



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

APR 3 2014

REPLY TO THE ATTENTION OF:

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

Don Hellriegel  
President, Board of Directors  
Andres & Wilton Farmers Grain & Supply Co.  
C/O Matthew C. Read  
Hodge, Dwyer & Driver  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, IL 62705-5776


Dear Mr. Hellriegel:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Andres & Wilton Farmers Grain & Supply Co. \_\_\_\_\_ . As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on APR 7 2014 .

Pursuant to paragraph 31 of the CAFO, Andres & Wilton Farmers Grain & Supply Co. must pay the civil penalty within 30 days of APR 7 2014 . Your check must display the case name Andres & Wilton Farmers Grain & Supply Co. and the docket number CAA-05-2014-0016

Please direct any questions regarding this case to Andre Daugavietis, Associate Regional Counsel, (312)886-6663.

Sincerely,



Nathan A. Frank, P.E., Chief  
Air Enforcement Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Andre Daugavietis, C-14J  
Jennifer Wilson, AE-17J  
Eric Jones, Illinois Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of: ) Docket No. CAA-05-2014-0016  
)  
Andres & Wilton Farmers Grain & ) Proceeding to Assess a Civil Penalty  
Supply Co. )  
Peotone, Illinois, ) Under Section 113(d) of the Clean Air Act,  
) 42 U.S.C. § 7413(d)  
Respondent. )  
\_\_\_\_\_ )

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**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 CAA), 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.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Andres & Wilton Farmers Grain & Supply Co. (Andres & Wilton), an Illinois Corporation.
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 to the terms of this 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. On February 21, 1980, EPA approved IPCB Rule 203 as part of the federally enforceable State Implementation Plan (SIP) for the State of Illinois. See 45 Fed. Reg. 11493. IPCB Rule 203 is codified at 35 Ill. Admin. Code §§ 212.461, 212.462 and 212.463, and set forth in the Illinois SIP at Rule 203(d)(9).

10. The Illinois SIP at Rule 203(d)(9)(A) [35 Ill. Admin. Code § 212.461(b)] establishes certain housekeeping practices that all grain-handling and grain-drying operations must implement regardless of size, including:

- i. Air pollution control devices shall be checked daily and cleaned as necessary to insure proper operation.
- ii. Cleaning and Maintenance.
  - a. Floors shall be kept swept and cleaned from boot pit to cupola floor. Roof or bin decks and other exposed flat surfaces shall be kept clean of grain and dust that would tend to rot or become airborne.
  - b. Cleaning shall be handled in such a manner as not to permit dust to escape to the atmosphere.
  - c. The yard and surrounding area, including but not limited to ditches and curbs, shall be cleaned to prevent the accumulation of rotting grain.

iii. Dump pit.

- a. Aspiration equipment shall be maintained and operated.
- b. Dust control devices shall be maintained and operated.

iv. Head House. The head house shall be maintained in such a fashion that visible quantities of dust or dirt are not allowed to escape to the atmosphere.

v. Property. The yard and driveway of any source shall be asphalted, oiled, or equivalently treated to control dust.

vi. Housekeeping Check List. Housekeeping check lists to be developed by the Agency shall be completed by the manager and maintained on the premises for inspection by Agency personnel.

11. The Illinois SIP at Rule 203(d)(9)(B) [35 Ill. Admin. Code § 212.462] applies to grain-handling operations with a throughput greater than 300,000 bushels/year. The pollution control requirements in Rule 203(d)(9)(B) [35 Ill. Admin. Code § 212.462] apply to all elevators in major population areas and elevators that are not in major population areas that have violated the Illinois SIP at Rule 203(d)(9)(A) [35 Ill. Admin. Code § 212.461(b)] or Section 9(a) of the Illinois Environmental Protection Act.

12. The Illinois SIP at Rule 203(d)(9)(B)(ii)(a)(1) [35 Ill. Admin. Code § 212.462(b)(1)(A)] requires that grain-handling operations apply induced draft to major dump pits and their associated equipment (including, but not limited to boots, hoppers and legs) to such an extent that a minimum face velocity is maintained at the effective grate surface sufficient to contain particulate emissions generated in unloading operations in accordance with the formula provided.

