



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

AUG 13 2014

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Pat Denor  
VP & General Manager  
Lakeview Farms, LLC  
19241 83<sup>rd</sup> Street  
Bristol, Wisconsin 53104

Re: Lakeview Farms, LLC, Bristol, Wisconsin Consent Agreement and Final Order  
Docket No. **EPCRA-05-2014-0018**

Dear Mr. Denor:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on August 13, 2014.

Please pay the EPCRA civil penalty in the amount of \$45,110 in the manner prescribed in paragraph 63 and reference your payment with the docket number **EPCRA-05-2014-0018**.

Your payment is due on September 12, 2014.

Please feel free to contact Ruth McNamara at [mcnamara.ruth@epa.gov](mailto:mcnamara.ruth@epa.gov) or by telephone at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Charles Mikalian, Associate Regional Counsel, at [mikalian.charles@epa.gov](mailto:mikalian.charles@epa.gov) or by telephone at (312) 886-2242. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hays, Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Lakeview Farms, LLC  
Bristol, Wisconsin

Respondent.



Docket No. EPCRA-05-2014-0018

Proceeding to Assess a Civil Penalty  
Under Section 325(c)(1) of the Emergency  
Planning and Community Right-to-Know  
Act of 1986

**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(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 (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Lakeview Farms, LLC, a Delaware Limited Liability Company doing business in the State of Wisconsin.

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. To avoid the costs and uncertainty of litigation, 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 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier 1 or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

12. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. 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 to \$37,500 per day of violation for violations that occurred after January 12, 2009.

#### **Factual Allegations and Alleged Violations**

15. Respondent is a “person” as that term is defined under 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 19241 83<sup>rd</sup> Street, Bristol, Wisconsin (facility).

17. At all times relevant to this CAFO, Respondent was an employer at the facility.

18. Respondent's 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. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Ammonia is classified as a health hazard.

21. Ammonia CAS #7664-41-7 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

22. Ammonia CAS #7664-41-7 is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

23. Ammonia CAS #7664-41-7 has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

24. During at least one period of time in calendar year 2010, ammonia was present at the facility in an amount equal to or greater than the minimum threshold level.

25. During at least one period of time in calendar year 2011, ammonia was present at the facility in an amount equal to or greater than the minimum threshold level.

26. During at least one period of time in calendar year 2012, ammonia was present at the facility in an amount equal to or greater than the minimum threshold level.

27. OSHA requires Respondent to prepare, or have available, an MSDS for ammonia.

28. Sulfuric acid is classified as a health hazard.

29. Sulfuric acid CAS #7664-93-9 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

30. Sulfuric acid CAS #7664-93-9 is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

31. Sulfuric acid CAS #7664-93-9 has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

32. During at least one period of time in calendar year 2010, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

33. During at least one period of time in calendar year 2011, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

34. During at least one period of time in calendar year 2012, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

35. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid.

36. Lead is classified as a health hazard.

37. Lead CAS #7439-92-1 is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

38. Lead CAS #7439-92-1 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

39. During at least one period of time in calendar year 2010, lead was present at the facility in an amount equal to or greater than the minimum threshold level.

40. During at least one period of time in calendar year 2011, lead was present at the facility in an amount equal to or greater than the minimum threshold level.

41. During at least one period of time in calendar year 2012, lead was present at the facility in an amount equal to or greater than the minimum threshold level.

42. OSHA requires Respondent to prepare, or have available, an MSDS for lead.
43. Respondent was required to submit to the SERC, LEPC, and fire department on or before March 1, 2011, a completed emergency and hazardous chemical inventory form including ammonia, sulfuric acid, and lead for calendar year 2010.
44. Respondent was required to submit to the SERC, LEPC, and fire department on or before March 1, 2012, a completed emergency and hazardous chemical inventory form including ammonia, sulfuric acid, and lead for calendar year 2011.
45. Respondent was required to submit to the SERC, LEPC, and fire department on or before March 1, 2013, a completed emergency and hazardous chemical inventory form including ammonia, sulfuric acid, and lead for calendar year 2012.
46. At all times relevant to this CAFO, Wisconsin Emergency Management was the SERC for Wisconsin under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).
47. At all times relevant to this CAFO, the Kenosha County Local Emergency Planning Committee was the LEPC for Bristol, Wisconsin, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).
48. At all times relevant to this CAFO, the Bristol Volunteer Fire Department was the fire department with jurisdiction over the facility.
49. Respondent timely submitted to the SERC, the LEPC and Bristol Volunteer Fire Department an emergency and hazardous chemical inventory form that referenced ammonia, but not sulfuric acid or lead, for calendar year 2010.
50. By March 1, 2011, Respondent had not submitted to the SERC, LEPC, and Bristol Volunteer Fire Department a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid, and lead for calendar year 2010.

