



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 02 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kevin N. McMurray
Attorney at Law
Frost Brown Todd LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202

Re: United Dairy Farmers, Inc.
Consent Agreement and Final Order
Docket Number: CAA-04-2016-8014(b)

Dear Mr. McMurray:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2016-8014(b)) involving United Dairy Farmers, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22, and became effective on the date of the filing.

Also, enclosed is a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4.

Should you have any questions concerning the SEC's environmental disclosure requirements or your compliance status in the future, please contact Ms. Bonnie Sawyer, EPA Region 4 Associate Regional Attorney, at (404) 562-9539.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:)
)
United Dairy Farmers, Inc.)
)
Respondent.)
_____)

Docket No.
CAA-04-2016-8014(b)

2017 MAR -2 AM 7:14
HEARING CLERK
OFFICE OF REGIONAL
ADMINISTRATOR

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing 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 United States Environmental Protection Agency, Region 4 (the "EPA"). On the EPA's behalf, the Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is United Dairy Farmers, Inc., a company doing business in the Commonwealth of Kentucky. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issue of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this Consent Agreement are pursuant to Section 113(a)(3)(A)), 42 U.S.C. § 7413(a)(3)(A).
6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b).

8. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

9. Respondent operates a “stationary source” as that term is defined by Section 302(z) of the Act, 42 U.S.C. § 7602(z). The Respondent’s stationary source is located at 2825 and 2819 Crescent Springs Road, Erlanger, Kentucky 41018 (“Stationary Source”).

10. Section 112(r) of the Act, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

11. Pursuant to Section 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.

12. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 C.F.R. § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

D. FACTUAL ALLEGATIONS

13. On April 21, 2014, the EPA issued to Respondent a notice of potential violation (“NOPV”), providing notice that the EPA found that Respondent potentially committed the alleged violations described in Section E of this Agreement, in addition to other potential violations of 40 C.F.R. Part 68, and providing Respondent an opportunity to confer with the EPA. On May 16, 2014, Respondent provided a written response and additional information, as requested by EPA. On March 24, 2015, representatives of Respondent and the EPA discussed the April 21, 2014, NOPV.

14. Respondent has submitted and registered an RMPlan to the EPA for its Stationary Source, and has developed an RMProgram accidental release prevention program for the Stationary Source.

15. For the purpose of this Agreement:

(a) At its Stationary Source, Respondent owns an ice production operation and two refrigerated warehousing storage operations.

(b) The Stationary Source consists of two separate ammonia closed-loop refrigeration system processes (Distribution Center and Cold Chain Integrity). Both processes have refrigerated and frozen storage space using industry standard mechanical refrigeration designs including multiple cooling coils (evaporators), heat rejection towers (condensers), rotary screw compressors, and ammonia service pressure vessels.

(c) At its Stationary Source, Respondent has two RMProgram level 3 covered processes which store or otherwise use anhydrous ammonia in amounts exceeding its applicable threshold of 10,000 pounds.

(d) During calendar year 2013, EPA opened an RMProgram compliance monitoring investigation to determine Respondent's compliance with 40 C.F.R. Part 68 at its Stationary Source. As part of this investigation, EPA conducted an onsite inspection of RMProgram related records and equipment on April 30th and May 1st of 2013. The focus of the onsite inspection was to assess Respondent's compliance with RMProgram requirements for its covered processes operating at its Stationary Source.

(e) At the time of the inspection, Respondent did not produce documentation supporting that it had updated and revalidated its process hazard analysis (PHA) for the Distribution Center covered process at least every five years after the initial PHA. The initial Distribution Center PHA was dated as completed on October 30, 2001. Subsequent PHA updates were dated as complete on November 30, 2006, and November 26, 2012. The November 26, 2012, Distribution Center PHA update was 12 months past due.

(f) Respondent failed to retain Distribution Center PHA documented resolution of recommendations for the life of the process. Recommendations from the November 2012 Distribution Center PHA had not been documented as resolved at the time of the inspection.

(g) At the time of inspection, Respondent did not produce documentation of the means it used to verify that each employee operating the Stationary Source processes understood the required training covering an overview of the processes and the associated operating procedures.

(h) At the time of inspection, Respondent did not produce complete records for the Stationary Source RMProgram equipment vacuum and pressure tests.

(i) Respondent failed to produce evidence indicating that it performed appropriate checks and inspections to assure that the Distribution Center Ice Maker #2 equipment was installed properly and consistent with design specifications and the manufacturer's instructions.

(j) Respondent failed to document that it had implemented appropriate responses to each of the findings from its Stationary Source RMProgram compliance audits.

(k) Respondent failed to update its Stationary Source RMPlan emergency contact information within thirty days of a change in such information.

