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**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Professional Ag Services, Inc.) **Docket No. CAA-07-2018-0288**
& Sur-Gro Plant Food Company,)
)
Respondents.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), Professional Ag Services, Inc., and Sur-Gro Plant Food Company (Respondents) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondents have violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondents are therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. Respondent Professional Ag Services, Inc. is a corporation doing business in the state of Missouri, and is an owner and operator of a facility located at 99 NW 280th Street in Plattsburg, Missouri (Facility).

5. Respondent Sur-Gro Plant Food Company is a business in good standing under the laws of the state of Missouri, and is an owner or operator of vessels containing anhydrous ammonia located at the Facility.

Statutory and Regulatory Background

6. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

7. On June 20, 1996, the EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This rule requires owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

8. The regulations at 40 C.F.R. Part 68 set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a Risk Management Plan ("RMP") that must be submitted to the EPA.

9. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(c), a covered process is subject to Program 2 requirements if the process does not meet the eligibility

requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(b) and (d), respectively.

11. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r)(7)(1) of the CAA, 42 U.S.C. § 7412(r)(7)(1), and its implementing regulations. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day for violations that occurred from January 12, 2009, through November 2, 2015; to \$45,268 per day for violations that occurred after November 2, 2015 and for which penalties were assessed on or after January 15, 2017 but before January 15, 2018; and to \$46,192 per day for violations that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018.

Definitions

12. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

13. The regulations at 40 C.F.R. § 68.3 define “stationary source,” in part, 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.

14. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

15. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, 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 regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

General Factual Allegations

17. Each Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. Respondent Professional Ag Services, Inc. is an owner or operator of the Facility. The Facility is a “stationary source” pursuant to Section 112(r)(2)(c) of the CAA, 42 U.S.C. § 7412(r)(2)(c), and pursuant to 40 C.F.R. § 68.3.

19. Respondent Sur-Gro Plant Food Company is an owner or operator of vessels containing anhydrous ammonia located at the Facility. The vessels are a “stationary source” pursuant to Section 112(r)(2)(c) of the CAA, 42 U.S.C. § 7412(r)(2)(c), and 40 C.F.R. § 68.3.

20. Anhydrous ammonia is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

21. On or about March 1, 2017, representatives of the EPA conducted an inspection of the Facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

22. Information gathered during the EPA inspection revealed that Respondents had greater than 10,000 pounds of anhydrous ammonia in a process at the Facility.

23. From the time Respondents first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondents were subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because they were owners and operators of a stationary source that had more than a threshold quantity of a regulated substance in a process.

24. From the time Respondents first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondents were subject to Program 2 prevention program requirements because pursuant to 40 C.F.R. § 68.10(c), the process does not meet the eligibility requirements of either Program 1 or Program 3, as described in 40 C.F.R. § 68.10(b) and (d), respectively.

25. From the time Respondents first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondents were required under Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a), and to comply with the Program 2 requirements provided at 40 C.F.R. § 68.12(c) and detailed in Subpart C.

Allegations of Violation

26. Complainant hereby states and alleges that Respondents have violated the CAA and federal regulations promulgated thereunder as follows:

Count 1

27. Paragraphs 17 through 25 above are herein incorporated.

28. The regulation at 40 C.F.R. § 68.36(a) requires the owner or operator of a stationary source subject to the Risk Management Program, 40 C.F.R. Part 68, to review and update the offsite consequence analyses at least once every five years.

29. The EPA inspection found that Respondents failed to update the offsite consequence analysis at least once every five years.

30. Respondents' failure to update the offsite consequence analysis at least once every five years, as required by 40 C.F.R. § 68.36(a), is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 2

31. Paragraphs 17 through 25 above are herein incorporated.

32. The regulation at 40 C.F.R. § 68.12(c)(3) requires the owner or operator of a stationary source with a process subject to Program 2 to implement the Program 2 prevention steps provided in Subpart C, §§ 68.48 through 68.60.

33. The EPA inspection found that Respondents failed to implement the Program 2 prevention requirements of 40 C.F.R. Part 68, Subpart C, §§ 68.48 through 68.60. Specifically, Respondents failed to:

- (a) Compile and maintain codes and standards used to design, build, and operate the regulated process, as required by 40 C.F.R. § 68.48(a)(5);
- (b) Conduct a hazard review that identifies all the hazards associated with the process and conduct a review at least every 5 years, as required by 40 C.F.R. § 68.50;
- (c) Prepare written operating procedures to address startup following a normal or emergency shutdown, or address consequences of deviation and steps to correct or avoid deviation, as required by 40 C.F.R. § 68.52(b)(6-7); and
- (d) Certify that they had evaluated compliance with the provisions of Subpart C at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed, as required by 40 C.F.R. § 68.58(a).

34. Respondents' failures to comply with Program 2 prevention requirements provided in 40 C.F.R. §§ 68.48 through 68.60, as required by 40 C.F.R. § 68.12(c)(3), are each a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 3

35. Paragraphs 17 through 25 above are herein incorporated.

36. The regulation at 40 C.F.R. § 68.12(c)(3) requires the owner or operator of a stationary source with a process subject to Program 2 to implement the Program 2 prevention steps provided in Subpart C, §§ 68.48 through 68.60.

