

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2011 MAR 22 PM 3: 01

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CAA-08-2010-0024

IN THE MATTER OF:

ALLIED ENERGY, INC.

ALLIED AGRONOMY LLC.

302 East Front Street

Gackle, ND 58442-0216

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 22<sup>nd</sup> DAY OF March, 2011.



Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
1595 WYNKOOP STREET  
DENVER, COLORADO 80202-1129

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IN THE MATTER OF: )  
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Allied Agronomy LLC )  
302 East Front Street )  
Gackle, North Dakota 58442-0216 )  
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)  
Respondents )  
)

COMBINED AMENDED COMPLAINT  
AND CONSENT AGREEMENT

DOCKET NO.: CAA-08-2010-0024

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondents, Allied Agronomy, LLC, and Allied Energy, Inc. (Respondents) by their undersigned representative, hereby consent and agree as follows:

1. On September 30, 2010, EPA issued a Complaint (Complaint) alleging certain violations of the Clean Air Act, (CAA) and proposed a civil penalty for the violations alleged therein. This Combined Amended Compliant and Consent Agreement (CACCA) supersedes the previous Compliant dated September, 30, 2010. All allegations in the Complaint are incorporated herein with the addition of Allied Agronomy, LLC as a Respondent in this matter to paragraphs 3 and 17 of the Complaint and all other references to the term Respondent in the Complaint.
2. Respondents admit the jurisdictional allegations of the Complaint and neither admit nor deny the specific factual allegations of the complaint.
3. Respondents waive their right to a hearing before any tribunal, to contest any issue of law or fact set forth in the CACCA.
4. PENALTY: This CACCA, upon incorporation into a final order, applies to and is binding upon EPA, Respondents, and Respondents' heirs, successors or assigns. Any change in ownership or corporate status of Respondents, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents responsibilities under this CACCA. This CACCA contains all terms of the settlement agreed to by the parties. Attachment A (Collection Information) provides terms for payment including the assessment of fees and interest charges for late payments. Respondents consent and agree to pay a civil penalty in the amount of \$31,300.
5. CERTIFICATION OF COMPLIANCE: On or before one hundred eighty days after the date of the Final Order approving this CACCA, Respondents will submit to EPA a Certification of Compliance, establishing Respondents completion of the items described in Paragraphs (a) through (i) below:
  - a. Develop and implement a management system as required by 40 C.F.R. § 68.15;
  - b. Compile and maintain the following up-to-date information, related to the regulated substances, processes, and equipment as required by 40 C.F.R. § 68.48:
    - i. Safe upper and lower temperatures, pressures, flows and compositions [C.F.R. § 68.48(a)(3)];
    - ii. Equipment specifications for ammonia tank [C.F.R. § 68.48(a)(4)]; and
    - iii. Codes and standards used to design, build and operate the process [C.F.R. § 68.48(a)(5)].

- c. Ensure and document that the process is designed in compliance with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.48(b);
- d. Perform a Process Hazard Review as required by 40 C.F.R. § 68.50;
- e. Certify that each employee presently operating a process and each employee newly assigned to a covered process has been trained or tested competent in the operating procedures provided in 40 C.F.R. § 68.52 that pertain to the duties as required by 40 C.F.R. § 68.54(a);
- f. Implement a maintenance program as required by 40 C.F.R. § 68.56. Include written procedures for maintenance and applicable fitness-for-service testing for tank and piping. The 2004 National Board Inspection Code has been adopted and incorporated by reference per Section 7-12-01-01 of the North Dakota Century Code;
- g. Complete a compliance audit every three years as required by 40 C.F.R. § 68.58;
- h. Ensure the facility emergency response plan includes procedures for informing the public and local emergency response agencies about accidental releases as required by 40 C.F.R. § 68.95(a)(1)(i) and procedures for coordinating with, or informing/reporting accidental releases to, the Local Emergency Planning Committee (LEPC) and State Emergency Response Commission (SERC); and
- i. Perform the five-year update of the Risk Management Plan as required by 40 C.F.R. § 68.190(b)(1).

The CERTIFICATION OF COMPLIANCE submitted by Respondents shall contain the date, printed name, and signature of Respondent's authorized representative, as well as the following statement:

*I certify that I am authorized to verify the completion of work on behalf of Respondents, Allied Energy, Inc. and Allied Agronomy, LLC. I certify under penalty of perjury that the foregoing is true and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.*

- 6. Respondents agree that the penalty shall never be claimed as a federal or other tax deduction or credit.
- 7. Nothing in this CACCA shall relieve Respondents of the duty to comply with the CAA and its implementing regulations.

8. Failure by Respondents to comply with any of the terms of this CACCA shall constitute a breach of the CACCA and may result in referral of the matter to the Department of Justice for enforcement of the CACCA and such other relief as may be appropriate.
9. Nothing in this CACCA shall be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondents failure to perform pursuant to the terms of this CACCA.
10. The undersigned representative for the Respondents certifies that he/she is fully authorized to enter into and bind Respondents to the terms and conditions of this CACCA.
11. The parties agree to submit this CACCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
12. Each party shall bear its own costs and attorney fees in connection with this matter.
13. This CACCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full resolution of the United States' claim for civil penalties for the specific violations alleged in the complaint.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,

Complainant.

Date: 3/18/2011

By: Michael T. Briner  
for Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

ALLIED ENERGY, Inc.  
ALLIED AGRONOMY, LLC

Respondents.

Date: 3-8-11

By: Gene Erpelding  
Gene Erpelding  
General Manager  
Allied Agronomy, LLC  
Allied Energy, Inc

**COLLECTION INFORMATION**

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

**CHECK PAYMENTS:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

**WIRE TRANSFERS:**

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

**OVERNIGHT MAIL:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
314-418-4087

**ACH (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. of Treasury.  
This payment option can be accessed from the information below:

WWW.PAY.GOV  
Enter sfo 1.1 in the search field

Open form and complete required fields.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **ALLIED ENERGY, INC., ALLIED AGRONOMY LLC.; DOCKET NO.: CAA-08-2010-0024** was filed with the Regional Hearing Clerk on March 22, 2011.

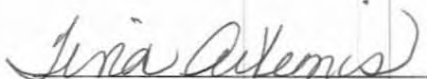
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on March 22, 2011, to:

Gene Erpelding, General Manager  
Allied Agronomy, LLC.  
Allied Energy, Inc.  
109 Industrial Park  
Edgeley, ND 58433

E-mailed to:

Elizabeth Whitsel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

March 22, 2011



Tina Artemis  
Paralegal/Regional Hearing Clerk