E. ALLEGED VIOLATIONS OF LAW

16. Based on the facts alleged in Section D above and consideration of the information submitted to the EPA in response to the NOPV, the EPA alleges that Respondent violated the codified rules of 40 C.F.R. Part 68, governing the Act's Chemical Accident Prevention Provisions when it:

Failed to update and revalidate the Distribution Center covered process PHA at least every five years as required by 40 C.F.R. § 68.67(f);

Failed to retain documentation for the Distribution Center PHA recommendation resolutions for the life of the covered process as required by 40 C.F.R. § 68.67(g);

Failed to document the means it used to verify that each employee operating the Stationary Source processes understood the required training covering an overview of the processes and the associated operating procedures as required by 40 C.F.R. § 68.71(c);

Failed to document each inspection and test performed on the Distribution Center RMProgram equipment as required by 40 C.F.R. § 68.73(d)(4);

Failed to demonstrate that appropriate checks and inspections were performed to assure that the Distribution Center RMProgram equipment was installed properly and consistent with design specifications and the manufacturer's instructions as required by 40 C.F.R. § 68.73(f)(2);

Failed to document that it had implemented appropriate responses to each of the findings from Stationary Source RMProgram compliance audits as required by 40 C.F.R. § 68.79(d); and

Failed to correct the RMPlan emergency contact information for the Stationary Source within thirty days of a change as required by 40 C.F.R. § 68.195(b).

F. TERMS OF CONSENT AGREEMENT

17. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) neither admits nor denies the factual allegations stated above;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the conditions specified in this Agreement;
- (e) waives any rights to contest the alleged violations of law set forth in Section E of this

- Consent Agreement; and
- (f) waives its rights to appeal the Order accompanying this Agreement.

18. For the purpose of this proceeding, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Eastern District of Kentucky;
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and
- (f) certifies that, to the best of its knowledge and belief based on the exercise of due diligence, as of its execution of this Agreement, the Stationary Source is in compliance with all relevant requirements of 40 C.F.R. Part 68.

19. Penalty Payment. Respondent agrees to:

- (a) pay the civil penalty of **FORTY-NINE THOUSAND DOLLARS (\$49,000)** ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement;
- (b) pay the EPA Penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," or by electronic transfer to one of the following addresses:

For payment sent via electronic transfer
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: "U.S. Environmental Protection Agency";

For payment sent via standard delivery

U.S. Environmental Protection Agency
Cincinnati Finance Center P.O. Box 979077
St. Louis, MO 63197-9000; or

For payment sent for signed receipt confirmation (FedEx, DSL, UPS, USPS Certified)

U.S. Environmental Protection Agency
Cincinnati Finance Center Box 979077
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Delivery Location Phone Number: 314-425-1819.

The check shall reference on its face the name and the Docket Number of the CAFO. Within 24 hours of payment of the EPA Penalty, send a separate copy of the check or confirmation of electronic transfer, and a written statement that payment has been made in accordance with this Agreement, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Deanne Grant
Chemical Management and Emergency
Planning Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

20. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the

Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

- (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

21. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

22. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

23. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

24. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, to the best of its knowledge based on the exercise of due diligence, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

25. Except as qualified by Paragraph 20, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

26. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts alleged above.

27. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

28. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

29. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon written agreement of both parties, and approval of the Regional Judicial Officer.

30. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$93,750 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

31. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

32. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

33. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.


THIS SECTION LEFT INTENTIONALLY BLANK

H. EFFECTIVE DATE

34. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk. The foregoing Consent Agreement in the Matter of United Dairy Farmers, Inc., Docket No. CAA-04-2016-8014(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

United Dairy Farmers, Inc.

By:  Date: 1/25/2017
Name: MARILYN R. COLEMAN (Typed or Printed)
Title: CFO (Typed or Printed)

FOR COMPLAINANT:

U.S. Environmental Protection Agency

By:  Date: 2/14/17
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR**

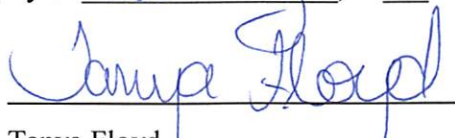
IN THE MATTER OF:)
)
United Dairy Farmers, Inc.)
)
Respondent.)
_____)

Docket No.
CAA-04-2016-8014(b)

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

Respondent is ORDERED to comply with all terms of the Consent Agreement, effective on the date that the Consent Agreement and Final Order are filed by the Regional Hearing Clerk.

SO ORDERED this 27th day of February, 2017.



Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of United Dairy Farmers, Inc., CAA-04-2016-8014(b), on the parties listed below in the manner indicated:

Robert W. Bookman
U. S. EPA, Region 4
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Bonnie Sawyer
U. S. EPA, Region 4
Office of Regional Counsel
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Kevin N. McMurray
Attorney at Law
Frost Brown Todd LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202

(Via Certified Mail -
Return Receipt Requested)

Date:

3-2-17



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511