



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUL 13 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard W. Sobalvarro, Esq.
Rajkowski Hansmeier
11 7th Avenue North
P.O. Box 1433
St. Cloud, MN 56302

Re: Crystal Valley Cooperative, Crystal Lake, Minnesota
Consent Agreement and Final Order
Docket No. CERCLA-05-2011-0017

Dear Mr. Sobalvarro:

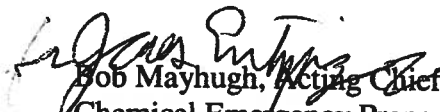
Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on July 13, 2011.

Please have your client pay the CERCLA civil penalty in the amount of \$7,858 in the manner prescribed in paragraphs 27 and 28, and reference your check with the billing document number 2751130B016 and the docket number CERCLA-05-2011-0017.

The payment is due on August 12, 2011.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Tamara Carnovsky Associate Regional Counsel, at (312) 886-2250. Thank you for your assistance in resolving this matter.

Sincerely,


Bob Mayhugh, Acting Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

**cc: Steve Tomylanovich
MN SERC Contact (w/enclosure)**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CERCLA-05-2011-0017
)	
Crystal Valley Cooperative)	Proceeding to Assess a Civil Penalty Under
Lake Crystal, Minnesota)	Section 109(b) of the Comprehensive
)	Environmental Response, Compensation, and
)	Liability Act.
Respondent.)	
_____)	

RECEIVED
JUL 13 2011

Consent Agreement and Final Order
Preliminary Statement

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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 Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. The Respondent is Crystal Valley Cooperative, a 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 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. 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 hazardous substance's reportable quantity.

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 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 the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, to \$32,500 per day of violation for

violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violation

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 time relevant to this CAFO, Respondent was in charge of the ammonia nurse tank located on a farmer’s field in Minnesota, Blue Earth County, Vernon Center Township, Section 5, Northwest ¼ (facility).

14. Respondent’s facility consists of equipment, storage container, motor vehicle, or any site or area where a hazardous substance has been deposited, stored, disposed of, or 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. 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. 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 November 5, 2008, at or about 12:20 p.m. Central time, a release occurred from Respondent’s facility of approximately 1,448 pounds of ammonia (the release).

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

20. During the release, approximately 1,448 pounds of ammonia spilled, leaked, pumped, poured, 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 November 5, 2008, at approximately 12:20 p.m. Central time.

23. Respondent notified the NRC of the release on November 5, 2008, at 3:06 p.m. Central time.

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

25. 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

26. Complainant has determined that an appropriate civil penalty to settle this action is \$7,858 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violation, Respondent’s agreement to perform a supplemental environmental project, 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 (CERCLA/EPCRA Enforcement Response Policy).

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,858 civil penalty for the CERCLA violation. Respondent must pay the penalty by ACH electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

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

In the comment or description field of the electronic funds transfer, state the following: Crystal Valley Cooperative, docket number of this CAFO, and the billing document number 2751130B016

28. Respondent must send a copy of the payment to:

Ruth McNamara, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Tamara Carnovsky, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

30. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 43, below, 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.

31. 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.

Supplemental Environmental Project

32. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by purchasing emergency response equipment for local fire departments.

33. Respondent must complete the SEP as follows:

By July 31, 2011 Respondent must purchase and deliver the emergency response equipment to the fire departments as identified on Exhibit A to this CAFO.

34. Respondent must spend at least \$29,468 to purchase the fire equipment.

35. Respondent certifies that it 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 it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

36. Respondent certifies to the best of its knowledge and belief after reasonable inquiry that each fire department receiving the emergency response equipment 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. Respondent also certifies that, to the best of its 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 of this settlement.

37. Respondent must maintain copies of the underlying data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying data to U.S. EPA within seven days of U.S. EPA's request for the information.

38. Respondent must submit a SEP completion report to U.S. EPA by August 31, 2011. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Itemized costs of goods used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods;
- c. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- d. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

39. Respondent must submit all notices and reports required by this CAFO by first class mail to Ruth McNamara at the address provided in paragraph 28, above.

40. 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 its general manager or 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.

41. Following receipt of the SEP completion report described in paragraph 38, above, U.S. 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 U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 43.

42. If U.S. 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 U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 43, below.

