

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)	
)	
FARMLAND FOODS, INC.)	Docket No. CAA-07-2010-0001
)	
CRETE, NEBRASKA)	
)	
)	
)	
Respondent.)	

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 ENVIRONMENTAL PROTECTION
 AGENCY-REGION VII
 REGIONAL HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Farmland Foods, Inc. (Farmland) 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) and 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 (CAA), 42 U.S.C. § 7413(d).
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated the Nebraska Air Quality Regulations Title 129, Chapters 20 and 41, approved by EPA as part of the Nebraska State Implementation Plan (SIP) pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, and Title V of the CAA, 42 U.S.C. §§ 7661-7661f. Furthermore, this CAFO serves as notice pursuant to Section 113(d)(2)(A), 42 U.S.C. § 7413(d)(2)(A) of EPA's intent to issue an order assessing penalties for such violations.

Parties

3. The Complainant, by delegation from the Administrator of EPA, and the Regional Administrator of EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. Respondent Farmland Foods, Inc. is incorporated under the laws of Delaware and authorized to do business in Nebraska.

Statutory and Regulatory Background

5. Section 110 of the CAA, 42 U.S.C. § 7410, grants the Administrator of the EPA authority to approve a state plan that provides for implementation, maintenance, and enforcement of a standard in each air quality control region within a state. After approval, a state implementation plan is enforceable by EPA pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

6. Neb. Admin. R. & Regs. Title 129, Ch. 20, "Opacity Emission Limitations and Standards," was approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410 on May 31, 1972, and subsequently revised in 1988, 1995, and 2002.

7. Neb. Admin. R. & Regs. Title 129, Ch. 20 states that, "No person shall cause or allow emissions from any source, which are of an opacity equal to or greater than twenty percent (20%), as evaluated by an EPA-approved method, or recorded by a continuous opacity monitoring system operated and maintained pursuant to 40 C.F.R. Part 60 Appendix B, except as provided in section 005 of this chapter."

8. Neb. Admin. R. & Regs. Title 129, Ch. 41, "General Provisions," was approved by EPA pursuant to Section 110 of the CAA, 42 U.S.C. § 7410 on May 31, 1972, and subsequently revised in 1989, 1995, 1996, 2000, and 2002.

9. Neb. Admin. R. & Regs. Title 129, Ch. 41 states in part that "failure to comply with the requirements of these regulations may be grounds for administrative enforcement proceedings."

10. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources. The purpose of Title V is to ensure that all "applicable requirements" for compliance with the CAA, are collected in one place.

11. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a, it is unlawful for an affected source to operate without or in violation of a permit issued pursuant to Title V of the CAA, 42 U.S.C. § 7661 *et. seq.* See also 40 C.F.R. § 70.7(b) and Neb. Admin. R. & Regs. Title 129, Ch. 41 § 001.

12. The Nebraska operating permit program was approved by EPA on October 18, 1995, 60 Fed. Reg. 53872. These regulations are currently codified at Neb. Admin. R. & Regs. Title 129, Chs. 5-15.

13. Pursuant to Neb. Admin. R. & Regs. Title 129, Ch. 8 § 007.01, the owner or operator of a Class II source must assure that the source operates in compliance with the terms and conditions of its permit. See also 40 C.F.R. § 70.1(b).

14. All terms and conditions in a Class II operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator of EPA and citizens under the CAA, except those terms and conditions which have been specifically designated as not federally enforceable. Neb. Admin. R. & Regs. Title 129, Ch. 8 § 016.

15. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, EPA may assess penalties of no more than \$27,500 per day for each violation occurring after January 30, 1997; no more than \$32,500 per day for each violation occurring between March 15, 2004, and January 12, 2009; and \$37,500 per day for each violation occurring after January 12, 2009.

Alleged Violations

General Allegations

16. EPA alleges that Respondent has violated the CAA and federal regulations promulgated pursuant to the CAA as follows:

17. Respondent is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. Respondent is located at Highway 103 South, Crete, Nebraska. Respondent owns or operates a pork slaughter and process facility.

19. The Nebraska Department of Environmental Quality (NDEQ) issued a Class II Operating Permit to Respondent on October 23, 2003, Permit No. 40819. The Permit incorporates the requirements of Nebraska Air Quality Regulation Title 129, Chapter 20, in Permit Condition XXV(I).

20. Respondent's Permit No. 40819, Permit Condition XXV(J)(1) requires Respondent to conduct regular surveys (visible emissions checks) of the entire plant to determine compliance with Neb. Admin. R. & Regs. Title 129, Ch. 20. These periodic

visual emissions surveys shall be conducted no less than daily during periods of plant operations.

21. Respondent's Permit No. 40819, Permit Condition XXV(J)(2) requires Respondent to record in a log the results of the visible emissions surveys. The log shall include: (a) whether any air emissions (except for water vapor) were visible from the plant; (b) all emissions point from which visible emissions occurred; and (c) whether the visible emissions were normal for the particular process or piece of equipment.

