



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

JUL 19 2013

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL RETURN
RECEIPT REQUESTED**

Terry Larsen
Chief Executive Officer
Mille Lacs Soil Service Association
165 State Highway 23, Box 86
Foreston, Minnesota 56330

Re: Mille Lacs Soil Service Association, Foreston, Minnesota
Docket No. CAA-05-2013-0033

Dear Mr. Larsen:

I have enclosed the Complaint filed by the U.S. Environmental Protection Agency against Mille Lacs Soil Service Association under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, and the Combined Enforcement Policy for Section 112(r) of the Clean Air Act.


As provided in the Complaint, if you would like to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604 within 30 days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due 30 days later. If you choose to file an answer, you also must mail a copy of it to Mary McAuliffe, Associate Regional Counsel (C-14J), U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

If you intend to file with the Regional Hearing Clerk as part of the record in this matter, any document that includes trade secrets, proprietary information or any business information that you claim is entitled to confidential treatment, you may submit the document "under seal." The rules for submitting confidential information under seal are set forth at Section 22.5(d) of the Consolidated Rules, 40 C.F.R. § 22.5(d). You should also refer to 40 C.F.R. Part 2, Subpart B. For more information about the procedures for submitting information under seal, go to <http://epa.gov/oalj/orders/alj-practice-manual.pdf>. EPA reserves its right to object to the submission of documents under seal.

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Whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Mary McAuliffe, Associate Regional Counsel, at 312-886-6237.

Sincerely,



Richard C. Karl, Director
Superfund Division

Enclosures (3) Administrative Complaint
Combined Enforcement Policy for Section 112(r) of the Clean Air Act
40 C.F.R. Part 22- Consolidated Rules

cc: Steve Scherek, Manager
Mille Lacs Soil Service Association

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:) Docket No. CAA-05-2013-0033)
Mille Lacs Soil Service Association Foreston, Minnesota,) Proceeding to Assess a Civil Penalty under) Section 113(d) of the Clean Air Act,) 42 U.S.C. § 7413(d)
Respondent.)

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Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (“the Act”), 42 U.S.C. § 7413(d).
2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (“U.S. EPA”), Region 5, Chicago, Illinois.
3. Respondent is Mille Lacs Soil Service Association (“Mille Lacs” or “Respondent”), a cooperative doing business in the State of Minnesota.

Statutory and Regulatory Background

4. In accordance with Section 112(r) of the Act, 42 U.S.C. § 7412, on June 20, 1996, U.S. EPA promulgated regulations to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur. These regulations, known as the Risk Management Program regulations, are codified at 40 C.F.R. Part 68.
5. The Risk Management Program regulations apply to all stationary sources that have more than a threshold quantity of a regulated substance in a process. The List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention is codified at

40 C.F.R § 68.130, Table 1. Procedures to determine whether a threshold quantity of a regulated substance is present at a stationary source are codified at 40 C.F.R. § 68.115.

6. Anhydrous 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. 40 C.F.R. § 68.130, Table 1.

7. The “threshold quantity” (as that term is defined in 40 C.F.R. § 68.3) for Anhydrous Ammonia is 10,000 pounds per year. 40 C.F.R. § 68.130, Table 1.

8. “Process” means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such a substance. 40 C.F.R. § 68.3.

9. An owner or operator of a stationary source subject to the Risk Management Program shall comply with the requirements of 40 C.F.R. Part 68 by no later than the latest of the following dates: June 21, 1999; three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or the date on which a regulated substance is first present in more than a threshold quantity in a process. 40 C.F.R. §§ 68.10(a), 68.150.

10. The Risk Management Program regulations require that the owner or operator of a facility subject to the regulations develop and implement a Risk Management Plan (“RMP”) for preventing accidental releases to the air and minimizing the consequences of releases that do occur. 40 C.F.R. §§ 68.10; 68.12; 68.150-68.185.

11. The owner or operator of a stationary source with a process subject to the Risk Management Program requirements shall submit an RMP as set forth at 40 C.F.R. Part 68, Subpart G, §§ 68.150 through 68.190.

