



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 1650 Arch Street  
 Philadelphia, Pennsylvania 19103-2029**

<b>In the Matter of:</b>	)	
	)	<b>U.S. EPA Docket No.: CERCLA-EPCRA-</b>
	)	<b>03-2010-0384</b>
<b>Mountaire Corporation</b>	)	
<b>1901 Napa Valley Drive</b>	)	
<b>Little Rock, Arkansas</b>	)	
<b>72212,</b>	)	
	)	<b>Proceedings Pursuant to Sections</b>
	)	<b>103 and 109 of the Comprehensive</b>
<b>Respondent.</b>	)	<b>Environmental Response</b>
	)	<b>Compensation and Liability Act, as</b>
	)	<b>amended, ("CERCLA"), 42 U.S.C.</b>
	)	<b>§§ 9603 and 9609, and Sections 304</b>
	)	<b>and 325 of the Emergency</b>
	)	<b>Planning and Community</b>
	)	<b>Right-to-Know Act, ("EPCRA")</b>
	)	<b>42 U.S.C. §§ 11004 and 11045.</b>
	)	
<b>Mountaire Farms Inc.</b>	)	
<b>55 Railroad Ave.</b>	)	
<b>Selbyville, Delaware</b>	)	
<b>19975,</b>	)	
	)	
<b>Facility.</b>	)	

**CONSENT AGREEMENT AND FINAL ORDER**

**STATUTORY AUTHORITY**

This Consent Agreement ("CA") is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045 as well as under the authority

provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, ("Part 22"). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

### **FINDINGS OF FACT**

EPA makes the following findings of fact, which, except for the facts supporting the jurisdictional allegations, Respondent neither admits nor denies:

1. Respondent, Mountaire Corporation, ("Mountaire"), is an Arkansas corporation with its principal place of business located at 1901 Napa Valley Drive, Little Rock, Arkansas, 72212.
2. As a corporation, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.
3. Upon information and belief, beginning in approximately 1977, continuing through the date of filing of this CA/FO, and at all times relevant to this CA/FO, Respondent was the owner or operator of the Selbyville Facility located at 55 Railroad Avenue in Selbyville, Delaware (hereinafter the "Facility"), within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004, and was in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
4. The Facility is a "facility", as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.
5. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present a substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a),

and Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

6. Beginning on or about January 14, 2007 at 11:20 p.m. (2320 hours), approximately five hundred (500) pounds of ammonia, Chemical Abstracts Service ("CAS") No. 7664-41-7, were released from the Respondent's Facility ("First Release").

7. Upon information and belief, a second release occurred on or about February 7, 2008 beginning at about 8:20 p.m. (2020 hours), of approximately nine hundred and sixty one (961) pounds of ammonia, CAS No. 7664-41-7, from the Respondent's Facility ("Second Release").

8. Ammonia is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, with an RQ of one hundred (100) pounds, as listed in 40 C.F.R. Part 302, Table 302.4.

9. The Releases from Respondent's Facility constitute releases of a hazardous substance in a quantity equal to, or greater than, the RQ of one hundred (100) pounds for that hazardous substance as listed in 40 C.F.R. Part 302, Table 302.4.

10. On or about April 21, 2010, EPA issued a Show Cause letter to Mountaire indicating that the Agency was considering the assessment of penalties against Mountaire for violations of Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004.

11. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used or stored, as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to, or greater than, the RQ, to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), of such release.

12. Section 304(a) and 304(b) of EPCRA, 42 U.S.C. §§ 11004(a) and (b), as implemented by 40 C.F.R. § 355.40(b)(1), requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the State Emergency Response Commission ("SERC") when there has been a release of a hazardous substance or an extremely hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance or an extremely hazardous substance. The relevant SERC is the Delaware Department of Natural Resources and Environmental Control, EPCRA Reporting Program, located at 156 South State Street in Dover, Delaware 19901.

13. On or about January 15, 2007 at or about 1:16 a.m. (0116 hours), or approximately fifty-six (56) minutes after the Respondent knew that ammonia had been released at the Respondent's Facility in an amount equal to or in excess of the applicable RQ, Respondent notified the NRC and SERC of the First Release.

14. On or about February 7, 2008 at or about 9:12 p.m. (2112 hours), or approximately fifty-two (52) minutes after the Respondent knew that ammonia had been released at the Respondent's Facility in an amount equal to or in excess of the applicable RQ, Respondent notified the NRC of the Second Release.

15. On or about February 7, 2008 at or about 9:14 p.m. (2114 hours), or approximately fifty-four (54) minutes after the Respondent knew that ammonia had been released at the Respondent's Facility in an amount equal to or in excess of the applicable RQ, Respondent notified the SERC of the Second Release.

16. Neither the First nor the Second Release was a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

17. Although Respondent notified the NRC and SERC of both releases, Respondent did not immediately notify the NRC or SERC of either release as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004. Immediate notification is required as soon as the Respondent knew or should have known of the release.

**EPA'S CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 103 OF CERCLA AND 304 OF EPCRA**

18. Respondent's failure to immediately notify the NRC as soon as the Respondent knew or should have known of the release of ammonia from the Facility in an amount equal to or in excess of its applicable RQ in both the First and Second Release, constitutes violations of Section 103 of CERCLA, 42 U.S.C. § 9603. Therefore, Respondent is subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

19. Respondent's failure to immediately notify the SERC of both the First and Second Releases constitutes violations of Section 304(b) of EPCRA, 42 U.S.C. § 11004(b). Therefore, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045

**CIVIL PENALTY**

20. For the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of CERCLA Section 103(a), 42 U.S.C. § 9603(a), and EPCRA Sections 304(b), 42 U.S.C. § 11004(b), in the total amount of \$13,602.

