



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

REPLY TO THE ATTENTION OF:  
**SC-6J**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Milton C. Smith, President  
Hinsdale Farms, Ltd.  
605 Kesco Drive  
Bristol, IN 46507

Re: Hinsdale Farms, Ltd., Bristol, Indiana Consent Agreement and Final Order

Dear Mr. Smith:

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 NOV 18 2008. Please note, the payment you sent to the U.S. Department of the Treasury on October 21, 2008, in the amount of \$37,053.00, will be applied to the civil penalty paragraph 31. For your reference your billing document number is BD 2750903A003 and docket number CAA-05-2009-000435.

Please feel free to contact Greg Chomycia at 312/353-8217 if you have any questions regarding the enclosed documents. Please direct any legal questions to William Wagner at 312/886-4684. Thank you for your assistance in resolving this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark J. Horwitz".

Mark J. Horwitz, Chief  
Office of Chemical Emergency  
Preparedness & Prevention

Enclosure

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

William Wagner(w/enclosure)  
Office of Regional Counsel  
U.S. EPA Region 5

Regina Kosik(w/enclosure)  
Regional Judicial Officer  
U.S. EPA, Region 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
NOV 18 2008

IN THE MATTER OF:

Hinsdale Farms, Inc.  
Bristol, Indiana,

Respondent.

) Docket No. CAA-05-2009-0004  
)  
)  
) Proceeding to Assess a Civil  
) Penalty under Section 113 of the Clean  
) Air Act,  
) 42 U.S.C. § 7413  
)  
)

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**Consent Agreement and Final Order**

**I. Preliminary Statement**

1. This is an administrative action commenced and concluded under Sections 113(a)(3)(A) and (d) of the Clean Air Act (the Act), 42 U.S.C. §§ 7413(a)(3)(A) and (d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) 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 (2004).

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency, Region 5 (U.S. EPA).

3. Respondent is Hinsdale Farms Inc. (Hinsdale or Respondent), a corporation doing business in Indiana.

4. In accordance with 40 C.F.R. § 22.13(b), 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).

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. Hinsdale consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

## **II. Jurisdiction and Waiver of Right to Hearing**

7. Hinsdale admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Hinsdale 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.

## **III. Statutory and Regulatory Background**

9. In accordance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), on June 20, 1996, U.S. EPA promulgated regulations to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur. These regulations, known as the Risk Management Program regulations, are codified at 40 C.F.R. Part 68.

10. The Risk Management Program regulations apply to all stationary sources that have more than a threshold quantity of a regulated substance in a process. The List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention is codified at 40 C.F.R. § 68.130, Table 1. Procedures to determine whether a threshold quantity of a regulated substance is present at a stationary source are codified at 40 C.F.R. § 68.115.

11. Anhydrous ammonia is a “regulated substance,” as that term is defined in Section 112(r)(3) of the Act, 40 C.F.R. § 68.3, and 40 C.F.R. § 68.130, Table 1.

12. The “threshold quantity” (as that term is defined in 40 C.F.R. § 68.3 and 40 C.F.R. § 68.130, Table 1) for anhydrous ammonia is 10,000 pounds.

13. "Process" as defined at 40 C.F.R. § 68.3, means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such a substance.

14. Pursuant to 40 C.F.R. §§ 68.10(a) and 68.150, an owner or operator of a stationary source subject to the Risk Management Program must comply with the requirements of 40 C.F.R. Part 68 by no later than the latest of the following dates: June 21, 1999; three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or the date on which a regulated substance is first present in more than a threshold quantity in a process.

15. The Risk Management Program regulations at 40 C.F.R. §§ 68.12 , require that the owner or operator of a facility subject to the regulations develop and implement a Risk Management Program (Program) for preventing accidental releases to the air and minimizing the consequences of releases that do occur.

16. The Risk Management Program regulations at 40 C.F.R. §§ 68.12(a) and 68.150-68.185, require the owner or operator of a facility subject to the regulations to submit a Risk Management Plan (RMP) to U.S. EPA on or before the date the facility is subject to the regulations.