13. The Illinois SIP at Rule 203(d)(9)(B)(ii)(a)(2) [35 Ill. Admin. Code § 212.462(b)(1)(B)] requires that the induced draft air stream from the dump pits for grain-handling facilities having a grain throughput not greater than 2,000,000 bushels per year or located outside of a major population area is collected and conveyed through air pollution control

equipment which has an overall rated and actual particulate collection efficiency of not less than 90% by weight.

14. The Illinois SIP at Rule 203(d)(9)(B)(ii)(a)(3) [35 Ill. Admin. Code § 212.462(b)(1)(C)] requires that the induced draft air stream from the dump pits of grain-handling facilities having a grain throughput greater than 2,000,000 bushels per year and located inside of a major population area is collected and conveyed through air pollution control equipment which has an overall rated and actual particulate collection efficiency of not less than 98% by weight.

15. The Illinois SIP at Rule 203(d)(9)(B)(ii)(a)(4) [35 Ill. Admin. Code § 212.462(b)(1)(D)] requires that means or devices (including, but not limited to quick-closing doors, air curtains or wind deflectors) be employed to prevent a wind velocity in excess of 50% of the induced draft face velocity at the pit; provided, however, that such means or devices do not have to achieve the same degree of prevention when the ambient air wind exceeds 25 mph.

16. The Illinois SIP at Rule 203(d)(9)(B)(iv)(a) [35 Ill. Admin. Code § 212.462(d)(1)] requires truck and hopper car loading to “employ socks, sleeves or equivalent devices which extend 6 inches below the sides of the receiving vehicle except for topping off.”

17. The Illinois SIP at Part 211 [35 Ill. Admin. Code § 211.3610] defines “major populations area” to include Will County, Illinois.

18. 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 SIP violations that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for SIP violations that occurred after January 12, 2009 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

19. Section 113(d)(1) 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.

20. 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 CAFO.

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

21. Andres & Wilton owned and operated a grain elevator located at 28451 South Route 45 Andres, Peotone, Will County, Illinois 60468 (the Facility) until February 27, 2013. The Facility was established in 1913.

22. The Facility processes soybeans, corn, oats and wheat with the aid of trucks, dump pits, belt conveyors, two dryers and storage bins in a manner that creates particulate matter.

23. The Facility has a total annual grain throughput of at least 300,000 bushels. During 2011, the Facility processed 1.36 million bushels of grain.

24. EPA performed an inspection at the Facility on July 16, 2012, and observed the following:

- a. Dump pit area: The Major Dump Pit was open at both ends and the doors on the shed were not used. The dump pit did not have induced draft, and, during the inspection, a pile of grain had accumulated on the floor grating of the dump pit in

use. The pile was slowly draining to the piping beneath the floor. Visible emissions were observed while trucks were unloading.

- b. Property: Dirt and gravel driveways were dusty. Grain was scattered on the dirt driveways and on the yard of the Facility.
- c. Loadout Areas: sleeves or equivalent devices were not extending into trucks that were being loaded. Visible emissions were observed while trucks were being loaded.

25. During the inspection, representatives of the Facility indicated that the roads are not watered except during harvest time.

26. EPA alleges that by operating a dump pit without induced draft, Andres & Wilton violated the Illinois SIP at Rule 203(d)(9)(B)(ii)(a)(1) and Rule 203(d)(9)(B)(ii)(a)(2) [35 Ill. Admin. Code § 212.462(b)(1)(A) and 35 Ill. Admin. Code § 212.462(b)(1)(B)].

27. EPA alleges that by operating a dump pit without doors, Andres & Wilton violated the Illinois SIP at Rule 203(d)(9)(B)(ii)(a)(4) [35 Ill. Admin. Code § 212.462(b)(1)(D)].

28. EPA alleges that by operating loadouts without socks or sleeves that extend six inches into trucks, Andres & Wilton violated the Illinois SIP at Rule 203(d)(9)(B)(iv)(a) [35 Ill. Admin. Code § 212.462(d)(1)].

29. EPA alleges that by operating the Facility without preventing dust from the roads, parking lots, and driveways and not properly performing housekeeping, Andres & Wilton violated 203(d)(9)(A) [35 Ill. Admin. Code § 212.461(b)].

#### **Civil Penalty**

30. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, the company's cooperation, willingness to come into



compliance and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$40,000.

