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

MAR 0 7 2011

REPLY TO THE ATTENTION OF:
SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Louis Knieper, Manager of Environmental Affairs
Southern Minnesota Beet Sugar Cooperative
P.O. Box 500
83550 County Road 21
Renville, Minnesota 56284

Re: Southern Minnesota Beet Sugar Cooperative, Renville, Minnesota, Consent Agreement and Final Order.
Docket No. **CAA-05-2011-0031**

Dear Mr. Knieper:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on MAR 0 7 2011. Please pay the civil penalty in the amount of $125,400 in the manner prescribed in paragraphs 63 - 65 and reference your check with the number BD **2751103A029** and the docket number.

Please feel free to contact Greg Chomycia at chomycia.greg@epa.gov or (312)353-8217, if you have any questions regarding the enclosed documents. Please direct any legal questions to Maria Gonzalez at (312) 886-6630. Thank you for your assistance in resolving this matter.

Sincerely,

Silvia Palomo

Silvia Palomo, Acting Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	**DOCKET NO.: CAA-05-2011-0031**
SOUTHERN MINNESOTA BEET SUGAR COOPERATIVE	)	
	)	**PROCEEDING TO ASSESS A CIVIL PENALTY UNDER SECTION 113(d) OF THE CLEAN AIR ACT, 42 U.S.C. § 7413(d)**
RENVILLE, MINNESOTA,	)	
	)	
RESPONDENT.	)	
	)	

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d)(1), 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* (the Consolidated Rules) as codified at 40 C.F.R. part 22, for violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r).

2. The Complainant is, by lawful delegation, the Director of the Superfund Division, U.S. EPA Region 5.

3. Respondent is Southern Minnesota Beet Sugar Cooperative, a domestic cooperative organized under the laws of the State of Minnesota

4. According to 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, an 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. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

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 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorizes the Administrator to promulgate regulations regarding the prevention and detection of accidental releases of designated chemicals. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan to prevent or minimize risks of accidental releases of those designated substances.

10. Under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

11. Under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), the Administrator promulgated "Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)" 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions.

12. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.12(d), requires the owner and operator of a stationary source with a process subject to Program 3, as defined at 40 C.F.R. § 68.10(d), to develop and implement a management system as required by 40 C.F.R. § 68.10(d), conduct a hazard assessment pursuant to 40 C.F.R. §§ 68.20 to 68.42, implement the prevention requirements of 40 C.F.R. §§ 68.65 to 68.87, and develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 and 68.95. These requirements are collectively known as the "Risk Management Program."

13. Under the Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if it does not meet the requirements of a Program 1 process found at 40 C.F.R. § 68.10(b) and is subject to the process safety management standard at 29 U.S.C. § 1910.119.

14. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines "stationary source" 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."

15. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines "process" as " any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of those activities."

16. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines "regulated substance" as "any substance listed pursuant to section 112(r)(3) of the Clean Air Act as amended, in [40 C.F.R.] § 68.130."

17. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines "owner or operator" as " any person who owns, leases, operates, controls or supervises a stationary source."

18. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines "threshold quantity" as "the quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act as amended, listed in [40 C.F.R.] § 68.130 and determined to be present at a stationary source as specified in [40 C.F.R.] § 68.115 of this part."

19. The Chemical Accident Pollution Prevention rule, in Tables 1 and 2 referenced in 40 C.F.R. § 68.130, lists sulfur dioxide as a regulated toxic substance with a threshold quantity of 10,000 pounds.

20. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement imposed under section 112(r)(7), it is unlawful for any person to operate any stationary source in violation of such requirement.

21. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes U.S. EPA to assess a civil penalty of up to $25,000 per day of violation up to a total of $200,000 for each

violation of Section 112(r) of the CAA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to $27,500 per day of violation up to a total of $220,000 for each violation of Section 112(r) of the CAA that occurred from January 31, 1997 through March 15, 2004, to $32,500 per day of violation up to a total of $270,000 for each violation of Section 112(r) of the CAA that occurred from March 15, 2004 through January 12, 2009, and to $37,500 per day violation up to a total of $295,000 for each violation of Section 112(r) of the CAA that occurred after January 12, 2009.

22. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), further limits the Administrator's authority to pursue administrative penalties to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for an administrative penalty action.

GENERAL ALLEGATIONS

23. Respondent is a "person" as that term is defined at section 302(e) of the CAA, 42 U.S.C. § 7602(e).

24. At all times relevant to this Complaint, Respondent owned, operated, controlled and supervised a facility located at 83550 County Road 21, Renville, Minnesota (the Facility), which includes buildings, structures, equipment, installations, which belong to the same industrial group, are located on one or more contiguous properties and which are under the control of Respondent, to process sugar beets into refined sugar.

