



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB 22 2012

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thad Shidler
Howesville Farm Service, Inc.
1390 W. State Road 246
Clay City, IN 47841

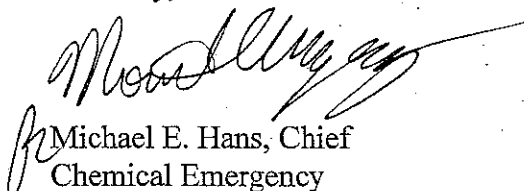
Re: Howesville Farm Service, Inc., Clay City, Indiana, Consent Agreement and Final Order
Docket No. CAA-05-2012-0011

Dear Mr. Shidler:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency filed the original CAFO with the Regional Hearing Clerk on FEB 22 2012. Please pay the civil penalty in the amount of \$17,400 in the manner prescribed in paragraphs 32 - 34 and reference your check with the number BD 2751203A013 and the docket number. Within 12 months of the above date, you will need to submit a final report regarding the Supplemental Environmental Projects as prescribed in paragraphs 43 - 45.

Please feel free to contact Greg Chomycia at chomycia.greg@epa.gov or (312)353-8217, if you have any questions regarding the enclosed documents. Please direct any legal questions to Reginald Pallesen at (312) 886-0555. Thank you for your assistance in resolving this matter.

Sincerely,


Michael E. Hans, Chief
Chemical Emergency
Preparedness and Prevention Section

Enclosure

RECEIVED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY FEB 22 2012
REGION 5

REGIONAL HEARING CLERK
USEPA
REGION 5

In the Matter of:)
)
Howesville Farm Service, Inc.,)
Clay City, Indiana,)
)
Respondent)
_____)

Docket No. CAA-05-2012-0011

Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

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 Sections 22.1(a)(2), 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, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations.

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency, Region 5, Chicago, Illinois.

3. Respondent is Howesville Farm Service, Inc. ("Howesville" or "Respondent"), a corporation doing business in the State of Indiana.

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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with 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 the 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 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that

within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

15. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions.

16. “Stationary source” is defined to mean “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.” 40 C.F.R. § 68.3.

17. "Process" is defined to mean "any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels located such that a regulated substance could be involved in a potential release, shall be considered a single process." 40 C.F.R. § 68.3.

18. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed anhydrous ammonia as a substance which, in the case of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The Administrator has further identified a threshold quantity of 10,000 pounds for determining whether sources are subject to the Risk Management Program. 40 C.F.R. § 68.130, Table 1.

19. 40 C.F.R. § 68.115 provides that a "threshold quantity of a regulated substance listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold."

20. 40 C.F.R. § 68.12(a) requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided in 40 C.F.R. §§ 150 - 185.

21. Section 113(d) of the Act 42 U.S.C. §7413(d) and 40 C.F.R. Part 19 provide that the Administrator may assess a civil penalty of up to \$32, 500 per day of violation up to a total of \$270,000 for each violation of Section 112(r) of the Act that occurred from March 15, 2004, to January 12, 2009, and a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for each violation of Section 112(r) of the Act that occurred after January 12, 2009.

22. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the

administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

23. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this Complaint.

Factual Allegations and Alleged Violations

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

25. Respondent is an Indiana corporation, with a farm supply facility located at 1390 W. State Road 246, Clay City, Indiana (“the Facility”).

26. For purposes of the requirements at 40 C.F.R. Part 68, Respondent is the “owner or operator” of the Facility, as that term is defined at Section 112(a)(9) of the Act.

27. Respondent’s ammonia storage process is a “process,” as that term is defined at 40 C.F.R. § 68.3.

28. On August 4, 2009, an authorized representative of the EPA conducted an inspection of the Facility to determine Respondent’s compliance with the Risk Management Program regulations.

29. The inspection confirmed that the Facility has more than a threshold amount of anhydrous ammonia and that the Facility had failed to develop or implement a Risk Management Program.

30. 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 promulgated pursuant to Section 112(r) of the

Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

31. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Civil Penalty

32. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e); the facts of this case; other factors such as cooperation and prompt compliance; and Respondent's agreement to perform a Supplemental Environmental Project, Complainant has determined that an appropriate civil penalty to settle this action is \$17,400.

33. Within 30 days after the effective date of this CAFO, Respondent must pay a \$17,400 civil penalty by sending a cashier's or certified check, by regular U.S. Postal Service mail, payable to the "Treasurer, United States of America," to:

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

The check must note "Howesville Farm Service," the docket number of this CAFO, and the billing document number. The docket number can be found on the first page of this document.

34. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Greg Chomycia
Chemical Emergency Preparedness and Prevention Section
Superfund Division (SC-5J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Reginald Pallesen
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

36. If Respondent does not pay timely the civil penalty, the 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 under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

37. 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 overdue amount from the date 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). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Supplemental Environmental Project

38. Respondent must complete a Supplemental Environmental Project (SEP) designed to protect the environment or public health by: 1) increasing security at its Facility to deter accidental and theft-related releases of ammonia; and 2) increasing security and assuring structural integrity of its ammonia nurse tank wagons.

