



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA GEORGIA 30303-8960

MAY 25 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kurt Leisure
Vice President Risk Services
The Cheesecake Factory Bakery, Inc.
26901 Malibu Hills Road
Calabasas Hills, California 91301

SUBJECT: The Cheesecake Factory, Inc.
Consent Agreement and Final Order
Docket No. EPCRA-04-2010-2037(b)

Dear Mr. Leisure:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the EPCRA matter (Docket No. EPCRA-04-2010-2037(b)) involving The Cheesecake Factory Bakery, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on date of filing.

Penalty payment of \$26,325 has been received and the U.S. Environmental Protection Agency, Region 4, Emergency Planning and Community Right-to-Know Act Enforcement Section considers this matter closed.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. If you have any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Mr. Jyoti Bhushan at (404) 562-9182.

Sincerely,

A handwritten signature in black ink that reads "Caron B. Falconer".

Caron B. Falconer
Chief, EPCRA Enforcement Section

Enclosures

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2010 MAY 25 PM 3:02
EPA Region 4
The Air, Pesticides and Toxics Management Division

IN THE MATTER OF:)
)
The Cheesecake Factory)
Bakery, Inc.)
)
Respondent.)
_____)

Docket Number: EPCRA-04-2010-2037(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is The Cheesecake Factory Bakery, Inc.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent is The Cheesecake Factory, Inc., a corporation doing business in the State of North Carolina.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

6. Respondent owns and operates a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 6792 Corporation Parkway, Battleboro, North Carolina.

III. EPA's Allegations of Violations

8. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, on or before March 1 annually, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 C.F.R. Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

9. At some time during the calendar years of 2008, 2007, and 2006, ammonia was present at the facility in an amount equal to or greater than 500 pounds.

10. Ammonia is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), for which Respondent is required to prepare or have available an MSDS under OSHA at its facility.

11. Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for ammonia to the SERC, the LEPC, and the fire department with jurisdiction over the facility for calendar years 2008, 2007, and 2006, by March 1 of the following year.

12. Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar years 2008, 2007, and 2006, and is therefore subject to the assessment of civil penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

13. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 for each violation of Section 312 that occurred after January 12, 2009. Each day a violation of Section 312 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by Administrative Order.

IV. Consent Agreement

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

15. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

16. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

17. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

18. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for a violation of any federal or state statute, regulation or permit; to initiate an action for imminent and substantial endangerment; or to pursue criminal enforcement.

19. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of EPCRA.

V. Final Order

20. Respondent shall pay a civil penalty of TWENTY SIX THOUSAND THREE HUNDRED TWENTY FIVE DOLLARS (\$26,325), for the violations alleged in Section II. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

21. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to one of the following addresses:

By Mail:

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

By Overnight:

U.S. Bank
Natalie Pearson (314) 418-4087
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

The check shall reference on its face the name and the Docket Number of the CAFO.

22. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Jyoti Bhushan
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

23. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

24. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

25. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

26. This CAFO shall be binding upon the Respondent, its successors and assigns.

27. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451

28. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

VI. Effective Date

29. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

The Cheesecake Factory, Inc.

By: [Signature] (Signature) Date: 5/7/10
Name: Kurt Leisner (Typed or Printed)
Title: Vice President, Risk Services (Typed or Printed)

U.S. Environmental Protection Agency

By: [Signature] Date: 4/30/10
Kenneth R. Lapierre, Acting Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 25th day of May, 2010 .

[Signature]
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing
Consent Agreement and Final Order, in the Matter of The Cheesecake Factory, Inc., Docket No.
EPCRA-04-2010-2037(b), on the parties listed below in the manner indicated:

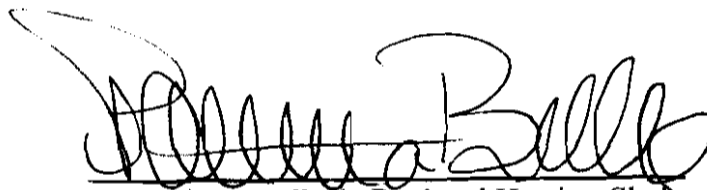
Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, Georgia 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, Georgia 30303

Mr. Kurt Leisure (Via Certified Mail - Return Receipt
Requested)
Vice.President Risk Services
The Cheesecake Factory Bakery, Inc.
26901 Malibu Hills Road
Calabasas Hills, California 91301

Date:

5-25-10



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511