

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Percival Farm Service, Inc.)

Percival, Iowa)

Respondent)

Docket Nos.

EPCRA-07-2008-0005

CERCLA-07-2008-0012

CAA-07-2008-0040

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and Percival Farm Service, Percival, Iowa, (Respondent) have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act, (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the first date of alleged violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative

penalty action. In addition, this is an administrative action for the assessment of civil penalties instituted pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609; and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirement to implement a Risk Management Program as required by 40 C.F.R. Part 68 and Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation. In addition, this CAFO serves as notice that EPA has reason to believe that Respondent has violated Section 103 of CERCLA, 42 U.S.C. § 9603, and the regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and codified at 40 C.F.R. Part 302; and Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 355.

Parties

3. The Complainant, by delegation from the Administrator of the EPA , and the Regional Administrator, EPA, Region VII, is the Director of the Air and Waste Management Division, EPA, Region VII.

4. The Respondent is the Percival Farm Service, Inc., located at 2070 195th Avenue, Percival, Iowa 51648. Respondent is a anhydrous ammonia retailer. Respondent is an active Iowa corporation, incorporated on February 21, 1995.

Statutory and Regulatory Requirements

CAA Section 112(r)

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

6. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. These regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

7. The regulations at 40 C.F.R. Part 68, set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a risk management plan (RMP) that must be submitted to EPA.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999; or the date on which a regulated substance is first present above the threshold quantity in a process.

9. Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), authorizes the United States to commence an action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

Emergency Notification Requirements EPCRA Section 304 and CERCLA Section 103

10. Section 103(a) of CERCLA and the regulation set forth at 40 C.F.R. § 302.6, require any person in charge of a vessel or an onshore or offshore facility, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such

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vessel or facility in quantities equal to or greater than the reportable quantity established pursuant to Section 102 of CERCLA, to immediately notify the National Response Center of such release.

11. Section 304(a) of EPCRA and the regulation set forth at 40 C.F.R. § 355.40, require the owner or operator of a facility at which a hazardous chemical is produced, used, or stored and at which there is a release of a reportable quantity of any EPCRA extremely hazardous substance or CERCLA hazardous substance to immediately notify the State Emergency Response Commission of any State likely to be affected by the release and the emergency coordinator for the Local Emergency Planning Committee for any area likely to be affected by the release.

12. Section 109(b)(1) of CERCLA authorizes a civil penalty of not more than \$25,000 per day for each day during which a violation continues for any violation of the requirements of Section 103(a) of CERCLA. Section 109(b)(1) of CERCLA, as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

13. Section 325(b)(2) of EPCRA authorizes a civil penalty for violations of the requirements of Section 304 of EPCRA of not more than \$25,000 per day for each day during which the violation continues. Section 325(b)(2) of EPCRA, as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil

penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

Definitions

14. The regulations at 40 C.F.R. § 68.3 define “stationary source” in part, as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.

15. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

17. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Alleged Violations

18. EPA alleges that Respondent has violated CAA Section 112(r), CERCLA Section 103, and EPCRA Section 304, as follows:

CAA Section 112(r)

19. EPA alleges that Respondent has violated the CAA and federal regulations, promulgated pursuant to the CAA, as follows:

20. Respondent is, and at all times referred to herein, was a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

21. Respondent’s facility located at 2070 195th Avenue, Percival, Iowa, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

22. Anhydrous ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

22. On or about October 31, 2007, Respondent responded to EPA’s request for information regarding its facility. This response showed that Respondent stored 288,750 pounds of anhydrous ammonia at its facility. Therefore, Respondent exceeded the threshold quantity for anhydrous ammonia. Respondent first filed an RMP on December 18, 2000.

23. Respondent is subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

24. Respondent was required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

25. EPA reviewed Respondent's Risk Management Plan and discovered that Respondent failed to update the emergency contact within one month of change, as required by 40 C.F.R. § 68.195.

26. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth above, is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Emergency Notification Requirements EPCRA Section 304 and CERCLA Section 103

27. Respondent is, and at all times referred to herein, was 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).

28. At all times relevant hereto, Respondent owned and operated and was in charge of Percival Farm Service, Inc., Percival, Iowa, located at 2070 195th Avenue, Percival, Iowa (Respondent's facility). As part of Respondent's business, Respondent stores anhydrous ammonia.

29. Respondent's facility is a facility as defined by Section 101(9) of CERCLA and Section 329(4) of EPCRA.

30. Anhydrous ammonia is a hazardous substance as defined by Section 101(14) of CERCLA, with a reportable quantity of 100 pounds, as designated by 40 C.F.R. § 302.4. Anhydrous ammonia is an extremely hazardous substance, as defined by Section 329(3) of

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EPCRA, 42 U.S.C. § 11049(3) and as designated pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a) and listed in 40 C.F.R. Part 355, Appendix A.

31. At all times relevant hereto, hazardous chemicals as defined by Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), were produced, used, or stored by Respondent's facility.

32. On or about September 22, 2007, there was a release of anhydrous ammonia from Respondent's facility in excess of the reportable quantity designated by 40 C.F.R. § 302.4. Respondent had knowledge of the release on September 22, 2007.

33. Respondent did not immediately notify the National Response Center of the release as soon as it had knowledge of the release.

34. Respondent's failure to notify the National Response Center of the release as soon as it had knowledge of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603, and of the requirements of 40 C.F.R. § 302.6.

35. Respondent did not immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release.

36. Respondent's failure to immediately notify the State Emergency Response Commission, and the Local Emergency Planning Committee, of the release is a violation of Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and of the requirements of 40 C.F.R. § 355.40(b).

CONSENT AGREEMENT

37. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

38. Respondent neither admits nor denies the factual allegations set forth above.

39. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.

40. This CAFO resolves the violations set forth above, specifically, the violation of the Section 112(r) of the CAA for the failure by Respondent to update the emergency contact information in its RMP; and the violations of Section 103 of CERCLA and Section 304 of EPCRA for the failure to immediately report the anhydrous ammonia release from Respondent's facility on September 22, 2007. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

41. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth below.

42. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

43. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is presently in compliance with all requirements of Section 112(r) of the CAA; Section 103 of CERCLA, 42 U.S.C. § 9603; and Section 304 of EPCRA, 42 U.S.C. § 11004, and all regulations promulgated thereunder.

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FINAL ORDER

Pursuant to the provisions of Section 113 of the CAA, 42 U.S.C. § 7413; Section 109 of CERCLA, 42 U.S.C. § 9609; and Section 325 of EPCRA, 42 U.S.C. § 11045, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Ten Thousand Dollars (\$10,000), within sixty days of entry of this Final Order. Payment shall be by two cashier's or certified checks. The first in the amount of Five Thousand Dollars (\$5000) and made payable to the "United States Treasury" and shall be remitted to:

United State Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

The second check also in the amount of Five Thousand Dollars (\$5000) shall be made payable to the "United States Treasury" and shall be remitted to:

United State Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
Post Office Box 979076
St. Louis, Missouri 63197-9000

2. A copy of each of the checks should be sent to:

Julie M. Van Horn
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101

and

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Kathy Robinson
Regional Hearing Clerk
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By  _____
Julie M. Van Horn
Senior Assistant Regional Counsel

Date 9 September 2008

By  _____
for Rebecca Weber
Director
Air and Waste Division
EPA Region VII

Date: 9/15/08

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RESPONDENT:
PERCIVAL FARM SERVICE, INC.
PERCIVAL, IOWA

By David Mark

Title President

Date 9-4-08

IT IS SO ORDERED. This Final Order shall become effective immediately.

By Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Date Sept. 22, 2008

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Julie M. Van Horn
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Sylvia Meek
Percival Farm Service, Inc.
2070 195th Avenue
Percival, Iowa 51648

Dated: 9/23/08


Kathy Robinson
Hearing Clerk, Region 7