25. The Facility stores and uses sulfur dioxide (CAS No. 7446-09-5) for disinfection.

26. Under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), the Administrator has listed sulfur dioxide as a substance regulated under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), identifying a threshold quantity of 5,000 pounds as indicated at 40 C.F.R. § 68.130, Table 2.

27. The Facility is a "stationary source" as that term is defined at section 112(a) of the CAA, 42 U.S.C. § 7412(a) and 40 C.F.R. § 68.3.

28. Respondent is an "owner or operator" of the facility as that term is defined at section 112(a) of the CAA, 42 U.S.C. § 7412(a).

29. At all times relevant to this Complaint, Respondent's Facility had sulfur dioxide in quantities exceeding 5,000 pounds, and thus maintained a hazardous substance in quantities exceeding a threshold quantity under the Chemical Accident Pollution Prevention rule.

30. The process at Respondent's facility is a covered process as defined in 40 C.F.R § 68.3.

31. Respondent's processes subject it to the Program 3 requirements under 40 C.F.R. § 68.10(d) because the distance to a public receptor, as defined at 40 C.F.R. § 68.30, is less than the distance to the flammable or toxic endpoint for a worst-case release assessment under 40 C.F.R. § 68.25, and because the process is subject to the process safety management standard at 29 U.S.C. § 1910.119.

32. On August 28, 2008, U.S. EPA conducted an inspection of the Facility.

33. Since the first violations occurred over 12 months ago, the Administrator and the Attorney General of the United States, each through their respective delegates, have

jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

SPECIFIC ALLEGATIONS OF LIABILITY

34. 40 C.F.R. § 68.65 requires the owner or operator to:

> [C]omplete a compilation of written process safety information before conducting any process hazard analysis required by the rule. ... This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process....
> (c) Information pertaining to the technology of the process.
> (1) Information concerning the technology of the process shall include at least the following: ...
> (iv) safe upper and lower limits for such items as temperatures, pressures, flows or compositions.

35. 40 C.F.R. § 68.67 provides:

> (a)The owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by this part. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. ... The process hazard analysis shall be conducted as soon as possible, but not later than June 21, 1999.

36. Under 40 C.F.R. § 68.67(f), the facility is required to update this analysis every five years.

37. Under 40 C.F.R. § 68.67(c)(5), the process hazard analysis must address stationary source siting.

38. 40 C.F.R. § 68.69(a) requires the owner or operator to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and to address, among other things, at least the following elements: normal operations, temporary operations, and emergency operations.

39. Under 40 C.F.R. § 68.73(b), "[t]he owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment."

40. 40 C.F.R. § 68.73(d) provides:

> (d) *Inspection and testing.* (1) Inspections and tests shall be performed on process equipment.
> (2) Inspections and testing procedures shall follow recognized and generally accepted good engineering practices.
> (3) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

41. Under 40 C.F.R. §68.75(a), "The owner or operator shall establish and implement written procedures to manage changes (except for 'replacements in kind') to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process."

42. The term "replacement in kind" is defined as "a replacement that satisfies the design specifications."

43. Under 40 C.F.R. § 68.77(a), "[t]he owner or operator shall perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information."

44. At the time of the inspection, the Respondent failed to have a complete compilation of process safety information by not including information concerning the technology of the process regarding the safe upper and lower limits for the process for such items as temperature, pressures, flows or compositions, as required by 40 C.F.R. § 68.65(c)(1)(iv).

45. At the time of the inspection, EPA discovered the Respondent failed to include consideration of stationary source siting in its process hazard analysis for the process as required by 40 C.F.R. § 68.67(c)(5).

46. The facility has emptied the liquid sulfur dioxide tank onsite in each of the last two years. At the time of the inspection, the facility did not have written operating procedures for safely emptying the tank and opening the tank. The facility did not have a written operating procedure for returning the tank to service. Written operating procedures for all normal, temporary and emergency operations are required by 40 C.F.R. § 68.69(a).

47. Pursuant to 40 C.F.R. § 68.73(b), the Respondent developed a written mechanical integrity program. That program is in section 9.0 of a document entitled "Risk Management Plan" and was available for review during the inspection. At the time of the inspection the written mechanical integrity program was last revised on August 3, 2007.

48. The written mechanical integrity program requires the facility to perform an annual review of the SO2 system "before the start of the Beet Campaign, during the month of August," using an integrity checklist.

49. Respondent failed to perform the annual review required by its written mechanical integrity program in 2006, 2005, 2004, or 2003.

