



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

JUL 09 2013

REPLY TO THE ATTENTION OF:
SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ronald E. Baylor
Principal
Miller Canfield
277 S. Rose Street, Suite 5000
Kalamazoo, Michigan 49007


Re: **Welch Foods Inc., Lawton, Michigan**
Consent Agreement and Final Order
Docket No. **CAA-05-2013-0029**

Dear Mr. Baylor,

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on July 9, 2013. Please inform your client of their obligation to pay a civil penalty in the amount of \$96,000 in the manner prescribed in paragraphs 36-41 and please note that your client must reference their check with the docket number.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Louise Gross, Regional Counsel, at (312) 886-6844. Thank you for your assistance in resolving this matter.

Sincerely yours,


Michael E. Mans, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

cc. Louise Gross, ORC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



JUL - 9 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)
)
Welch Foods Inc.)
Lawton, Michigan,)
)
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Respondent.)
_____)

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

Docket No. CAA-05-2013-0029

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 (U.S. EPA), Region 5, Chicago, Illinois.

3. Respondent is Welch Foods Inc. (Respondent), a corporation doing business in the State of Michigan.

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. In order to resolve this matter without litigation, 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 (Risk Management Program Regulations).

16. Under 40 C.F.R. § 68.3, “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.”

17. Under 40 C.F.R. § 68.3, “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.”

18. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed anhydrous ammonia (CAS No. 7664-41-7) 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 lbs. for anhydrous ammonia (CAS No. 7664-41-7) for determining whether sources are subject to the Risk Management Program. 40 C.F.R. § 68.130, Tables 1 and 2.

19. 40 C.F.R. § 68.115 provides that a “threshold quantity of a regulated substance listed in 40 C.F.R. § 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 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. §§68.150 through 68.185.

21. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirements of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to

Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

22. Section 113(d) of the Act 42 U.S.C. §7413(d) and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA 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.

23. 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.

24. 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

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

26. Respondent owns and operates a refrigerated juice facility located at 400 Walker Street, Lawton, Michigan, which consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person (the Lawton Facility).

27. On July 10, 2000, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations at 40 C.F.R. Part 68, Respondent submitted to U.S. EPA an RMP for the Lawton Facility.

28. According to the RMP submitted to U.S. EPA by Respondent, the Lawton Facility:

- a. fell within NAICS Code 311411, as “frozen fruit, juice, and vegetable manufacturing”;
- b. used anhydrous ammonia as a process chemical during its operations; and
- c. held at least 10,000 lbs. of anhydrous ammonia.

29. On September 6, 2011, authorized representatives of U.S. EPA conducted an inspection at the Lawton Facility to determine its compliance with 40 C.F.R. Part 68.

30. The Lawton Facility is a “stationary source,” as defined at 40 C.F.R. § 68.3.

31. On July 10, 2000, having held for use in its operations at the Lawton Facility 10,000 lbs. or more of anhydrous ammonia, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and became subject to 40 C.F.R. Part 68.

32. For purposes of compliance with 40 C.F.R. Part 68 in its RMP, Respondent has acknowledged that it was required to meet Program 3 eligibility requirements at the Lawton Facility.

33. Based on the inspection conducted on September 6, 2011 and a review of additional information received by U.S. EPA subsequent to that date, it has identified the following alleged violations by Respondent of the Risk Management Program Regulations:

- a. Failure to develop a management system to oversee the implementation of the risk management program elements, as required under 40 C.F.R. §68.15(a).

- b. Failure to document other persons responsible for implementing individual requirements of the risk management program and define the lines of authority through an organization chart or similar document, as required under 40 C.F.R. §68.15(c).
- c. Failure to review and update the off-site consequence analyses at least once every five years, as required under 40 C.F.R. §68.36(a).
- d. Failure to maintain records on the offsite consequence analysis for the worst-case scenario that includes a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for selection; assumptions shall include use of any administrative controls and any passive mitigation that were assumed to limit the quantity that could be released. Documentation shall include the anticipated effect of the controls and mitigation on the release quantity and rate, as required under 40 C.F.R. §68.39(a).
- e. Failure to maintain records on the offsite consequence analysis for the alternative release scenarios that includes a description of the scenarios identified, assumptions and parameters used, and the rationale for the selection of specific scenarios; assumptions shall include any administrative controls and any mitigation that were assumed to limit the quantity that could be released. Documentation shall include the effect of the controls and mitigation on the release quantity and rate, as required under 40 C.F.R. § 68.39(b).
- f. Failure to maintain records on the offsite consequence analyses that includes the data used to estimate population and environmental receptors potentially affected, as required under 40 C.F.R. § 68.39(e).
- g. Failure to compile written process safety information pertaining to the technology of the process that includes maximum intended inventory, as required under 40 C.F.R. §68.65(c)(1)(iii).
- h. Failure to compile written process safety information for the equipment in the process that contains the ventilation system design, as required under 40 C.F.R. §68.65(d)(1)(v).
- i. Failure to document that equipment complies with recognized and generally accepted good engineering practices, as required under 40 C.F.R. §68.65(d)(2).
- j. Failure to establish a system to promptly address the Process Hazard Analysis team's findings and recommendations, assure that the recommendations are resolved in a timely manner and documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations, as required under 40 C.F.R. § 68.67(e).