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$40,000 civil penalty by check. For checks sent by regular U.S. Postal Service mail, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

For checks sent by express mail (non-U.S. Postal Service which won't deliver mail to P.O. Boxes) sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note Respondent's name, docket number of this CAFO.

32. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Andre Daugavietis (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

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

34. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 45, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

35. 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 pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. 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. 42 U.S.C. § 7413(d)(5).

#### **Supplemental Environment Project**

36. Respondent agrees to complete a supplemental environmental project (SEP) designed to protect the public health and the environment by providing funding toward replacing an HVAC system at the Peotone Park District Daycare Center located at 8 Blue Devil Drive Peotone, IL with a more energy efficient system that has zoned heating and a MERV 8 filter to

aid in the removal of spores, dust mite debris, cat and dog dander and other small particles. The Peotone Park District Daycare Center is located in close proximity to the Facility and the SEP project is intended to reduce the amounts of CO<sub>2</sub>, PM, SO<sub>2</sub>, and NO<sub>x</sub> entering the atmosphere.

37. Respondent must complete the SEP as follows. Respondent must provide the Peotone Park District with at least \$80,000 toward the purchase of two new, energy efficient HVAC systems that will create zoned heating and air conditioning at the Peotone Park District Daycare Center within 30 days of the effective date of the order. One is a 12 ton unit and will be used in the front of the building. The other is a 10 ton unit and will be used in the rear of the building. The units are to be owned and operated by the Peotone Park District.

38. Respondent certifies as follows:

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

I certify that Andres & Wilton 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.

39. EPA may inspect Respondent's records at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

40. Respondent must submit a SEP completion report to EPA within 60 days of the effective date of the order. This report must contain copies of cancelled check(s), or other payment method(s), and any correspondence used to complete the SEP.

41. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 32, above.

42. In each report that Respondent submits as provided by this CAFO, 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.

43. Following receipt of the SEP completion report described in paragraph 40, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 45.

44. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 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 45, below.

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

- a. If Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$80,000.
- b. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 <sup>st</sup> through 14 <sup>th</sup> day
\$200	15 <sup>th</sup> through 30 <sup>th</sup> day
\$400	31 <sup>st</sup> day and beyond

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

47. 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 31, above, and will pay interest and nonpayment penalties on any overdue amounts.

48. Any public statement that Respondent makes referring to the SEP must include the following language: "Andres & Wilton Farmers Grain & Supply Co. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Andres & Wilton for violations of the Clean Air Act."

49. 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 a 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.

50. 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**

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

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

53. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 51, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

54. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

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

56. 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.

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

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

**Andres & Wilton Farmers Grain & Supply Co., Respondent**

3-17-14  
Date

Don Hellriegel  
Don Hellriegel  
President, Board of Directors  
Andres & Wilton Farmers Grain & Supply  
Co.

**United States Environmental Protection Agency, Complainant**

3/31/14  
Date

George T. Czerniak  
George T. Czerniak  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5


**Consent Agreement and Final Order**  
**In the Matter of: Andres & Wilton Farmers Grain and Supply Company**  
**Docket No. CAA-05-2014-0016**



**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.

4-3-2014  
Date

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



**Consent Agreement and Final Order**  
**In the Matter of: Andres & Wilton Farmers Grain & Supply Co.**  
**Docket No. CAA-05-2014-0016**



**Certificate of Service**

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number **CAA-05-2014-0016** with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Don Hellriegel  
President, Board of Directors  
Andres & Wilton Farmers Grain & Supply Co.  
C/O Matthew C. Read  
Hodge, Dwyer & Driver  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, IL 62705-5776

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U.S. EPA - REGION 5

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

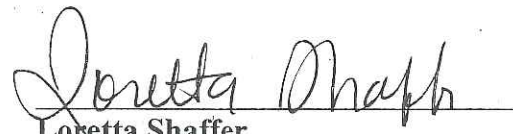
Ann Coyle  
Regional Judicial Officer (C-14J)  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Eric Jones  
Manager, Compliance Unit  
Bureau of Air  
Illinois Environmental Protection Agency  
1201 Grand Avenue East  
Springfield, Illinois 62702



On the 7 day of April 2014.

  
Loretta Shaffer  
Administrative Program Assistant  
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

70091680000076700788