



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

JAN 26 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Larry Serven
President
Serven Fertilizer, Inc.
22421 State Route 41
Prairie City, Illinois 61470

MM-05-2016-0002

CAA-05-2016-0014

Re: Serven Fertilizer, Inc., Consent Agreement and Final Order, Docket Nos.

EPCRA-05-2016-0005 CERCLA-05-2016-0002

Dear Mr. Serven:

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 26, 2016.

Please pay the CERCLA civil penalty in the amount of \$7,073 in the manner prescribed in paragraphs 72 and 73, and reference your check with the billing document number 2751630B002 and the docket number CERCLA-05-2016-0002.

Please pay the EPCRA civil penalty in the amount of \$21,219 in the manner prescribed in paragraphs 74-76, and reference your check with the docket number EPCRA-05-2016-0005.

Please pay the civil penalty for CAA violations in the amount of \$6,250 in the manner described in paragraphs 74-76, and reference your check with the docket number. CAA-05-2016-0014

Your payments are due on February 25, 2016.

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 Jose DeLeon, Associate Regional Counsel, at (312) 353-7456. Thank you for your assistance in resolving this matter.

Sincerely,

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5 MM-05-2016-0002

CAA-05-2016-0014

In the Matter of:)

Serven Fertilizer, Inc.)
Prairie City, Illinois)

Respondent.)



Docket Nos.)

CERCLA-05-2016-0002 EPCRA-05-2016-0005)

Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation and
Liability Act, Section 325(b)(2) of the
Emergency Planning and Community Right-
to-Know Act of 1986, and Section 113(d) of
the Clean Air Act, 42 U.S.C. §7413(d)

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) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d) and Sections 22.1(a)(2), 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 Serven Fertilizer, 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 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 government's response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must 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).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility 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.

13. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

14. 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).

15. 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.

16. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325 (b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of choose appropriate sections CERCLA Section 103 and EPCRA Section 304. 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 these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

17. In accordance with Section 112(r) of the Act, on June 20, 1996, EPA promulgated regulations to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur. These regulations, known as the Risk Management Program regulations, are codified at 40 C.F.R. Part 68.

18. The Risk Management Program regulations apply to all stationary sources with processes that contain more than a threshold quantity of a regulated substance. The List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention is codified at 40 C.F.R. § 68.130.

19. Anhydrous ammonia is a “regulated substance,” as that term is defined in Section 112(r)(3) of the Act and 40 C.F.R. § 68.3. *See* 40 C.F.R. § 68.130, Table 1.

20. The “threshold quantity” (as that term is defined in 40 C.F.R. § 68.3) for anhydrous ammonia is 10,000 pounds in a process. *See* 40 C.F.R. § 68.130, Table 1.

21. The Risk Management Program regulations require that the owner or operator of a facility subject to the regulations develop and implement a Risk Management Plan (RMP) for preventing accidental releases to the air and minimizing the consequences of releases that do occur. *See* 40 C.F.R. § 68.12.

22. A facility’s RMP must, among other things, describe the stationary source and regulated substances handled at the facility. *See* 40 C.F.R. § 68.155(b).

23. A facility’s RMP must be submitted no later than: June 21, 1999; three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or the date on which a regulated substance is first present in more than a threshold quantity in a process,

whichever is later. *See* 40 C.F.R. §§ 68.10(a) and 68.150.

24. The owner or operator of a stationary source shall revise and update the RMP submitted under 40 C.F.R. § 68.150 at least once every five years from the date of the initial submission or most recent required update. *See* 40 C.F.R. § 68.190(b)(1)

25. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation, up to a total of \$270,000 for violations that occurred from March 15, 2004 through January 12, 2009; and may assess a civil penalty of up to \$37,500 per day of violation up to \$295,000 for violations that occurred after January 12, 2009, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

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

28. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 22421 Illinois Highway 41, Prairie City, Illinois, 61470 (facility).

29. At this facility, the Respondent is engaged in the business of selling anhydrous ammonia.

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

31. The facility is a “stationary source” as that term is defined at 40 C.F.R. § 68.3.

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

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

34. Respondent's facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

35. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

36. 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.

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

38. 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).

39. Anhydrous ammonia, CAS #7664-41-7, has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

40. Anhydrous ammonia is classified as a physical or health hazard, and a simple asphyxiant.

41. 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. § 10.1200(c).

42. At all times relevant to this CAFO, anhydrous ammonia was produced, used or stored at Respondent's facility.

43. 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).

44. The Respondent stores more than 10,000 lbs. of anhydrous ammonia at Respondent's facility. The anhydrous ammonia is stored and sold to farmers as fertilizer.

45. In the RMP submitted by the Respondent on August 19, 2009, the Respondent reported that its facility stores anhydrous ammonia.

46. On August 2, 2012, at or about 3:15 a.m., a release occurred from Respondent's facility of approximately 600 pounds of anhydrous ammonia (the release).

