



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 14 2010

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeff C. Braegelmann
Gislason & Hunter LLP
P.O. Box 458
New Ulm, MN 56073-0458

Re: More's Ag Center, Blue Earth, Minnesota
Consent Agreement and Final Order – Docket Nos:

MM-05-2010-0005

CERCLA-05-2010-0004

Dear Mr. Braegelmann:

EPCRA-05-2010-0012

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 June 14, 2010.

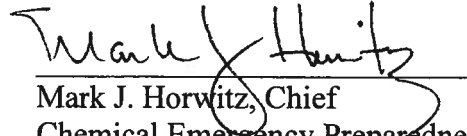
Please have your client pay the CERCLA civil penalty in the amount of \$4,293 in the manner prescribed in paragraphs 49 and 51, and reference their check with the number BD 2751030B004 and docket number(s) CERCLA-05-2010-0004

Please have your client pay the EPCRA civil penalty in the amount of \$4,293 in the manner prescribed in paragraphs 50 and 51, and reference their check with the number BD 2751044E016 and docket numbers EPCRA-05-2010-0012

The payments are due on July 14, 2010.

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 Andre Daugavietis, Associate Regional Counsel, at (312) 886-6663. Thank you for your assistance in resolving this matter.

Sincerely,


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

Enclosure

cc: Steve Tomylanovich (w/enclosure)
MN SERC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

MM-05-2010-0005

EPCRA-05-2010-0012

In the Matter of:)
)
More's Ag Center)
Blue Earth, MN)
)
Respondent.)
_____)

Docket Nos. CERCLA-05-2010-0004
Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation, and
Liability Act, and Section 325(b)(2) of the
Emergency Community Right-to-Know Act of 1986

RECEIVED

JUN 14 2010

Consent Agreement and Final Order
Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045, 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. The Respondent is More's Ag Center a corporation doing business in the State of Minnesota.
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.

Stipulations 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.

9. The parties consent to the terms of this Consent Agreement and Final Order (CAFO).

10. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Statutory and Regulatory Background

11. 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.

12. 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).

13. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under 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 state emergency planning commission (SERC) of any state likely to be affected by a release.

14. 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).

15. 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 applicable federal and state agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and 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.

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

Allegations

17. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

18. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

19. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 11018 State Highway 254, Blue Earth, Minnesota 56013 (facility).

20. At all time relevant to this Complaint, Respondent was in charge of the facility.

21. Respondent’s facility consists of a building, structure, installation, equipment, well, storage container, motor vehicle, rolling stock, or site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

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 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

25. At all times relevant to this Complaint, ammonia was produced, used or stored at the facility.

26. Ammonia, CAS #7664-41-7, is an “extremely hazardous substance” pursuant to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

27. Ammonia, CAS #7664-41-7, has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

28. 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).

29. Ammonia, CAS #7664-41-7, has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

30. Before 9:30 a.m. Central Time on June 20, 2007, a release occurred from Respondent's facility of approximately 6,580 pounds of ammonia (the release).

31. The release of ammonia exceeded 100 pounds (in a 24 hour time period).

32. During the release, up to approximately 6,580 pounds of ammonia spilled, leaked, emitted, emptied, discharged, or escaped into the land surface or subsurface strata, or ambient air and/or the air.

33. The release is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

34. The release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

35. Respondent had knowledge on June 20, 2007, at approximately 9:30 a.m. Central Time that a release of ammonia had occurred; Respondent had knowledge by at least 10:30 a.m. Central Time on June 20, 2007, that the release was of a reportable quantity of ammonia.

36. The release required notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

37. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

38. The release was likely to affect Minnesota.

39. At all times relevant to this Complaint, the Minnesota Division of Homeland Security and Emergency Management was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

Count 1 (failure to notify NRC)

40. Complainant incorporates paragraphs 1 through 37 of this Complaint as if set forth in this paragraph.

41. Respondent notified the NRC of the release on June 20, 2007, at 1:32 p.m. Central Time.

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).

Count 2 (written notice to SERC)

44. Complainant incorporates paragraphs 1 through 39 of this Complaint as if set forth in this paragraph.

45. Respondent provided written follow-up emergency notice of the release to the SERC on August 31, 2007.

46. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

47. Respondent's failure to provide written follow-up emergency notice to the SERC 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

48. In consideration of the Respondent's good faith negotiations and participation in a quick settlement, and Respondent's agreement to perform two supplemental environmental projects, Complainant has determined that an appropriate civil penalty to settle this action is \$8,586.

Penalty Payment Provisions

49. For the CERCLA violations being alleged and settled by this CAFO, within 30 days after the effective date of this CAFO, Respondent must pay a \$4,293 civil penalty for the CERCLA violation.

Respondent shall pay the penalty by sending a certified check, payable to "EPA Hazardous Substance Superfund," to:

[for checks sent by regular U.S. postal service]

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979076
U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: In the Matter of More's Ag, the docket numbers of this CAFO and the billing document number 2751030B004.

50. For the EPCRA violations being alleged and settled by this CAFO, within 30 days after the effective date of this CAFO, Respondent must pay a \$4,293 civil penalty for the EPCRA violations.

