



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2011 MAY 27 AM 10:04

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2010-0028

IN THE MATTER OF:

FARMERS UNION OIL CO., INC.

Kenaston Anhydrous Plant

County Road 1

Kenmare, North Dakota 58746

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 27th DAY OF May, 2011.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

2011 MAY 27 AM 8:19

FILED
EPA REGION VIII
HEARING OFFICE

IN THE MATTER OF:)

Farmers Union Oil Company, Inc.)
Kenaston Anhydrous Plant)
County Road 1)
Kenmare, North Dakota 58746)

Respondent)

CONSENT AGREEMENT

DOCKET NO.: CAA-08-2010-0028

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Farmers Union Oil Company, Inc. (FUO), owner of the Kenaston Anhydrous Plant, by their undersigned representatives, hereby consent and agree as follows:

1. On September 30, 2010, EPA issued a Complaint alleging certain violations of the Clean Air Act, (CAA) and proposed a civil penalty for the violations alleged therein.
2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.
3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.
4. **PENALTY:** This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA, Respondent, and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties. Attachment A (Collection Information) provides terms for payment including the assessment of fees and interest charges for late payments. Respondent consents and agrees to pay a civil penalty in the amount of Six Thousand One Hundred Dollars (\$6,100).
5. **CERTIFICATION OF COMPLIANCE:** Within 90 days of FUO's receipt of the Final Order in this matter, FUO will submit to EPA a Certification of Compliance, establishing FUO's completion of the items described in subparagraphs (a) through (j) below:
 - a) Develop and implement a management system as required by 40 C.F.R. § 68.15;
 - b) Compile and maintain the most current information related to the regulated substances, processes, and equipment as required by 40 C.F.R. § 68.48. Specifically, compile information for safe upper and lower temperatures, pressures, flows and compositions [C.F.R. § 68.48(a)(3)]; equipment specifications for ammonia tank [C.F.R. § 68.48(a)(4)]; and codes and standards used to design, build and operate the process [C.F.R. § 68.48(a)(5)];

- c) Ensure that the ammonia process is designed in compliance with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.48(b);
- d) Perform a Process Hazard Review as required by 40 C.F.R. § 68.50;
- e) Ensure that operating procedures are in accordance with 40 C.F.R. § 68.52;
- f) Provide refresher training at least every three years, or more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process in accordance with 40 C.F.R. § 68.54(b);
- g) Implement and maintain a maintenance program as required by 40 C.F.R. § 68.56;
- h) Evaluate compliance with the RMP program every three years as required in 40 C.F.R. § 68.58. Document the findings of the audit including an appropriate response to each finding. Document that each deficiency found during the audit has been corrected;
- i) Ensure that the facility emergency response plan includes procedures for informing the public and local emergency response agencies about accidental releases as required by 40 C.F.R. § 68.95(a)(1)(i); and,
- j) Ensure that the facility emergency response plan includes documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures to the covered chemical as required by 40 C.F.R. § 68.95(a)(1)(ii).

The CERTIFICATION OF COMPLIANCE submitted by FOU shall contain the date, printed name, and signature of a FOU officer, as well as the following statement:

I certify that I am authorized to verify the completion of work on behalf of Farmers Union Oil Company, Inc. and Kenaston Anhydrous Plant. I certify under penalty of perjury that the foregoing is true and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

6. **SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP's):** Respondent will perform two SEP's described below.

7. Description of SEP #1: Respondent shall make arrangements for the delivery of two ammonia safety/Risk Management Plan (RMP) training workshops for first responders, the public and regulated industry with operations that have a potential to be regulated under CAA 112(r)(7).

8. Prior to the beginning of the first workshop, a final agenda and information regarding the instructors selected to provide the training shall be submitted to EPA for review and approval.

9. In addition to providing notice to the State Fertilizer Association, North Dakota Department of Agriculture, and the State Emergency Response Committee, FOU will notify the appropriate Local

Emergency Planning Committees for those districts selected for training sessions. The notifications will include the date, time and agenda for each workshop. The training shall be open, at no cost, to all members of the above listed organizations in addition to agricultural ammonia suppliers.

10. All workshops shall be completed within eighteen (18) months of the date of the Final Order.
11. **The total expenditure for SEP #1 shall not be less than One Thousand Eight Hundred Dollars (\$1,800).** This amount is 90% of the original SEP estimate (\$2,000).
12. Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

SEP #1 Completion Report:

- a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following completion of SEP #1. The SEP Completion Report shall contain the following information:
 - (i) A detailed description of the SEP as implemented;
 - (ii) A description of deviations from the original SEP proposal, if applicable;
 - (iii) Locations of all completed workshops;
 - (iv) Number of attendees at each training session;
 - (v) Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and,
 - (vii) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement.
13. Description of SEP #2:
Respondent shall make arrangements for a third party to conduct a regulatory compliance audit on all nurse tanks owned by the FUEO locations listed below. The audit will consist of a review of all applicable regulations and standards, ensuring all nurse tanks at these locations meet these regulations. The regulations shall include DOT, EPA, OSHA, and any other applicable regulations.

Facility	Location
Kenmare Anhydrous Plant	Highway 52, Kenmare, North Dakota
Kenaston Anhydrous Plant	County Road 1, Kenmare, North Dakota
Coulee Anhydrous Plant	Highway 50, Coulee, North Dakota
Powers Lake Anhydrous Plant	Highway 50, Powers Lake, North Dakota
Norma Anhydrous Plant	9290 57 th Avenue, Kenmare, North Dakota

14. Respondent will complete the audit within six (6) months of the date of the Final Order.

15. **The total expenditure for SEP #2 shall not be less than Eleven Thousand Two Hundred Dollars (\$11,200).** This amount is approximately 90% of the original SEP estimate (\$12,474).

16. Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

SEP #2 Completion Report:

a. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following completion of SEP #2. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of deviations from the original SEP proposal, if applicable;
- (iii) The audit findings listed by statute;
- (iv) Verification of correction of any findings and/or recommendations;
- (v) Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and,
- (vii) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement.

17. No part of SEP 1 or SEP 2 will contain work that is otherwise required as part of any permit, enforcement action, or state or local requirement.

18. Respondent agrees that failure to submit the SEP Completion Reports shall be deemed a violation of this Consent Agreement and Respondent shall become liable for stipulated penalties and late fees as set forth below.

19. In all documents or reports, including, without limitation, the SEP Completion Reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall have its duly appointed officer sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

20. EPA acceptance of SEP Reports: Following receipt of the SEP Completion Reports described above, EPA will do one of the following:

- (i) Accept the SEP Completion Reports;
- (ii) Reject the SEP Completion Reports with notification to Respondent in writing of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies; or
- (iii) Reject the SEP Completion Reports and seek stipulated penalties in accordance with the provisions herein.

21. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval within ten (10) days of receipt of such notification. EPA and Respondent shall then have an additional thirty (30) days to reach agreement from the receipt by EPA of Respondent's notification of objection. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement.

22. The determination of whether the SEPs have been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEPs shall be in the sole discretion of EPA.

23. Respondent shall submit by first class mail all notices and reports required by this Consent Agreement to:

David Cobb, 8ENF-AT
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

SEP STIPULATED PENALTIES, LATE FEES AND GENERAL PROVISIONS

24. In the event that Respondent fails to comply with any of the terms or provisions of this agreement relating to the performance of the SEPs described above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the total SEPs expenditure stated above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

SEP #1:

- a. If the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty to the U.S. Treasury in the amount of One Thousand Eight Hundred Dollars (\$1,800) within thirty (30) days of written demand by EPA.

- b. If the SEP has been satisfactorily completed, and Respondent spent less than the amount of money required to be spent for the project, Respondent shall pay One Thousand Eight Hundred Dollars (\$1,800), less the EPA approved amount already expended on the SEP, to the U.S. Treasury within thirty (30) days of written demand by EPA.
- c. For failure to submit the SEP Completion Report required above, Respondent shall pay to the U.S. Treasury, within thirty (30) days of written demand by EPA, a stipulated penalty in the amount of Fifty Dollars (\$50) for each calendar day after the day the SEP Completion Report was originally due until the day that the SEP Completion Report is received by EPA.

SEP #2:

- d. If the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty to the U.S. Treasury in the amount of Eleven Thousand Two Hundred Dollars (\$11,200) within thirty (30) days of written demand by EPA.
 - e. If the SEP has been satisfactorily completed, and Respondent spent less than the amount of money required to be spent for the project, Respondent shall pay Eleven Thousand Two Hundred Dollars (\$11,200), less the EPA approved amount already expended on the SEP, to the U.S. Treasury within thirty (30) days of written demand by EPA.
 - f. For failure to submit the SEP Completion Report required above, Respondent shall pay to the U.S. Treasury, within thirty (30) days of written demand by EPA, a stipulated penalty in the amount of Fifty Dollars (\$50) for each calendar day after the day the SEP Completion Report was originally due until the day that the SEP Completion Report is received by EPA.
25. Stipulated penalties described in paragraph 24 shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.
26. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Attachment A (Collection Information) provides terms for payment including the assessment of fees and interest charges for late payments.
27. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.
28. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEPs, shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act § 112(r)."
29. Respondent hereby agrees not to claim any funds expended in the performance of the SEPs as a deductible business expense for purposes of federal taxes. In addition, Respondent hereby agrees that, within thirty (30) days of the date it submits its federal tax reports for the calendar year in which the above-identified SEPs are completed, it will submit to David Cobb, EPA Region 8, certification that any funds expended in the performance of the SEPs have not been deducted from federal taxes.

30. Failure by Respondent to comply with any term of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and such other relief as may be appropriate.

31. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of the Consent Agreement.

32. If the undersigned is a representative of the Respondent, he/she certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the parties he/she represents to the terms and conditions of the Consent Agreement.

33. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

34. Each party shall bear its own costs and attorney fees in connection with this matter.

35. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Complainant.

Date: 5-26-11

By: 

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

FARMERS UNION OIL COMPANY, INC.

Respondent.

Date: 5-11-11

By: 

Greg Westlake
General Manager
Farmers Union Oil Company, Inc.

COLLECTION INFORMATION

Payment shall be due on or before 30 calendar days after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

CHECK PAYMENTS:

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

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

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 "

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

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

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENTS AND FINAL ORDERS** in the matter of **FARMERS UNION OIL CO., INC. COULEE ANHYDROUS PLANT; KENASTON ANHYDROUS PLANT; and KENMARE ANHYDROUS PLANT; DOCKET NOS.: CAA-08-2010-0028; CAA-08-2010-00032; and CAA-08-2010-0030**. The documents were filed with the Regional Hearing Clerk on May 27, 2011.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on May 27, 2011, to:

Greg Westlake, Manager
Farmers Union Oil
Kenmare Anhydrous Plant
Hwy. 52
Kenmare, North Dakota 58746

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

May 27, 2010



Tina Artemis
Paralegal/Regional Hearing Clerk

