

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 respective interests and in the public interest.

6. In order to resolve this matter without litigation, Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations set out in paragraphs 9-25 in this CAFO, and neither admits nor denies the factual allegations in the 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. In any proceeding to enforce the terms and conditions of this CAFO, the Respondent waives any right to contest the allegations set out herein. This waiver shall not preclude the Respondent from challenging the same or similar allegations in proceedings, if any, not resolved by this CAFO.

Statutory and Regulatory Background
(Jurisdictional Allegations)

9. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

15. Section 112(a)(9) of the Act, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as “any person who owns, leases, operates, controls or supervises a stationary source.”

16. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions.

17. “Stationary source” is defined to mean “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.” 40 C.F.R. § 68.3.

18. “Process” is defined to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.” 40 C.F.R. § 68.3.

19. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed anhydrous ammonia, CAS No. 7664-47-7, as a substance which, in the case of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The Administrator has further identified a threshold quantity of 10,000 lbs. of anhydrous ammonia for determining whether sources are subject to the Risk Management Program. 40 C.F.R. § 68.130, Table 1.

20. 40 C.F.R. § 68.115 provides that a “threshold quantity of a regulated substance listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”

21. 40 C.F.R. § 68.12 requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided in 40 C.F.R. §§68.150 through 68.185.

22. 40 C.F.R. § 68.12(c) requires that, in addition to meeting the general requirements of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 2 shall meet additional requirements identified at 40 C.F.R. § 68.12(c).

23. Section 113(d) of the Act 42 U.S.C. §7413(d) and 40 C.F.R. Part 19 provides that the Administrator of the EPA may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for each violation of Section 112(r) of the Act that occurred from March 15, 2004 to January 12, 2009, a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for each violation of Section 112(r) of the Act that occurred after January 12, 2009, and a civil penalty of up to \$44,539 per day of violation up to a total of \$356,312 for each violation of Section 112(r) of the Act that occurred after December 6, 2013 through November 2, 2015 or was assessed before August 1, 2016.

24. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

25. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

Factual Allegations and Alleged Violations

26. Respondent is a “person,” as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

27. Respondent is a Minnesota cooperative with a facility located at 4411 Upper 291st Street, Randolph, Minnesota (“Randolph Facility”), and a facility located at 600 4th Street SW, Montgomery, Minnesota (“Montgomery Facility”).

28. For purposes of the requirements at 40 C.F.R. Part 68, Respondent is the “owner or operator” of the Randolph and Montgomery Facilities, as that term is defined at Section 112(a)(9) of the Act.

29. Respondent’s ammonia storage process is a “process,” as that term is defined at 40 C.F.R. § 68.3.

30. On September 6, 2012, an authorized representative of the EPA conducted an inspection of the Randolph Facility to determine Respondent’s compliance with the Risk Management Program regulations.

31. The inspection confirmed that the Randolph Facility has more than a threshold amount of anhydrous ammonia. The inspection also identified the Randolph Facility’s violations as described in paragraphs 32–41 of this CAFO.

32. The Randolph Facility failed to document names or positions of people responsible for the implementation of the facility’s RMP Program elements and to document the lines of authority between them, as required by 40 C.F.R. § 68.15(c).

33. The Randolph Facility failed to maintain records of the off-site consequence analysis, as required by 40 C.F.R. § 68.39.

34. The Randolph Facility failed to document information pertaining to the process and equipment, including safe upper and lower parameters, equipment specifications, and the codes and standards used to operate the process, as required by 40 C.F.R. § 68.48(a).

35. The Randolph Facility failed to conduct a hazard review, as required by 40 C.F.R. § 68.50.

36. The Randolph Facility failed to prepare written operating procedures, as required by 40 C.F.R. § 68.52.

37. The Randolph Facility failed to train employees operating the process on operating procedures, as required by 40 C.F.R. § 68.54.

38. The Randolph Facility failed to prepare and implement procedures to maintain the on-going mechanical integrity of process equipment, as required by 40 C.F.R. § 68.56(a).