47. In a 24 hour time period, the release of anhydrous ammonia exceeded 100 pounds.

48. During the release, approximately 600 pounds of anhydrous ammonia discharged into the air.

49. The release is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

50. The release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

51. Respondent had knowledge of the release on August 2, 2012 at approximately 3:15 a.m.

52. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

53. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

54. The release was likely to affect Illinois.

55. 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).

56. The release was likely to affect McDonough County.

57. At all times relevant to this CAFO, the McDonough County Local Emergency Planning Committee was the LEPC for McDonough County under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

58. Respondent notified the NRC of the release on August 2, 2012 at 7:25 a.m.

59. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

60. 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).

61. Respondent notified the Illinois SERC of release on August 2, 2012, at 7:00 a.m.

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

63. 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).

64. As of December 10, 2012, Respondent had not notified the LEPC of the release.

65. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

66. 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).

67. As of December 10, 2012, Respondent had not provided the written follow-up emergency notice to the LEPC.

68. Respondent did not provide the LEPC with written follow-up emergency notice of the release as soon as practicable after the release occurred.

69. Respondent's failure to provide written follow-up emergency notice to the LEPC as

soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

70. On October 24, 2013, EPA sent requests for information to the Respondent's facility under the authority of Section 114(a) of the Act, 42 U.S.C. § 7414(a). The request was issued because EPA had not received an updated RMP within the five year deadline as required by 40 C.F.R. § 68.190(b)(1).

71. The information submitted by the Respondent in response to EPA's request for information confirmed that the facility had failed to submit a revised and updated RMP within five years of the initial submission or the submission of the most recent update in violation of 40 C.F.R. § 68.190.

Civil Penalty

72. Complainant has determined that an appropriate civil penalty to settle this action is \$7,073 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, Respondent's agreement to perform a supplemental environmental project, 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).

73. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,073 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's

or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

and for checks sent by express mail, by sending a cashier's or certified check, payable to "EPA Hazardous Substances 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 following: Serven Fertilizer, Inc., the docket numbers of this CAFO and the billing document number **2751630B002**

74. Complainant has determined that an appropriate civil penalty to settle this action is \$21,219 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, Respondent's agreement to perform a supplemental environmental project, 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.

75. Complainant has determined that an appropriate civil penalty to settle this action is \$6,250 for the CAA violation. In determining the penalty amount, Complainant has considered the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e); the facts and circumstances of this case; and other factors such as cooperation, prompt return to compliance, and Respondent's agreement to perform a supplemental environmental project as described

below. Complainant has also considered U.S. EPA's guidance entitled, *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (June 2012).

76. Within 30 days after the effective date of this CAFO, Respondent must pay a \$21,219 civil penalty for the EPCRA violations and \$6,250 for the CAA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

and for checks sent by express mail, 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 following: Serven Fertilizer, Inc., and the docket numbers of this CAFO

EPCRA-05-2016-0005

77. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket numbers and the billing document number, if any, 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 60604-3511

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

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

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

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

79. If Respondent does not timely pay the civil penalty or any stipulate penalties due under paragraph 92, below, 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.

80. 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.

Supplemental Environmental Project

81. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by purchasing emergency response equipment for local fire departments.

82. Respondent must complete the SEP by purchasing 15 aluminum 4500PSI composite bottles for the Bushnell-Prairie City Fire District.

83. Respondent must spend at least \$15,705 to purchase the equipment.

84. Respondent must complete the SEP by April 1, 2016.

85. Respondent certifies as follows:

I certify that Serven Fertilizer, Inc. is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Serven Fertilizer, Inc. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Serven Fertilizer, Inc. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to U.S. EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

86. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

87. Respondent must submit a SEP completion report to U.S. EPA by May 1, 2016.

2015. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

88. Respondent must submit all notices and reports required by this CAFO by first class mail to Ginger Jager of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 77, above.

89. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

90. Following receipt of the SEP completion report described in paragraph 87, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will

seek stipulated penalties under paragraph 92.

91. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 92, below.

92. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 84, Respondent must pay a penalty of \$15,705.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 83, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 83, Respondent must pay a penalty of \$3,000.
- d. If Respondent did not submit timely the SEP completion report [or any other report required by paragraph 87, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Violation</u> |
|--------------------------------------|----------------------------|
| \$500 | 1st through 14th day |
| \$1,000 | 15th through 30th day |
| \$1,500 | 31st day and beyond |

93. U.S. EPA's determinations of whether Respondent completed the SEP satisfactorily

and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

94. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 76-77, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

95. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2)."

96. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

97. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

99. 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.

100. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Section 304 of EPCRA, 42 U.S.C. § 11004, and Section 112(r) of the CAA and 40 C.F.R. Part 68.

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

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

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


104. 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.

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

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

Serven Fertilizer, Inc., Respondent


1/7/16
Date



Larry Serven
President
Serven Fertilizer, Inc.