#### **IV. Factual Allegations**

17. Hinsdale operates an ammonia storage facility located at 605 Kesco Drive, Bristol, Indiana (the facility). At the facility, Hinsdale uses anhydrous ammonia in its refrigeration system.

18. Hinsdale is a "person," as that term is defined at Section 302(e) of the Act, 42 U.S.C. §7602(e).

19. The facility is a “stationary source,” as that term is defined at 40 C.F.R. § 68.3.

20. For purposes of the requirements at 40 C.F.R. Part 68, Respondent is the “owner or operator” of the facility. Section 112(a)(9) of the Act, 42 U.S.C. § 7412(a)(9).

21. The facility stores more than 10,000 pounds of anhydrous ammonia in its ammonia storage process.

22. The facility is subject to the requirements of 40 C.F.R. Part 68.

23. On August 1, 2004, U.S. EPA performed an inspection at the facility for compliance with 40 C.F.R. Part 68.

24. At the time of the inspection, Hinsdale had not developed or implemented a Risk Management Program at the facility.

25. At the time of the inspection, Hinsdale had not submitted a Risk Management Plan.

26. On December 8, 2004, U.S. EPA issued an information request pursuant to Section 114(a) of the Act, 42 U.S.C. § 7414(a).

27. On April 28, 2005, U.S. EPA issued a Finding of Violation to the Respondent.

28. Subsequently, the parties engaged in negotiations and exchanged information pertaining to the applicability of the Risk Management Program regulations to the facility and the resolution of this matter.

**V. Violations**

29. Hinsdale failed to develop and implement a Program as required by 40 C.F.R. Part 68.12

30. Hinsdale failed to submit an RMP as required by 40 C.F.R. Part 68.12(a) and 40 C.F.R. Parts 68.150 through 68.185.

**VI. Civil Penalty**

31. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), to the facts of this case, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$37,053.

32. Hinsdale must pay the \$37,053 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

33. Hinsdale must send the check to:

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

34. A transmittal letter, stating Hinsdale's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check.

Hinsdale must send copies of the check and transmittal letter to the following 3 parties:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Attn: Greg Chomycia, (SC-6J)  
Superfund Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

William Wagner (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

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

36. If Hinsdale does not pay timely the civil penalty, 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 under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Hinsdale will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Hinsdale will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **VII. General Terms of Settlement**

38. This CAFO resolves only Hinsdale's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.

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



40. This CAFO does not affect Hinsdale's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in Paragraph 38 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

41. The terms of this CAFO bind Hinsdale, and its successors, and assigns.

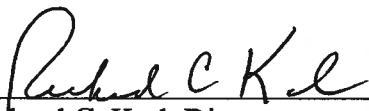
42. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

43. Each party agrees to bear its own costs and attorneys' fees in this action.

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

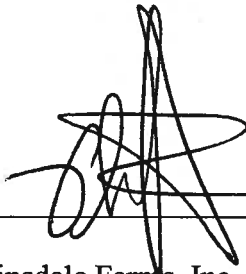
**U.S. Environmental Protection Agency, Complainant**

11-10-08  
Date

  
Richard C. Karl, Director  
Superfund Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

**Hinsdale Farms, Inc., Respondent**

10-21-08  
Date

  
Hinsdale Farms, Inc.

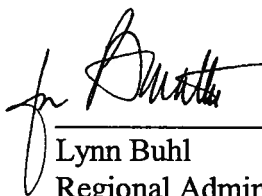
**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of Hinsdale Farms, Inc.**  
**Docket No. CAA-05-2009-0004**

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**Final Order**

REGIONAL HEARING CLERK  
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PROTECTION AGENCY

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.



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Lynn Buhl  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

RECEIVED

NOV 18 2008

I, Greg Chomycia, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, docket number **CAA-05-2009-0004** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Hinsdale Farms, Inc. 605 Kesco Dr., Hinsdale, Indiana by placing them in the custody of the United States Postal Service addressed as follows:

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

on the 18<sup>th</sup> day of November, 2008.



Greg Chomycia  
Chemical Emergency Preparedness  
and Planning

CERTIFIED MAIL RECEIPT NUMBER: \_\_\_\_\_