43. 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 did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 33, Respondent must pay a penalty of \$23,576.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 34, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 34, Respondent must pay a penalty of \$2,357.
- d. 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:

Penalty Per Violation Per Day

\$ 500

\$1,000

\$1,500

Period of Violation

1st through 14th day

15th through 30th day

31st day and beyond

44. U.S. 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.

45. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 27-28, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

46. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a)."

47. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology purchased and delivered by Respondent in connection with the SEP under the terms of this CAFO.

48. 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

49. This CAFO resolves only Respondent's liability for federal civil penalties for the violation alleged in the CAFO.

50. 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.

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

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

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

54. The terms of this CAFO bind Respondent and 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 attorney's fees in this action.

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

**In the Matter of: Crystal Valley Cooperative, Lake Crystal, Minnesota
Docket No.**

Crystal Valley Cooperative, Respondent

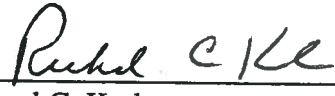
6-20-2011
Date



Roger Kienholz
General Manager
Crystal Valley Cooperative

U.S. Environmental Protection Agency, Complainant

7-8-11
Date



Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Crystal Valley Cooperative, Lake Crystal, Minnesota
Docket No. CERCLA-05-2011-0017

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.

7-11-11

Date



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

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of: Crystal Valley Cooperative, Lake Crystal, Minnesota
Docket No. CERCLA-05-2011-0017

Certificate of Service

I, Ruth McNamara, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed a second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Richard W. Sobalvarro, Esq.
Rajkowski Hansmeier
11 7th Avenue North
P.O. Box 1433
St. Cloud, MN 56302

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JUL 13 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 13th day of July, 2011

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5

Exhibit A

Equipment		DESCRIPTION	VENDOR
Butterfield Fire	\$ 1,500.00 Additional Turnout Gear	Personnel Safety Gear, used for Hazardous Materials Incidents	Fire Safety USA 3253 19 th street NW Rochester, Mn 55901
Butterfield Fire Dept. 120 East Brown St Comfrey, MN 56019	\$ 800.00 Additional Turnout Gear	Personnel Safety Gear, used for Hazardous Materials Incidents	Fire Safety USA
Comfrey Fire Dept. 120 East Brown St Comfrey, MN 56019	\$ 1,072.35 2 Motorola Minitor V Pagers	Emergency Communication , used for Response to Haz Mat Scene	Alpha Wireless 1115 Cross Street North Mankato, Mn 56003
Courtland / Nicollet Fire	\$ 800.00 Victim Rescue Tube	Personnel Extracation Tool, used for Hazardous Environment Incidents	Fire Safety USA 3253 19 th street NW Rochester, Mn 55901
Courtland / Nicollet Fire	\$ 1,500.00 Pro Pak Foam Unit	Foam generating unit used to smother fire & volittle fumes/Haz Mat	Metro Fire 13915 Lincoln st NE Ham Lake, MN 55304
Courtland / Nicollet Fire	\$ 157.50 Additional Funds Pro Pak Foam Unit	Foam generating unit used to smother fire & volittle fumes/Haz Mat	Metro Fire
Darfur Fire Dept.	\$ 669.00 4 stream lights/flood	Personnel Safety Gear, used for Hazardous Materials Incidents	Heinman Fire Equip 2320 NW Blvd Ashton, IA 51232
Darfur Fire Dept.	\$ 560.00 Dewalt 18 volt tool pak	18 volt portable power tool & attachments, used for extrication, ventilation or remediation /Haz Mat scene	Northern States Supply 600 Industrial DR SW Wilmar, MN
ELYSIAN FIRE DEPT.	\$ 1,500.00 C50 Mini-Cutter tool	additional attachment for exsisting portable power tool , used for extrication, ventilation or remediation /Haz Mat scene	Fire Safety USA 3253 19 th street NW Rochester, Mn 55901
Good Thunder Fire Dept.	\$ 1,500.00 Victim Rescue Tube	Personnel Extracation Tool, used for Hazardous Environment Incidents	Fire Safety USA 3253 19 th street NW Rochester, Mn 55901
Good Thunder Fire Dept.	\$ 501.00 1 Motorola Minitor V Pagers	Emergency Communication , used for Response to Haz Mat Scene	Alpha Wireless
Janesville Fire	\$ 1,500.00 2 Motorola Radios	Emergency Communication , used for Response to Haz Mat Scene	AnCom Communications 1800 Cliff Road E # 17 Burnsville, Mn
Janesville Fire Lake Crystal Fire Dept. P.O. Box 528 Crystal, MN 56055	\$ 406.00 Balance for Motorola Radios	Emergency Communication , used for Response to Haz Mat Scene	AnCom Communications
Lake Crystal Fire Dept. P.O. Box 528	\$ 491.66 Rescue Body Harness' 2x	Personnel Safety & Extracation items, used in Hazardous Environment /Retrival	MES-MIDAM 1751 Business Park Dr Fremont, NE 68025
LaSalle Fire	\$ 491.66 Rescue Body Harness' 2x	Personnel Safety & Extracation items, used in Hazardous Environment /Retrival	MES-MIDAM
LaSalle Fire	\$ 1,500.00 Ventilation Saw	18 volt portable power tool , used for extrication, ventilation or remediation /Haz Mat Scene	Fire Safety USA 3253 19 th street NW Rochester, Mn 55901
LaSalle Fire	\$ 610.00 Ventilation Fan	portableFAN , used for extrication, ventilation or remediation /Haz Mat Scene	Fire Safety USA

