



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 23 2007

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles R. Saur, President
Snappy Apple Farms, Inc.
961 Newaygo Road
Casnovia, MI 49318

Re: Snappy Apple Farms, Inc., Casnovia, Michigan, Consent Agreement and Final Order
Docket No. EPCRA-05-2007-0021

Dear Mr. Suar:

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 MAY 23 2007.

Please pay the civil penalty in the amount of \$7,919.00 in the manner prescribed in paragraph 39, and reference you check with the billing document number 2750744E018 and the docket number EPCRA-05-2007-0021.

Your payments are due on JUN 22 2007 [within 30 days of filing date].

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Mark Koller, Assistant Regional Counsel, at (312) 353-2591. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Mark Koller (w/ enclosure)
Office of Regional Counsel

Captain Eddie Washington (w/ enclosure)
Susan Parker (w/ enclosure)
MI SERC

Marcy Toney
Regional Judicial Officer

Andy Mikula, Vice President (w/ enclosure)
Snappy Apple Farms, Inc.
961 Newaygo Road
Casnovia, MI 49318 (certified)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) **Docket No. EPCRA-05-2007-0021**
)
Snappy Apple Farms, Inc.) **Proceeding to Assess a Civil Penalty under**
961 Newaygo Road) **Section 325(c) of the Emergency Planning**
Casnovia, Michigan 49318-9600) **and Community Right-to-Know Act of**
) **1986, 42 U.S.C. § 11045(c)**
Respondent.)

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), 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. Complainant is the Branch Chief, Emergency Response Branch 1, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).
3. Respondent is Snappy Apple Farms, Inc., a corporation, doing business in the State of Michigan.
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 entry of this CAFO and the assessment of the specified civil penalty; and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Snappy Apple Farms, Inc. admits the jurisdictional allegations in this CAFO and neither admits or denies the factual allegations in this CAFO.

8. Snappy Apple Farms, Inc. 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 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), appropriate local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter a completed Emergency and Hazardous Chemical Inventory Form (Tier I of Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDSs.

11. 29 C.F.R. § 1910.1200(d)(3) provides that the chemical manufacturer, importer, or employer evaluating chemicals shall treat the following sources as establishing that the chemicals listed in them are hazardous: 29 C.F.R. § 1910 subpart Z.

12. Under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), the U.S. EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations and Violations

13. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. At all times relevant to this CAFO, Respondent was an owner or operator of the Facility located at 961 Newaygo Road, Casnovia, Michigan 49318-9600 (the Facility).

15. At all times relevant to this CAFO, Respondent was an employer at the Facility.

16. Respondent’s Facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

17. Respondent’s Facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42, U.S.C. § 11049(4).

18. Anhydrous ammonia (CAS # 7664-41-7) is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. § 1910, subpart Z, § 1910.1000, Table Z-1.

19. Anhydrous ammonia (CAS # 7664-41-7) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

20. Anhydrous ammonia (CAS # 7664-41-7) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

21. Anhydrous ammonia (CAS # 7664-41-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

22. During at least one period of time in calendar year 2002, 2003, and 2004, anhydrous ammonia was present at the Facility in an amount equal to or greater than the minimum threshold level.

23. OSHA requires Respondent to prepare, or have available, an MSDS for anhydrous ammonia.

24. Respondent was required to submit to the SERC, LEPC and fire department an MSDS for anhydrous ammonia or a list including anhydrous ammonia.

25. At all times relevant to this CAFO, the Michigan State Emergency Response Commission was the state emergency response commission (SERC) for Michigan, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

26. At all times relevant to this CAFO, the Muskegon County Local Emergency Planning Committee was the local emergency planning committee (LEPC) for Muskegon County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

27. At all times relevant to this CAFO, the Casnovia Township Fire Department was the fire department with jurisdiction over the Facility.

28. As of August 11, 2005, Respondent had not submitted to the SERC, LEPC, and Casnovia Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia for calendar years 2002, 2003, and 2004.

29. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2003, for calendar year 2002 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

30. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2003, for calendar year 2002 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

31. Each day Respondent failed to submit to the Casnovia Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2003, for calendar year 2002 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

32. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2004, for calendar year 2003 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

33. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2004, for calendar year 2003 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

34. Each day Respondent failed to submit to the Casnovia Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2004, for calendar year 2003 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

35. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2005, for calendar year 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

36. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2005, for calendar year 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

37. Each day Respondent failed to submit to the Casnovia Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia by March 1, 2005, for calendar year 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

38. In consideration of Respondent's agreement to perform a supplemental environmental project and Respondent's inability to pay the penalty defense, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$7,919.00.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,919.00 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Region 5
Attention: Finance
P.O. Box 371531
Pittsburgh, PA 15251-7531

The check must note the case title of this matter: Snappy Apple Farms, Inc., the docket number of this CAFO, and the billing document number 2750744E018.

40. A transmittal letter, stating the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

James Entzminger, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Mark Koller, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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

42. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 55 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.

43. 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 six percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

Supplemental Environmental Project

44. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by purchasing and donating to the Casnovia Township Fire Department (2) mobile weather stations, (4) binoculars, (16) road block devices, gas cartridges for 15 self-contained breathing apparatuses, and (2) stationary weather stations. Additionally, Snappy Apple Farms, Inc. will pay for the Casnovia Fire Department to attend computer training classes in hazardous chemical inventory, mapping, and plotting sites.

