BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2014-0140
LAND VIEW, INC.,	)	**CONSENT AGREEMENT AND FINAL ORDER**
Rupert, Idaho,	)	
Respondent.	)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Land View, Inc. ("Respondent") agrees to issuance of, the Final Order contained in Part V of this CAFO.

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, Washington 98101
(206) 553-1037

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a corporation formed in the State of Idaho.

3.2. Respondent owns and operates an agricultural chemical manufacturing facility located at 925 Highway 24 in Rupert, Idaho (the "facility").

3.3. Section 112(r) of the CAA and its implementing regulations at 40 C.F.R. Part 68 require the owner and operator of a stationary source at which a regulated substance is present in more than a threshold quantity (TQ) to develop 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.

3.4. 40 C.F.R. § 68.3 defines "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the CAA in 40 C.F.R. § 68.130.

3.5. Aqueous ammonia (concentration 20% or greater) (hereinafter, "aqueous ammonia") is a regulated substance with a TQ of 20,000 pounds, as listed in 40 C.F.R. § 68.130.

3.6. Anhydrous ammonia is a regulated substance with a TQ of 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.7. Under 40 C.F.R. §§ 68.12(a) and 68.150, the owner or operator of any stationary source that uses, stores, manufactures, or handles more than the TQ of any regulated substance in a single process must submit a single RMP to EPA no later than the latest of the following dates: (a) June 1, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above the TQ in a process. The RMP must include a registration that reflects all covered processes.

3.8. 40 C.F.R. § 68.12(a) and (d) require that, in addition to submitting a single RMP as provided in §§ 68.150 to 68.185, the owner or operator of a stationary source with a process subject to Program 3 must develop and implement a management system as provided in § 68.15; conduct a hazard assessment as provided in §§ 68.20 through 68.42, implement the prevention requirements of §§ 68.65 to 68.87; develop and implement an emergency response program as provided in §§ 68.90 through 68.95; and submit as part of an RMP the data on prevention program elements for Program 3 processes as provided in § 68.175.

3.9. The facility is a stationary source that has a Program 3 covered process as defined in 40 C.F.R. § 68.10(d).

3.10. Respondent has been subject to the RMP requirements since June 21, 1999, as provided in 40 C.F.R. § 68.10(a)(1), because the facility used, stored, manufactured, or handled more than the TQ of 10,000 pounds of anhydrous ammonia in a single process as of that date.

3.11. Respondent became subject to the RMP requirements for aqueous ammonia on July 1, 2010, the date on which the facility first used, stored, manufactured, or handled more than the TQ of 20,000 pounds of aqueous ammonia in a single process.

3.12. Respondent submitted an RMP to EPA on June 21, 1999, June 21, 2004, June 16, 2009, and April 26, 2012.

3.13. Respondent did not analyze and report in its June 16, 2009 RMP additional worst-case release scenarios for the two 18,000-gallon anhydrous ammonia pressure vessels and the two 32,000-gallon aqueous ammonia atmospheric storage tanks at the facility as required by 40 C.F.R. § 68.25(a)(2). In addition, Respondent failed to document and maintain records of the methodology used to determine distance to endpoints as required by 40 C.F.R. § 68.39(d) and the data used to estimate population and determine the environmental receptors potentially affected as required by 40 C.F.R. 68.39(e).

3.14. Respondent did not document and maintain the following written process safety information pertaining to the technology of certain covered processes as required by 40 C.F.R. § 68.65(c)(1): adequate block flow diagrams for anhydrous ammonia storage and for the production and storage of aqueous ammonia; process chemistry for the production and storage of aqueous ammonia; maximum intended inventory for the aqueous ammonia and anhydrous ammonia storage tanks; safe upper and lower limits for such items as temperatures, pressures, flows, or compositions for the aqueous ammonia process equipment; and an

evaluation of the consequences of deviation for the unloading of ammonia rail tanker cars, the transferring of ammonia from the rail tanker cars to the anhydrous ammonia storage tanks, the transferring of anhydrous ammonia from the rail tanker cars to the mobile "T-Reactor" for producing 10-34-0 fertilizer, the transferring of anhydrous ammonia from the storage tanks to a fixed convertor reactor to produce aqueous ammonia, and the loading/unloading of the aqueous ammonia storage tanks.

