

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
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)
)
Butte Farm Supply Inc.) Docket No. CAA-07-2009-0009
Butte, Nebraska)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA), and Butte Farm Supply Inc. (Respondent), have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) 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).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirement to implement a Risk Management Plan as required by 40 C.F.R. Part 68 and Section 112(r) of the Clean Air Act, 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 Section 113(d)(2)(A) of the Act, 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 the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Butte Farm Supply Inc., 48256 St. Hwy 12, Butte, Nebraska 68722. Respondent stores anhydrous ammonia at its facility for sale.

Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Section 112(r) to the Clean Air Act, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

6. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Clean Air Act. 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.

7. The regulations at 40 C.F.R. Part 68, 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.

8. Pursuant to Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, 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.

9. Section 113(d) of the Clean Air Act, 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 for each 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). Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to 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.

Definitions

10. The regulations at 40 C.F.R. § 68.3 define “stationary source” in part, as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.

11. 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.

12. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130.

13. 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.

Alleged Violations

14. The EPA alleges that Respondent has violated the Clean Air Act and federal regulations, promulgated pursuant to the Clean Air Act, as follows:

15. Respondent is, and was at all times referred to herein, a “person” as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

16. Respondent’s facility located at 48256 St. Hwy 12, Butte, Nebraska 68722, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

17. 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.

18. On or about June 28, 2007, EPA conducted an inspection of Respondent’s facility to determine compliance with Section 112(r) of the Clean Air Act and 40 C.F.R. Part 68.

19. Records collected during the inspection showed that Respondent has exceeded the threshold quantity for anhydrous ammonia. Respondent originally filed an RMP in June of 1999.

20. 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.

21. 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.

22. Records collected during the inspection showed that Respondent failed to implement a risk management program that included all the requirements of a management system and a prevention program. Specifically, Respondent failed to implement a prevention program by failing to: (1) ensure that each employee has been trained or tested competent in the operating procedures as required by 40 C.F.R. § 68.54(a); (2) certify that they have evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart C at least every three years as required by 40 C.F.R. § 68.58; (3) maintain records supporting the implementation of 40 C.F.R. Part 68 for five years as required by 40 C.F.R. § 68.200; and (4) revise and update the risk management plan within five years of the initial submission as required by 40 C.F.R. § 68.190.

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

CONSENT AGREEMENT

24. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

25. 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.

26. Respondent neither admits nor denies the factual allegations set forth above.

27. 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.

28. 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.

29. This Consent Agreement and Final Order addresses all civil and administrative claims for the 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 Clean Air Act or other applicable law.

30. 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 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

31. The effect of settlement described in paragraph 29 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 30 above of this Consent Agreement and Final Order.

32. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty in the amount of Six Thousand Five Hundred Five Dollars (\$6,505.00) as set forth in paragraph 1 of the Final Order.

33. **Supplemental Environmental Project:** In response to the violations of the Clean Air Act in this Consent Agreement and Final Order and in settlement of this matter, although not required by the Clean Air Act or any other federal, state, or local law, Respondent agrees to implement a supplemental environmental project (SEP), as described in paragraphs 34 and 35 below, which the parties agree is intended to secure significant environmental or public health protection and improvement.

34. Within sixty (60) days of the effective date of this Consent Agreement and Final Order, Respondent shall complete the SEP by the purchasing equipment on the attached list (herein incorporated as Attachment 1) for the nearby Butte Volunteer Fire Department and Boyd County Ambulance Service, for use in emergency response actions including responses to hazardous substance and chemical spills.

35. The total expenditure for the SEP shall be not less than Sixteen Thousand Five Hundred Forty-Three Dollars (\$16,543.00). All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

36. Within sixty (60) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information:

- a) a detailed description of the SEP as implemented;
- b) a description of any operating problems encountered and the solutions thereto;
- c) a description of the specific environmental and/or public health benefits resulting from implementation of the SEP;

- d) itemized costs, documented by copies of purchase orders, receipts, or canceled checks;
- e) certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

37. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

38. The SEP Completion Report shall include the following statement of Respondent, through an officer, signed and certifying under penalty of law the following:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

39. The SEP Completion Report shall be submitted to the following:

Fatimatou Ndiaye (AWMD/CRIB)
U.S. Environmental Protection Agency, Region 7
901 N. Fifth Street
Kansas City, Kansas 66101.

40. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this Consent Agreement and Final Order and Respondent shall become liable for stipulated penalties pursuant to paragraph 45 below.

41. No portion of Respondent's expenditures on the SEP required under this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for state or local income tax purposes. Additionally, for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

42. Respondent agrees that in any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP, Respondent shall include a statement that the SEP was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Air Act.

43. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is the Respondent required to perform or develop the SEP by any other agreement, grant, or an injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

44. After receipt of the SEP Completion Report described in paragraph 36 above, EPA will notify Respondent, in writing, regarding: a) any deficiencies in the SEP report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or b) indicate that EPA concludes that the project has been completed satisfactorily; or c) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 45 herein.

