



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

NOV 05 2012

REPLY TO THE ATTENTION OF:

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

Scott Swenhaugen  
Manager  
Kenyon Ag Services LLC  
550 Huseth Street  
Kenyon, Minnesota 55946

Re: Kenyon Ag Services LLC, Kenyon, Minnesota  
Consent Agreement and Final Order  
Docket No. **CERCLA-05-2013-0003**

Dear Mr. Swenhaugen:

Enclosed please find one fully executed original Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA filed the second original CAFO with the Regional Hearing Clerk on November 5, 2012.

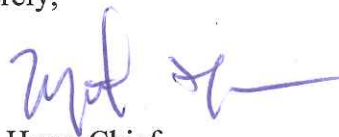
Please have your client pay the CERCLA civil penalty in the amount of \$3,990 in the manner prescribed in paragraphs 27 and 28, and reference your check with the CERCLA billing document number **2751330B003** and the docket number CERCLA-05-2013-0003.

The payment is due on December 4, 2012.

If you have any questions regarding the enclosed documents please feel free to contact Ruth McNamara at [mcnamara.ruth@epa.gov](mailto:mcnamara.ruth@epa.gov) or by calling (312) 353-3193. Please direct any legal questions to Charles Mikalian, Associate Regional Counsel, at [mikalian.charles@epa.gov](mailto:mikalian.charles@epa.gov) or by calling (312) 886-2242. Thank you for your assistance in resolving this matter.

Re: Kenyon Ag Service LLC, Kenyon, Minnesota  
Consent Agreement and Final Order  
Docket No.

Sincerely,



Mick Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure

cc: Steve Tomylanovich  
MN SERC Contact (w/enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CERCLA-05-2013-0003</b>
	)	
<b>Kenyon Ag Services, LLC</b>	)	<b>Proceeding to Assess a Civil Penalty Under</b>
<b>Kenyon, Minnesota</b>	)	<b>Section 109(b) of the Comprehensive</b>
	)	<b>Environmental Response, Compensation,</b>
<b>Respondent.</b>	)	<b>and Liability Act</b>
_____	)	

**RECEIVED**

NOV 05 2012

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), 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. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Kenyon Ag Services, LLC, a corporation doing business in the State of Minnesota.

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 the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

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

8. Respondent 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), provides a mechanism to alert federal agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the government's response to an emergency and pose serious threats to human health and the environment.

11. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$32,500 per day of violation that occurred after March 15, 2004 through January 12, 2009 and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

### **Factual Allegations and Alleged Violations**

12. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
13. At all times relevant to this CAFO, Respondent was in charge of the ammonia nurse tank that was the subject of an accident at the 200 block of Lamb Street, Kenyon, Minnesota (facility).
14. Respondent’s facility consists of equipment, storage container, motor vehicle, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.
15. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
16. Ammonia (CAS #7664-41-7) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
17. Ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.
18. On November 23, 2009, at or about 10:00 a.m. Central Standard Time (CST), a release occurred from Respondent’s facility of approximately 7,084 pounds of ammonia (the release).
19. In a 24 hour time period, the release of 7,084 pounds of ammonia exceeded the 100 pound reportable quantity for this substance.
20. During the release ammonia spilled, leaked, emitted, discharged, escaped into the ambient air.

21. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

22. Respondent had knowledge of the release on November 23, 2009, at approximately 10:00 a.m. CST.

23. Respondent notified the NRC of the release on November 23, 2009, at approximately 12:58 p.m. CST.

24. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

25. Respondent’s failure to notify immediately the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

#### **Civil Penalty**

26. Complainant has determined that an appropriate civil penalty to settle this action is \$3,990 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, Respondent’s agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. EPA’s Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,990 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier’s or certified check, payable to “EPA Hazardous Substance Superfund,” to:

U.S. EPA  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

The check must note the following: In the Matter of Kenyon Ag Services, LLC, the docket number of this CAFO, and the billing document number 2751330B003.

28. A transmittal letter, stating the Respondent's name, 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-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Ruth McNamara, (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Charles Mikalian, (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

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

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



31. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. 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 6 percent per year penalty on any principal amount 90 days past due.

### **Supplemental Environmental Project**

32. Respondent must complete a supplemental environmental project (SEP) designed to reduce the likelihood of a release by installing security fencing and lighting around its storage facility in Kenyon, Minnesota and by providing hazardous materials response equipment to the local responders to reduce the risk to the community should a release occur.

33. Respondent must complete the SEP as follows:

- a. Purchase, install and operate fencing and lighting around the storage facility located at 550 Huseth Street, Kenyon, Minnesota.
- b. Purchase and donate to the Kenyon Volunteer Fire Department a rescue saw that may be used to cut ventilation holes in walls of buildings to address hazardous materials release mitigation, two hose nozzles that may be used to knock down hazardous materials vapor clouds, and a power sprayer to use during decontamination activities.
- c. Purchase and donate to the Nerstrand Fire Department a Northstar 8000 Portable Generator and a Honda 3" Water Transfer Pump.

34. Respondent must spend at least \$14,463 to complete the SEP.

35. Respondent certifies as follows:

I certify that Kenyon Ag Services, LLC is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Kenyon Ag Services, LLC has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.



I certify that Kenyon Ag Services, LLC 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. I further certify that, to the best of my 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 U.S. EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For 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 expired.

36. U.S. EPA may inspect Respondent's storage facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

37. Respondent must submit a SEP completion report to U.S. EPA on or before April 1, 2013. 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. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

38. Respondent must submit all notices and reports required by this CAFO by first class mail to Ruth McNamara at the address provided in paragraph 28 above.

39. 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, it 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.

40. Following receipt of the SEP completion report described in paragraph 37 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 stipulated penalties under paragraph 42, below.

41. 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 42, below.

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

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$11,654.

- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 34, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 34, Respondent must pay the difference between what was spent and \$10,489.
- d. If Respondent did not submit timely the SEP completion report Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$200	1st through 14th day
\$400	15th through 30th day
\$600	31st day and beyond

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

44. 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 paragraphs 27 and 28 above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

45. 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 the Comprehensive Environmental Response, Compensation and Liability Act release reporting requirements."

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

**General Provisions**

47. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

49. Respondent certifies that that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

50. This CAFO does not affect Respondent's responsibility to comply with CERCLA and other applicable federal, state and local laws and regulations.

51. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

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

54. Each party agrees to bear its own costs and attorney's fees in this action.

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

**Kenyon Ag Services LLC, Respondent**

10-3-12  
Date


  
\_\_\_\_\_  
Scott Swenhaugen, Manager  
Kenyon Ag Services LLC

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

10/23/12  
Date

  
\_\_\_\_\_  
Sharon Jaffess, Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

10/25/2012  
Date

  
\_\_\_\_\_  
for Richard C. Karl, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5


U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
OCT 10 2012  
OFFICE OF REGIONAL  
COUNSEL

**In the Matter of: Kenyon Ag Services LLC, Kenyon, Minnesota**  
**Docket No. CERCLA-05-2013-0003**

**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. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10-31-12  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

  
NOV 05 2012  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**In the Matter of: Kenyon Ag Services LLC, Kenyon, Minnesota  
Docket No.**

**CERCLA-05-2013-0003**

**Certificate of Service**

I, Ruth McNamara, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed a second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:


Scott Swenhaugen  
Manager  
Kenyon Ag Services LLC  
550 Huseeth Street  
Kenyon, Minnesota 55946

**RECEIVED**

NOV 05 2012

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

on the 5<sup>th</sup> day of November, 2012

  
Ruth McNamara *Anton Filgajev*  
U.S. Environmental Protection Agency  
Region 5