39. At its Facility, Respondent must complete the SEP as follows:

- a. Within 6 months of the effective date of the CAFO, Respondent must purchase and install a 6 foot high chain link fence around the perimeter of the Facility.
- b. Within 6 months of the effective date of the CAFO, Respondent must purchase and install 5 additional outdoor security lights at the Facility.
- c. Within 6 months of the effective date of the CAFO, Respondent must purchase and install 82 valve locks for its ammonia nurse tanks.
- d. Within 6 months of the effective date of the CAFO, Respondent must purchase and install a Digital Video Recording (DVR) based surveillance system.
- e. Within 6 months of the effective date of the CAFO, Respondent must purchase 2 gas detectors that are capable of determining the ammonia concentration in air.
- f. Within 6 months of the effective date of the CAFO, Respondent must purchase and begin utilizing an ultrasonic thickness gauge to assure structural integrity of its ammonia tank wagons. Respondent must have personnel at the Facility who have been trained in the proper use of this gauge.

40. Respondent must spend at least \$27,820 to purchase and install the perimeter fencing, \$2,500 to purchase and install additional lighting equipment, \$10,000 to purchase and install the nurse tank valve locks, \$550 to purchase and install the DVR-based surveillance system, \$980 to purchase the gas monitors, and \$1080 to purchase the thickness gauge.

41. 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.

42. The EPA may inspect the Facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

43. Within 12 months of the effective date of the CAFO, Respondent must submit a SEP Completion Report to the EPA. This Report must contain the following information:

- a. A detailed description of the SEP as completed;
- b. An itemized list of 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; and
- c. A certification that Respondent has completed the SEP in compliance with this CAFO.

44. Respondent must submit all notices and reports required by this CAFO by first class mail to Greg Chomycia of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 34, above.

45. In the SEP Completion Report that Respondent submits under 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.

46. Following receipt of the SEP Completion Report, the 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 the EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP Report, and the EPA will seek stipulated penalties, as provided in paragraph 54, below.

47. 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 the EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, the EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that the EPA imposes in its decision. If Respondent does not complete the SEP as required by the EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 48, below.

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

- a. Except as provided in subparagraph (b) immediately below, if the SEP has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$67,600;
- b. If the SEP is not completed in accordance with Paragraphs 38 - 40, above, but the EPA determines that Respondent: i) made good faith and timely efforts to complete the projects; and ii) certifies, with supporting documentation, that Respondent spent on the SEP at least 90 percent of the amount of money required to be spent, Respondent shall not be liable for any stipulated penalty;
- c. If the SEP is completed in accordance with Paragraphs 38 - 40, but Respondent spent on the SEP less than 90 percent of the amount of money required to be expended, Respondent shall pay a stipulated penalty to the United States in the amount of \$ 6,700;

- d. If the SEP is completed in accordance with Paragraphs 38 - 40, and Respondent spent on the SEP at least 90 percent of the amount of money required to be expended, Respondent shall not be liable for any stipulated penalty; and
- e. For failure to timely submit the SEP Completion Report, Respondent shall pay a stipulated penalty as follows:

<u>Penalty Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 1000	31st day and beyond

49. These penalties will accrue from the date Respondent was required to meet its deadline, until it achieves compliance with the deadline.

50. The EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

51. Respondent must pay any stipulated penalties within 15 days of receiving the EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 33, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

52. Any public statement that Respondent makes referring to the SEP must include the following language, "Howesville Farm Service, Inc., undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Howesville Farm Service for alleged violations of Section 112(r) of the Clean Air Act."

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

54. 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

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

56. The CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

57. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, State, and local laws.

58. Respondent certifies that it is complying fully with 40 C.F.R. Part 68.

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

60. 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.

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

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

63. The effective date of this CAFO is the date that this CAFO is filed with the Regional Hearing Clerk.

CONSENT AGREEMENT AND FINAL ORDER

**In the Matter of Howesville Farm Service, Inc.
Docket No.**

Howesville Farm Service, Inc., Respondent

Date: 1-27-12 By: Thad D. Shidler
Thad D. Shidler
Howesville Farm Service, Inc.

United States Environmental Protection Agency, Complainant

2-17-12
Date
Richard C. Karl
Richard C. Karl, Director
Superfund Division

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CONSENT AGREEMENT AND FINAL ORDER

**In the Matter of Howesville Farm Service, Inc.
Docket No. CAA-05-2012-0011**

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.

2-21-12

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing them in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

RECEIVED

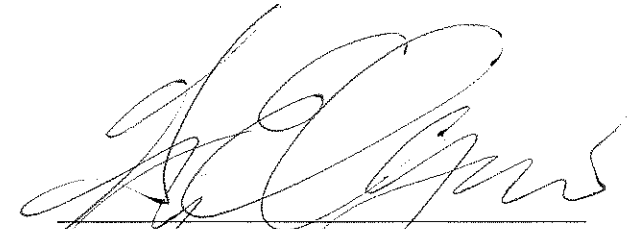
FEB 22 2012

REGIONAL HEARING CLERK
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REGION 5

Thad D. Shidler
Howesville Farm Service, Inc.
1390 West State Road 246
Clay City, Indiana 47841

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 22 day of February, 2012.



Greg Chomycia
U.S. Environmental Protection Agency
Region 5

CAA-05-2012-0011

