

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

<b>In the Matter of:</b>	)	Docket No. CAA-05-2020-0035
	)	
<b>Nutrien Marseilles, Illinois,</b>	)	<b>Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)</b>
<b>Respondent.</b>	)	
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**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the “Act”), 42 U.S.C. § 7413(d), and Section 22.1(a)(2), 22.13(b), and 22.18(b)(2)-(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. § 22.1(a)(2), 22.13(b), and 22.18(b)(2)-(3), for alleged violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r) and the implementing regulations at 40 C.F.R. Part 68.

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Nutrien (“Nutrien” or “Respondent”), a corporation doing business in the State of Illinois.

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). *See* 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 terms of this CAFO, including the assessment of the civil penalty specified below.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations in this CAFO.

8. Respondent 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 CAFO, including any right of review under Section 113(d)(4) of the Act, 42 U.S.C. § 7413(d)(4), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

**Statutory and Regulatory Background**

9. In accordance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), EPA promulgated the “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31,668 (June 20, 1996), to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur. These regulations were codified at 40 C.F.R. Part 68 (Chemical Accident Prevention Provisions) and are commonly known as the “Risk Management Program regulations”.

10. The Risk Management Program regulations apply to all stationary sources with processes that contain more than a threshold quantity of a regulated substance. *See* 40 C.F.R.

§ 68.10(a). The List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention is codified at 40 C.F.R. § 68.130.

11. The Risk Management Program regulations define a “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.” *See* 40 C.F.R. § 68.3.

12. The Risk Management Program regulations define a “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.” *See id.*

13. Ammonia is a “regulated substance” as that term is defined in Section 112(r)(3) of the Act and 40 C.F.R. § 68.3. *See* 40 C.F.R. § 68.130, Table 1.

14. The “threshold quantity” (as that term is defined in 40 C.F.R. § 68.3) for ammonia is 10,000 pounds. This threshold quantity is present at a stationary source if the total quantity of ammonia contained in a process exceeds 10,000 pounds. *See* 40 C.F.R. § 68.115(a) and 68.130, Table 1.

15. Each process in which a regulated substance is present in more than a threshold quantity (a “covered process”) is subject to one of three risk management programs. *See* 40 C.F.R. § 68.10(b)-(d). If a covered process does not meet the eligibility requirements for Program 1 under 40 C.F.R. § 68.10(b), and the process is subject to the OSHA process safety management standard at 29 C.F.R. § 1910.119, then the process is subject to Program 3 under 40 C.F.R. § 68.10(d).

16. In addition to meeting the requirement to submit a risk management plan (RMP)

under 40 C.F.R. § 68.12(a), the Program 3 requirements include developing and implementing a management system as provided in 40 C.F.R. § 68.15; conducting a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42; implementing the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87; developing and implementing an emergency response program as provided in 40 C.F.R. §§ 68.90 to 68.95; and submitting as part of the RMP the data on prevention program elements for Program 3 processes as provided in 40 C.F.R. § 68.175. *See* 40 C.F.R. § 68.12(d).

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

17. Respondent is a “person” as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

18. Respondent owns and operates a facility at 1801 Broadway Street Marseilles, Illinois 61341 (the “facility”). Respondent is thus the “owner or operator” of the facility for purposes of 40 C.F.R. Part 68. *See* 42 U.S.C. § 7412(a)(9) (definition of “owner or operator”).

19. The facility consists of 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. The facility is thus a “stationary source” under 40 C.F.R. § 68.3.

20. Respondent stores and uses ammonia, a “regulated substance” under Section 112(r)(3) of the Act and 40 C.F.R. § 68.3, at the facility in parts of the storage and refrigeration process. Respondent’s activities involving a regulated substance thus constitute a “process” under 40 C.F.R. § 68.3.

21. Respondent's storage and refrigeration process described in paragraph 20 contains more than the threshold quantity (10,000 pounds) of ammonia. *See* 40 C.F.R. § 68.130, Table 1.

22. The Risk Management Program regulations apply to Respondent's facility as a stationary source with a process that contain more than a threshold quantity of a regulated substance. *See* 40 C.F.R. § 68.10(a).

23. Respondent's storage and refrigeration process does not meet the eligibility requirements for Program 1 under 40 C.F.R. § 68.10(b) and is subject to the OSHA process safety management standard since the process involves ammonia above the threshold quantity in 29 C.F.R. § 1910.119, App. A. Respondent's storage and refrigeration process is therefore subject to Program 3 under 40 C.F.R. § 68.10(d).

24. On July 7, 2018 and August 8, 2018, a representative from EPA conducted an inspection at the facility under the authority of Section 114(a) of the Act, 42 U.S.C. § 7414(a). The purpose of the inspection was to determine whether the Respondent was complying at the facility with Section 112(r) of the Act and the Risk Management Program regulations.