39. The Randolph Facility failed to train each employee involved in maintaining the on-going integrity of the process, as required by 40 C.F.R. § 68.56(b).

40. The Randolph Facility failed to conduct an audit evaluating compliance with the provisions of the prevention program at least every three years, as required by 40 C.F.R. § 68.58(a).

41. The Randolph Facility failed to investigate each incident which resulted in, or could have resulted in, a catastrophic release, as required by 40 C.F.R. § 68.60.

42. On June 26, 2014, an authorized representative of the EPA conducted an inspection of the Montgomery Facility to determine Respondent's compliance with the Risk Management Program regulations.

43. The inspection confirmed that the Montgomery Facility has more than a threshold amount of anhydrous ammonia. The inspection also identified the Montgomery Facility's violations as described in paragraphs 44–51 of this CAFO.

44. the Montgomery Facility failed to document names or positions of people responsible for the implementation of the facility's RMP Program elements and to document the lines of authority between them, as required by 40 C.F.R. § 68.15(c).

45. the Montgomery Facility failed to document information pertaining to the process and equipment, including safe upper and lower parameters, equipment specifications, and the codes and standards used to operate the process, as required by 40 C.F.R. § 68.48(a).

46. the Montgomery Facility failed to conduct a hazard review, as required by 40 C.F.R. § 68.50.

47. the Montgomery Facility failed to prepare written operating procedures, as required by 40 C.F.R. § 68.52.

48. the Montgomery Facility failed to train employees operating the process on operating procedures, as required by 40 C.F.R. § 68.54.

49. the Montgomery Facility failed to prepare and implement procedures to maintain the on-going mechanical integrity of process equipment, as required by 40 C.F.R. § 68.56(a).

50. the Montgomery Facility failed to train each employee involved in maintaining the on-going integrity of the process, as required by 40 C.F.R. § 68.56(b).

51. the Montgomery Facility failed to conduct an audit evaluating compliance with the provisions of the prevention program at least every three years, as required by 40 C.F.R. § 68.58(a).

52. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the

effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

53. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Civil Penalty

54. Based on an analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors as justice may require, the EPA has determined that an appropriate civil penalty to settle this action is \$120,000.00.

55. Within 60 days after the effective date of this CAFO, Respondent must pay the \$120,000.00 civil penalty by sending a cashier's or certified check, by regular U.S. Postal Service mail, payable to the "Treasurer, United States of America," to:

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

The check must note "River Country Cooperative" and the docket number of this CAFO.

56. A transmittal letter stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Greg Chomycia (SC-5J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Kathleen Kelly Schnieders, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

58. If Respondent does not pay timely the civil penalty, 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 under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

59. 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 overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. 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 quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

60. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: schnieders.kathleen@epa.gov (for Complainant), and johnduchscherer@rivercountrycoop.net (for Respondent), with a courtesy copy to jared.peterson@fmjlaw.com.

61. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO. EPA is not aware of any additional facts arising out of the aforementioned inspections of the Respondent's Randolph Facility or Montgomery Facility that would support any additional civil penalty being sought against Respondent.

62. The CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

63. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Compliance with this CAFO is a defense to any civil penalties arising out of the aforementioned inspections of Respondent's Randolph Facility and Montgomery Facility.

64. Respondent certifies that, to the best of its knowledge and belief, it is complying fully with 40 C.F.R. Part 68 to the extent applicable to Respondent.

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

66. 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.

67. Each party agrees to bear its own costs and attorneys' fees in this action.

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

69. The effective date of this CAFO is the date when this CAFO is filed with the Regional Hearing Clerk's office.

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of River Country Cooperative
Docket No. CAA-05-2020-0022

River Country Cooperative, Respondent

Date: 6/1/2020 By: 
River Country Cooperative

U. S. Environmental Protection Agency, Complainant

Date

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2020.06.30
12:52:14 -05'00'

Michael D. Harris
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of River Country Cooperative
Docket No. CAA-05-2020-0022

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.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2020.06.30
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Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5