U.S. Environmental Protection Agency, Complainant

1-13-16
Date



M. Cecilia Moore, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

1/14/2016
Date



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

In the Matter of: Serven Fertilizer, Inc.
Docket No. MM-05-2016-0002

CAA-05-2016-0014

CERCLA-05-2016-0002

Final Order

EPCRA-05-2016-0005

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

1/25/16


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

CERCLA-05-2016-0002

In the Matter of: Serven Fertilizer, Inc.

Docket No. MM-05-2016-0002

CAA-05-2016-0014

EPCRA-05-2016-0005

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on January 26, 2016 in the following manner to the addressees:

Copy by Certified Mail

Return Receipt Requested: Larry Serven
Serven Fertilizer, Inc.
22421 State Route 41
Prairie City, Illinois 61470

Copy by E-mail to

Attorney for Complainant: Jose C. de Leon
deleon.jose@epa.gov

Copy by E-mail to

Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: January 26, 2016



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S):

7011 1150 0000 2640 6516

SUPERFUND ACCOUNTS RECEIVABLE STANDARD CONTROL FORM

PART I: TYPE OF RECEIVABLE

- | | |
|--|--|
| <input type="checkbox"/> ADMINISTRATIVE ORDER CONSENT (AOC) <input type="checkbox"/> CONSENT DECREE (CD) <input type="checkbox"/> OVERSIGHT BILL <input type="checkbox"/> SUPERFUND STATE CONTRACT (SSC) <input type="checkbox"/> STIPULATED PENALTIES | <input type="checkbox"/> UNILATERAL ADMINISTRATIVE ORDER (UAO) <input type="checkbox"/> 107(a) DEMAND LETTER <input type="checkbox"/> BANKRUPTCY PROOF OF CLAIM <input checked="" type="checkbox"/> OTHER: <u>Consent Agreement and Final Order</u> SPLIT WITH OTHER STATUTES <input type="checkbox"/> YES <input type="checkbox"/> NO |
|--|--|

NON-FEDERAL RECEIVABLE:
TIN NUMBER: _____

FEDERAL RECEIVABLE:
TAS NUMBER: _____

PART II: FUNDING INFORMATION

- | | |
|--|--|
| <input type="checkbox"/> TRUST FUND (HSCR68) <input type="checkbox"/> SPECIAL ACCOUNT - PAST COSTS (TR2B) <input type="checkbox"/> SPECIAL ACCOUNT - FUTURE COSTS (TR2) <input type="checkbox"/> NON FEDERAL- SSC (TR1) <input checked="" type="checkbox"/> SUPERFUND FINES & PENALTIES (HSFP68) | <input type="checkbox"/> TRUST FUND (HSCR68) <input type="checkbox"/> SPECIAL ACCOUNT- PAST COSTS-FEDERAL (TR2B) <input type="checkbox"/> SPECIAL ACCOUNT-FUTURE COSTS- FEDERAL (TR2A) <input type="checkbox"/> SUPERFUND FINES & PENALTIES- FEDERAL (HSFP68) |
|--|--|

PART III: DEBTOR INFORMATION

DEBTOR NAME
ADDRESS
ADDRESS (CONT'D)
CITY
STATE
ZIP

Larry Serwen, President
22421 State Route 41
Prairie City
Illinois
61470

PART IV: ACCOUNT INFORMATION

ASSIGNED BILL NUMBER (if applicable)
 TREASURY ACCOUNT SYMBOL (if applicable)
 REF. DOCKET NO.
 BILLING EFFECTIVE DATE
 BILLING PERIOD
 DUE IN (date or # of days)
 AMOUNT DUE

2751630B002
CERCLA-05-2016-0002
January 26, 2016
30 Days
February 25, 2016
\$7,073.00

PART V: ACCOUNTING STRING

| BBFY | FUND | ORG | PRC | SITE/PROJECT | AMOUNT |
|-------------|---------------|------------|-----|-----------------|---------------|
| <u>2016</u> | <u>HSFP68</u> | <u>05F</u> | | <u>05ZZACOD</u> | <u>7,073-</u> |
| | | | | | |

PART VI: REGIONAL POINTS OF CONTACTS

| | |
|--|-------------------------------|
| CREATED BY <u>La Dawn Whitehead</u> | PHONE NO. <u>312 886-3713</u> |
| COUNSEL CONTACT <u>Jose C. de Leon</u> | PHONE NO. <u>312 353-7456</u> |
| FINANCE CONTACT <u>La Dawn Whitehead</u> | PHONE NO. <u>312 886-3713</u> |
| PROGRAM CONTACT <u>Ginger Jager</u> | PHONE NO. <u>312 886-0967</u> |
| <u>Silva Palotto</u> | PHONE NO. <u>312-353-2172</u> |

PART VII: SPECIAL INSTRUCTIONS/NOTES (interest amount, installment schedule, bankruptcy info, etc.)

PART VIII: COMPLETE CERTIFIED MAIL TRACKING NUMBER

7011 1150 0000 2640 6516