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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

AUG 6 2012

IN THE MATTER OF:

Goldberg and Solovy Foods, Inc.
5925 South Alcoa Avenue
Vernon, CA 90058

Respondent.

Docket No.
EPCRA-09-2012-00 03

CONSENT AGREEMENT

AND
FINAL ORDER
PURSUANT TO 40 CFR
SECTIONS 22.13 and 22.18

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CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Goldberg and Solovy Foods, Inc., a corporation organized under the laws of the State of California.
2. This CA/FO, pursuant to 40 CFR §§ 22.13(b) and 22.18(b), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, and the implementing regulations.

1 EPCRA §§ 302, 303, 304, 311, 312, 322, and 323 to the Director of the Superfund
2 Division with delegation R9 1290.18.

3 6. Respondent owned and operated a facility located at 5925 South Alcoa Avenue, in
4 Vernon, California.

5 7. On or before December 31, 2009 and December 31, 2010, Respondent produced, used,
6 or stored lead acid batteries weighing 43,534 pounds and containing sulfuric acid (CAS
7 No. 7664-93-9) at a concentration of 9% (3,918 pounds) and lead acid/lead compounds
8 (CAS No. 7439-92-1) at a concentration of 54% (23,508 pounds), both hazardous
9 chemicals, at the Facility in quantities equal to or exceeding the threshold planning
10 quantities (TPQs).

11 8. The TPQ for sulfuric acid is 1,000 pounds and the TPQ for lead acid/lead compounds is
12 10,000 pounds.

13 9. In a letter dated May 4, 2011, Respondent voluntarily disclosed to EPA that it had not
14 submitted Inventory Forms for the chemicals described for the calendar years 2009 and
15 2010, as required by Section 312 of EPCRA, 42 U.S.C. § 11022.

16 10. Respondent submitted a Hazardous Material Business Plan, the California version
17 equivalent to the Tier II Annual Chemical Inventory Form, containing information on
18 chemicals used at the Facility during calendar years 2009 and 2010 to the City of
19 Vernon Fire Department, but failed to include the hazardous materials contained in the
20 lead acid batteries.

1 D. ALLEGED VIOLATIONS

2 COUNT I

3 (Failure to Timely Submit Annual Chemical Inventory Forms)

4 11. Paragraphs 1 through 10 above are incorporated herein by this reference as if they were
5 set forth here in their entirety.

6 12. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7 13. At all times relevant to this CA/FO, Respondent has been the owner or operator of the
8 Facility.

9 14. At all times relevant to this CA/FO, Respondent has been a "person" as defined by
10 Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

11 15. Respondent is required to prepare or have available an MSDS under 29 CFR
12 § 1910.1200(g) because it is engaged in a business where chemicals are either used or
13 distributed, or are produced for use or distribution.

14 16. Sulfuric acid and lead acid/lead compounds are "hazardous chemicals" as defined under
15 Occupational Safety and Health Act of 1970 ("OSHA"), 29 U.S.C. § 651 *et seq.*

16 17. During the calendar years 2009 and 2010, Respondent used sulfuric acid and lead
17 acid/lead compounds, at the Facility in quantities above the applicable thresholds
18 established in 40 CFR § 370.10(a)(1) and 40 CFR Part 355, Appendices A and B.

19 18. Respondent's failure to submit Inventory Forms containing information on hazardous
20 chemicals present at the Facility during the calendar years 2009 and 2010 to the City of
21 Vernon Fire Department on or before March 1, 2010 and March 1, 2011 are violations of
22 Section 312 of EPCRA, 42 U.S.C. § 11022.

1 E. CIVIL PENALTY

- 2 19. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as adjusted by the Debt
3 Collection Improvement Act of 1996, see 40 CFR Part 19, authorizes a civil penalty of up
4 to \$27,500 per day for each day a violation of EPCRA occurs after January 30, 1997.
5 For violations that occur on or after March 15, 2004, a civil administrative penalty of
6 \$32,500 per day is authorized. For violations that occur on or after January 12, 2009, a
7 civil administrative penalty of \$37,500 per day is authorized.
- 8 20. Under EPA's Final Policy Statement on *Incentives for Self-Policing: Discovery,*
9 *Disclosures, Correction and Prevention of Violations*, 65 Fed. Reg. 19618, ("Audit
10 Policy"), effective May 11, 2000, EPA has the discretion to eliminate or substantially
11 reduce the gravity component of a penalty if it determines that a respondent has
12 satisfied the nine conditions set forth in the Audit Policy.
- 13 21. The nine conditions a respondent must satisfy under the Audit Policy are: (1) systematic
14 discovery of the violation through an environmental audit or a compliance management
15 system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure
16 independent of government or third party plaintiff; (5) correction and remediation; (6)
17 prevention of recurrence; (7) no repeat violations; (8) other violations excluded; and (9)
18 cooperation.
- 19 22. Under the "Expanded Options for Discovery of violations" as described in the *Small*
20 *Business Compliance Policy of May 11, 2000*, a disclosure may include a violation
21 discovered via "any means."
- 22 23. Regulated entities deemed by EPA to have satisfied the nine conditions in the Audit
23 Policy will not face any gravity-based civil penalties. If the regulated entity meets all but
24 the first condition (Systematic Discovery), EPA will reduce the gravity-based penalties by

1 75%. EPA reserves the right to collect any economic benefit realized as a result of the
2 violation disclosed.