45. Stipulated Penalties:

a. In the event that Respondent fails to comply with any of the terms or provision of this Consent Agreement and Final Order relating to the performance of the SEP described in paragraphs 34 and 35 above, and/or to the extent that actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraphs 34 and 35 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i) Except as provided in subparagraph ii), for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$13,235.00.

ii) If the SEP is not completed in accordance with paragraphs 34 and 35, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

iii) If the SEP is completed in accordance with paragraphs 34 and 35, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$13,235.00.

iv) If the SEP is completed in accordance with paragraphs 34 and 35, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

v) For failure to submit the SEP Completion Report required by paragraph 36 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the due date of the Completion Report stated in paragraph 36 above until the report is submitted.

b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c. Stipulated penalties for paragraph v) above shall begin to accrue on the day after performance is due, and shall continue through the final day of the completion of the activity.

d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 1 of the Final Order.

46. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

47. This Consent Agreement and Final Order shall apply to and be binding upon EPA and Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters herein comply with the terms of this Consent Agreement and Final Order.

48. 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.

49. **Late Payment Provision:** Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and charge to cover the costs of processing and handling delinquent claims. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States tax and loan rate in accordance with 31 C.F.R. § 9019(b). A charge will be assessed to cover the debt collection, including processing and handling costs and attorney's fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety

(90) days after payment is due. Any such non-payment penalty charge on the debt will be accrued from the date the penalty becomes due and is not paid, 31 C.F.R. §§ 901.9(c) and (d).

50. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

FINAL ORDER

Pursuant to the provisions of the Clean Air Act, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent, in settlement of the allegations set forth above, shall pay a civil penalty of Six Thousand Five Hundred Five Dollars (\$6,505.00) within thirty days of entry of this Final Order. Payment of the penalty shall be by cashier's or certified check which shall reference Respondent by name and the docket number, and made payable to the "United States Treasury" and remitted to:

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

2. A copy of the check should simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 N. Fifth Street
Kansas City, Kansas 66101; and

Robert W. Richards
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
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.

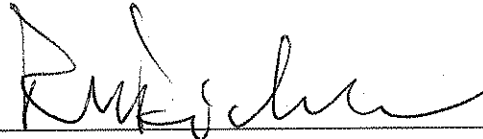
In the Matter of Butte Farm Supply Inc.
Docket Number CAA-07-2009-0009

4. This Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

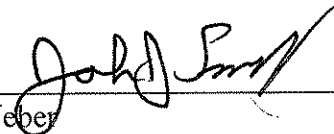
5. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

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

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By 
Robert W. Richards
Assistant Regional Counsel

Date 9/22/09

By 
Becky Weber
Director
Air and Waste Management Division

Date 9/23/09

In the Matter of Butte Farm Supply Inc.
Docket Number CAA-07-2009-0009

RESPONDENT:
BUTTE FARM SUPPLY INC.
BUTTE, NEBRASKA

By 

Title Vice President & General Manager

Date 9-4-09

In the Matter of Butte Farm Supply Inc.
Docket Number CAA-07-2009-0009

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

By Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Date Sept. 24, 2009

ATTACHMENT 1

Equipment to be purchased for the Butte Volunteer Fire Department:

| <u>Quantity</u> | <u>Item</u> |
|-----------------|----------------------------------------------------------------|
| 1 | 11-HP Honda Portable Pump |
| 1 | Gated Wyes – Aluminum Valve |
| | Airlift Suspension for F250 Grass Rig |
| | Labor to install pump, reel, and suspension on F-250 Grass Rig |
| 1 | NUPLA Heavy Duty Bolt Cutters |
| 2 | Pike Poles with D-Handles |
| 25 | Air Bottle Thread Savers |
| 2 | ½" X 150' Rescue Rope |
| 1 | Multicut Carbide Saw Chain |
| 3 | Wildland Jump Suits |
| 4 | Litebox Rechargeable Flashlights |
| 6 | Class A Foam – 5 Gallon |
| 10 | Hi Vis Safety Vests |
| 5 | Foxfury Com20 Helmet Lamps |
| 15 | Ringers Rescue Gloves |
| 10 | Fireman VIII Gloves |

Equipment to be purchased for the Boyd County Ambulance Service:

| <u>Quantity</u> | <u>Item</u> |
|-----------------|------------------------------------------|
| 1 | Powerheart EAD |
| 1 | Trailer |
| 4 | Flashback Lights |
| 6 | Safety Vests |
| | Shipping & Handling for lights and vests |
| 1 | Deluxe Extremity Splint Kit |
| 1 | Plastic Basket Stretcher |
| 3 | Trauma/Oxygen Kits |
| 2 | Oxygen Cylinders |
| 2 | Oxygen Regulators |

IN THE MATTER OF Butte Farm Supply Inc., Respondent
Docket No. CAA-07-2009-0009

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:

Robert W. Richards
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Doug Sextro, Officer and Manager
Butte Farm Supply, Inc.
P.O. Box 257
Butte, Nebraska 68722

Dated: 9/28/09



Kathy Robinson
Hearing Clerk, Region 7