



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 13 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gregory W. Blount
Troutman Sanders LLP
600 Peachtree Street NE, Suite 5200
Atlanta, Georgia 30308-2216

Re: Wayne Farms LLC, Jack, Alabama
Consent Agreement and Final Order
CAA-04-2019-8015(b)

Dear Mr. Blount:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2019-8015(b)) involving Wayne Farms LLC. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing. As specified by the penalty payment instruction in paragraph 20 of the CAFO, Wayne Farms LLC has agreed to pay the civil penalty within 30 calendar days of the effective date of the CAFO.

If you have any questions, please call Ms. Michi Kono at (404) 562-9558.

Sincerely,

A handwritten signature in black ink, appearing to read "César A. Zapata".

César A. Zapata
Acting Chief
Air Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR**

RECEIVED
DIRECTOR OF ENFORCEMENT AND COMPLIANCE ASSURANCE DIVISION
NOV 11 2019

IN THE MATTER OF:)
)
Wayne Farms LLC)
)
Respondent.)
_____)

Docket No.
CAA-04-2019-8015(b)

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing 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. Complainant is the United States Environmental Protection Agency, Region 4 (the "EPA"). The Director of the Enforcement and Compliance Assurance Division, EPA Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is Wayne Farms LLC a company doing business in the State of Alabama. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issue of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this Consent Agreement are of Section 112(r)(7).
6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d).

7. On December 12, 2018, the EPA issued to Respondent a Notice of Potential Violation (“NOPV”), providing notice that the EPA found that Respondent had potentially committed the alleged violations described in Section E of this Agreement and providing Respondent an opportunity to confer with the EPA. On March 7, 2019, representatives of Respondent and the EPA discussed the December 12, 2018, NOPV.

8. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes settlement between Complainant and Respondent. 40 C.F.R. § 22.4(b) and 22.18(b).

9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. Section 112(r) of the Act, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3) and other extremely hazardous substances. The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

11. Pursuant to Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C), a “stationary source” means any buildings, structures, equipment, installations or substance emitting stationary activity (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person or persons under common control, and (iv) from which an accidental release can occur.

12. Pursuant to Sections 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.

13. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 C.F.R. § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

D. FACTUAL ALLEGATIONS

14. Respondent operates a “stationary source” as that term is defined by Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C). The Respondent’s stationary source is located at 1020 County Road 114, Jack, Alabama 36346 (stationary source).

15. Respondent has submitted and registered an RMPlan to the EPA for its stationary source and has developed an RMProgram accidental release prevention program for the stationary source.

16. For the purpose of this Agreement:

(a) At its stationary source, the Respondent operates an ammonia refrigeration process.

(b) On August 28, 2018, the EPA conducted an onsite inspection of the RMProgram related records and equipment for the purpose of assessing the Respondent’s compliance with the RMProgram requirements and the implemented recognized and generally accepted good engineering practices (RAGAGEP) for its covered process at its stationary source.

(c) At its stationary source, the Respondent, at the time of inspection, had 65,000 pounds of ammonia on site for cold food storage purposes.

(d) At its stationary source, the Respondent, at the time of inspection, had one RMProgram level 3 covered process, which stores or otherwise uses anhydrous ammonia in an amount exceeding its applicable threshold of 10,000 pounds.

(e) The relief vent for the second system for the ammonia refrigeration process discharged downward towards the cat walk located directly below.

(f) The Respondent conducted a process hazard analysis (PHA) on June 2, 2014. Six (6) action items from the PHA were completed after their assigned due dates.

(g) The Respondent conducted a compliance audit in June, 2016. Action items from the June, 2016, compliance audit were still open at the time of the inspection.

E. ALLEGED VIOLATIONS OF LAW

17. Based on EPA’s compliance monitoring investigation, the EPA alleges that the Respondent violated the codified rules governing the Act’s Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 C.F.R. Part 68 when it:

Failed to document that equipment complies with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.65(d)(2);

Failed to establish a system to promptly address the team’s findings and recommendations and assure that the recommendations are resolved in a timely manner and that the resolution is documented as required by 40 C.F.R. § 68.67(e); and

Failed to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected as required by 40 C.F.R. § 68.79(d).

F. TERMS OF CONSENT AGREEMENT

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

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) neither admits nor denies the factual allegations stated above;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this Agreement;
- (f) consents to any Permit Action;
- (g) waives any rights to contest the alleged violations of law set forth in Section E of this Consent Agreement; and
- (h) waives its rights to appeal the Order accompanying this Agreement, and

19. For the purpose of this Agreement, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Southern District of Alabama;
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and
- (f) certifies that as of its execution of this Agreement, it is in compliance with all relevant requirements of 40 C.F.R. Part 68.

20. Penalty Payment. Respondent agrees to:

- a) pay the civil penalty of **SIX THOUSAND NINE HUNDRED SIXTY DOLLARS (\$6,960)** ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement;
- b) pay the EPA Penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," or by electronic transfer to one of the following addresses:

For payment sent via electronic transfer
Federal Reserve Bank of New York
ABA = 021030004

Account Number = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: "U.S. Environmental Protection Agency";

For payment sent via standard delivery
U.S. Environmental Protection Agency
Cincinnati Finance Center Box 979077
St. Louis, MO 63197-9000; or

For payment sent for signed receipt confirmation (FedEx, DSL, UPS, USPS Certified)

U.S. Environmental Protection Agency
Cincinnati Finance Center Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101 (Delivery Location Phone Number: 314-425-1819).