3 24. EPA has concluded that Respondent has, as described herein, satisfied the nine
4 conditions outlined in the Audit Policy and therefore will not face gravity-based civil
5 penalties.

6 25. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance
7 Management System or (per the *Small Business Compliance Policy of May 11 2000*)
8 "any means". Respondent discovered the violations on April 18, 2011, during an internal
9 environmental audit of the Facility.

10 26. Voluntary Discovery. Respondent's discovery of the violations was voluntary and did not
11 result from any legally mandated monitoring or sampling requirement prescribed by
12 statute, regulation, permit, judicial or administrative order, or consent agreement.

13 27. Prompt Disclosure. Respondent disclosed violations to EPA within 21 days after it
14 discovered the violations had, or may have, occurred, advised that the process of
15 verifying its EPCRA Section 312 reporting thresholds for the prior three years was
16 ongoing and advised that there may be additional violations discovered. The initial
17 violations were discovered on April 18, 2011, and were reported to the EPA 16 days
18 later in a letter dated May 4, 2011.

19 28. Discovery and Disclosure Independent of Government or Third Party Plaintiff.
20 Respondent discovered and disclosed the violations to EPA prior to any federal, state, or
21 local agency inspection or investigation, notice of citizen suit, the filing of a third-party
22 complaint, the reporting of the violations by a "whistle-blower," or imminent discovery by
23 a regulatory agency.

- 1 29. Correction and Remediation. Respondent provided the chemical hazard information and
2 submitted the HMBPs for the calendar years 2009 and 2010 to the City of Vernon Fire
3 Department, the point of compliance in California, and to EPA by letter on May 4, 2011.
- 4 30. Prevent Recurrence. Respondent has told EPA that it plans to take the following steps
5 to prevent a recurrence of any violation of Section 312 of EPCRA, 42 U.S.C. § 11022:
6 Respondent has implemented a procedure for reviewing EPCRA § 312 violations
7 annually whereby the relevant recording thresholds and requirements will be assessed
8 and fulfilled in advance of the March 1st reporting date. Respondent will also continue its
9 internal audit procedures and monitor compliance.
- 10 31. Repeat Violations. Respondent has not had any other occurrence of these specific
11 violations at the Facility within the past three years or at any other facility owned or
12 operated by Respondent within the past five years.
- 13 32. Other Violations Excluded. The violations did not result in serious actual harm, present
14 an imminent and substantial endangerment to public health or the environment, or
15 violate the specific terms of any judicial or administrative order or consent agreement.
- 16 33. Cooperation. Respondent has fully cooperated with EPA in determining the applicability
17 of the Audit Policy.
- 18 34. In signing this CA/FO, Respondent certifies under penalty of law that the information
19 submitted to EPA in the letter dated May 4, 2011, disclosing violations of
20 EPCRA Section 312, 42 U.S.C. § 11022, and the information in paragraphs 25 – 33 of
21 this CA/FO are based upon true, accurate, and complete information that the signatory
22 can verify personally, or regarding which the signatory has inquired of the person or
23 persons directly responsible for gathering the information.

1 35. EPA has determined that the violations resulted in an insignificant amount of economic
2 benefit.

3 36. For the reasons set forth above, all penalties based on the gravity of the violations and
4 the savings of economic costs related to the failure to timely submit the Inventory Forms
5 are waived.

6
7 **F. ADMISSIONS AND WAIVERS**

8 37. For purposes of this proceeding, Respondent admits the jurisdictional allegations above,
9 and agrees that the EPA Administrator and Region IX Administrator have jurisdiction and
10 authority over the subject matter of the action commenced in this CA/FO and over
11 Respondent pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 CFR
12 §§ 22.4 and 22.34. Respondent consents to and agrees not to contest EPA's jurisdiction
13 and authority to enter into and issue this CA/FO and to enforce its terms. Further,
14 Respondent will not contest EPA's jurisdiction and authority to compel compliance with
15 this CA/FO in any enforcement proceedings, either administrative or judicial, or to
16 impose sanctions for violations of this CA/FO.

