



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

May 22, 2008

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8933 0115

Mikael Pedersen
Senior Executive Vice President
Farmland Dairies, LLC
5252 Clay Avenue S.W.
Grand Rapids, Michigan 49548

Consent Agreement and Final Order, Docket No. **EPCRA-05-2008-0012**

Dear Mr. Pedersen:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on May 22, 2008, with the Regional Hearing Clerk.

The civil penalty in the amount of \$25,210.00 is to be paid in the manner prescribed in paragraph 29 and 30. In the comment or description field of the electronic funds transfer, please state: Farmland Dairies, LLC, the docket number of this CAFO (above), and the following billing document number BD 2750844E012. Payment is due by June 21, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Maynard Shaw", written over a horizontal line.

Maynard Shaw
Pesticides and Toxics Compliance Section

Enclosures

bcc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Charles V. Mikalian, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**Farmland Dairies, LLC
Grand Rapids, Michigan**

Respondent

) **Docket No. EPCRA-05-2008-0012**
)
) **Proceeding to Assess a Civil Penalty**
) **Under Section 325(c) of the Emergency**
) **Planning and Community Right-to-Know**
) **Act of 1986, 42 U.S.C. § 11045(c)**
)
)
)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), 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 the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Farmland Dairies, LLC, a corporation doing business in the State of Michigan.

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. Respondent believes that its alleged liability as set forth in this CAFO was discharged in the bankruptcy proceedings of Parmalat USA, Inc., Farmland Dairies, LLC and Farmland Stremicks Sub, L.L.C. filed in the United States Bankruptcy Court for the Southern

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District of New York on February 11, 2004. Respondent enters into the CAFO, among other things, to avoid litigation over U.S. EPA's dispute regarding this contention.

6. 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.

7. This CAFO shall not be construed as an admission of liability by the Respondent. No part of this CAFO or the negotiations leading up to the execution by the parties to this CAFO shall be admissible or used in any litigation, claim or other proceeding, provided, however, that such evidence may be offered in an action seeking solely to enforce the terms of this CAFO.

8. 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

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

10. 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.

11. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

Statutory and Regulatory Background

12. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed, or otherwise used a toxic chemical in an amount in excess of an applicable threshold quantity of that chemical listed under Section

313(f) of EPCRA and 40 C.F.R. § 372.25 during the calendar year; to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of U.S. EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

13. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

14. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. The U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 of EPCRA that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 of EPCRA that occurred after March 15, 2004, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

15. Respondent is a "person" as that term is defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 5252 Clay Avenue S.W., Grand Rapids, Michigan 49548 ("Facility") during calendar year 2004.

17. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the Facility.

18. The Facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

19. The Facility is a "facility" as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. The Facility has a SIC code of 2026, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

Count 1

21. During calendar year 2004, Respondent otherwise used, as that term is defined at 40 C.F.R. § 372.3, greater than 10,000 pounds of nitric acid, CAS No. 7697-376-2, a toxic chemical listed under 40 C.F.R. § 372.65, at the Facility.

22. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Michigan a Form R for nitric acid for calendar year 2004 by July 1, 2005.

23. Respondent did not submit to the Administrator of U.S. EPA and to the State of Michigan a Form R for nitric acid for calendar year 2004 by July 1, 2005.

24. Respondent's failure to submit timely a Form R for nitric acid to the Administrator of U.S. EPA and to the State of Michigan for calendar year 2004 by July 1, 2005, violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 2

25. During calendar year 2004, Respondent manufactured, as that term is defined at 40 C.F.R. § 372.3, greater than 25,000 pounds of nitrates, a chemical category listed under 40 C.F.R. § 372.65, at the Facility.

26. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Michigan a Form R for nitrates for calendar year 2004 by July 1, 2005.

27. Respondent did not submit to the Administrator of U.S. EPA and to the State of Michigan a Form R for nitrates for calendar year 2004 by July 1, 2005.

28. Respondent's failure to submit timely a Form R for nitrates to the Administrator of U.S. EPA and to the State of Michigan for calendar year 2004 by July 1, 2005, violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

29. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$25,210.00. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended)* (April 12, 2001).

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$25,210.00 civil penalty for the EPCRA violations. Respondent may pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America."

For checks sent by regular U.S. Postal Service mail, the check must be sent to:

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

For checks sent by express mail, the check must be sent to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note Farmland Dairies, L.L.C., the docket number of this CAFO and the billing document number.

Respondent may also pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 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." In the comment or description field of the electronic funds transfer, state Farmland Dairies, L.L.C., the docket number of this CAFO and the billing document number.

31. For payment by check, a transmittal letter, stating Farmland Dairies, L.L.C., 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-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Maynard Shaw (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

32. This civil penalty is not deductible for federal tax purposes, unless any law, regulation, guidance issued by the Internal Revenue Service, or common law provides otherwise.

33. If Respondent does not pay the civil penalty timely, 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.

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, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

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

35. 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.

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

37. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 313 of EPCRA.

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


39. Each person signing this 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.

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

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

Farmland Dairies, L.L.C.

April 21, 2008
Date

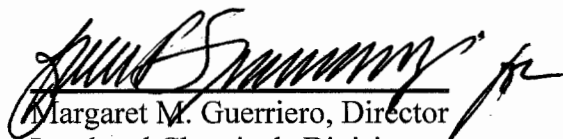

Mikael Pedersen
Senior Executive Vice President

EPCRA-05-2008-0012

**In the Matter of:
Farmland Dairies, LLC**

United States Environmental Protection Agency, Complainant

5/16/08
Date


Margaret M. Guerriero, Director
Land and Chemicals Division

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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.

5-20-08

Date

Richard C Kal

Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

EPCRA-05-2008-0012

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REGIONAL HEARING CLERK
GENERAL

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Farmland Dairies, LLC, was filed on May 22, 2008, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed, by Certified Mail, Receipt No. 7001 0320 0005 8933 0115 a copy of the original to the Respondent:

Mikael Pedersen
Senior Executive Vice President
Farmland Dairies, LLC
5252 Clay Avenue S.W.
Grand Rapids, Michigan 49548

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Charles V. Mikalian, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown, PTCS (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. EPCRA-05-2008-0012

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