- k. Failure to retain Process Hazard Analysis and updated or revalidations for each process covered, as well as the resolution of recommendations for the life of the process, as required under 40 C.F.R. §68.67(g).
- l. Failure to develop and implement written operating procedures that provide instructions or steps for conducting activities associated with each covered process consistent with safety information and that address safety systems and their functions, as required under 40 C.F.R. §68.69(a)(4).
- m. Failure to certify annually that operating procedures are current and accurate and that procedures have been reviewed as often as necessary, as required under 40 C.F.R. §68.69(c).
- n. Failure to provide refresher training at least every three years, or more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process, as required under 40 C.F.R. §68.71(b).
- o. Failure to ascertain that each employee involved in operating a process has received and understood the training required and to prepare a record which contains the identity of the employee, the date of the training, and the means used to verify that the employee understood the training, as required under 40 C.F.R. §68.71(c).
- p. Failure to establish and implement written procedures to maintain the on-going integrity of process equipment, as required under 40 C.F.R. §68.73(b).
- q. Failure to ensure that the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience, as required under 40 C.F.R. §68.73(d)(3).
- r. Failure to document each inspection and test that has been performed on process equipment, which identifies the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test, as required under 40 C.F.R. §68.73(d)(4).
- s. Failure to certify that the stationary source has evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed, as required under 40 C.F.R. §68.79(a).
- t. Failure to promptly determine and document an appropriate response to each of the findings of the audit and document that deficiencies have been corrected, as required under 40 C.F.R. §68.79(e).
- u. Failure to document training for all employees in relevant emergency response procedures, as required under 40 C.F.R. §68.95(a)(3).

- v. Failure to submit correct emergency contact information within one month of a change, as required under 40 C.F.R. §68.195(b).

34. 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.

35. 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

36. Based on an analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation and prompt compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$ 96,000.00.

37. Within 30 days after the effective date of this CAFO, Respondent must pay the \$ 96,000.00 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 "Welch Foods Inc." and the docket number of this CAFO.

38. A transmittal letter stating Respondent's name, complete address, and the case docket 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 Boulevard
Chicago, IL 60604

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

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

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

40. If Respondent 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.

41. 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.

General Provisions

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

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

44. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 42, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

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

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

47. 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.

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

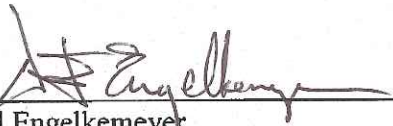
49. This CAFO constitutes the entire agreement between the parties.

50. The effective date of this CAFO is the date when this CAFO is filed with the Regional Hearing Clerk's office.

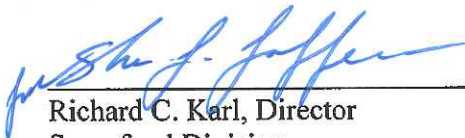
CONSENT AGREEMENT AND FINAL ORDER

**In the Welch Foods Inc.
Docket No.**

Welch Foods Inc., Respondent

Date: 6/7/13 By: 
David Engelkemeyer
Vice President of Operations
Welch Foods Inc.

United States Environmental Protection Agency, Complainant

Date: 6/27/13 
Richard C. Karl, Director
Superfund Division

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of Welch Foods, Inc.

Docket No. CAA-05-2013-0029

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.

7-1-13

Date



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



JUL - 9 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CAA-05-2013-0029

Certificate of Service

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

Ronal E. Baylor
Miller, Canfield, Paddock and Stone, P.L.C.
277 South Rose Street, Suite 5000
Kalamazoo, Michigan 49007

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 9 day of July, 2013.



Monika Chrzaszcz Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5



JUL - 9 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY