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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No. CAA-5-99-048
)	
Countrymark Cooperative,)	Proceeding to Assess an
Inc.)	Administrative Penalty
Mount Vernon, Indiana,)	under Section 113(d) of the
)	Clean Air Act,
Respondent.)	42 U.S.C. § 7413(d)
)	

Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On September 30, 1999, U.S. EPA filed the complaint in this action against Respondent Countrymark Cooperative, Inc. The complaint alleges that Countrymark violated Section 111(e) of the Act, 42 U.S.C. § 7411(e), and Subparts A and GGG of the New Source Performance Standards (NSPS), at 40 C.F.R. § 60.11(d) and 40 C.F.R. §60.486(e), at its facility in Mount Vernon, Indiana.

3. Countrymark filed an answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

Stipulations

4. Countrymark admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

5. Countrymark waives its right to contest the allegations in the complaint, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

6. Countrymark certifies that it is complying fully with Subparts A and GGG of the NSPS.

7. The parties consent to the terms of this consent agreement and final order (CAFO).

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

Civil Penalty

9. In consideration of Respondent's cooperation in remedying these violations and its agreement to perform a supplemental environmental project (SEP), U.S. EPA agrees to mitigate the proposed penalty of \$73,500 to \$11,000.

10. Countrymark must pay the \$11,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

11. Countrymark must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

12. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (R-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

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

13. This civil penalty is not deductible for federal tax purposes. Further, Countrymark agrees not to deduct the cost of the SEP for either state or federal tax purposes.

14. If Countrymark does not pay timely the civil penalty, 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 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.

15. Interest will accrue on any overdue amount from the date payment was due at a rate established under 26 U.S.C. § 6621(a)(2). Countrymark will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Countrymark will 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 (SEP)

16. Countrymark must complete a SEP designed to protect the environment and the public health by purchasing and equipping a hazardous response trailer (haz mat trailer) for Posey County's local emergency planning committee (LEPC) and providing training in its use.

17. Countrymark must complete the SEP as follows:

- a. on or before August 31, 2000, Countrymark must purchase and provide to the LEPC a fully equipped haz mat

trailer. The trailer must contain the following equipment and features:

- (1) customized fittings and shelving;
- (2) communications and electrical equipment, including an electric generator;
- (3) draeger tube type screening system;
- (4) environmental sampling equipment, including portable test kits with varied parameters and samplers such as disposable/reusable dippers and caliwasa;
- (5) portable containment tools including both pop-up and form-a-berm types;
- (6) drum and tank repair patching kits;
- (7) miscellaneous tools, such as shovels, flashlights, etc.;
- (8) spill clean-up supplies;
- (9) neutralizing and encapsulating agents;
- (10) a decontamination system;
- (11) personal protective equipment, including gloves, coveralls, and respirators;

b. On or before September 15, 2000, Countrymark shall arrange and pay the costs of an instructor to conduct a one-day training session for the LEPC on use of the haz mat trailer and Countrymark shall provide supplies to be used in that training session.

18. Countrymark must spend at least \$30,000 to purchase the fully-equipped haz mat trailer and to pay the costs of the one-day training session.

19. Countrymark 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. Countrymark further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

20. Countrymark must submit a SEP completion report to U.S. EPA by October 31, 2000. This report must contain the following information:

- a. detailed description of the SEP 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 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 Countrymark has completed the SEP in compliance with this CAFO; and
- e. description of the environmental and public health benefits resulting from the SEP.

21. Countrymark must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

22. In each report that Countrymark 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, the information 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.

23. Following receipt of the SEP completion report described in paragraph 20 above, U.S. EPA must notify Countrymark 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 Countrymark 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 25.

24. If U.S. EPA exercises option b. above, Countrymark 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 Countrymark's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Countrymark a written decision on its objection. Countrymark will comply with any reasonable requirements that U.S. EPA

imposes in its decision. If Countrymark does not complete the SEP as required by U.S. EPA's decision, Countrymark will pay stipulated penalties to the United States under paragraph 25 below. The time periods in this paragraph may be extended upon agreement of the parties.

