



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6

**1445 Ross Avenue, Suite 1200
Dallas, Texas 75202 - 2733**

10 APR 2018

Via Certified Mail (Return Receipt # 7015 3430 0000 5839 9568) and Email

Nestlé Prepared Foods Co. Inc.
Attn: Frank Eastman
One Nestle Way
Jonesboro, AR 72401
Frank.Eastman1@US.nestle.com

Re: EPCRA § 313 Consent Agreement & Final Order
Nestlé Prepared Foods Co. Inc., Docket No. EPCRA-06-2018-0504

Dear Mr. Eastman:

Enclosed is the fully executed Consent Agreement & Final Order (CAFO) which has been filed with the Regional Hearing Clerk. Nestlé has 30 days from the date of filing to submit the civil penalty of \$27,720.00 in the manner described in Section IV of the CAFO, beginning on page 6. The date of filing is stamped in the top right corner of the CAFO.

Should you have any questions, please contact David Riley at (214) 665-7298 or riley.david@epa.gov. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cheryl T. Seager".

For Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2018 APR 12 AM 10:40
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	
	§	
NESTLÉ PREPARED FOODS CO. INC.	§	DOCKET NO. EPCRA-06-2018-0504
JONESBORO, ARKANSAS	§	
	§	
	§	
RESPONDENT	§	
	§	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA), Region-6 (Complainant), and Nestlé Prepared Foods Co. Inc. (Respondent), in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. For the purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO.

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in this CAFO.

4. The EPA and Respondent agree that the settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

5. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.

7. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. Respondent hereby certifies that as of the date of the execution of this CAFO, Nestlé Prepared Foods Co. Inc. has corrected the violations alleged in this CAFO, and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

II. STATUTORY AND REGULATORY BACKGROUND

9. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that (a) has ten or more full-time employees; (b) is an establishment with a primary Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) manufactured, processed, or otherwise used a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold amounts established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28 during the preceding calendar year; to complete and submit a toxic chemical release form (“Form R”) to the Administrator of the EPA and to the State in which the subject facility is located by July 1, for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in amounts exceeding the established threshold amount during that preceding calendar year.

10. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical manufactured or processed, and 10,000 pounds for any toxic chemical otherwise used for the applicable calendar year. Other reporting thresholds are set forth in 40 C.F.R. §§ 372.27 and 372.28.

11. 40 C.F.R. § 372.85(b)(15)(i) requires that a Form R shall include information on the offsite transfer of the chemical in waste to a Publicly Owned Treatment Works (POTW),

including the name and address of the POTW, and an estimate of the amount of the chemical transferred, in pounds.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

12. Respondent is incorporated under the laws of the State of Delaware and is authorized to do business in the State of Arkansas.

13. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. Respondent owns and operates a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), at One Nestle Way, Jonesboro, Arkansas, 72401 (Facility).

15. The Facility had ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3, for the 2014 and 2015 calendar years.

16. The Facility's primary NAICS industry code 311412 (Frozen Specialty Food Manufacturing) is included in the subsector 311 (Food Manufacturing), which is listed in 40 C.F.R. § 372.23(b).

17. Nitric acid is a "toxic chemical" within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

18. During the 2014 and 2015 calendar years, nitric acid was "otherwise used" as that term is defined by 40 C.F.R. § 372.3, at the Facility. As such, Respondent is subject to the regulatory and statutory provisions cited herein.

19. An inspection of the Facility was conducted on March 22, 2017, by a duly authorized representative of the EPA's Region 6 office. Based on information provided by the Respondent, the following violations are alleged.

B. VIOLATIONS

Count One – Significant Data Quality Error for Nitric Acid for 2014

20. During the 2014 calendar year, Respondent otherwise used nitric acid at the Facility in excess of the 10,000-pound threshold amount.

21. During the 2014 calendar year, Respondent transferred 13,331.8 pounds of nitric acid offsite to a POTW.

22. Respondent submitted a Form R for nitric acid by July 1, 2015, that contained no information on the offsite transfer of that chemical to a POTW for the 2014 calendar year.

23. Therefore, Respondent violated 40 C.F.R. § 372.85(b)(15)(i) by submitting a Form R that did not include information on the offsite transfer of the chemical in waste to a POTW for the 2014 calendar year to the EPA and to the State of Arkansas.

Count Two – Significant Data Quality Error for Nitric Acid for 2015

24. During the 2015 calendar year, Respondent otherwise used nitric acid at the Facility in excess of the 10,000-pound threshold amount.

25. During the 2015 calendar year, Respondent transferred 16,502.4 pounds of nitric acid offsite to a POTW.

26. Respondent submitted a Form R for nitric acid by July 1, 2016, that contained no information on the offsite transfer of that chemical to a POTW for the 2015 calendar year.

27. Therefore, Respondent violated 40 C.F.R. § 372.85(b)(15)(i) by submitting a Form R that did not include information on the offsite transfer of the chemical in waste to a POTW for the 2015 calendar year to the EPA and to the State of Arkansas.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

28. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), which authorizes the EPA to assess a civil penalty of up to \$55,907 per day for each violation of EPCRA.^[1] Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, and with respect to Respondent, ability to pay, lack of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, cooperation, institution of corrective actions, and other factors as justice may require, it is **ORDERED** that Respondent be assessed a civil penalty of **Twenty-Seven Thousand Seven Hundred and Twenty Dollars (\$27,720.00)**, which will settle the violations as alleged herein.

29. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the fully-assessed civil penalty of \$27,720.00, by certified check, cashier's check, or wire transfer,

^[1] The amount of penalty that can be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 codified at 40 C.F.R. Part 19.

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made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

PLEASE NOTE: Docket number EPCRA-06-2018-0504 shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference Respondent's

name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer shall reference Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer, to the following:

David Riley
EPCRA 313 Enforcement Officer (6EN-H3)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received by the EPA and acknowledged in the Region.

30. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

31. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth below.

32. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, the EPA will 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.

Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by the EPA on any amount of the civil penalty that is not paid by the respective 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). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

33. The EPA will also assess a fifteen dollar (\$15.00) administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional fifteen dollar (\$15.00) charge for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

34. This document is a "Final Order" as that term is defined in the "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)," dated August 10, 1992; Amended, April 12, 2001; for the purpose of demonstrating a history of "prior such violations."

B. RETENTION OF ENFORCEMENT RIGHTS

35. The EPA does not waive any rights or remedies available to the EPA for any other violations by Respondent of Federal or State laws, regulations, or permitting conditions.

36. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

37. Except as specifically provided in this CAFO, nothing herein shall limit the power and authority of the EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants on, at, or from Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit the EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments, to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

C. COSTS

38. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

D. EFFECTIVE DATE

39. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 3/27/2018



Roy Roberto
Factory Manager
Nestlé Prepared Foods Co. Inc.

FOR THE COMPLAINANT:

Date: 4/10/18



for _____
Cheryl T. Seager
Director
Compliance Assurance &
Enforcement Division

V. FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

4-11-18



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

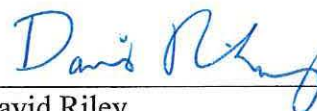
I hereby certify that on the 12th day of April, 2018, the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following individual(s) by the methods indicated below:

Certified Mail – Return Receipt # 7015 3430 0000 5839 9568

Nestlé Prepared Foods Co. Inc.
Attn: Frank Eastman
One Nestle Way
Jonesboro, AR 72401

Email (PDF):

Frank.Eastman1@US.nestle.com



David Riley
EPCRA § 313 Inspector/Enforcement Officer