51. Each day that Respondent failed to submit to the SERC, LEPC, and Bristol Volunteer Fire Department an Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2011, for calendar year 2010 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

52. Respondent timely submitted to the SERC, the LEPC and Bristol Volunteer Fire Department an emergency and hazardous chemical inventory form that referenced ammonia, but not sulfuric acid or lead, for calendar year 2011.

53. By March 1, 2012, Respondent had not submitted to the SERC, LEPC, and Bristol Volunteer Fire Department an Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2011.

54. Respondent submitted to the SERC, LEPC, and Bristol Volunteer Fire Department a completed Emergency and Hazardous Chemical Inventory Form that included ammonia, sulfuric acid, and lead on September 30, 2013, for calendar year 2011.

55. Each day that Respondent failed to submit to the SERC, LEPC, and Bristol Volunteer Fire Department an Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

56. Respondent timely submitted to the SERC, the LEPC and Bristol Volunteer Fire Department an emergency and hazardous chemical inventory form that referenced ammonia, but not sulfuric acid or lead, for calendar year 2012.

57. By March 1, 2013, Respondent had not submitted to the SERC, LEPC, and Bristol Volunteer Fire Department an Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2012.



58. Respondent submitted to the SERC, LEPC, and Bristol Volunteer Fire Department a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid, and lead on October 1, 2013, for calendar year 2012.

59. Each day that Respondent failed to submit to the SERC an Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2013, for calendar year 2012 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

60. Each day that Respondent failed to submit to the LEPC an Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2013, for calendar year 2012 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

61. Each day that Respondent failed to submit to the Bristol Volunteer Fire Department an Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2013, for calendar year 2012 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### **Civil Penalty**

62. Complainant has determined that an appropriate civil penalty to settle this action is \$45,110. 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 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 (EPCRA/CERCLA Enforcement Response Policy).

63. Within 30 days after the effective date of this CAFO, Respondent must pay a \$45,110 civil penalty for the EPCRA violations by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state the following: In the Matter of: Lakeview Farms, LLC, and the docket number of this CAFO.

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

65. 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. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

66. 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.

### **General Provisions**

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

68. 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.

69. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

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

71. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

73. 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.

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

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

**Lakeview Farms, LLC, Respondent**

JULY 24, 2014  
Date

Richard S. Moening  
Pat Denor ~~Richard S. Moening~~  
VP & General Manager ~~GENERAL COUNSEL~~  
Lakeview Farms, LLC

**U.S. Environmental Protection Agency, Complainant**

8/4/14  
Date

Michael E. Hans  
Sharon Jaffess, Chief ~~MICHAEL E. HANS for Jaffess~~  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

8-4-14  
Date


Richard C. Karl  
Richard C. Karl, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Lakeview Farms, LLC**  
**Docket No. EPCRA-05-2014-0018**

**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.

8-5-2014  
Date

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

**Consent Agreement and Final Order**  
**In the Matter of: Lakeview Farms, LLC, Bristol, Wisconsin**  
**Docket No. EPCRA-05-2014-0018**

**Certificate of Service**

I certify that I filed the original and a copy of the Consent Agreement and Final Order, docket number EPCRA-05-2014-0018 with the Regional Hearing Clerk (E19-J), U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a copy of the Complaint to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Pat Denor  
VP & General Manager  
Lakeview Farms, LLC  
19241 83<sup>rd</sup> Street  
Bristol, Wisconsin 53104


I certify that I forwarded a copy to the State Emergency Response Commission addressed as follows:

Cate Vogel  
EPCRA Planner/Program Manager  
Wisconsin Emergency Management  
P.O. Box 7865  
Madison, Wisconsin 53707-7865

I certify that I forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC  
Charles Mikalian, ORC

On the 13<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
Ruth McNamara  
U.S. Environmental Protection Agency  
Region 5