17 38. Respondent admits any allegations of fact or law set forth in Section C and D of this
18 CA/FO. Respondent hereby waives any rights it may have to contest the allegations set
19 forth in this CA/FO and waives any rights it may have to a hearing on any issue relating
20 to the factual allegations or legal conclusions set forth in this CA/FO, including without
21 limitation a hearing pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. Respondent
22 hereby consents to the issuance of this CA/FO without adjudication and waives any
23 rights it may have to appeal the Final Order attached to this Consent Agreement and
24 made part of this CA/FO.

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2 G. PARTIES BOUND

3 39. This CA/FO shall apply to and be binding upon Respondent and its agents, successors,
4 and assigns and upon all persons acting under or for Respondent. This CA/FO shall
5 constitute full settlement of the violations alleged herein.

6 40. No change in ownership or corporate, partnership, or legal status relating to the Facility
7 will in any way alter Respondent's obligations and responsibilities under this CA/FO.

8 41. The undersigned representative of Respondent hereby certifies that he or she is fully
9 authorized by Respondent to enter into this CA/FO, to execute it, and to legally bind
10 Respondent to it.

11
12 H. PAYMENT OF CIVIL PENALTY

13 42. Because EPA has concluded that Respondent has, as described herein, satisfied the
14 nine conditions set forth in the Audit Policy, Complainant has not sought gravity-based
15 penalties for the violations alleged.

16 43. Based on Complainant's determination that any economic benefit derived from the
17 violations was insignificant, Complainant has not sought to collect any economic benefit
18 penalty for the violations alleged.

19 44. Complainant and Respondent hereby consent to the assessment of a civil penalty in the
20 amount of **ZERO DOLLARS (\$0)** in settlement of the violations set forth in Section D
21 above. This CA/FO constitutes a settlement of the civil and administrative penalty
22 claims of the United States for the violations of Section 312 of EPCRA specifically
23 alleged in Section D above.

1 45. The effect of the settlement described above is conditional upon the accuracy of
2 Respondent's representations to EPA as memorialized in paragraphs 25- 33 of this
3 CA/FO and Respondent's self-disclosure dated May 4, 2011.
4

5 I. RESERVATION OF RIGHTS

6 46. EPA expressly reserves all rights and defenses that it may have.

7 47. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and
8 remedies, both legal and equitable, including without limitation, the right to require
9 Respondent to perform tasks in addition to those required by this CA/FO and the right to
10 assess penalties under Section 325 of EPCRA, 42 U.S.C. § 11045, or take other
11 appropriate action, in the event that Respondent fails to comply with any of the
12 requirements of this CA/FO.

13 48. This CA/FO shall not be construed as a covenant not to sue, a release, waiver, or
14 limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has
15 under EPCRA or any other statutory, regulatory, or common law enforcement authority
16 of the United States, except as otherwise set forth herein.

17 49. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise
18 preclude EPA from taking additional enforcement actions should EPA determine that
19 such actions are warranted, except as they relate to Respondent's liability for federal
20 civil penalties for the specific alleged violations set forth in Section D of this CA/FO.

21 50. This CA/FO is not intended to be, nor shall it be construed as, a permit. This CA/FO
22 does not relieve Respondent of any obligation to obtain and comply with any local, state,
23 or federal permits.

1 51. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released
2 from liability, if any, for the costs of any response actions taken by EPA. EPA reserves
3 its right to seek reimbursement from Respondent for any response costs incurred by the
4 United States that may result or arise from the alleged counts set forth in Section D.

5
6 J. OTHER CLAIMS

7 52. Nothing in this CA/FO shall constitute or be construed as a release from any other claim,
8 cause of action, or demand in law or equity by or against any person, firm, partnership,
9 entity, or corporation for any liability it may have arising out of or relating in any way to
10 the generation, storage, treatment, handling, transportation, release, or disposal of any
11 hazardous constituents, hazardous substances, hazardous wastes, pollutants, or
12 contaminants found at, taken to, or taken from the Facility.

13
14 K. MISCELLANEOUS

15 53. This CA/FO may be amended or modified only by written agreement executed by both
16 EPA and Respondent.

17 54. The headings in this CA/FO are for convenience of reference only and shall not affect
18 interpretation of this CA/FO.

19 55. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
20 proceeding.

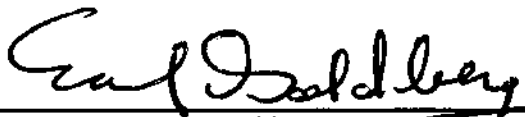
21 56. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on
22 the date that the Final Order contained in this CA/FO, having been approved and issued
23 by either the Regional Judicial Officer or Regional Administrator, is filed.

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IT IS SO AGREED,

07-05-12

Date



Earl Goldberg, President
Goldberg and Solovy Foods, Inc.