The check shall reference on its face the name and the Docket Number of the CAFO. Within 24 hours of payment of the EPA Penalty, Respondent shall send a separate copy of the check or confirmation of electronic transfer, and a written statement that payment has been made in accordance with this Agreement, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Jordan Noles
Air Section 1
Air Enforcement Branch
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

21. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c) collect the debt by administrative offset (i.e., the withholding of money payable by the

United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

- d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

22. Supplemental Environmental Project ("SEP").

- a) Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the Effective Date of this CAFO. Respondent shall expend no less than **TWENTY-ONE THOUSAND SIX HUNDRED TWENTY-FOUR DOLLARS (\$21,624)** for the purchase of eight (8) Globe GXCEL turnout gear coats, eight (8) Globe GXCEL turnout pants, eight (8) Globe supreme leather structural boots, eight (8) Cairns 1044 W/ Defender Shields, and eight (8) Majestic Pacc II 100% Nomex hoods for the Five Star Volunteer Fire Department in Jack, Alabama.
- b) Respondent agrees that in the event that Respondent's actual purchase of equipment deviates from the equipment specified above, Respondent shall provide information to EPA explaining the reason(s) for any such deviation. So long as the amount that Respondent spends equals or exceeds \$21,624, and the explanation for the deviation is acceptable to EPA, this provision shall be deemed to be satisfied.
- c) This Consent Agreement and Final Order shall not be construed to constitute EPA endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.
- d) Respondent certifies the truth and accuracy of each of the following:
 - (1) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$21,624;
 - (2) That, as of the effective date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation, permit, order or agreement and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;
 - (3) That the SEP is not a project the Respondent was planning or intending to construct, perform or implement other than in settlement of the claim resolved in this CAFO;
 - (4) That Respondent has not received and will not receive credit for the SEP in any other enforcement action of any kind;
 - (5) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
 - (6) That for federal income tax purposes, Respondent agrees it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
 - (7) That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and

- (8) That Respondent has inquired of the Five Star Volunteer Fire Department whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Five Star Volunteer Fire Department that it is not a party to such a transaction.
- e) Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 22(a). If Respondent does not fully and timely complete the SEP, it shall be required to pay stipulated penalties pursuant to Paragraph 22(i).
 - f) Respondent agrees that EPA may inspect the stationary source at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
 - g) Respondent shall submit to EPA a SEP Completion Report, no later than sixty (60) calendar days after the Effective Date of this CAFO. The Report shall be sent to the Air Enforcement Section 1, to the attention of Jordan Noles at the address provided above. The Report shall include the following:
 - 1) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
 - 2) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than \$21,624, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 22(a).
- Upon request, Respondent shall send EPA any additional documentation requested by EPA.
- h) In making any reference to the SEP, any public statement, oral or written, Respondent shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental protection Agency for violations of Section 112(r)(7) of the Clean Air Act (CAA)."
 - i) Respondent shall pay to the United States a stipulated penalty of the difference between \$21,624 and the actual SEP expenditure if Respondent fails to timely and fully complete the activities described in Paragraph 22(a), including failure to spend the minimum amount of **TWENTY-ONE THOUSAND SIX HUNDRED TWENTY-FOUR DOLLARS (\$21,624)**.
 - j) For purposes of Paragraph 22(i), whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.
 - k) Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late if Respondent fails to timely submit a SEP Completion Report as required by this CAFO.

23. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

24. By signing this Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into terms and conditions of this Agreement and has the legal capacity to bind Respondent to this Agreement.

25. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

26. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

27. Except as qualified by Paragraph 21, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

28. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.

29. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

30. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

31. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon written agreement of both parties, and approval of the Regional Judicial Officer.

32. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and pursuant to 40 C.F.R. Part 19, as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

33. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

34. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

35. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

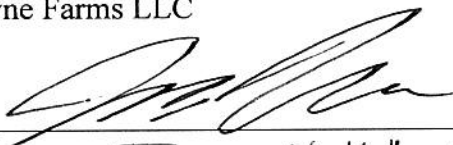
H. EFFECTIVE DATE

36. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement in the Matter of Wayne Farms LLC, Docket No. CAA-04-2019-8015(b), is Hereby Stipulated, Agreed, and Approved for Entry.

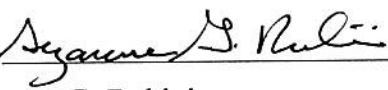
FOR RESPONDENT:

Wayne Farms LLC

By:  Date: 8/15/19
Name: Jeremy V. Kilburn (Typed or Printed)
Title: Vice President and General Counsel (Typed or Printed)

FOR COMPLAINANT:

U.S. Environmental Protection Agency

By:  Date: 8/26/2019
Suzanne G. Rubini
Acting Director
Enforcement and Compliance Assurance Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:

Wayne Farms LLC

Respondent.

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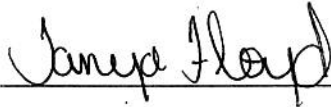
Docket No.
CAA-04-2019-8015(b)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

SO ORDERED this 12th day of September, 2019.



Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of Wayne Farms LLC, CAA-04-2019-8015(b), on the parties listed below in the manner indicated:

Jordan Noles
U.S. EPA, Region 4
Enforcement and Compliance
Assurance Division

(Via EPA's internal mail)

Michi Kono
U. S. EPA, Region 4
Office of Regional Counsel

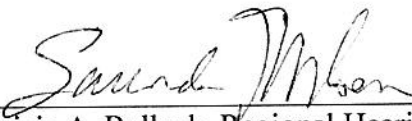
(Via EPA's internal mail)

Mr. Gregory W. Blount
Troutman Sanders LLP
600 Peachtree Street NE, Suite 5200
Atlanta, Georgia 30308-2216

(Via Certified Mail - Return Receipt Requested)

Date:

9/13/19



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511