

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
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)

)
Farmers Union Cooperative Association)
Gretna, Nebraska)
Respondent)

) Docket Nos.
) EPCRA-07-2008-0001
) CERCLA-07-2008-0007

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and Farmers Union Cooperative Association, Gretna, Nebraska (Respondent) have agreed to a settlement of this action before filing 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 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609; and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 103 of CERCLA, 42 U.S.C. § 9603, and the

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regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and codified at 40 C.F.R. Part 302; and Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 355.

Parties

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

4. The Respondent is the Farmers Union Cooperative Association, located at 112 Railroad Avenue, Gretna, Nebraska 68028. Respondent is an anhydrous ammonia retailer. Respondent is incorporated and registered to do business in Nebraska.

Statutory and Regulatory Requirements

5. Section 103(a) of CERCLA and the regulation set forth at 40 C.F.R. § 302.6, require any person in charge of a vessel or an onshore or offshore facility, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than the reportable quantity established pursuant to Section 102 of CERCLA, to immediately notify the National Response Center of such release.

6. Section 304(a) of EPCRA and the regulation set forth at 40 C.F.R. § 355.40, require the owner or operator of a facility at which a hazardous chemical is produced, used, or stored and at which there is a release of a reportable quantity of any EPCRA extremely hazardous

substance or CERCLA hazardous substance to immediately notify the State Emergency Response Commission of any State likely to be affected by the release and the emergency coordinator for the Local Emergency Planning Committee for any area likely to be affected by the release.

7. Pursuant to Section 304(b) of EPCRA, in the case of transportation related releases, or storage incident to transportation, the notice requirements with respect to the release may be satisfied by dialing 911, or in the absence of a 911-emergency number by calling the operator.

8. Section 109(b)(1) of CERCLA authorizes a civil penalty of not more than \$25,000 per day for each day during which a violation continues for any violation of the requirements of Section 103(a) of CERCLA. Section 109(b)(1) of CERCLA, as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil 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.

9. Section 325(b)(2) of EPCRA authorizes a civil penalty for violations of the requirements of Section 304 of EPCRA of not more than \$25,000 per day for each day during which the violation continues. Section 325(b)(2) of EPCRA, as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil 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.

Alleged Violations

10. EPA alleges that Respondent has violated CERCLA Section 103, and EPCRA Section 304, as follows:

11. Respondent is, and at all times referred to herein, was a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21); and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

12. At all times relevant hereto, Respondent owned and operated and was in charge of Farmers Union Cooperative Association, Gretna, Nebraska, located at 112 Railroad Avenue, Gretna, Nebraska (Respondent's facility). As part of Respondent's business, Respondent owns, operates and transports nurse tanks filled with anhydrous ammonia.

13. Respondent's facility is a facility as defined by Section 101(9) of CERCLA and Section 329(4) of EPCRA. Each of Respondent's nurse tanks also meet the definition of a facility under Section 101(9) of CERCLA and Section 329(4) of EPCRA.

14. Anhydrous ammonia is a hazardous substance as defined by Section 101(14) of CERCLA, with a reportable quantity of 100 pounds, as designated by 40 C.F.R. § 302.4. Anhydrous ammonia is an extremely hazardous substance, as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3) and as designated pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a) and listed in 40 C.F.R. Part 355, Appendix A.

15. At all times relevant hereto, hazardous chemicals as defined by Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), were produced, used, or stored by Respondent's facility.

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16. On or about April 10, 2006, there was a release of anhydrous ammonia from Respondent's facility in excess of the reportable quantity designated by 40 C.F.R. § 302.4. Respondent discovered the release on April 10, 2006.

17. Respondent did not immediately notify the National Response Center of the release as soon as it had knowledge of the release.

18. Respondent's failure to notify the National Response Center of the release as soon as it had knowledge of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603, and of the requirements of 40 C.F.R. § 302.6.

19. Respondent did not immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release. Respondent did not immediately notify 911 or the operator of the release.

20. Respondent's failure to immediately notify the State Emergency Response Commission, the Local Emergency Planning Committee, or 911, of the release is a violation of Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and of the requirements of 40 C.F.R. § 355.40(b).

CONSENT AGREEMENT

21. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

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

23. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.

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24. 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.

25. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth below.

26. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

27. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is presently in compliance with all requirements of Section 103 of CERCLA, 42 U.S.C. § 9603; and Section 304 of EPCRA, 42 U.S.C. § 11004, and all regulations promulgated thereunder.

