



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

JAN 27 2015

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

REPLY TO THE ATTENTION OF:

R. Lee Allen  
Corporate General Counsel  
Brandt Consolidated, Inc.  
2935 S. Koke Mill Road  
Springfield, Illinois 62711

Re: Brandt Consolidated, Inc. Consent Agreement and Final Order **MM-05-2015-0002**  
Docket No. **CERCLA-05-2015-0002** **EPCRA-05-2015-0007**

Dear Mr. Lee:

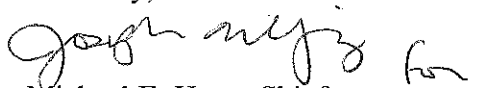
Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on January 27, 2015

Please pay the CERCLA civil penalty in the amount of \$11,510 in the manner described in paragraphs 54 and 55. Please pay the EPCRA civil penalty in the amount of \$23,020 in the manner prescribed in paragraphs 56 and 57, and reference your checks with the docket number CERCLA-05-2015-0002 ~~80#~~ 2751530B002 and **EPCRA-05-2015-0007**

Your payments are due on February 26, 2015

Please feel free to contact Ginger Jager at (312) 886-0767 if you have any questions regarding the enclosed documents. Please direct any legal questions to Eaton R. Weiler, Associate Regional Counsel, at (312) 886-6041. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

cc: Jon England, IEMA (w/ enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

MM-05-2015-0002

In the Matter of:

Brandt Consolidated, Inc.  
Williamsville, IL

Respondent.



) Docket Nos. CERCLA: CERCLA-05-2015-0002  
) EPCRA: EPCRA-05-2015-0007  
) Proceeding to Assess a Civil Penalty Under  
) Section 109(b) of the Comprehensive  
) Environmental Response, Compensation and  
) Liability Act, and Section 325(b)(2) and  
) (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 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2) and (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 Brandt Consolidated, Inc., a corporation doing business in the State of Illinois.

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. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), requires the owner or operator of a facility to immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

11. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), the owner or operator of a facility must give the notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), immediately after the release, to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

12. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

13. 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).

14. 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.

15. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$37,500 per day for each violation that occurred after January 12, 2009.

16. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of EPCRA Section 304. The Debt

Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$37,500 per day for each violation that occurred after January 12, 2009.

**Factual Allegations and Alleged Violations**

17. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

18. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

19. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 120 East Taylor Street, Williamsville, Illinois (facility).

20. At all times relevant to this CAFO, Respondent was in charge of the facility.

21. Respondent’s facility consists of storage containers where a hazardous substance has been stored.

22. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

23. 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.

24. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

25. Anhydrous ammonia, CAS #7664-41-7, is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

26. Anhydrous ammonia is classified as a physical or health hazard.
27. Anhydrous 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).
28. At all times relevant to this CAFO, Respondent produced, used or stored anhydrous ammonia at the facility.
29. Anhydrous 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).
30. Anhydrous ammonia, CAS #7664-41-7, has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A, and 40 C.F.R. Part 302, Table 302.4.
31. On June 3, 2012, at or about 8:00 p.m., a release occurred from Respondent’s facility of approximately 580 pounds of anhydrous ammonia (the release).
32. In a 24 hour time period, the release of anhydrous ammonia exceeded 100 pounds.
33. During the release, approximately 580 pounds of anhydrous ammonia discharged into the ambient air.
34. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
35. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).
36. Respondent had knowledge of the release on June 3, 2012, at approximately 8:00 p.m.
37. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

38. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).
39. The release was likely to affect Illinois.
40. At all times relevant to this CAFO, the Illinois Emergency Management Agency was the SERC for Illinois under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).
41. The release was likely to affect Sangamon County.
42. At all times relevant to this CAFO, the Sangamon Valley LEPC was the LEPC for Sangamon County under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

**Count 1**

(Alleged Failure to Notify NRC)

43. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.
44. Respondent notified the NRC of the release on June 4, 2012, at 8:15 a.m.
45. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.
46. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

**Count 2**

(Alleged Failure to Notify SERC)

47. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.
48. Respondent notified the Illinois SERC of the release on June 4, 2012, at 8:05 a.m.

49. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

50. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

**Count 3**

(Alleged Failure to Notify LEPC)

51. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

52. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release. Information concerning the release was communicated to the LEPC's release reporting contact the following morning on June 4, 2012.

53. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

**Civil Penalty**

54. Complainant has determined that an appropriate civil penalty to settle this action is \$11,510 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, 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).

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$11,510 civil penalty for the CERCLA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Bank  
Government Lockbox 979076 U.S. EPA Superfund Payments  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must note the case name and the docket number of this CAFO.

56. Complainant has determined that an appropriate civil penalty to settle this action is \$23,020 for the EPCRA violations. 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 EPCRA/CERCLA Enforcement Response Policy.

57. Within 30 days after the effective date of this CAFO, Respondent must pay a \$23,020 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The check must note the case name and the docket number of this CAFO.

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

Regional Hearing Clerk, (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Ginger Jager, (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

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

60. 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.

61. 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. U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

### **General Provisions**

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

63. 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.

64. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304 of EPCRA, 42 U.S.C. § 11004.

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

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

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

68. 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.

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

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

**In the Matter of: Brandt Consolidated, Inc.**  
**Docket No.**

**Brandt Consolidated, Inc., Respondent**

Jan 9, 2015  
Date



Tim McArdle  
General Manager  
Brandt Consolidated, Inc.

**In the Matter of: Brandt Consolidated, Inc.**  
**Docket No.**

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

1/21/15  
Date

Lawrence Schmitt  
Lawrence Schmitt, Acting Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

1/21/2015  
Date

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

**In the Matter of: Brandt Consolidated, Inc. MM-05-2015-0002**

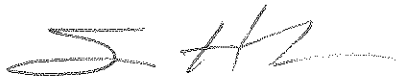
**Docket No. CERCLA-05-2015-0002**

**EPCRA-05-2015-0007**

**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.

11/23/2015  
Date

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

In the Matter of: Brandt Consolidated, Inc. MM-05-2015-0002

Docket No. [ ]

CERCLA-05-2015-0002


EPCRA-05-2015-0007

Certificate of Service

I, Ginger Jager, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

R. Lee Allen  
Corporate General Counsel  
Brandt Consolidated, Inc.  
2935 S. Koke Mill Road  
Springfield, IL 62711

on the 27<sup>th</sup> day of January, 2015

  
\_\_\_\_\_  
Ginger Jager  
U.S. Environmental Protection Agency  
Region 5