37. The EPA inspection found that Respondents failed to implement the Program 2 prevention requirements regarding recognized and generally accepted good engineering practices, provided in 40 C.F.R. Part 68, Subpart C, §§ 68.48 through 68.60. Specifically, Respondents failed to:

- (a) Ensure that the process is designed in compliance with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.48(b); and
- (b) Perform inspections and tests on process equipment following recognized and generally accepted good engineering practices at a frequency consistent with industry standards or codes, as required by 40 C.F.R. § 68.56(d).

38. Respondents' failures to comply with Program 2 prevention requirements regarding recognized and generally accepted good engineering practices provided in 40 C.F.R. §§ 68.48 through 68.60, as required by 40 C.F.R. § 68.12(c)(3), are each a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Count 4

39. Paragraphs 17 through 25 above are herein incorporated.

40. The regulation at 40 C.F.R. § 68.12(a) requires the owner or operator of a stationary source to submit a single RMP, as provided in 40 C.F.R. §§ 68.150 to 68.185.

41. The EPA inspection found that Respondents failed to implement the requirements of 40 C.F.R. §§ 68.150 through 68.185. Specifically, Respondents failed to:

- (a) Revise, review, and update the RMP at least once every five years, as required by 40 C.F.R. § 68.190(b)(1);
- (b) Include the general and anhydrous ammonia-specific accidental release prevention program, five-year accident history, and planned changes to improve safety in the executive summary of the RMP, as required by 40 C.F.R. § 68.155(c)(d)&(f); and
- (c) Submit correct information in the registration section of the RMP, as required by 40 C.F.R. § 68.160(b)(1)(4)&(6).

42. Respondents' failures to comply with the requirements of 40 C.F.R. §§ 68.150 through 68.185, as required by 40 C.F.R. § 68.12(a), are each a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

CONSENT AGREEMENT

43. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondents:

- (a) admit the jurisdictional allegations set forth herein;
- (b) neither admit nor deny the specific factual allegations stated herein;
- (c) consent to the assessment of a civil penalty, as stated herein;
- (d) consent to the issuance of any specified compliance or corrective action order;
- (e) consent to any conditions specified herein;
- (f) consent to any stated Permit Action;
- (g) waive any right to contest the allegations set forth herein; and
- (h) waive their rights to appeal the Final Order accompanying this Consent Agreement.

44. Respondents consent to the issuance of this Consent Agreement and Final Order and consent for the purposes of settlement to the payment of the civil penalty specified herein.

45. Respondents and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

46. Respondents agree that, in settlement of the claims alleged herein, Respondents shall pay a civil penalty of Forty-Eight Thousand Dollars (\$48,000), as set forth below.

47. Respondents shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondents by name and docket number **CAA-07-2018-0288** and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

48. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Kate Reitz, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

49. Respondents understand that their failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

50. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondents' liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

51. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondents' representations to the EPA, as memorialized in paragraph directly below.

52. Respondents certify by the signing of this Consent Agreement that they are presently in compliance with all requirements of the CAA and its implementing regulations.

53. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

54. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

55. By signing this Consent Agreement, the undersigned representatives of each Respondent certify that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and have the legal capacity to bind the party they represent to this Consent Agreement.

56. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

57. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

58. This Consent Agreement and Final Order shall apply to and be binding upon Respondents and Respondents' agents, successors, and/or assigns. Respondents shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondents with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT:

PROFESSIONAL AG SERVICES, INC.

Date: 4/24/18



Signature

Michael Chad O'Connor

Name

President

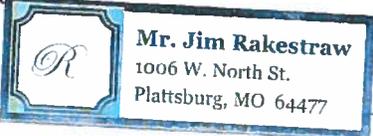
Title

RESPONDENT:

SUR-GRO PLANT FOOD COMPANY

Date: 8-24-18

Jim Rakestraw
Signature

Name 
Mr. Jim Rakestraw
1006 W. North St.
Plattsburg, MO 64477

President
Title

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/25/18



Mark A. Smith
Acting Director, Air and Waste Management Division
U.S. Environmental Protection Agency, Region 7

Date: 9/24/18



Katherine Reitz
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

Sept. 25, 2018

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

reitz.katherine@epa.gov

Copy via Email to Respondent Professional Ag Services, Inc:

proagserv@gmail.com

AND

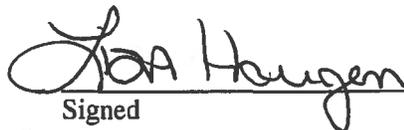
Copy via Certified Mail, Return Receipt Requested, to Respondent Professional Ag Services, Inc.:

Mr. Michael Chadwick O'Connor
President & Director
Professional Ag Services, Inc.
800 W. Oak Street
Lathrop, Missouri 64465

Copy via Certified Mail, Return Receipt Requested, to Respondent Sur-Gro Plant Food Company:

Mr. Jim Rakestraw
President
Sur-Gro Plant Food Co.
1006 W. North Street
Plattsburg, Missouri 64477.

Dated this 25th day of September, 2018.


Signed _____