45. By September 30, 2007, Respondent must complete the SEP by purchasing and donating the equipment identified in paragraph 44 above and paying for the training for the Casnovia Township Fire Department.

46. Respondent must spend at least \$480.00 for the two mobile weather stations; \$640.00 for the four binoculars; \$1,040.00 for the (16) road block devices; \$2,370 for the gas cartridges for (15) self contained breathing apparatuses; \$196.00 for the two stationary weather stations; and, \$1,000 for the computer training.

47. 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.

48. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with the EPCRA requirements.

49. 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.

50. Respondent must submit a SEP completion report to U.S. EPA by October 30, 2007. This report must contain the following information:
- a. Detailed description of the SEP as completed;
 - b. Description of any operating problems and the actions taken to correct the problems;
 - c. Itemized costs of goods and services 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 and services;
 - d. A statement from the fire chief of the Casnovia Township Fire Department indicating what equipment was received and when the training was completed;
 - e. Certification that Respondent has completed the SEP in compliance with this CAFO; and
 - f. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

51. Respondent must submit all notices and reports required by this CAFO by first class mail to:

James Entzminger, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

52. 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 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, the information 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.

53. Following receipt of the SEP completion report described in paragraph 50 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 penalties under paragraph 55.

54. 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 55 below.

55. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph 46, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 46.
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$1,200.00, in addition to any penalty required under Subparagraph a. above.
- c. If Respondent halts or abandons work on the SEP, the Respondent must pay a stipulated penalty of \$3,000.00, in addition to any penalty required under Subparagraph a. above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 45 for implementing the SEP, fails to submit timely the SEP completion report

required in paragraph 50, Respondent must pay Stipulated Penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1 st through 14 th day
\$1,000	15 th through 30 th day
\$1,500	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone, until it achieves compliance with the milestone.

56. U.S. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Respondent.

57. 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 paragraph 39, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

58. 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 violations of EPCRA Section 312."

59. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment purchased and donated by Respondent in connection with the SEP under the terms of this Agreement.

60. Respondent must make the following certification to the U.S. EPA at the time it submits its tax returns for the taxable year 2007 to the IRS:

"Under penalties of perjury, I declare that I have examined the tax returns pertaining to the taxable year 2007. To the best of my knowledge and belief, these tax returns do not

contain deductions or depreciations for any supplemental environmental project expenses my company had incurred.”

Respondent should send the certification to:

James Entzminger, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

General Provisions

61. This CAFO only resolves Respondent’s liability for federal civil penalties for the violations and facts alleged in the CAFO.

62. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

63. This CAFO does not affect Respondent’s responsibility to comply with EPCRA and other applicable federal, state and local laws, and regulations.

64. This CAFO is a “final order” for purposes of U.S. EPA’s Enforcement Response Policy for EPCRA Section 312.

65. The terms of this CAFO bind Respondent and its successors and assigns.

66. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

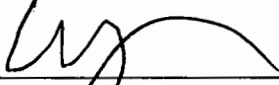
67. Each party agrees to bear its own costs and fees, including attorneys’ fees, in this action.

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

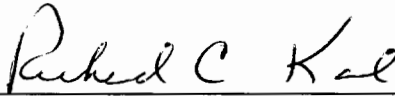
In the Matter of: Snappy Apple Farms, Inc., Casnovia, Michigan
Consent Agreement and Final Order
Docket No. EPCRA-05-2007-0021

U.S. Environmental Protection Agency, Complainant

Date: 5/18/07


By: 
William J. Bolen, Chief
Emergency Response Branch 1
Superfund Division
U.S. EPA, Region 5

Date: 5-21-07

By: 
Richard C. Karl, Director
Superfund Division
U.S. EPA, Region 5

Snappy Apple Farms, Inc., Respondent

Date: 5-10-07

By: 
ANDREW J. MIKULA
(Printed Name)
Vice Pres. & CEO
(Printed Title)

In the Matter of: Snappy Apple Farms, Inc., Casnovia, Michigan
Consent Agreement and Final Order
Docket No. EPCRA-05-2007-0021

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. IT IS SO ORDERED.

Date: 5/22/07

By: Walter W. Kovalich Jr.
for
Mary A. Gade
Regional Administrator
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In the Matter of: Snappy Apple Farms, Inc., Casnovia, Michigan
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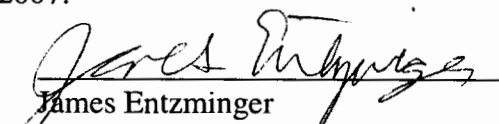
Certificate of Service

I, James Entzminger, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, Docket Number EPCRA-05-2007-0021 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, served a copy on the Regional Judicial Officer, via interoffice mail, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing them in the custody of the United States Postal Service addressed as follows:

Charles R. Saur, President
Snappy Apple Farms, Inc.
961 Newaygo Road
Casnovia, Michigan 49318

Andy Mikula, Vice President
Snappy Apple Farms, Inc.
961 Newaygo Road
Casnovia, Michigan 49318

on the 23 day of May, 2007.


James Entzminger
U.S. Environmental Protection Agency
Region 5