7-31-2012

Date



Jane Diamond
Director
Superfund Division
United States Environmental Protection Agency,
Region IX

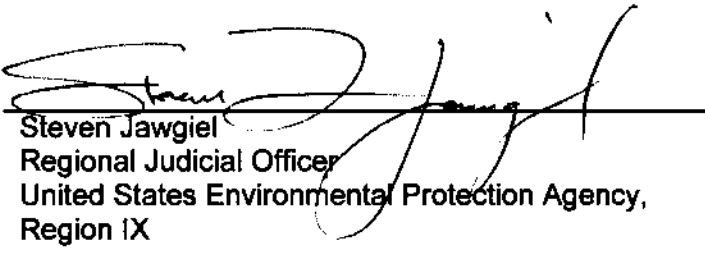
Goldberg and Solovy Foods, Inc.
Vernon, CA

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FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. EPCRA-09-2012-0003) be entered and that Respondent pay a civil penalty in the amount of **ZERO DOLLARS (\$0)**.

08/03/12
Date


Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

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1 B. STATUTORY AND REGULATORY FRAMEWORK

2 3. Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 CFR § 370.40(a), requires the owner
3 or operator of a facility to prepare or have available a material safety data sheet
4 ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of
5 1970 ("OSHA"), 29 U.S.C. § 651 *et seq.*, and to submit an annual emergency and
6 hazardous chemical inventory form ("Inventory Form") if hazardous chemicals are
7 present at the facility during the preceding calendar year in quantities above the
8 threshold levels established in 40 CFR § 370.10(a)(1). The Inventory Form must be
9 submitted by March 1 of each year to the State Emergency Response Commission
10 ("SERC"), the Local Emergency Planning Committee ("LEPC"), and the fire
11 department(s) having jurisdiction over the facility. The State of California has delegated
12 authority to implement the EPCRA program to the Certified Unified Reporting Agencies
13 ("CUPAs") which has jurisdiction over each geographic area. The single point of
14 compliance for this facility is the City of Vernon, the designated CUPA for Vernon
15 facilities. In California, the requirement to submit an annual chemical inventory is
16 satisfied by submitting a Hazardous Materials Business Plan ("HMBP"), the equivalent to
17 the Tier II Annual Chemical Inventory Form, to the CUPA.

18
19 C. GENERAL ALLEGATIONS

- 20 4. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess civil
21 penalties for any violation of Section 312 of EPCRA, 42 U.S.C. § 11022.
- 22 5. The Administrator of EPA has delegated enforcement authority under EPCRA to the
23 Regional Administrators by EPA delegation 22-3-A, dated May 11, 1994. The Regional
24 Administrator, EPA Region IX, in turn, has delegated the authority to enforce

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of GOLDBERG AND SOLOVY FOODS, INC. (Docket #: EPCRA-09-2012-0003) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

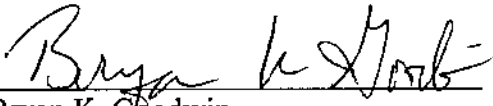
A copy was mailed via CERTIFIED MAIL to:

Earl Goldberg
President
Goldberg and Solovy Foods, Inc.
5925 South Alcoa Avenue
Vernon, CA 90058

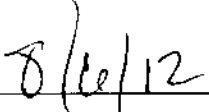
CERTIFIED MAIL NUMBER: 7010 1060 0002 0234 9964

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Thanne Cox, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX



Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

AUG 6 2012

Certified Mail No.: 7010 1060 0002 0234 9964
Refer to: Goldberg and Solovy Foods, Inc., Vernon, CA

Earl Goldberg, President
Goldberg and Solovy Foods, Inc.
5925 South Alcoa Avenue
Vernon, CA 90058

Re: Consent Agreement and Final Order, Settlement of Audit Policy Disclosures

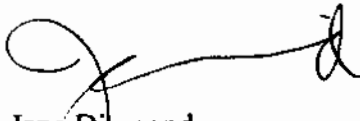
Dear Mr. Goldberg:

Please find enclosed the fully executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX (EPA), and Goldberg and Solovy Foods, Inc., concerning their facility, located in Vernon, CA.

This CA/FO simultaneously commences and concludes the above-referenced proceeding concerning the outstanding Emergency Planning and Community Right-to-Know Act (EPCRA) compliance matters between Goldberg and Solovy Foods, Inc. and EPA as alleged in the CA/FO.

If you have any questions regarding the EPCRA requirements governing operations at Goldberg and Solovy Foods, Inc., or which concern the proceedings terminated by the enclosed documents, please contact Elizabeth Cox at (415) 972-3908.

Sincerely,



Jane Diamond
Director
Superfund Division

Enclosures