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

a. Except as provided in subparagraph b, below, if Countrymark did not complete the SEP satisfactorily according to this CAFO, Countrymark must pay a stipulated penalty of \$24,000.

b. If Countrymark did not complete the SEP satisfactorily, but U.S. EPA determines that Countrymark: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, Countrymark will not be liable for any stipulated penalty.

c. If Countrymark satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, Countrymark must pay a stipulated penalty of \$ 2,400.

d. If Countrymark failed to submit timely the SEP completion report required by paragraph 20 above, Countrymark must pay a stipulated penalty of \$500 for each day after the report was due until it submits the report.

26. U.S. EPA will determine whether Countrymark satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP. U.S. EPA's determination

will be within the discretion of U.S. EPA which discretion U.S. EPA will exercise in a reasonable manner under the circumstances.

27. Countrymark must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Countrymark will use the method of payment specified in paragraphs 10-12 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

28. Any public statement that Countrymark makes referring to the SEP must include the following language, "Countrymark undertook this project pursuant to the settlement of the United States Environmental Protection Agency's enforcement action against Countrymark for violations of the Clean Air Act."

29. If an event beyond the control of Countrymark occurs which causes a delay in performing the SEP as required by this CAFO, Countrymark must promptly notify U.S. EPA by telephone and must, within seven days of becoming aware of the event, notify U.S. EPA in writing of the delay, the anticipated length of the delay, the cause of the delay, the measures taken by Countrymark to prevent or minimize the delay and the timetable by which Countrymark agrees to complete the delayed duties. If U.S. EPA agrees that the delay is caused by circumstances beyond the control of Countrymark, U.S. EPA may extend the time for performing the SEP.

General Provisions

30. This CAFO resolves all claims by U.S. EPA for civil penalties for the violations alleged in the complaint.

31. Nothing in this CAFO restricts U.S. EPA's authority to seek Countrymark's compliance with the Act and other applicable laws and regulations.

32. This CAFO does not affect Countrymark's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

33. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Countrymark's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

34. The terms of this CAFO bind Countrymark and its successors and assigns.

35. 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.

36. Each party agrees to bear its own costs and fees in this action.

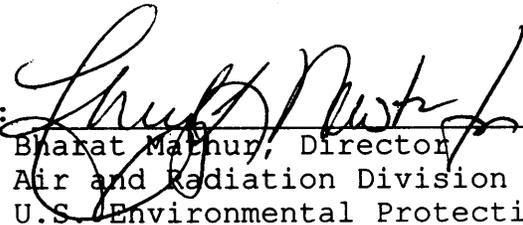
37. This CAFO constitutes the entire agreement between the parties.

**U.S. Environmental Protection
Agency, Complainant**

Date:

7/14/00

By:



Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

**Countrymark Cooperative, Inc.,
Respondent**

Date:

July 7, 2000

By:



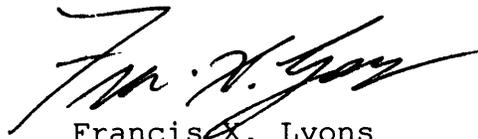
John T. Deaton
Vice President, Refinery Operations
Countrymark Cooperative, Inc.

CONSENT AGREEMENT AND FINAL ORDER
Countrymark Cooperative, Inc.
Docket No. CAA-5-99-048

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Date: 7/14/00



Francis X. Lyons
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-5-99-048 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to John Deaton and Countrymark's council by placing them in the custody of the United States Postal Service addressed as follows:

John Deaton
Vice President, refinery Operations
Countrymark Cooperative, Inc.
1200 Refinery Road
Mount Vernon, IN 47620

Eugene Bernstein
Barnes & Thornburg
200 W. Madison
Suite 2610
Chicago, IL 60606

and

Felicia Robinson, Assistant Commissioner
Office of Enforcement
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

on the 17th day of July, 2000.


Betty Williams
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 2199026 422