25. Based on the inspection conducted by EPA, EPA alleges that Respondent failed to comply with the Risk Management Program regulations at the facility for Program 3 requirements as set forth below:

- a. Nutrien failed to establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; and develop a written schedule of when these actions are to be completed as required under 40 C.F.R. § 68.67(e).
- b. Nutrien failed to implement established written procedures to maintain the ongoing integrity of process equipment as required under 40 C.F.R. § 68.73(b).
- c. Nutrien failed to conduct inspections and test of process equipment at a frequency that is consistent with applicable manufacturers' recommendations and good

- engineering practices, and more frequently if determined to be necessary by prior operating experience as required under 40 C.F.R. § 68.73(d)(3).
- d. Nutrien failed to correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operations as required under 40 C.F.R. § 68.73(e).
  - e. Nutrien failed to implement written procedures to manage changes to process chemicals, technology, equipment and process and changes to stationary sources that affect a covered process as required under 40 C.F.R. § 68.75(a).
  - f. Nutrien failed to establish written procedures that assure modifications to operating procedures are addressed prior to any change as required under 40 C.F.R. § 68.75(b)(3).
  - g. Nutrien failed to establish written procedures that assure the necessary time period for the change is addressed prior to any change as required under 40 C.F.R. § 68.75(b)(4).
  - h. Nutrien failed to inform and train employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process prior to start-up of the process or affected part of the process as required under 40 C.F.R. § 68.75(c).
  - i. Nutrien failed to update process safety information as required under 40 C.F.R. § 68.75(d).
  - j. Nutrien failed to update operating procedures or practices as required under 40 C.F.R. § 68.75(e).
  - k. Nutrien failed to certify that they have evaluated compliance at least every three years to verify that procedures and practices developed are adequate and being followed as required under 40 C.F.R. § 68.79(a).
  - l. Nutrien 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 under 40 C.F.R. § 68.79(d).
  - m. Nutrien failed to investigate each incident which resulted in or could reasonably have resulted in a catastrophic release of a regulated substance as required under 40 C.F.R. § 68.81(a).
  - n. Nutrien failed to investigate each incident no later than 48 hours following the incident as required under 40 C.F.R. § 68.81(b).

- o. Nutrien failed to establish an incident investigation team as required under 40 C.F.R. § 68.81(c).
- p. Nutrien failed to prepare a report at the conclusion of an investigation which includes the date the investigation began as required under 40 C.F.R. § 68.81(d)(2).
- q. Nutrien failed to prepare a report at the conclusion of an investigation which includes any recommendations resulting from the investigation. as required under 40 C.F.R. § 68.81(d)(5).
- r. Nutrien failed to establish a system to promptly address and resolve the incident report findings and recommendations and documents resolutions and corrective actions as required under 40 C.F.R. § 68.81(e).

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

27. Under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the Administrator may issue an administrative order against any person assessing a civil administrative penalty whenever, on the basis of any available information, the Administrator finds that such person has violated Section 112(r) of the Act and 40 C.F.R. Part 68. The Administrator may assess a civil penalty of up to \$47,357 per day for each violation, with a maximum of \$378,852, for violations that occurred after November 2, 2015, where penalties were assessed on or after February 6, 2019 but before January 13, 2020, and \$48,192 per day for each violation, with a maximum of \$385,535, for violations that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020.

#### Civil Penalty

28. Complainant has determined that an appropriate civil penalty to settle this action

is \$ \$244,709.22. In determining the penalty amount, Complainant has considered the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts and circumstances of this case, and other factors such as cooperation, prompt return to compliance, and Respondent's agreement to perform a supplemental environmental project as described below. Complainant has also considered U.S. EPA's Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012).

29. Within 30 days after the effective date of this CAFO, Respondent must pay the \$244,709.22 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note the following: the case title ("In the Matter of Nutrien") and the docket number of this CAFO.

30. A transmittal letter stating Respondent's name, complete address, and the docket number of this CAFO must accompany the payment in paragraph 29. 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 Boulevard  
Chicago, Illinois 60604

Monika Chrzaszcz (SE-5J)  
Environmental Engineer  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
[Chrzaszcz.monika@epa.gov](mailto:Chrzaszcz.monika@epa.gov)



Cynthia A. King (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

32. If Respondent does not timely pay the civil penalty, EPA shall request the Attorney General to bring a civil action in the appropriate district court to recover the amount assessed (plus interest at rates established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the CAFO), as well as the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. Respondent acknowledges that, in such an action, the validity, amount, and appropriateness of the civil penalty shall not be subject to review.

33. 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 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 Act, 42 U.S.C. § 7413(d)(5). Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter. *Id.*

#### **General Provisions**

34. Pursuant to 40 C.F.R. § 22.5(b)(2), the Parties consent to service of this CAFO by email at the following email addresses: king.cynthia@epa.gov (for Complainant) and

sherri.kuhlmann@nutrien.com (for Respondent). *See* 40 C.F.R. § 22.5-6. The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

35. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

37. This CAFO does not affect Respondent's responsibility to comply with the Act, the Risk Program Management regulations, and any other applicable federal, state, and local laws and regulations.

38. Respondent certifies that it is complying fully with Section 112(r) of the Act and 40 C.F.R. Part 68.

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

40. Each person signing this CAFO 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.


41. Each party agrees to bear its own costs and attorney's fees in this action.

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

43. The effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

**In the Matter of Nutrien**  
**Docket No. CAA-05-2020-0035**

9.14.20  
Date

  
Sherri Heckel Kuhlmann  
General Counsel, Retail  
Nutrien

**United States Environmental Protection Agency, Complainant**

\_\_\_\_\_  
Date

MICHAEL  
HARRIS

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Date: 2020.09.21  
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Michael D. Harris,  
Director  
Enforcement and Compliance Assurance Division

**In the Matter of Nutrien**  
**Docket No. CAA-05-2020-0035**

**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.

\_\_\_\_\_  
Date

ANN COYLE  
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Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5