12. According to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 68, the Administrator of U.S. EPA (“the Administrator”) may assess a civil penalty of up to \$27,500 per day of violation, up to a total of \$220,000, for violations that occurred on or after January 31, 1997 and March 15, 2004, may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred on and after March 15, 2004, but before January 13, 2009, and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred on and after January 13, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

13. Section 113(d)(1) 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 Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

14. 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.

General Allegations

15. Respondent is a Minnesota cooperative with a farm supply facility located at 13450 State Highway 23, Foreston, Minnesota (“the Facility”).

16. At the Facility, Respondent stores and sells anhydrous ammonia for fertilizer.

17. Respondent is a “person,” as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).
18. The Facility is a “stationary source,” as that term is defined at 40 C.F.R. § 68.3.
19. 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.
20. Respondent’s ammonia storage process is a “process,” as that term is defined at 40 C.F.R. § 68.3.
21. On August 29, 2011, Complainant sent a Request for Information (“RFI”) to Respondent regarding Respondent’s compliance with the RMP regulations.
22. Among other things, Complainant’s RFI Question 1 asks Respondent if Respondent submitted an RMP pursuant to 40 C.F.R. Part 68.
23. Respondent sent a letter dated September 16, 2011 in response to Complainant’s RFI (“Response”).
24. In its Response, Respondent provides no information about submitting an RMP for its Facility.
25. In its Response, Respondent states that the Facility has been in business since 1965.
26. In its Response, Respondent states that the Facility has a maximum plant capability of 219,000 pounds of anhydrous ammonia, calculated at 85% at 70 degrees Fahrenheit.

27. On July 3, 2012, Complainant sent a letter to Respondent informing Respondent that, among other things, it was in violation of the Act, and encouraging Respondent to take the actions necessary to come into compliance.

28. On March 28, 2013, Complainant sent Respondent a Notice of Intent to File a Civil Administrative Complaint (“Notice”). Complainant’s Notice informed Respondent of Complainant’s intent to file a civil administrative action for civil penalties, based upon listed allegations of violations of the RMP regulations.

29. Complainant’s Notice also provided Respondent with an opportunity to present any information that it believed Complainant should consider prior to filing an administrative action, including financial data bearing on Respondent’s ability to pay.

30. To date, Respondent has not responded in writing to Complainant’s March 28, 2013 letter.

Count I

31. Complaint incorporates paragraphs 1-30 of this Complaint, as if set forth in this paragraph.

32. At all times relevant to this Complaint, Respondent has been the owner or operator of the Facility.

33. Respondent’s Facility is a stationary source that has more than a threshold quantity of a regulated substance in a process.

34. Respondent was required to develop and implement a single RMP for preventing accidental releases to the air and minimizing the consequences of releases that do occur, as required by 40 C.F.R. §§ 68.10, 68.12, and 68.150 through 68.185.

35. Respondent was required to submit a single RMP on before June 21, 1999, as set forth at 40 C.F.R. §§ 68.12, and 68.150 through 68.185.

36. Respondent was required to review and update the RMP as required by 40 C.F.R. § 68.190.

37. U.S. EPA's federal database for RMPs indicates Respondent submitted a single RMP to U.S. EPA on April 5, 2013.

38. Respondent failed to submit a single RMP in violation of 40 C.F.R. § 68.12, and §§ 68.150-68.185, and Respondent failed to review and update the RMP in violation of 40 C.F.R. § 68.190, in violation of Section 112(r) of the Act, 42 U.S.C. § 7412(r).

Proposed Civil Penalty

39. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint of \$50,000.00.

Complainant determined the proposed civil penalty according to the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e). Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Combined Enforcement Policy for § 112(r) of the Clean Air Act, dated June 20, 2012.

Complainant developed the proposed penalty based on the best information available to Complainant at the time of the issuance of this Complaint. Complainant may adjust the proposed

penalty if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriateness of the proposed penalty.

Rules Governing This Proceeding

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“the Consolidated Rules”), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk’s address is:

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Mary McAuliffe, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. McAuliffe at 312-886-6237.

Ms. McAuliffe’s address is:

Mary McAuliffe (C-14J)
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Penalty Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America," and by delivering the check to:

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

Respondent must include the case name, docket number and billing document number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to the Regional Hearing Clerk and Ms. McAuliffe, Associate Regional Counsel, at the addresses given above.