Lewisville Fire	\$	1,472.49	Portable Hose Rack	Fire Attack, Water moving Equip, used for Hazardous Materials Incidents	600 Industrial DR SW Wilmar, MN
Lewisville Fire	\$	427.00	Complete Portable Hose Rack	Fire Attack, Water moving Equip, used for Hazardous Materials Incidents	Northern States Supply Forstner Fire Apparatus 326 Benzel st Madelia, Mn 56062
Madelia Fire Dept. 120 West Main St Madelia, MN 56062	\$	1,500.00	Water Tank (Portable)	Fire Attack, Water moving Equip, used for Hazardous Materials Incidents	Forstner Fire Apparatus 3253 19 th street NW Rochester, Mn 55901
Madelia Fire Dept. 120 West Main St Madelia,	\$	450.00	Addnl Funds Water Tank (Portable)	Fire Attack, Water moving Equip, used for Hazardous Materials Incidents	Forstner Fire Apparatus Fire Safety USA
Nicollet Fire	\$	1,130.00	Safety Vests /Traffic Control Signs	Traffic Control & personnel visibility & safety items, used during remediation /Haz Mat scene	3253 19 th street NW Rochester, Mn 55901
ODIN FIRE	\$	1,500.00	water wall, Blower, AX,Harness	Traffic Control & personnel visibility & safety items, used during Remediation/Ventilation /Haz Mat Scene	Fire Safety USA 3253 19 th street NW Rochester, Mn 55901
ODIN FIRE	\$	380.00	addnl Funds water wall, Blower, AX,H	Traffic Control & personnel visibility & safety items,	Fire Safety USA Fire Safety USA
Ormsby Fire & Rescue	\$	1,500.00	Hose 2.5' 350' + 1.5" 300'	Fire Attack, Water moving Equip, used for Hazardous Materials Incidents	3253 19 th street NW Rochester, Mn 55901
Ormsby Fire & Rescue	\$	400.34	Addnl 1.5" & 2.5" Hose	Fire Attack, Water moving Equip, used for Hazardous Materials Incidents	Fire Safety USA
St James Fire Dept.	\$	700.00	Responder Gloves 13 of 34	Personnel Safety items, used in Hazardous Environment /Haz Mat Scene	MES-MIDAM 1751 Business Park Dr Fremont, NE 68025
St James Fire Dept.	\$	550.00	Responder Gloves 10 of 34	Personnel Safety items, used in Hazardous Environment /Haz Mat Scene	MES-MIDAM
Vernon Center Fire Dept.	\$	1,680.00	4 Motorola Minitor V Pagers	Emergency Communication , used for Response to Haz Mat Scene	Alpha Wireless 1115 Cross Street North Mankato, Mn 56003
Vernon Center Fire Dept.	\$	420.00	Balance of Motorola Minitor V Pagers	Emergency Communication , used for Response to Haz Mat Scene	Alpha Wireless 2-Way Radio of MN 114 N. Main St. Janesville, Mn 56003
Waldorf Fire Dept	\$	1,500.00	3 Motorola Radios	Emergency Communication , used for Response to Haz Mat Scene	2-Way Radio of MN
Waldorf Fire Dept	\$	300.00	Balance of Motorola Radios	Emergency Communication , used for Response to Haz Mat Scene	
	\$	29,469.00			