



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 11 2010

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kirk F. Sniff, Esquire
Strasburger & Price, LLP
901 Main Street, Suite 4400
Dallas, Texas 75202-3794

Re: **Country Fresh, LLC, Flint, Michigan** Consent Agreement and Final Order.
Docket No. **CAA-05-2010-0014**

Dear Mr. Sniff:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on March 11, 2010. Please pay the civil penalty in the amount of \$92,400 in the manner prescribed in paragraphs 32-38 and reference your check with the number BD **2751003A015** and docket number.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert Guenther, Associate Regional Counsel, at (312) 886-0566. Thank you for your assistance in resolving this matter.

Sincerely yours,

A handwritten signature in black ink that reads "Mark J. Horwitz".

Mark J. Horwitz, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
COUNTRY FRESH, LLC,)
FLINT, MICHIGAN,)
EPA ID: 100000102998)
)
RESPONDENT.)
_____)

DOCKET NO.: CAA-05-2010-0014

PROCEEDING TO ASSESS
A CIVIL PENALTY UNDER
SECTION 113(d) OF THE
CLEAN AIR ACT,
42 U.S.C. § 7413(b)

RECEIVED
MAR 11 2010

CONSENT AGREEMENT AND FINAL ORDER REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d)(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* (the Consolidated Rules) as codified at 40 C.F.R. part 22, for violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r).
2. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
3. 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.
4. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

5. Respondent stipulates that EPA has jurisdiction over the subject matter of this CAFO, and waives any jurisdictional objections it may have. Respondent neither admits nor denies Complainant's findings of fact and conclusions of law set forth in paragraphs 7 through 31 of this CAFO.

6. 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

7. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator to issue regulations regarding the prevention and detection of accidental releases of designated chemicals. These regulations further require the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan to prevent or minimize risks of accidental releases of those designated substances.

8. Pursuant to section 112(r)(7)(A) and (B) of the CAA, 42 U.S.C. § 112(r)(7)(A) and (B), the Administrator promulgated the Chemical Accident Pollution Prevention rule on January 31, 1994. This rule is codified at 40 C.F.R. part 68 and has been modified from time to time since.

9. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.12(d), requires the owner and operator of a stationary source with a process subject to Program 3, as defined at 40 C.F.R. § 68.10(d), to develop and implement a management system as required by 40 C.F.R. § 68.10(d), conduct a hazard assessment pursuant to 40 C.F.R.

§§ 68.20 to 68.42, implement the prevention requirements of 40 C.F.R. §§ 68.65 to 68.87, and develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 and 68.95. These requirements are collectively known as the “Risk Management Program.”

10. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.10(d), defines a Program 3 process as one which does not meet the requirements of a Program 1 process found at 40 C.F.R. § 68.10(b) and is subject to the process safety management standard at 29 U.S.C. § 1910.119.

11. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “stationary source” 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.”

12. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “process” as “... any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of those activities. ... ”

13. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “regulated substance” as “... any substance listed pursuant to section 112(r)(3) of the Clean Air Act ... in [40 C.F.R.] § 68.130.”

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

15. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines “threshold quantity” as “ ... the quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act ... , listed in [40 C.F.R.] § 68.130 and determined to be present at a stationary source as specified in [40 C.F.R.] § 68.115. ... ”

16. The Chemical Accident Pollution Prevention rule, in Tables 1 and 2 referenced in 40 C.F.R. § 68.130, lists anhydrous ammonia as a regulated toxic substance with a threshold quantity of 10,000 pounds.

17. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement imposed under section 112(r)(7), it is unlawful for any person to operate any stationary source in violation of such requirement.

18. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), provides that the Administrator may issue an administrative order against any person assessing civil administrative penalties of up to \$25,000 per day of violation whenever the Administrator finds that person has violated a requirement of subchapter I of the CAA, including a requirement of any rule promulgated under that subchapter.

19. 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 under section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), to \$32,500 per day of

violation to a maximum of \$270,000 for violations occurring after March 15, 2004, but before January 13, 2009.

20. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), further limits the Administrator's authority to pursue administrative penalties 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

GENERAL ALLEGATIONS

21. Complainant is, by lawful delegation, the Director of the Superfund Division, U.S. EPA Region 5.

22. Respondent is Country Fresh, LLC, a limited liability corporation organized under the laws of the State of Michigan, and is thus a "person" according to section 302(e) of the CAA, 42 U.S.C. § 7602(e).

23. At all times relevant to this Complaint, Respondent owned, operated, controlled and supervised a facility located at 609 Chavez Drive, Flint, Michigan (the Facility), which includes buildings, structures, equipment, installations, which belong to the same industrial group, are located on one or more contiguous properties and which are under the control of Respondent, to receive and process milk and milk-derived dairy products. Respondent's Facility stores and uses anhydrous ammonia (CAS No. 7664-41-7) as a refrigerant. Respondent closed the Facility August 15, 2009.

24. Respondent's Facility in Flint is a "stationary source" as that term is defined in 40 C.F.R. § 68.3.

25. Respondent is an “owner or operator” as that term is used in 40 C.F.R. § 68.3.

26. Respondent’s Facility had anhydrous ammonia in quantities exceeding 10,000 pounds during calendar years 1999 through 2008, and thus maintained a hazardous substance in quantities exceeding a threshold quantity under the Chemical Accident Pollution Prevention rule.

27. Respondent’s processes subject it to the Program 3 requirements because the distance to a public receptor, as defined at 40 C.F.R. § 68.30, is less than the distance to the flammable or toxic endpoint for a worst-case release assessment under 40 C.F.R. § 68.25, and because the process is subject to the process safety management standard at 29 U.S.C. § 1910.119.

28. On September 28, 2009, the Administrator and the Attorney General of the United States, each through their respective delegates, jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

SPECIFIC ALLEGATIONS OF LIABILITY

29. On June 8, 2008, Respondent’s Risk Management Program for the Facility, prepared pursuant to 40 C.F.R. § 68.12(d), failed to include numerous elements required by those provisions. A table listing the deficiencies in Respondent’s Risk Management Program at the Facility is attached as Table A.

30. Respondent’s failure to develop and implement a complete Risk Management Program at the Facility is a violation of the requirements of 40 C.F.R. § 68.12(d).

31. Respondent's violation of 40 C.F.R. § 68.12(d) constitutes the unlawful operation of a stationary source subject to a regulation or requirement promulgated under section 112(r) of the CAA, 42 U.S.C. § 7412(r), and authorizes the Administrator to seek penalties pursuant to section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B).

CIVIL PENALTY

32. Considering Respondent's cooperation in quickly resolving this matter and other factors as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$92,400.

33. Within 30 days after the effective date of this CAFO, Respondent must pay the \$92,400 civil penalty by sending a cashier's or certified check, 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

34. The check must note the following: the case caption, the docket number of this CAFO and the billing document number to be assigned by U.S. EPA upon filing of this CAFO.

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

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

Monika Chrzaszcz (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

37. 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. Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. 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 CAA, 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

39. This CAFO resolves only Respondent's liability, and any liability of Respondent's parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, servants, successors and assigns for federal civil penalties for the violations and facts alleged in the CAFO.

40. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

41. This CAFO does not affect Respondent's responsibility to comply with the CAA or other applicable federal, state and local laws or regulations.

42. This CAFO is a "final order" for purposes of U.S. EPA's enforcement response policy for section 112(r) of the CAA.

43. The terms of this CAFO bind Respondent, Respondent's parents, subsidiaries, affiliates, related corporations and entities, insurers, reinsurers, indemnitors, stockholders, officers, directors, employees, agents, servants, successors and assigns.

44. 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.

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

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

Country Fresh, LLC, Respondent

Feb 16, 2010
Date

Dennis Busch
Dennis Busch
Authorized Signatory
Country Fresh, LLC

U.S. Environmental Protection Agency, Complainant

3-9-10
Date

Richard C. Karl
Richard C. Karl
Director
Superfund Division

In the Matter of:
Country Fresh, LLC,
Flint, Michigan
Docket No: _____
CAA-05-2010-0014

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FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. **IT IS SO ORDERED.**