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address given above.

Respondent's written Answer must clearly and directly admit, deny or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

If Respondent does not file a written Answer within 30 days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations.

Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the U.S. EPA Administrator under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts alleged in the Complaint and to discuss a settlement. To request an informal settlement conference, Respondent may contact Ms. McAuliffe at 312-886-6237.

Respondent's request for an informal settlement conference does not extend the 30-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing proceeding. Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state or local law.

7-19-13
Date


Richard C. Karl, Director
Superfund Division

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In the Matter of Mille Lacs Soil Service Association

Certificate of Service

I, Charles Rodriguez, certify that I hand-delivered the original and one copy of the Complaint in the matter of Mille Lacs Soil Service Association to the Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, and that I mailed a correct copy of the Complaint, a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22, and a copy of the penalty policy described in the Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent by placing them in the custody of the United States Postal Service addressed as follows:

Terry Larsen, Chief Executive Officer
Mille Lacs Soil Service Association
165 State Highway 23, Box 86
Foreston, Minnesota 56330

I also certify that I sent a copy of the Complaint by first-class mail to:

Steve Scherek, Manager
Mille Lacs Soil Service Association
165 State Highway 23, Box 86
Foreston, Minnesota 56330

On the 22nd day of July, 2013.



Charles Rodriguez
Student Aide
U.S. EPA, Region 5
Office of Regional Counsel

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CERTIFIED MAIL RECEIPT NUMBER 7009 1680 0000 7678 3071

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REGIONAL COUNSEL
U.S. EPA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:) Docket No. CAA-05-2013-0033
)
Mille Lacs Soil Service Association Foreston, Minnesota,) Proceeding to Assess a Civil Penalty under
) Section 113(d) of the Clean Air Act,
) 42 U.S.C. § 7413(d)
Respondent.)

Proof of Service

As set forth in 40 C.F.R. § 22.5(b)(1)(iii), Complainant hereby files a proof of service of the Complaint in this matter. As shown on the attached executed delivery receipt, the Complaint filed on July 22, 2013, was delivered to Respondent on or about July 26, 2013, and the executed delivery receipt was returned to Complainant on July 29, 2013.

July 30, 2013
Date

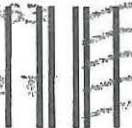
Mary T. McAuliffe
 Mary T. McAuliffe
 Associate Regional Counsel
 U.S. EPA, Region 5
 77 W. Jackson Blvd.
 Chicago, Illinois 60604
 Phone: (312) 886-6237

REGIONAL OFFICE
U.S. ENVIRONMENTAL PROTECTION AGENCY

SAINT CLOUD, MN 56311

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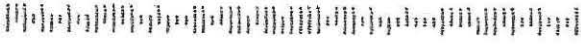


First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Mary McAuliffe
United States Environmental Protection Agency
Region 5 (C-14J)
77 W Jackson Blvd
Chicago, IL 60604

U.S. ENVIRONMENTAL PROTECTION AGENCY
2013
OFFICE OF REGIONAL COUNSEL



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Terry Larsen
Chief Executive Officer
Mille Lacs Soil Service Association
165 State Highway 23, Box 86
Foreston, Minnesota 56330

2. Article Number
(Transfer from service label)

7009 1680 0000 7678 3071

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Duane Stronk Addressee

B. Received by (Printed Name) C. Date of Delivery
Duane Stronk

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

In the Matter of Mille Lacs Soil Service Association
Docket No. CAA-05-2013-0033

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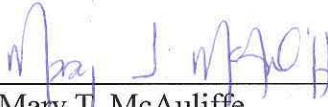
Certificate of Service

I hereby certify that on the date below I hand-delivered the original and one copy of the attached Proof of Service to the Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, and caused copies to be sent via first class mail to:

Terry Larsen, Chief Executive Officer
Mille Lacs Soil Service Association
165 State Highway 23, Box 86
Foreston, Minnesota 56330

Steve Scherek, Manager
Mille Lacs Soil Service Association
165 State Highway 23, Box 86
Foreston, Minnesota 56330

July 30, 2013
Date


Mary T. McAuliffe
Associate Regional Counsel
U.S. EPA, Region 5