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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

In the Matter of)
)
Seed & Farm Supply Co. Inc.) Docket No. CAA-07-2011-0026
)
)
Respondent) CONSENT AGREEMENT AND FINAL
) ORDER

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Seed & Farm Supply Co. Inc. (Respondent) have agreed to a settlement of this action before the 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 of Practice) 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). This Consent Agreement and Final Order (CAFO) is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this CAFO.

II. 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). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the first date of alleged violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This CAFO serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions, and specifically the requirement to submit a Risk Management Plan, 40 C.F.R. Part 68, Subpart G, promulgated pursuant to Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r). Furthermore, this CAFO serves as notice pursuant to Section

113(d)(2)(A) of the Clean Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

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

4. Respondent is Seed & Farm Supply Co. Inc., located at 1246 W. Highway K, Liberal, Missouri. The facility operates a system of grain elevators and conducts retail sales of fertilizers, pesticides, animal feeds, and general farm supplies. Respondent is incorporated under the laws of the State of Missouri.

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

6. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. These regulations require owners and operators of stationary sources to develop and implement a Risk Management Program that includes a hazard assessment, a prevention program, and an emergency response program.

7. The regulations at 40 C.F.R. Part 68, set forth the requirements of a Risk Management Program that must be established at each stationary source. The Risk Management Plan (RMP) is the report required by the Risk Management Program.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999; or the date on which a regulated substance is first present above the threshold quantity in a process.

9. 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, including Section 112(r)(7). Section 113(d) of the CAA, 42

U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative 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. For each violation of Section 112(r) of the CAA that occurs after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

Definitions

10. The regulations at 40 C.F.R. § 68.3 define “stationary source” in part, as any buildings, structures, equipment, installations or substance emitting stationary activities, which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

11. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

12. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), as amended, in 40 C.F.R. § 68.130.

13. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances or a combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Factual Allegations

14. Respondent is a “person” as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

15. Respondent owns and operates a system of grain elevators and conducts retail sales of fertilizers, pesticides, animal feeds, and general farm supplies. Respondent’s facility is located at 1246 West Highway K, Liberal, Missouri. Respondent has approximately six employees.

16. Respondent’s facility is a “stationary source” pursuant to 40 C.F.R. § 68.3.

17. Anhydrous ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia as listed in 40 C.F.R. § 68.130, Table 2, is 10,000 pounds.

18. On or about January 10, 2010, an EPA representative conducted an inspection of Respondent's facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

19. Records collected during the inspection showed that Respondent exceeded the threshold quantity for anhydrous ammonia.

20. Respondent is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

COUNT I

21. The allegations stated in Paragraphs 1 through 20 are incorporated as if fully set forth herein.

22. Respondent is required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a management system, a hazard assessment, a prevention program, and an emergency response program, and submit a Risk Management Plan to EPA.

23. Records collected during the inspection showed that Respondent failed to implement a risk management program that included all of the requirements of the statute and regulations. Specifically, Respondent:

- (a) Failed to prepare and submit a five year update of the Risk Management Plan as required by 40 C.F.R. § 68.190(b)(1);
- (b) Failed to maintain up-to-date safety information related to the regulated substances, processes, and equipment, including Material Safety Data Sheets as required by 40 C.F.R. § 68.48;
- (c) Failed to conduct a hazard review of the hazards associated with the regulated processes, substances and procedures, to document the results of the hazard review, and ensure timely resolution of any problems as required by 40 C.F.R. §§ 68.50(a),(c), and (d).
- (d) Failed to prepare written operation procedures as required by 40 C.F.R. § 68.52;
- (e) Failed to conduct, document, and maintain compliance audits as required by 40 C.F.R. § 68.58;
- (f) Failed to provide an executive summary in the RMP that contained all necessary elements as required by 40 C.F.R. § 68.155;

(g) Failed to provide true and accurate information for the Prevention Program/Program 2 as required by 40 C.F.R. § 68.170 (b), (d), (e) (f), (h), and (i); and

(h) Failed to develop a management system as required by 40 C.F.R. § 68.15(a).

24. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth in Paragraph 23, violates Section 112(r) of the CAA, 42 U.S.C § 7412(r).

III. CONSENT AGREEMENT

25. 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.

26. Respondent admits the jurisdictional allegations of this CAFO 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 set forth below.

27. Respondent neither admits nor denies the factual allegations or legal conclusions set forth above.

28. 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 proposed Final Order portion of this CAFO.

29. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

30. 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.

31. This CAFO addresses all civil administrative claims for the CAA violations identified above. Complainant reserves the right to take any enforcement action with respect to violations of the CAA, or any other applicable law.

32. Respondent certifies that by signing this CAFO, to the best of its knowledge, Respondent's facility is in compliance with all the requirements Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

33. The effect of settlement described in Paragraph 31 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 32 of this CAFO.

34. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure

significant environmental and/or public health benefits. Respondent shall purchase the emergency response equipment referenced in Attachment A, at a cost of no less than Twenty Thousand, One Hundred and Twenty-Eight Dollars and No Cents (\$20,128.00) no later than one (1) year from the effective date of the Final Order. The emergency equipment shall be purchased for the Liberal, Missouri Fire Department and can be used to address releases of anhydrous ammonia and other hazardous chemicals. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

35. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following:

- (a) A detailed description of the SEP as implemented; and
- (b) Itemized costs, documented by copies of purchase orders, receipts, or canceled checks.
- (c) All reports shall be directed to the following:

Patricia Reitz
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

36. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report included costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

37. Respondent agrees to the payment of stipulated penalties as follows. In the event Respondent fails to comply with any of the terms or provisions of this Consent agreement relating to the performance of the SEP as set forth in paragraphs 34 and 35 of this CAFO and/or to the extent that the actual expenditures of the SEP do not equal or exceed the cost of the SEP described in paragraph 34 of this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (a) Except as provided in subparagraphs (b) and (c) of this paragraph, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in paragraph 34 of this CAFO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Twenty-Four Thousand Dollars and No Cents (\$24,000.00), minus any documented

expenditures determined by EPA to be acceptable for the SEP, for a total equal to 120% of the projected costs of the SEP.

- (b) If Respondent fails to timely and completely submit the SEP Completion Report required by paragraph 35, Respondent shall be liable and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars (\$250).
- (c) If the SEP is not completed in accordance with paragraphs 34 and 35 of this CAFO, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

38. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

39. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 1 of the Final Order portion of this CAFO.

40. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

41. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

42. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

43. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

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

45. Nothing in this CAFO shall be construed as a release from any other action under law and/or regulation administered by EPA. 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.

46. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of the debt collection including processing and handling costs and attorneys' fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

47. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest 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 the overdue amount from the due date through the date of payment.

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

FINAL ORDER

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

1. Respondent shall pay a civil penalty of Thirty-Nine Thousand Dollars and No Cents (\$39,000), within thirty (30) days of the effective date of this Final Order. Payment shall be made by cashier's or certified check made payable to the "United States Treasury" and shall be 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-07-2011-0026.

2. A copy of the check should be sent to:

Kathy Robinson
Regional Hearing Clerk
United States Environmental Protection Agency—Region 7
901 N. Fifth Street
Kansas City, Kansas 66101

and to:

Sara Hertz Wu
Assistant Regional Counsel
United States Environmental Protection Agency—Region 7
901 N. Fifth Street
Kansas City, Kansas 66101.

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

4. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

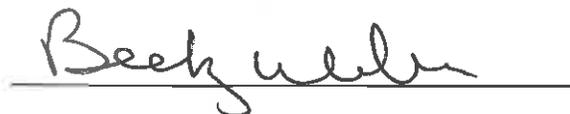
5. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:

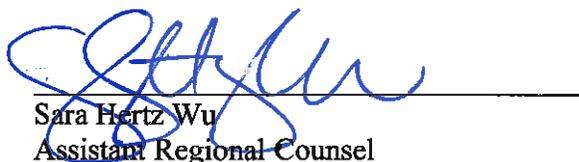
U. S. ENVIRONMENTAL PROTECTION AGENCY

9/12

Date



Becky Weber
Director
Air and Waste Management Division



Sara Hertz Wu
Assistant Regional Counsel

RESPONDENT:

SEED & FARM CO. INC.