22. Respondent's Permit No. 40819, Permit Condition XXV(J)(3) requires Respondent to proceed with appropriate corrective action or verify that emissions are below 20% opacity using EPA Method 9 where emission points with visible emissions are perceived or believed to equal or exceed 20% opacity. If Method 9 readings cannot be obtained, the source representative shall record the following, provided they are trained in EPA Method 9: (i) the color of the emissions; (ii) an estimate of the highest density of the emissions in 5% increments with 5% being the lightest and 100% being the darkest; (iii) the cause of the abnormal emissions; (iv) any corrective actions taken upon verification that the visible emissions equal or exceed 20% opacity.

23. Respondent's Permit No. 40819, Permit Condition XXV(J)(4) requires Respondent to document the total duration of any abnormal emission event in the required log.

24. Respondent is subject to the requirements of Nebraska Air Quality Regulation Title 129, Chapters 8, 20, 41, and Title V of the CAA.

25. On May 24, 2008, EPA representatives performed an Air Compliance Inspection at Respondent's facility in Crete, Nebraska.

26. On August 27, 2008, EPA sent an information request to Respondent under Section 114 of the CAA, 42 U.S.C. § 7414. Respondent responded to the request on September 8, 2008, and September 24, 2008.

Count I

27. Paragraphs 1-26 are incorporated by reference as if fully set forth herein.

28. Respondent failed to comply with Neb. Admin. R. & Regs Title 129, Ch. 20 and Permit No. 40819 by exceeding the 20% opacity limit set forth in Neb. Admin R. & Regs. Title 129, Ch. 20 and Permit No. 40819, Permit Condition XXV(I)(3) for approximately 233 days from January 2006 through August 2008.

29. Respondent's failure to comply with Neb. Admin R. & Regs. Title 129, Ch. 20 and Permit No. 40819, Permit Condition XXV(I)(3) is a violation of the Nebraska SIP, and Title V of the CAA.

Count II

30. Paragraphs 1-26 are incorporated by reference as if fully set forth herein.

31. Respondent failed to comply with Permit No. 40189. Specifically, Respondent failed to: (1) proceed with appropriate corrective action or verify that emissions are below 20% opacity using EPA Method 9 where emission points with visible emissions are perceived or believed to equal or exceed 20% opacity as required by Permit No. 40819, Permit Condition XXV(J)(3); and (2) document the total duration of any abnormal emission event in the required log as required by Permit No. 40819, Permit Condition XXV(J)(4).

32. Respondent's failure to comply with Permit No. 40819, Permit Conditions XXV(J)(3) and (4) are violations of Title V of the CAA.

CONSENT AGREEMENT

33. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

34. 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 CAFO.

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

36. 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 CAFO.

37. 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.

38. This CAFO addresses all civil and administrative claims for the CAA violations identified above, existing through the effective date of this CAFO. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA or other applicable law.

39. Respondent certifies by signing of this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of the Nebraska Air Quality Regulations Title 129, Chapters 20 and 41, approved by EPA as part of the Nebraska State Implementation Plan (SIP) pursuant to Section 110 of the CAA, 42

U.S.C. § 7410, and Title V of the CAA, 42 U.S.C. § 7661-7661f.

40. The effect of settlement described in Paragraph 38 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 39, above, of this CAFO.

41. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

42. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

43. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Seventy Thousand Four Hundred and Twenty-Five Dollars and Sixty Cents (\$70,425.60) as set forth in Paragraph I of the Final Order.

44. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

Payment Procedures

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

1. Respondent shall pay a civil penalty of Seventy Thousand Four Hundred and Twenty-Five Dollars and Sixty Cents (\$70,425.60) due within thirty (30) days of the entry of this Final Order.

2. Pursuant to 40 C.F.R. § 13.18, failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. Interest on any late payment 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 any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest.

3. Payment of the penalty shall be by cashier or certified check 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

This payment shall reference docket number CAA-07-2010-0001.

Copies of the check shall be mailed to:

Sara Hertz Wu
Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 7
901 North 5th Street
Kansas City, Kansas 66101

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. This Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns.

COMPLAINANT: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

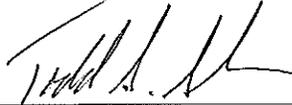
12/2/07
Date


Becky A. Weber
Director
Air and Waste Management Division


Sara Hertz
Assistant Regional Counsel

RESPONDENT: FARMLAND FOODS, INC.

11-23-09
Date


Signature

Todd A. Gerken
Printed Name

SR VP of Operations
Title

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

Dec. 9, 2009
Date

Karina Borromeo
KARINA BORRÓMEO
Regional Judicial Officer
U.S. EPA Region 7

IN THE MATTER OF Farmland Foods, Inc., Respondent
Docket No. CAA-07-2010-0001

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:

Sara Hertz Wu
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:

Parthy Evans
Stinson Morrison Hecker LLP
1201 Walnut
Kansas City, MO 64106

Dated: 12/9/09


Kathy Robinson
Hearing Clerk, Region 7