Respondent shall pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. postal service]

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

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: In the Matter of Mores Ag, the docket numbers of this CAFO and the billing document number 2751044E016.

51. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket numbers and the billing document numbers must accompany the payments. Respondent must send a copy of the checks and transmittal letter(s) to:

Regional Hearing Clerk, (E-13J)
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. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Andre Daugavietis, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

52. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 69, 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.

53. 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.

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

Supplemental Environmental Projects

55. Respondent has agreed to, and must, complete two supplemental environmental projects (SEPs), as described below.

Security Enhancement SEP

56. At its facility, Respondent must complete a “security enhancement” SEP as follows:

Respondent will purchase and install fencing and lighting around the facility tanks holding hazardous materials. This will provide protection against theft and vandalism incidents at the facility which could result in releases of ammonia or other hazardous materials. Preventing such releases reduce the risk of exposure to the community, as well as employees and emergency responders.

57. Respondent must spend at least \$30,622 to purchase and install the equipment.

58. Respondent must install the fencing and lighting at the facility by no later than 120 days after the effective date of this CAFO.

Emergency Equipment Purchase SEP

59. Respondent must complete an “emergency equipment purchase” SEP as follows:

Respondent will purchase emergency response equipment and donate the equipment to the Faribault County Sheriff’s Department. This will provide protection for emergency responders in responding to releases of ammonia or other hazardous materials, such as the release at issue in this matter. The equipment will reduce the risk of exposure to the emergency responders, and thereby provide the responders with protection to mitigate releases and reduce the risk of exposure to the community.

60. Respondent must spend at least \$1,624 to purchase the equipment.

61. Respondent must donate the equipment to the Sheriff’s Department by no later than 120 days after the effective date of this CAFO.

General SEP Provisions

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

63. Respondent certifies that it is not required to perform or develop the SEPs 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.

64. Respondent must submit a SEP completion report to U.S. EPA by 150 days after the effective date of this CAFO. This report must contain the following information:

- a. Detailed description of the SEP(s) 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(s) 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(s) in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from each SEP (quantify the benefits and pollution reductions, if feasible).

65. 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 51, above.

66. 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.

67. Following receipt of the SEP completion report described above, U.S. EPA will 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 69, below.

68. 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 69, below.

69. 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 on a SEP pursuant to this CAFO than the amount set forth in paragraphs 57 and 60, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on that SEP and the amount set forth in paragraphs 57 and 60, above.
- b. If Respondent has completed a SEP, but that SEP is not satisfactorily completed, Respondent must pay \$2,000, for each such SEP, in addition to any penalty required under subparagraph a, above.
- c. If Respondent halts or abandons work on a SEP, Respondent must pay a stipulated penalty of \$5,000, for each such SEP, 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>
\$50	1st through 14th day
\$60	15th through 30th day
\$70	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.

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

71. 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 49 through 54, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts (as set forth in those paragraphs).

72. Any public statement that Respondent makes referring to a SEP under the terms of this CAFO 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."

73. 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 SEP under the terms of this CAFO.

74. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing a SEP under the terms of this CAFO.

General Provisions

75. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged above.

76. Except as provided in paragraph 75, above, nothing in this CAFO restricts U.S. EPA's authority to seek Respondent's compliance with EPCRA, CERCLA, and other applicable laws and regulations, except that U.S. EPA is precluded from seeking civil penalties for the violations alleged in the Complaint.

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

78. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 304 of EPCRA and Section 103 of CERCLA.

79. The terms of this CAFO bind the Parties, and their respective successors and assigns.

80. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

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

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

83. Respondent and U.S. EPA agree to the issuance and entry of the accompanying Final Order.

84. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

**In the Matter of:
More's Ag Center, Blue Earth, Minnesota
Docket Numbers:**

SIGNATORIES

For Respondent:

5-11-10
Date

Charles R. More
Charles More, Owner
More's Ag Center

For Complainant

5-24-10
Date

Jason H. El-Zein
Jason H. El-Zein, Chief
Emergency Response Branch 1
Superfund Division

6/10/10
Date

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

In the Matter of:

More's Ag Center, Blue Earth, Minnesota

Docket Numbers: MM-05-2010-0005

CERCLA-05-2010-0004

EPCRA-05-2010-0012

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. § 22.18(c).

6-11-10

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED

JUN 14 2010

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

In the Matter of:
More's Ag Center, Blue Earth, Minnesota
Docket Numbers: MM-05-2010-0005

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

I hereby certify that on this date, the original of the foregoing Consent Agreement and Final Order was filed with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604, and that I then caused an original of the filed document to be promptly mailed to the following by First Class Mail:

Charles More
More's Ag Center
11018 State Highway 254
Blue Earth, MN 56013

and true and correct copies of the filed document to be promptly mailed to the following by First Class Mail:

Matt Berger / Jeff Braegelmann
Gislason & Hunter LLP
P.O. Box 458
New Ulm, MN 56073-0458

Dated June 14, 2010

Ruth McNamara

Ruth McNamara
U.S. Environmental Protection Agency
Region 5