



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

MAR 17 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Brent Ericson
General Manager
Grainco FS, Inc.
3107 North State Highway 23
Ottawa, Illinois 61350-9645

Re: Grainco FS, Inc., Ottawa, Illinois, Consent Agreement and Final Order
Docket No. CERCLA-05-2011-0009

Dear Mr. Ericson:


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 17 2011.

Please pay the civil penalty in the amount of \$6,045.00 in the manner prescribed in paragraph 27, and reference your check with the billing document number 2751130B009 and the docket number CERCLA-05-2011-0009.

Your payments are due on APR 15 2011.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Tamara Carnovsky, Associate Regional Counsel, at (312) 886-2250. Thank you for your assistance in resolving this matter.

Sincerely,


Silvia Palomo, Acting Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA REGION 5
2011 MAR 17 AM 10:15

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:) **Docket No. CERCLA-05-2011-0009**
)
Grainco FS, Inc.) **Proceeding to Assess a Civil Penalty Under**
Ottawa, Illinois) **Section 109(b) of the Comprehensive**
) **Environmental Response, Compensation,**
Respondent.) **and Liability Act**
)

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

3. The Respondent is Grainco FS, Inc., a corporation doing business in the State of Illinois.

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 \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, to \$32,500 per day of violation for

violations 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 Violation

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 Complaint, Respondent was in charge of the anhydrous ammonia nurse tank located at 21465 West 119th Street, Plainfield, Illinois (facility).

14. Respondent’s facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container, motor vehicle, rolling stock, or any site or area where a hazardous substance has been deposited, stored, 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. Anhydrous 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. Anhydrous 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 April 21, 2007, at or about 7:00 p.m., a release occurred from Respondent’s facility of approximately 889 pounds of anhydrous ammonia (the release).

19. In a 24 hour time period, the release of anhydrous ammonia exceeded 100 pounds.

20. During the release, approximately 889 pounds of anhydrous ammonia spilled, leaked, discharged, or escaped into the land surface or subsurface strata, or ambient air and/or air, or land.

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 April 21, 2007, at approximately 7:30 p.m.

23. Respondent notified the NRC of the release on April 22, 2007, at 10:30 a.m.

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 \$6,045 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 (CERCLA/EPCRA Enforcement Response Policy).

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,045 civil penalty for the CERCLA violation. Respondent must pay the penalty by ACH electronic funds transfer, payable to “EPA Hazardous Substance Superfund, and sent to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment or description field of the electronic funds transfer, state the following: Grainco FS, Inc., docket number of this CAFO, and the billing document number 2751308009⁹⁰.

28. Respondent must send a copy of the payment to:

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

Tamara Carnovsky, (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 43, 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 protect the environment and public health by replacing the running gears on at least twelve ammonia nurse tanks.

33. At its Ottawa, Illinois facility, Respondent must complete the SEP as follows:

By October 1, 2011 Respondent must purchase and install twelve new twin mounted running gears. Two NH₃ nurse tanks will be mounted on each new twin running gear used for transportation and application of ammonia.

34. Respondent must spend at least \$36,000 to purchase and install the twelve new twin mounted running gears.

35. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

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

37. Respondent must maintain copies of the underlying data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying data to U.S. EPA within seven days of U.S. EPA's request for the information.

38. Respondent must submit a SEP completion report to U.S. EPA by November 1, 2011. This report must contain the following information:

- a. Detailed description of the SEP as completed, including the total number of nurse tanks that the Respondent owns or operates at the Ottawa, Illinois facility, the information from the data plate on nurse tanks where the running gears were

replaced, and pictures of the old and new running gears;

- 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).

39. Respondent must submit all notices and reports required by this CAFO by first class mail to James Entzminger at the address provided in paragraph 28, above.

40. 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 its general manager or 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.

41. Following receipt of the SEP completion report described in paragraph 38, 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 43.

42. 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 43, below.

43. 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, including the schedule in paragraph 33, Respondent must pay a penalty of \$18,134.
- 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 a penalty of \$4,534.
- 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>
\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

44. 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.

45. 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 27-28, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

46. 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 violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a)."

47. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

48. 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

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

50. 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.

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

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

53. This CAFO is a "final order" for purposes of U.S. EPA's CERCLA/EPCRA

Enforcement Response Policy.

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

55. 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.

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

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

In the Matter of: Grainco FS, Inc.
Docket No. CERCLA-05-2011-0009

Grainco FS, Inc., Respondent

February 25, 2011

Date

Brent Ericson

Brent Ericson
General Manager
Grainco FS, Inc.

U.S. Environmental Protection Agency, Complainant

3/15/2011

Date

Richard C. Karl


Richard C. Karl Douglas E. Ballotti, Acting
Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

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Docket No. CERCLA-05-2011-0009

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.

3/16/11
Date



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


In the Matter of: Grainco FS, Inc.
Docket No. CERCLA-05-2011-0009

Certificate of Service

I, James Entzminger, 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:

Brent Ericson
General Manager
Grainco FS, Inc.
3107 North State Highway 23
Ottawa, Illinois 61350-9645

on the 17 day of March, 2011


James Entzminger
U.S. Environmental Protection Agency
Region 5

2011 MAR 17 AM 10:16
REGIONAL HEARING CLERK
U.S. EPA REGION 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY

MAR 07 2011

OFFICE OF REGIONAL
COUNSEL