



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

AUG -9 2019

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Michael Rocha, Esquire  
Petitt Worrell Rocha PLLC  
100 North Tampa Street, Suite 3575  
Tampa, Florida 33602-5890

Re: Bickett Farms, LLC, Central City, Kentucky; and  
Bickett Farms, LLC, Morganfield, Kentucky  
Consent Agreement and Final Order  
Docket Number: CAA-04-2019-8011(b)

Dear Mr. Rocha:

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-04-2019-8011(b)) involving Bickett Farms, LLC. 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. **The penalty payment should be made within 30 days after the receipt of the signed, approved and filed CAFO.**

If you have any questions, please call Mr. Om P. Devkota at (404) 562-8963.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cesar Zapata".

Cesar Zapata  
Acting Chief  
Air Enforcement Branch

Enclosure

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

**IN THE MATTER OF:** )  
 )  
Bickett Farms, LLC )  
 )  
Respondent. )  
\_\_\_\_\_ )

**Docket No.**  
CAA-04-2019-8011(b)

2019 AUG -9 AM 7:56  
HEARING CLERK  
OFFICE OF REGIONAL COUNSEL  
EPA REGION 4

**CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (CAA or 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"). The Director of the Enforcement and Compliance Assurance Division, EPA Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is Bickett Farms, LLC, a limited liability 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 and the attached Final 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 ("CAFO").

**B. JURISDICTION**

5. This CAFO 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 CAFO are of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7) and the implementing regulations at 40 C.F.R. Part 68.
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).

7. The EPA sent a Notice of Potential Violations letter dated May 18, 2017, providing Respondent notice that the EPA found that Respondent had potentially committed the alleged violations in Section E of this CAFO and providing Respondent an opportunity to confer with the EPA. From May 24, 2017, through March 19, 2019, representatives of the Respondent and the EPA held phone calls to discuss the alleged violations described in Section E of this CAFO and the CAFO terms described in Section F.
8. The Regional Judicial Officer is authorized to ratify this CAFO, which memorializes settlement between Complainant and Respondent. 40 CFR § 22.4(b) and 22.18(b).
9. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 CFR § 22.13(b).

### **C. GOVERNING LAW**

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), and other extremely hazardous substances. 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 Sections 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 CFR 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 CFR § 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 CFR §§ 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 CFR § 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. Respondent operates two “stationary sources” as that term is defined by Section 302(z) of the Act, 42 U.S.C. § 7602(z). The Respondent’s stationary sources are located at 10391 State Route 175 North, Central City, Kentucky, 42330, and 9921 State Road 56 East, Morganfield, Kentucky, 42437.
14. Respondent currently has registered an RMPlan with the EPA for its stationary sources and

has developed an RMProgram accidental release prevention program for the stationary sources.

15. For the purpose of this CAFO:

- (a) At its stationary sources, the Respondent operates an ammonia fertilizer retailer facility.
- (b) At its stationary sources, the Respondent has 556,000 (Central City) and 512,000 (Morganfield) pounds of ammonia in onsite storage.
- (c) At its stationary sources, the Respondent has one RMProgram level 2 covered process, which processes anhydrous ammonia in an amount exceeding its applicable threshold of 10,000 pounds.

16. On October 25, 2016, the EPA sent an Information Request to Mr. James C. Bickett, the previous owner of the stationary sources, pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a). A response to the Information Request was submitted to the EPA on Mr. James C. Bickett's behalf. Mr. James C. Bickett died on November 29, 2016. Respondent acquired the facilities after Mr. Bickett's death.

17. Mr. Bickett had not registered an RMPlan for the stationary sources with the EPA. Respondent registered an RMPlan with EPA for the stationary sources soon after EPA's issuance of a Notice of Potential Non-Compliance on March 18, 2017.

#### **E. ALLEGED VIOLATIONS OF LAW**

18. Based on EPA's investigation, the EPA alleges that the Respondent violated Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7) and the implementing regulations at 40 CFR Part 68 when:

Respondent did not timely submit a single Risk Management Plan for its facility located in Central City, Kentucky, as required by 40 CFR § 68.150(a).

Respondent did not timely submit a single Risk Management Plan for its facility located in Morganfield, Kentucky, as required by 40 CFR § 68.150(a).

#### **F. TERMS OF CAFO**

19. For the purpose of this proceeding, as required by 40 CFR § 22.18(b)(2), Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
- (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 issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this CAFO;
- (f) consents to any Permit Action;
- (g) waives any rights to contest the alleged violations of law set forth in Section E of this CAFO; and

(h) waives its rights to appeal the Order accompanying this CAFO.

20. For the purpose of this CAFO, Respondent:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this CAFO 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 CAFO, including any right of judicial review under 42 U.S.C. §§ 7401-7671q. and/or the Administrative Procedures Act, 5 U.S.C. §§ 701-706.;
- (d) consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the Western 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 CAFO, 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 as of its execution of this CAFO, it is in compliance with all relevant requirements of 40 CFR Part 68.

21. Penalty Payment. Respondent agrees to:

- (a) pay the civil penalty of **THIRTY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$36,500)** ("EPA Penalty") within 30 calendar days of the Effective Date of this CAFO;
- (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 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-C2-GL  
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, Respondent shall 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 CAFO, to the following persons at the following addresses:

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

Om Devkota  
U.S. EPA, Region 4  
Air Enforcement Branch  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

22. If Respondent fails to timely pay any portion of the EPA Penalty assessed under this CAFO, 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 CFR §§ 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 CFR 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 CFR § 13.17.

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

24. By signing this CAFO, 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 terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

25. By signing this CAFO, both parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.

26. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission 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.

27. Except as qualified by Paragraph 22, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **G. EFFECT OF CAFO**

28. In accordance with 40 CFR § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

29. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

30. This CAFO 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.

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

32. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and pursuant to 40 CFR Part 19, 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 CAFO in an administrative, civil judicial, or criminal action.

33. Nothing in this CAFO 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.

34. 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.

35. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, 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.

#### **H. EFFECTIVE DATE**

36. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO 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 Reminder of This Page Intentionally Left Blank**



The foregoing Consent Agreement in the Matter of Bickett Farms, LLC, Docket No. CAA-04-2019-8011(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Bickett Farms, LLC

By: Patty Bickett Date: 6-5-2019

Name: Patty Bickett (Typed or Printed)

Title: member (Typed or Printed)

FOR COMPLAINANT:

U.S. Environmental Protection Agency

By: Suzanne Rubini Date: 7-17-2019

Suzanne G. Rubini  
Acting Director  
Enforcement and Compliance Assurance Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
)  
Bickett Farms, LLC )  
)  
)  
Respondent. )  
\_\_\_\_\_ )

**Docket No.**  
CAA-04-2019-8011(b)

**FINAL ORDER**

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.

The 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 8<sup>th</sup> day of August, 2019.

Tanya Floyd

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 Bickett Farms LLC, CAA-04-2019-8011(b) on the parties listed below in the manner indicated:

Om P. Devkota  
U. S. EPA, Region 4  
Air Enforcement Branch

(Via EPA's internal mail)

Michi Kono  
U. S. EPA, Region 4  
Office of Regional Counsel


(Via EPA's internal mail)

Mr. Michael Rocha, Esquire  
Petitt Worrell Rocha PLLC  
100 North Tampa Street, Suite 3575  
Tampa, Florida 33602-5890

(Via Certified Mail - Return Receipt Requested)

Date:

8-9-19



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