within 30 days after the effective date of this CAFO, Respondent must pay the civil penalty in the amount of \$6,800 by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

29. In the comment area of the electronic funds transfer, Respondent should state its name, the docket number of this CAFO and the billing document number.

30. 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 Boulevard  
Chicago, IL 60604

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

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

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

32. If Respondent does not pay timely the civil penalty, 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.

33. 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.

### **Supplemental Environmental Project**

34. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by preventing and reducing the risk of a release of anhydrous ammonia. The SEP requires the Respondent to install a remotely operated shutdown system on anhydrous ammonia storage tanks. The Respondent will install a system on the anhydrous ammonia storage tanks at the following facilities: Effingham Equity, 2755 East 1100<sup>th</sup> Ave, Altamont, Illinois; Effingham Equity, 23801 East State Highway, Dieterich, Illinois; Effingham Equity, 822 S. 2<sup>nd</sup> Street, Greenville, Illinois; Effingham Equity, 16990 North Second Street, Marshall, Illinois; and Effingham Equity, 218 Vine Street, Stewardson, Illinois.

35. Respondent must spend at least \$50,000 for the purchase and installation of the SEP as a condition of receiving the reduction in the penalty amount of the originally proposed penalty of \$27,200 to \$6,800.

36. Respondent will complete the SEP as follows:

- a. By December 30, 2015, Respondent must (1) complete the installation of the remotely operated shut down systems on two facilities, and (2) begin operating the systems.
- b. By August 30, 2016, Respondent must (1) complete the installation of the remotely operated shut down systems on the other facilities, and (2) begin operating the systems.

37. Respondent certifies as follows:

I certify that Effingham Equity, Inc. is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Effingham Equity, Inc. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.



I certify that Effingham Equity, Inc. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

38. Respondent must submit status reports providing information as to the progress it has made in completing the SEP as follows:

- a. By January 30, 2016, Respondent must submit a written report that includes a detailed description of the status of the installation of the remotely operated shutdown systems; the report should include supporting documentation such as work orders, purchase orders, and/or invoices for the equipment.

39. Respondent must submit a SEP completion report to EPA within 30 days after completion of the SEP. This report shall contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution prevention, if feasible).

40. Respondent must submit all notices and reports required by this CAFO by first class mail to:

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

41. In each report that Respondent submits under paragraphs 38 and 39 above, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

42. Following receipt of the SEP completion report described in paragraph 39 above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP completion report;
- b. There are deficiencies in the SEP as completed or in the SEP completion report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP completion report and EPA will seek stipulated penalties under paragraph 44 below.

43. If EPA exercises option b. under Paragraph 42 above, Respondent may object in writing to the deficiency notice within 30 days of receiving the notice. The parties will have 60 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not

complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 46 below.

44. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b. below, if Respondent does not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 38 above, as it may be extended under paragraph 48, Respondent must pay an additional penalty of \$20,400.
- b. If Respondent does not complete the SEP satisfactorily according to the requirements of this CAFO, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certifies, with supporting documents, that it has spent at least 90 percent of the amount set forth in paragraph 35 above, Respondent will not be liable for any stipulated penalty under subparagraph a. above.
- c. If Respondent completes the SEP satisfactorily according to the requirements of this CAFO, but spends less than 90 percent of the amount set forth in paragraph 35 above, Respondent must pay an additional civil penalty of \$2,520.
- d. If Respondent fails to comply with the schedule in paragraph 36 above for implementing the SEP, fails to submit timely each of the status updates required under paragraph 36 above, or fails to submit timely the SEP completion report required by paragraph 37 above, as each may be extended under paragraph 48, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 <sup>st</sup> through 14 <sup>th</sup> day
\$250	15 <sup>th</sup> through 30 <sup>th</sup> day
\$500	31 <sup>st</sup> day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until Respondent achieves compliance with the milestone.

45. EPA's determination of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete SEP will bind Respondent.

46. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 28 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts as provided in paragraph 33 above.

47. Any public statement that Respondent makes referring to the SEP must include the following language, "Effingham Equity, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Effingham Equity, Inc. for violations of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r)."

48. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b. above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

49. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

### **General Provisions**

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

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

52. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws and regulations. Except as provided in Paragraph 50, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

53. Respondent certifies that it is complying fully with Section 112(r) of the Act and 40 C.F.R. Part 68.

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

55. 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.

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

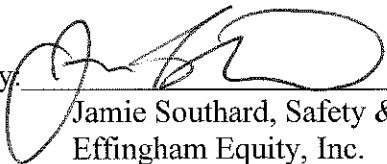
57. This CAFO constitutes the entire agreement between the parties.

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

**In the Matter of Effingham Equity, Inc., Effingham, Illinois**  
**Docket No. CAA-05-2016-0011**

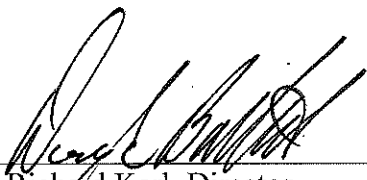
**Effingham Equity, Inc., Respondent**

Date: 11/20/2015

By:   
\_\_\_\_\_  
Jamie Southard, Safety & Regulatory Director  
Effingham Equity, Inc.

**United States Environmental Protection Agency, Complainant**

Date: 10/21/2015

By:   
\_\_\_\_\_  
for Richard Karl, Director  
Superfund Division

**In the Matter of Effingham Equity, Inc., Effingham, Illinois**  
**Docket No. CAA-05-2016-0011**

**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.

12/23/2015  
Date

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

In the matter of: **Effingham Equity, Inc., Effingham, Illinois**  
Docket Number: **CAA-05-2016-0011**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on December 31, 2015, this day in the following manner to the addressees:

Copy by certified mail  
return-receipt requested:

Jamie Southard  
Safety & Regulatory Director  
Effingham Equity, Inc.  
201 West Roadway  
Effingham, Illinois 62401

Copy by e-mail to  
Complainant:

Steven P. Kaiser  
kaiser.steven@epa.gov

Copy by e-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated: December 31, 2015

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

CERTIFIED MAIL RECEIPT NUMBER(S):

7011 1150 0000 2640 6462