Date: 8-31-2011

By: 

Printed Name: MARTIN BUNTON

Title: PRESIDENT

IN THE MATTER OF Seed & Farm Supply Co., Inc.
Docket No. CAA-07-2011-0026

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

Date: Sept. 19, 2011

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

ATTACHMENT A

**PROPOSED SUPPLEMENTAL ENVIRONMENTAL PROJECT
SEED & FARM SUPPLY, INC.
08/08/2011**

The Supplemental Environmental Project (SEP) to be performed by Seed & Farm Supply, Inc. shall consist of providing equipment and supplies to the local rural fire department in Liberal, Missouri. The equipment will allow the fire department to better respond to releases of anhydrous ammonia. To accomplish the SEP, Seed & Farm Supply, Inc. will expend the sum of \$20,000 for the purchase of equipment and supplies for the local fire department, of which a detailed list can be found in Attachment #1 at the end of this proposal. The fire department has assured Seed & Farm Supply, Inc. that the equipment and supplies listed in Attachment #1 can be used to respond to a release of anhydrous ammonia, and that the fire department has not requested funds from any state or federal agency to purchase the same equipment. A letter confirming these statements can be found at the end of this proposal in Attachment #2. The equipment and supplies shall be acquired by Seed & Farm Supply, Inc. for the fire department no later than one year from the date of entry of this Consent Decree. Documentation of the expenditures made in connection with the SEP will be included as part of the SEP Completion Report.

ATTACHMENT 1

**Mr. Rick Davied
Volunteer Fire Chief
Liberal, Missouri Rural Fire Department**

**Ms. Sara Hartz Wu
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 N. 5th Street
Kansas City, KS 66101**

**Re: Seed & Farm Supply, Inc.
SEP Proposal**

Ms. Hartz Wu:

I am the Fire Chief for Liberal, Missouri's local rural fire department. It is my understanding that Seed & Farm Supply, Inc. has offered to purchase over \$20,000 worth of equipment for the fire station. The equipment being purchased by Seed & Farm Supply, Inc. can be used to respond to releases of anhydrous ammonia. Additionally, the Liberal, MO Rural Fire Department has not requested funds from any state or federal agency to be used to purchase the same equipment.

Sincerely,



**Rick Davied
Volunteer Fire Chief
Liberal, Missouri Rural Fire Department**

ATTACHMENT 2

Bunker Gear for LRFD

Brand: Fyrepel

Items per set:

Coats- Fyrepel Battalion Tan Advance Turn-Out Coat, 32" length

**Pants & Suspenders - Fyrepel Battalion Tan Advance Turn-Out Pant with Suspenders,
30" Inseam**

Boots- Servus, Standard Insulated NFPA Structural Rubber Bunker Boot

Gloves- Shelby, FDP Cuffed Blue Koala Cowhide Structural Fire Gloves

Specifics:

30" Inseam

32" Coats

Total per Set:

\$1,122

Total cost for 14 sets:

\$15,708

Quote From:

Kenco Fire Equipment

1810 E. St. Louis St

Springfield, MO 65802

(417) 831-7669

Pagers for LRFD

Brand: Motorola

Model: Minitor V (5)

Price per pager:

\$340

Total cost for 13 pagers:

\$4,420

Quote from:

Davis Communications

1638 6000 Rd

Bartlett, KS 67332

(620) 226-3477

Grand Total: \$20,128

IN THE MATTER OF Seed & Farm Supply Co. Inc., Respondent
Docket No. CAA-07-2011-0026

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 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Robert Brundage
Thomas Smith
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, Missouri 65102-0537

Dated: 9/20/11



Kathy Robinson
Hearing Clerk, Region 7