Date: 3/11/10

By: Walter W. Kandiak
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

Country Fresh Dairy, LLC

Table A

Citation	Description
Management System	
68.15(c)	Failure to document other persons responsible for implementing individual requirements of the risk management program and define the lines of authority through an organization chart or similar document
68.36(a)	Failure to review and update the off-site consequence analyses at least once every five years
68.39(a, b & e)	Failure to maintain offsite consequence analyses documentation
Prevention Program	
Process Safety Information	
68.65(a)	Failure to complete a compilation of written process safety information before conducting any process hazard analysis
68.65(c)(1)(i)	Failure to document information pertaining to the technology of the process, that included a block flow diagram or simplified process flow diagram
68.65(c)(1)(iii)	Failure to maintain information pertaining to the technology of the process, that included maximum intended inventory
68.65(c)(1)(iv)	failure to maintain information pertaining to the technology of the process, that included safe upper and lower limits for such items as temperatures and pressures
68.65(c)(1)(v)	Failure to maintain information pertaining to the technology of the process, that included an evaluation of consequences of deviations
68.65(d)(1)(ii)	Failure to have documentation that included piping and instrumentation diagrams
68.65(d)(1)(iii)	Failure to have documentation on the electrical classification of the facility
68.65(d)(1)(iv)	Failure to have documentation on the relief system design and design basis
68.65(d)(1)(v)	Failure to have documentation on the ventilation system design
68.65(d)(1)(vi)	Failure to have documentation on the design codes and standards employed to build and operate the process
68.65(d)(1)(viii)	Failure to have information regarding the safety systems of the process
68.65(d)(2)	Failure to document that equipment complies with recognized and generally accepted good engineering practices
Process Hazard Analysis	
68.67(e)	Failure to establish a system to promptly address the team's findings and recommendations in their Process Hazard Analysis
68.67(f)	Failure to update or revalidate a PHA every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process
68.67(g)	Failure to retain PHAs and updates or revalidations for each process covered
Operating Procedures	
68.69(a)	Failure to develop and implement all required written operating procedures that provide instructions or steps for conducting activities associated with each covered process consistent with the safely information
Training	
68.71(a)	Failure to train each employee in the written operating procedures developed in Part 68.69, on safety and health hazards, and on emergency operations including shutdown and safe work practices applicable to the employee's job tasks
68.71(a)(1)	Failure to initially train each employee involved in operating a process, and each employee before being involved in operating
68.71(b)	Failure to provide refresher training, that includes operating procedures specific to the facility, at least every three years, or more often if necessary
68.71(c)	Failure to document in records that each employee involved in operating a process has received and understood the training required
Mechanical Integrity	
68.73(b)	Failure to establish and implement written procedures to maintain on-going integrity of

Country Fresh Dairy, LLC

Table A

	process equipment
68.73(c)	Failure to train each employee involved in maintaining the on-going integrity of the process equipment in an overview of the process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner
68.73(d)(2)	Failure to follow recognized and generally accepted good engineering practices for inspections and testing procedures
68.73(d)(3)	Failure to ensure that the frequency of inspection and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience
68.73(d)(4)	Failure to document each inspection and test that has been performed on process equipment, which identified the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identification of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test
Management of Change	
68.75(a)	Failure to implement written procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process
68.75(d)	Failure to update process safety information accordingly when a change resulted in a change in the process safety information
68.75(e)	Failure to update procedures or practices accordingly when a change resulted in a change in the operating procedures or practices
Compliance Audit	
68.79(a)	Failure to certify that you have evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed
Contractors	
68.87(b)(1)	Failure to obtain and evaluate information regarding the contract owner or operator's safety performance and programs when selecting a contractor

Certificate of Service

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U.S. EPA REGION 5

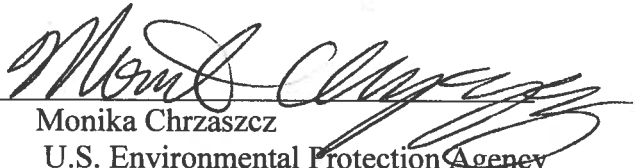
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I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

Kirk F. Sniff, Esquire
Strasburger & Price, LLP
901 Main Street, Suite 4400
Dallas, Texas 75202-3794

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 11th date of March, 2010.


Monika Chrzaszcz
U.S. Environmental Protection Agency
Region 5

CAA-05-2010-0014