3.15. Respondent did not document and maintain the following written process safety information pertaining to the equipment in certain covered processes as required by 40 C.F.R. § 68.65(d)(1) and (d)(2): materials of construction on process equipment (e.g., pressure relief valves, pumps, fixed converter reactor, hoses, storage tanks) for the aqueous ammonia process; piping and instrumentation diagrams for the aqueous ammonia process and the 10-34-0 fertilizer production process; relief system design and design basis for the anhydrous ammonia storage tanks and the aqueous ammonia storage tanks; design codes and standards employed for the aqueous ammonia process, the 10-34-0 fertilizer production process, and the anhydrous ammonia storage tanks; material and energy balance for the aqueous ammonia process and the 10-34-0 fertilizer production process; safety systems (e.g., interlocks, detection or suppression systems) for the aqueous ammonia process; documentation that the equipment complies with good and generally accepted good engineering practices for the aqueous ammonia process; and documentation that Respondent had determined that the Barnard & Leas reactor is designed, maintained, inspected, tested, and operating in a safe manner.

3.16. Respondent did not address the following elements in its initial 2009 Process Hazards Analysis for the loading and unloading of ammonia and aqueous ammonia using hoses

as required by 40 C.F.R. § 68.67(c): hazards of the process; identification of any previous incident which had a likely potential for catastrophic consequences; engineering and administrative controls applicable to the hazards and their interrelationships; stationary source siting; human factors; and an evaluation of a range of the possible safety and health effects of failure of controls.

3.17. Respondent did not have written operating procedures that address emergency shutdown or the consequences of deviation and steps required to avoid or correct a deviation for the aqueous ammonia process as required by 40 C.F.R. § 68.69(a)(1) and (2) and failed to certify annually that its operating procedures for the aqueous ammonia process, 10-34-0 fertilizer production process, and anhydrous ammonia process are current and accurate as required by 40 C.F.R. § 68.69(c).

3.18. Respondent did not maintain documentation that each employee involved in operating the aqueous ammonia process had received and understood required training as required by 40 C.F.R. § 68.71(c).

3.19. Respondent did not have written inspection and testing procedures meeting the requirements of 40 C.F.R. § 68.73(d)(2) and (3) for maintaining the ongoing integrity of the aqueous ammonia and anhydrous ammonia storage process equipment, which is equipment identified in 40 C.F.R. § 68.73(a), or adequate documentation of each inspection and test performed on such equipment as required by 40 C.F.R. § 68.73(d)(4).

3.20. Respondent's written procedures for the aqueous ammonia process and anhydrous ammonia storage process for managing changes to process chemicals, technology, equipment,

and procedures, and changes to stationary sources that affect a covered process, did not meet the requirements of 40 C.F.R. § 68.75(a) and (b).

3.21. Respondent did not promptly determine and document an appropriate response to each of the findings of the August 24, 2010 compliance audit and that deficiencies had been corrected as required by 40 C.F.R. § 68.79(d).

3.22. Respondent did not obtain and evaluate information regarding Blick's Phosphate Conversion's safety performance and programs before selecting it as a contractor as required by 40 C.F.R. § 68.87(b)(1).

3.23. Respondent did not register each covered process as required by 40 C.F.R. § 68.160(a) and (b) because its June 16, 2009 RMP registration form did not include all of the required information for the aqueous ammonia process and the 10-34-0 fertilizer production process.

3.24. The violations alleged in paragraphs 3.13 through 3.22 above occurred from approximately July 1, 2010 through approximately April 26, 2012.

3.25. Respondent violated Section 112(r) of the CAA and 40 C.F.R. Part 68.

3.26. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment.

3.27. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $37,500 per day of violation.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the other factual allegations and legal conclusions contained in this CAFO.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into account the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is $101,000 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payments under this CAFO may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www2.epa.gov/financial/makepayment. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve proof of the payment of the Assessed Penalty on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Smith.candace@epa.gov

Javier Morales
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
morales.javier@epa.gov

4.7. If Respondent fails to pay the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

4.8.1. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V of this CAFO.

4.14. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED: 7-29-14

FOR RESPONDENT:

ROD MERRIGAN, MANAGER
Land View, Inc.

DATED: 7/29/14

ROY M YOUNG, PRESIDENT
Land View, Inc.

DATED: 8/5/2014

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

5.2. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.3. This CAFO constitutes a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO resolves only those causes of action alleged in Part III above. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 7th day of August, 2014.

M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Land View, Inc., Docket No.: CAA-10-2014-0140**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Julie Vergeront
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Doug Morrison
Environmental Law Northwest
17371 NE 67th Court, Suite 208
Redmond, Washington 98052

DATED this 7th day of Aug., 2014.

CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10