



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

NOV 02 2009

REPLY TO THE ATTENTION OF:

SC-6J

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

Rachel A. Schneider  
Quarles & Brady LLP  
411 East Wisconsin Avenue  
Milwaukee, WI 53202

Re: Lakeview Farms, Inc., Bristol, Wisconsin  
Consent Agreement and Final Order - Docket Nos.

Dear Ms. Schneider:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on NOV 02 2009.

Please have your client pay the CERCLA civil penalty in the amount of \$10,108 in the manner prescribed in paragraphs 54 and 56, and reference the check with the billing document number CERCLA-05-2010-0001 and the docket numbers MM-05-2010-0002 and 2751030B001.

Please have your client pay the EPCRA civil penalty in the amount of \$33,840 in the manner prescribed in paragraphs 55 and 56, and reference the check with the billing document number 2751044E004 and the docket numbers MM-05-2010-0002 and EPCRA-05-2010-0003.

The payments are due on DEC 02 2009.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Harriet Croke, Assistant Regional Counsel, at (312) 353-4789. Thank you for your assistance in resolving this matter.

Sincerely,



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

Enclosure

cc: Regional Hearing Clerk  
U.S. EPA Region 5

Harriet Croke (w/enclosure)  
ORC

Dawn Miller  
WI SERC Contact (w/enclosure)

Marcy Toney  
Regional Judicial Officer

RECEIVED

NOV 02 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

REGIONAL HEARING CLERK  
USEPA  
REGION 5

In the Matter of:	)	Docket Nos.	MM-05-2010-0002
	)		
	)		CERCLA-05-2010-0001 EPCRA-05-2010-0003
	)		
Lakeview Farms, Inc.	)	Proceeding to Assess a Civil Penalty Under	
Bristol, Wisconsin	)	Section 109(b) of the Comprehensive	
	)	Environmental Response, Compensation,	
	)	and Liability Act, and Section 325(b)(2) of the	
Respondent.	)	Emergency Planning and	
_____	)	Community Right-to-Know Act of 1986.	

Consent Agreement and Final Order  
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), 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) and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Lakeview Farms, Inc., a corporation doing business in the State of Wisconsin.

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 hazardous substance's reportable quantity.

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 governments' 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 planning 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 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

15. 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 CERCLA Section 103 and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, \$32,500 per day of violation that occurred from March 15, 2004 to January 12, 2009, and \$37,500 for violations that occurred after January 12, 2009.

### **Factual Allegations and Alleged Violations**

16. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
17. Respondent is a "person" as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
18. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 19231 – 83<sup>rd</sup> Street, Bristol, Wisconsin (facility).
19. At all time relevant to this CAFO, Respondent was in charge of the facility.
20. Respondent's facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.
21. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
22. 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.
23. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
24. Ammonia CAS # 7664-41-7 is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1

25. Ammonia CAS # 7664-41-7 is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
26. At all times relevant to this CAFO, ammonia was produced, used or stored at Respondent’s facility
27. 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).
28. Ammonia CAS # 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.
29. 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).
30. Ammonia CAS # 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.
31. On October 24, 2007, at or about 2:00 p.m. CT, a release occurred from Respondent’s facility of approximately 500 pounds of ammonia (the release).
32. In a 24 hour time period, the release of 500 pounds of ammonia exceeded the 100 pound RQ.
33. During the release, approximately 500 pounds of ammonia spilled, leaked, pumped, emitted, emptied, discharged, or escaped into the ambient air.
34. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
35. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

36. Respondent had knowledge of the release on October 24, 2007 at approximately 2:00 p.m. CT.
37. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
38. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).
39. The release was likely to affect Wisconsin.
40. At all times relevant to this CAFO, the Wisconsin Emergency Management was the SERC for Wisconsin under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).
41. Respondent notified the NRC of the release on October 24, 2007, at 5:03 p.m. CT.
42. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.
43. 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).
44. Respondent notified the Wisconsin SERC of release on October 24, 2007, at 4:30 p.m. CT.
45. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.
46. 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).
47. Respondent provided written follow-up emergency notice of the release to the SERC on January 7, 2008.
48. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.



49. Respondent's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

50. Respondent provided written follow-up emergency notice to the LEPC on January 7, 2008.

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

52. 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).