**PAYMENT TERMS**

21. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, the Respondent must pay the civil penalty no later than thirty (30) days after the effective date of the Final Order (the "final due date"). A payment of \$6,801 shall be made for the CERCLA portion of the penalty. An additional payment of \$6,801 shall be made for the EPCRA portion of the penalty.

22. Payment shall be made as follows:

a. If payment is to be made by cashier's check, separate CERCLA and EPCRA payment cashier checks shall be made as follows.

I. The CERCLA portion of the penalty, payable to "EPA-Hazardous Substances Superfund," in care of:

U.S. Environmental Protection Agency  
Attn: Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

Contact: Natalie Pearson, (314-418-4087)

If the cashier's check is sent overnight mail, it should be sent to:

U.S. Environmental Protection Agency  
ATTENTION: Superfund Payments  
U.S. Bank  
1005 Convention Plaza  
Mail Station FL-MO-C2GL  
St. Louis, MO 63101

Contact Natalie Pearson, (314-418-4087)

The Respondent shall note on the CERCLA penalty-payment cashier's check the title and docket number of this case.

- ii. The EPCRA portion of the penalty, payable to "United States Treasury" in care of:

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

If check is sent via overnight mail, it should be sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station FL-MO-C2GL  
St. Louis, MO 63101

The Respondent shall note on the EPCRA penalty-payment cashier's check the title and docket number of this case.

- b. Payment may be made via EFT (wire transfer) to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

- c. Payment may be made via Automated Clearinghouse (ACH) to:

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact - Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

23. The Respondent shall submit a copy of the checks, or verification of wire transfer or ACH to the following persons:

Lydia Guy (3RC00)  
Regional Hearing Clerk  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Alison Lecker (3RC41)  
Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

24. The CERCLA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and is consistent with 40 C.F.R. Part 19 and the *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, (September 30, 1999)*.

25. The EPCRA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and are consistent with 40 C.F.R. Part 19 and the *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, (September 30, 1999)*.

26. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with

the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

27. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the final due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Interest on any civil penalties assessed pursuant to this CA/FO will begin to accrue on the date that a written demand for such penalties is mailed or hand-delivered to Respondent.

28. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

29. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

30. Failure by the Respondent to pay the \$13,602 penalty assessed by the Final Order ("FO") in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

#### GENERAL PROVISIONS

31. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

32. For the purpose of this proceeding, Respondent agrees not to contest the Environmental Protection Agency's jurisdiction with respect to the execution or enforcement of the CA/FO.



33. For the purpose of this proceeding, Respondent neither admits nor denies factual allegations and conclusions of law set forth in this CA/FO, but expressly waives its rights to contest said allegations in this proceeding.

34. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the FO under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

35. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this CA on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this CA and to legally bind Respondent to the terms and conditions of the CA and accompanying FO.

36. This CA/FO resolves only those civil claims that are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition that Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

37. Each party to this action shall bear its own costs and attorney's fees.

38. By entering into this CA/FO, the Respondent does not admit any liability for the civil claims alleged herein.

**FOR Mountaire Farms Inc.**

John Ward  
SIGNATURE

8/20/2010  
DATE

Title: Director of Safety & Health

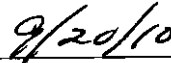
In the Matter of: Mountaire Farms Inc.

U.S. EPA Docket No.: CERCLA-EPCRA-2010-  
03-2010-0384

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY**



Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division



DATE

In the Matter of:

U.S. EPA Docket No.: CERCLA-EPCRA-03-2010-0384

Mountaire Corporation  
1901 Napa Valley Drive  
Little Rock, Arkansas  
72212,

Respondent.

Proceedings Pursuant to Sections 103 and 109 of the Comprehensive Environmental Response Compensation and Liability Act, as amended, ("CERCLA"), 42 U.S.C. §§ 9603 and 9609, and Sections 304 and 325 of the Emergency Planning and Community Right-to-Know Act, ("EPCRA") 42 U.S.C. §§ 11004 and 11045.

Mountaire Farms Inc.  
55 Railroad Ave.  
Selbyville, Delaware  
19975,

Facility.

**FINAL ORDER**


Pursuant to Sections 103 and 109 of the Comprehensive Environmental Response Compensation and Liability Act, as amended, ("CERCLA"), 42 U.S.C. §§ 9603 and 9609, Sections 304 and 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11004 and 11045, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

**Effective Date**

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

Date:

9/21/10



Renée Sarajian  
Regional Judicial Officer  
EPA, Region III



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 1650 Arch Street  
 Philadelphia, Pennsylvania 19103-2029**

<b>In the Matter of:</b>	)	
	)	<b>U.S. EPA Docket No.: CERCLA-EPCRA-</b>
	)	<b>03-2010-0384</b>
<b>Mountaire Corporation</b>	)	
<b>1901 Napa Valley Drive</b>	)	
<b>Little Rock, Arkansas</b>	)	
<b>72212,</b>	)	
	)	
<b>Respondent.</b>	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER</b>
	)	
<b>Mountaire Farms Inc.</b>	)	
<b>55 Railroad Ave.</b>	)	
<b>Selbyville, Delaware</b>	)	
<b>19975,</b>	)	
	)	
<b>Facility.</b>	)	

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent by certified mail to:

William E. Burton III, Esq.  
 Smith Moore Leatherwood LLP  
 300 North Greene Street, Suite 1400  
 Greensboro, NC 27401

9/21/10  
 DATE

*Alison Lecker*  
 Alison Lecker  
 Assistant Regional Counsel  
 Counsel for Complainant  
 (215) 814-2698