50. Respondent failed to implement its mechanical integrity procedures as required by 40 C.F.R. § 68.73(b).

51. The mechanical integrity procedures Respondent developed under 40 C.F.R. § 68.73 fail to address all the components of the SO2 process. Specifically, they fail to

address the storage tank, the relief valves on the tank, the delivery hose, the sight glass, the electrical controls of the process, or the sensor probes in the process.

52. Respondent failed to develop a written mechanical integrity procedures for all process equipment covered by 40 C.F.R. § 68.73(a) as required by 40 C.F.R. § 68.73.

53. Respondent developed a written management of change (MoC) policy under 40 C.F.R. § 68.75(a). The program is in section 11.0 of a document entitled "Risk Management Plan" and was available for review during the inspection. At the time of the inspection, the policy was last revised on August 3, 2007.

54. The MoC policy states, "Change (except for 'replacement in kind') to the sulfur dioxide process chemicals, technology, equipment, and procedures, and changes to facilities that affect the SO2 process shall be managed according to this written policy." It also states, "[t]he following consideration will be addressed and documented prior to any change... The technical basis for the proposed change ... authorization requirements for the proposed change."

55. Respondent replaced its liquid SO2 storage tank in 2007 and its vaporizer system in 2008, and, during the inspection, employees of the facility identified that there had been several changes to the piping design of the SO2 system.

56. The changes in Paragraph 55 did not meet the definition of "replacement in kind."

57. The change of liquid sulfur dioxide storage tanks in 2007 was not managed according to the MoC policy, as required by section 11.0 of the "Risk Management Plan". The historical SO2 piping changes were not recorded in any manner including the MoC policy, as required by section 11.0 of the "Risk Management Plan".

58. The changes to the vaporizer system in August of 2008 were not managed by the MoC policy prior to the change. MoC documentation was prepared after the vaporizer project was authorized and begun. The MoC forms were prepared on August 24, 2008, after the facility was contacted about the August 28, 2008 inspection and not prior to the initiation of the change.

59. Respondent failed to implement its MoC policy as required by 40 C.F.R. § 68.75(a).

60. Respondent's replacement of the liquid sulfur dioxide tank in August of 2007, required a change in the process safety information under 40 C.F.R. § 68.65(a); and 40 C.F.R. § 68.77(a) required Respondent to perform a pre-startup safety review. The Respondent failed to perform a pre-startup safety review after the modification of the process as required by 40 C.F.R. Part 68.77(a).

61. Respondent violated the requirements of 40 C.F.R. Part 68, and is subject to the assessment of a civil penalty under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

CIVIL PENALTY

62. In consideration of Respondent's cooperation, willingness to quickly resolve this matter and other factors as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is $125,400.

63. Within 30 days after the effective date of this CAFO, Respondent must pay the $125,400 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

64. The check must note the following: the case caption, the docket number of this CAFO and the billing document number to be assigned by U.S. EPA upon filing of this CAFO.

65. A transmittal letter, stating Respondent's name, the case title, 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 Blvd.
Chicago, IL 60604

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

Maria Gonzalez (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

67. If Respondent does not timely pay 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. Respondent agrees that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

68. 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 overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to section 113(d)(5) of the CAA, 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.

GENERAL PROVISIONS

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

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

71. Respondent certifies that it is complying fully with Section112(r) of the CAA, and with 40 C.F.R. Part 68.

72. This CAFO does not affect Respondent's responsibility to comply with the CAA or other applicable federal, state and local laws or regulations.

73. This CAFO is a "final order" for purposes of U.S. EPA's enforcement response policy for section 112(r) of the CAA.

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

75. 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.

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

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

Southern Minnesota Beet Sugar Cooperative, Respondent

1/11/11
Date

Robert W. Stwikl-L
Authorized Signatory
Southern Minnesota Beet Sugar Cooperative

U.S. Environmental Protection Agency, Complainant

3/3/2011
Date

Richard C. Karl
Director
Superfund Division

In the Matter of:
Southern Minnesota Beet Sugar Cooperative
Renville, Minnesota
Docket No: _____
CAA-05-2011-0031

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. **IT IS SO ORDERED.**

Date: 3-4-11

By: _____
Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I, Greg Chomycia, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, docket number CAA-05-2011-0031 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 Southern Minnesota Beet Sugar Cooperative by placing them in the custody of the United States Postal Service addressed as follows:

Louis Knieper, Manager of Environmental Affairs
Southern Minnesota Beet Sugar Cooperative
P.O. Box 500
83550 County Road 21
Renville, Minnesota 56284

RECEIVED
MAR 07 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

on the 7th day of March, 2011.

Greg Chomycia
Chemical Emergency
Preparedness and Planning Section

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0188 0147