



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

HAND DELIVERY

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: **In the Matter of Supervalu, Inc.**
U.S. EPA Docket No. CERC-03-2013-0112

Dear Ms. Guy:

Enclosed please find the original and one copy of Consent Agreement and Final Order, along with a certificate of service.

Sincerely yours,

Suzanne M. Parent
Associate Regional Counsel

Enclosures

cc: Tom Darling, Esq.
Perry Pandya (3HS61)
John J. Rozman, Pennsylvania Emergency Management Agency
John Matz, Schuylkill Emergency Management Agency

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EPA REGION III, PHILA. PA

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

**Supervalu, Inc.
7075 Flying Cloud Drive
Eden Prairie, Minnesota
55344,**

Respondent.

**Supervalu, Inc.
8258 Richford Road
Mechanicsville, Virginia
23116,**

Facility.

)
) **EPA Docket Nos.: CERC-03-2013-0112**
)
)
) **Proceedings Pursuant to Sections 103 and 109**
) **of the Comprehensive Environmental Response,**
) **Compensation, and Liability Act, 42 U.S.C.**
) **§§ 9603, 9609**

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CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609. The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency ("EPA"), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has redelegated this authority to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant"). Further, this Consent Agreement is proposed and entered into under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(7).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Agreement.

EPA'S FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

EPA'S FINDINGS OF FACT

5. Respondent Supervalu, Inc. ("Supervalu" or "Respondent") is a publicly-owned nationwide grocery corporation headquartered in Eden Prairie, Minnesota and incorporated in the State of Delaware.
6. Supervalu owns and operates a distribution center located in Mechanicsville, Virginia ("the Facility"). At all times relevant to this CA/FO, Respondent has been in charge of the Facility within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6.
7. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. § 302.3.
8. On July 15, 2010, EPA conducted an inspection of the Facility to determine Respondent's compliance with Section 103 of CERCLA, 42 U.S.C. § 9603.
9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

10. According to information retrieved at the inspection and subsequently provided by Respondent after the inspection, on September 17, 2008, a technician employed by Respondent's refrigeration contractor observed small pulses of anhydrous ammonia, Chemical Abstracts Service ("CAS") No. 7664-41-7, leaking from a pressure relief valve at the Facility. The leak was identified by frost on the relief line, which quickly dissipated after the observed pulse from the valve, indicating that the valve was cycling between leaking and then reseating after the frost melted.

11. The leaking pressure relief valve was a Cyrus Shank Pressure Relief Valve, number 803. According to the manufacturer's specifications, the Cyrus Shank Pressure Relief Valve, number 803, will release anhydrous ammonia at a rate ranging from 10.85 pounds per minute to 50.76 pounds per minute, depending on the relief pressure setting.

12. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

13. Anhydrous ammonia is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.

14. The leaking pressure relief valve would have released 100 pounds of anhydrous ammonia after leak periods totaled from between two minutes to less than 10 minutes, depending on the pressure relief setting of the valve.

15. At approximately 4:15 p.m. on September 18, 2008, Respondent's refrigeration contractor informed Respondent of the pulses of ammonia observed on September 17, 2008 leaking from the pressure relief valve. At approximately 5:15 p.m. on September 18, 2008, Respondent shut down the refrigeration system that included the leaking pressure relief valve, stopping the release.

16. The cycling nature of the leak from the pressure relief valve from September 17, 2008 to September 18, 2008 resulted in a release of greater than 100 pounds of anhydrous ammonia ("the Release").

17. The Release constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

18. The Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

19. Respondent knew or should have known of the Release of anhydrous ammonia from the Facility, in a quantity equal to or exceeding its RQ, at 4:15 p.m. on September 18, 2008.

20. Respondent did not notify the NRC of the Release until 5:49 p.m. on September 18, 2008, a reporting delay of one hour and thirty-four minutes.

21. Respondent failed to immediately notify the NRC of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding its applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

EPA’S CONCLUSION OF LAW

22. Respondent’s failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

CIVIL PENALTY

23. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, set forth above, in the amount of **\$12,500**.

PAYMENT TERMS

24. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, Respondent shall pay the civil penalty of \$12,500, no later than thirty (30) days after the effective date of the Final Order (the “final due date”) by either cashier’s check, certified check, or electronic wire transfer. Payment of the civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent’s name and address, and the Docket Number of this action;
- b. All checks for the civil penalty shall be made payable to **EPA-Hazardous Substances Superfund**;

- c. Payment for the civil penalty made by check and sent by regular mail shall be addressed to:

U.S. EPA
ATTN: Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

- d. Payment for the civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
ATTENTION: Superfund Payments
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

- e. Payment made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. Payment made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

- g. Electronic payment made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

25. The Respondent shall submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Suzanne M. Parent (3RC42)
Associate Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

26. The CERCLA civil penalty stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and are consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

27. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

28. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will waive interest on any amount of the civil penalty that is paid by the final due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

29. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

30. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

31. Failure by the Respondent to pay the CERCLA civil penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

32. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609.

33. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

34. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

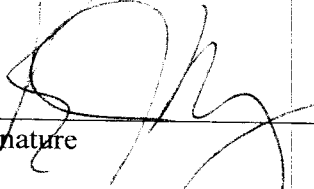
35. Each party to this action shall bear its own costs and attorney's fees.

In re: Supervalu, Inc.

CERC-03-2013-0112

FOR SUPERVALU, INC.

Signature



DATE

9/18/13

Print Name

Kim J. Myrdahl

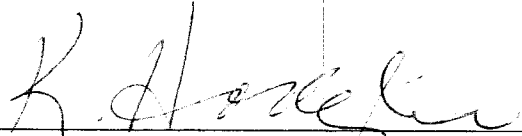
Title

VP - Litigation, Regulatory & Compliance

In re: Supervalu, Inc.

CERC-03-2013-0112

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Kathryn A. Hodgkiss, Acting Director
Hazardous Site Cleanup Division

9/30/2013

DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

Supervalu, Inc.
7075 Flying Cloud Drive
Eden Prairie, Minnesota
55344,

Respondent.

Supervalu, Inc.
8258 Richfood Road
Mechanicsville, Virginia
23116,

Facility.

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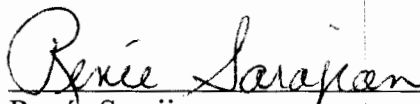
)
)
) Proceedings Pursuant to Sections 103 and 109
) of the Comprehensive Environmental Response,
) Compensation, and Liability Act, 42 U.S.C.
) §§ 9603, 9609

FINAL ORDER

Pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to pay the civil penalty of \$12,500 and to otherwise comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.



Renee Sarajian
Regional Judicial Officer
EPA, Region III

9/26/13

DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:)

Supervalu, Inc.)
7075 Flying Cloud Drive)
Eden Prairie, Minnesota)
55344,)

Respondent.)

Supervalu, Inc.)
8258 Richfood Road)
Mechanicsville, Virginia)
23116,)

Facility.)

EPA Docket Nos.: CERC-03-2013-0112

Proceedings Pursuant to Sections 103 and 109
of the Comprehensive Environmental Response,
Compensation, and Liability Act, 42 U.S.C.
§§ 9603, 9609

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via Overnight Mail

Tom Darling, Esq.
Senior Litigation Attorney
Supervalu, Inc.
Eastview Innovation Center Office
7075 Flying Cloud Drive
Eden Prairie, MN 55344

9/26/13
Date


Suzanne M. Parent
Associate Regional Counsel