#### **Civil Penalty**

53. In consideration of Respondents willingness to quickly settle this matter prior to the issuance of a complaint, their cooperation throughout the process, and their performing a Supplemental Environmental Project (SEP), U.S. EPA has determined that an appropriate civil penalty to settle this action is \$43,948.

54. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,108 civil penalty for the CERCLA violation. Respondent must pay the penalty by electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire should read "D68010727  
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: In the Matter of: Lakeview Farms Inc., Bristol, Wisconsin, the CERCLA and MM docket numbers of this CAFO and the billing document number 2751030B001.

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$33,840 civil penalty for the EPCRA violations. Respondent must pay the penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire should read "D68010727  
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: In the Matter of: Lakeview Farms, Inc., Bristol, Wisconsin, the EPCRA and MM docket numbers of this CAFO and the billing document number 2751044E004.

56. 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 transmittal letter to:

Regional Hearing Clerk, (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3511

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

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

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

58. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 70, 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.

59. 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**

60. Respondent must complete a supplemental environmental project (SEP) designed to reduce the risk of exposure if another release of ammonia should occur by installing an ammonia sensor.

61. At its 19241 – 83<sup>rd</sup> Street, Bristol, Wisconsin, facility, Respondent must complete the SEP as follows:

Respondent will purchase and install an ammonia sensor in the safety relief vent line on their ammonia refrigeration system. This sensor will provide an alarm when a release occurs. This early detection of a release will provide for quicker mitigation and will reduce the risk of exposure to the community should another ammonia release occur.

62. Respondent must spend at least \$15,000 to purchase and install the equipment.

63. Respondent must continuously use or operate the ammonia sensor for at least five years following its installation.

64. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

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

66. Respondent must submit a SEP completion report to U.S. EPA by March 30, 2010. 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).

67. Respondent must submit all notices and reports required by this CAFO by first class mail to Ruth McNamara of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 56 above.

68. 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.

69. Following receipt of the SEP completion report described in paragraph 66, 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 71.

70. 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 71 below.

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

- a. If Respondent has spent less than the amount set forth in paragraph 62 above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 62.
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$15,000 in addition to any penalty required under subparagraph a, above.
- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$15,000 in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to submit timely the SEP completion report, Respondent must pay stipulated penalties as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$200	15th through 30th day
\$300	31st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone, until it achieves compliance with the milestone.

72. U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

73. 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 54 and 55 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

74. 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 103 of CERCLA and Section 304 of EPCRA."

75. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

76. 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**

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

78. 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.

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

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

81. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA and EPCRA.

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

83. 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.

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

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



**In the Matter of:**  
**Lakeview Farms, Inc., Bristol, Wisconsin**  
**Docket Nos.**

**MM-05-2010-0002**

**CERCLA-05-2010-0001**

**EPCRA-05-2010-0003**

**SIGNATORIES**

**Lakeview Farms, Inc. Respondent**

10/12/09  
Date

Patrick F. Denor  
Pat Denor  
VP Food Safety & Quality

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

10/23/09  
Date

for Thomas Hensler  
Jason El-Zein, Chief  
Emergency Response Branch 1  
Superfund Division

10-26-09  
Date

Richard C. Karl  
Richard C. Karl, Director  
Superfund Division

In the Matter of:  
Lakeview Farms, Inc., Bristol, Wisconsin  
Docket Nos.

MM-05-2010-0002

CERCLA-05-2010-0001

EPCRA-05-2010-0003

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10-26-09  
Date

Richard C. Kelso  
Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

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USEPA  
REGION 5

In the Matter of:  
Lakeview Farms, Inc., Bristol, Wisconsin  
Docket Nos.

MM-05-2010-0002

CERCLA-05-2010-0001

EPCRA-05-2010-0003

Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket numbers to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Lakeview Farms Inc.'s Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Rachael A. Schneider  
Quarles & Brady LLP  
411 East Wisconsin Avenue  
Milwaukee, WI 53202

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NOV 02 2009

on the 2 day of November, 2009

REGIONAL HEARING CLERK  
USEPA  
REGION 5

Ruth McNamara  
Ruth McNamara  
U.S. Environmental Protection Agency  
Region 5