28. Although not required by CERCLA, EPCRA or any federal, state or local law, in settlement of this matter Respondent agrees to implement the supplemental environmental projects listed in Attachment A to this Consent Agreement. Respondent agrees to purchase for the benefit of the Gretna Volunteer Fire and Rescue Department, Gretna, Nebraska, the equipment listed in Attachment A by December 31, 2007.

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:

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1. Respondent shall pay a civil penalty of Five Thousand Six Hundred Fifty Dollars (\$5,650), within thirty days of entry of this Final Order. Payment shall be by two cashier's or certified checks. The first in the amount of Two Thousand Eight Hundred Twenty-five Dollars (\$2,825) and made payable to the "United States Treasury" and shall be remitted to:

United State Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

The second check also in the amount of Two Thousand Eight Hundred Twenty-five Dollars (\$2,825) shall be made payable to the "United States Treasury" and shall be remitted to:

United State Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
Post Office Box 979076
St. Louis, Missouri 63197-9000

2. A copy of each of the checks should be sent to:

Julie M. Van Horn
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101.

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

4. Respondent shall undertake and complete the supplement environmental projects as set forth in paragraph 28 of this Consent Agreement and Attachment A by December 31, 2007. Respondent shall notify Complainant in writing within thirty (30) days after Respondent has purchased all of the equipment listed in Attachment A.

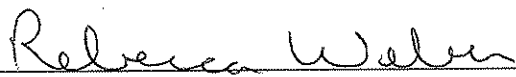
5. In the event that Respondent fails to timely purchase the equipment listed in paragraph 28, and Attachment A, Respondent shall pay a stipulated penalty of Ten Thousand Dollars (\$10,000) for each piece of equipment that Respondent fails to timely purchase, up to a total stipulated penalty of Fifty Thousand Dollars (\$50,000). Such stipulated penalty shall become immediately due and payable upon notice by EPA, unless Respondent submits in writing a request for dispute resolution to the Regional Judicial Officer.

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COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By 
Julie M. Van Horn
Senior Assistant Regional Counsel

Date 5 December 2007

By 
Rebecca Weber
Director
Air and Waste Division
EPA Region VII

Date: 12/3/07

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RESPONDENT:
FARMER UNION
COOPERATIVE ASSOCIATION
GRETNA, NEBRASKA

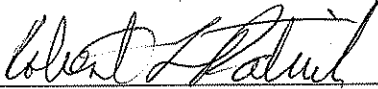
By John Kald

Title manager

Date 11-26-07

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

By 
Robert Patrick
Regional Judicial Officer

Date December 6, 2007

ATTACHMENT A

<u>Quantity</u>	<u>Description</u>	<u>Per unit</u>	<u>Total</u>
2	Air Pak NxG7 4.5 Dual EBSS with Q.C.	\$ 4,600.00	\$ 9,200.00
2	45 minute extra bottle	\$ 800.00	\$ 1,600.00
1	RIT Pak II	\$ 2,150.00	\$ 2,150.00
1	Tempest Explosion Proof 16" fan	\$ 1,242.00	\$ 1,242.00
1	Mister ring for fan	\$ 200.10	\$ 200.10
2	Hazmat Patch and Plug Kit	\$ 492.00	\$ 984.00
2	Kevelar Escape Belt	\$ 132.64	\$ 265.28
2	Overpack Spill Kit	\$ 554.00	\$ 1,108.00
1	Air Pack flow test unit	\$ 9,000.00	\$ 9,000.00
1	Computer and printer for test unit	\$ 1,500.00	\$ 1,500.00
Total			\$ 27,249.38

IN THE MATTER OF Farmers Union Cooperative Association, Respondent
Docket Nos. EPCRA-07-2008-0001 and CERCLA-07-2008-0007

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:

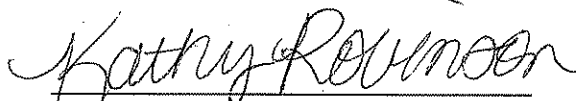
Copy hand delivered to
Attorney for Complainant:

Julie M. Van Horn
Senior 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:

Stephen D. Mossman
Mattson, Ricketts, Davies, Stewart and Calkins
134 South 13th Street, Suite 1200
Lincoln, Nebraska 68508

Dated: 12/6/07



Kathy Robinson
Hearing Clerk, Region 7