



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 20 2016

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Kevin N. McMurray  
Frost Brown Todd, LLC  
3300 Great American Tower  
301 East Fourth Street  
Cincinnati, Ohio 45202-4182

Re: Kroger Limited Partnership II d/b/a Country Oven Bakery  
Consent Agreement and Final Order  
Docket No. CAA-04-2015-8008(b)

Dear Mr. McMurray:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2015-8008(b) involving Kroger Limited Partnership II d/b/a Country Oven Bakery. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client, Kroger Limited Partnership II d/b/a Country Oven Bakery, on notice of its potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the U. S. Environmental Protection Agency. If you have any questions with regard 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 Ms. Ellen Rouch at (404) 562-9575.

Sincerely,

A handwritten signature in blue ink that reads "Donnette D. Skudivant for".

Anthony G. Toney  
Chief  
Chemical Safety and Enforcement Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
BEFORE THE ADMINISTRATOR**

USEPA, REGION 4  
OFFICE OF REGIONAL  
COUNSEL

2016 SEP 20 AM 6:47

HEARING CLERK

**IN THE MATTER OF:** )  
 )  
 Kroger Limited Partnership II )  
 d/b/a Country Oven Bakery )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**Docket No.**  
CAA-04-2015-8008(b)

**CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region 4 (the "EPA"). The Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act, 42 U.S.C. § 7413(a)(3)(A).
3. Respondent is Kroger Limited Partnership II d/b/a Country Oven Bakery, an Ohio limited partnership, doing business in the Commonwealth of Kentucky. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issue of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

**B. JURISDICTION**

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this Consent Agreement are pursuant to Section 113(a)(3)(A).
6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before initiation of this

proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. On February 6, 2013, the EPA issued to Respondent a Notice of Potential Violation ("NOPV"), providing notice that the EPA found that Respondent potentially committed the alleged violations described in Section E of this Agreement and providing Respondent an opportunity to confer with the EPA. On February 20, 2013, representatives of Respondent and the EPA discussed the February 6, 2013, NOPV. Additional discussions were subsequently held with representatives of Respondent and the EPA relative to the February 6, 2013, NOPV.

8. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes settlement between Complainant and Respondent. 40 C.F.R. § 22.4(b) and 22.18(b).

9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

### **C. GOVERNING LAW**

10. Respondent operates a "stationary source" as that term is defined by Section 302(z) of the Act, 42 U.S.C. § 7602(z). The Respondent's stationary source is located at 2840 Pioneer Drive, Bowling Green, Kentucky 42101 (stationary source).

11. Section 112(r) of the Act, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

12. Pursuant to Section 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the "Risk Management Program" (RMProgram) and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.

13. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a "process" as defined in 40 C.F.R. § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

## **D. FACTUAL ALLEGATIONS**

14. Respondent has submitted and registered an RMPlan to the EPA for its stationary source, and has developed an RMProgram accidental release prevention program for the stationary source.

15. For the purpose of this Agreement:

(a) At its stationary source, the Respondent operates two processes to provide refrigeration and cold storage for the Country Oven Bakery manufacturing operations, one with a maximum of 19,000 pounds of ammonia (anhydrous) and another with 13,500 pounds of ammonia (anhydrous).

(b) At its stationary source, the Respondent otherwise uses ammonia (anhydrous), hereafter referred to as "ammonia."

(c) At its stationary source, the Respondent has two RMProgram level 3 covered processes, ammonia refrigeration systems, which each store or otherwise use the regulated substance ammonia in amounts exceeding the applicable threshold of 10,000 pounds.

(d) During calendar year 2012, EPA opened an RMProgram compliance monitoring investigation to determine Respondent's compliance with 40 C.F.R. Part 68 at its stationary source. The EPA conducted an onsite inspection of RMProgram related records on August 14, 2012. The focus of the onsite inspection was to assess the Respondent's compliance with RMProgram requirements for its covered processes operating at its stationary source.

(e) At the time of the inspection, Respondent could not confirm that all operating procedures for Engine Room #1 had been annually certified.

(f) At the time of the inspection, Respondent could not confirm that compliance audits had been conducted at least every 3 years. The Respondent's last compliance audit, as noted during the August 14, 2012 compliance inspection, was conducted in November 2008.

(g) The Respondent's RMPlan, submitted on June 22, 2009, only identified one ammonia refrigeration process. At the time of the inspection the Respondent indicated there were two ammonia refrigeration processes, one with a maximum of 19,000 pounds of ammonia and another with 13,500 pounds of ammonia. The Respondent could not provide documentation that their RMPlan was updated within 6 months from the time when the second ammonia refrigeration process (the second process) which had a maximum of 13,500 pounds of ammonia was first present above the threshold quantity.

(h) At the time of inspection, the Respondent could not confirm that corrected contact information was submitted within one month of a change in the emergency contact, although the listed individual in the June 2009 RMPlan submission departed the stationary source in September 2011.

## **E. ALLEGED VIOLATIONS OF LAW**

16. Based on EPA's compliance monitoring investigation, the EPA alleges that the Respondent violated the codified rules governing the Act's Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 C.F.R. Part 68 when it:

Failed to annually certify that operating procedures were current and accurate and that procedures had been reviewed as often as necessary as required by 40 C.F.R. § 68.69(c);

Failed to certify compliance through a compliance audit at least every three years to verify procedures and practices are adequate and are being followed as required by 40 C.F.R. § 68.79(a);

Failed to update the RMPlan within six months on which a regulated substance is first present above a threshold quantity in a new process as required by 40 C.F.R. § 68.190(b)(4);

Failed to submit a corrected RMPlan within one month of a change in the emergency contact information as required by 40 C.F.R. § 68.195(b).

#### **F. TERMS OF CONSENT AGREEMENT**

17. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) neither admits nor denies the factual allegations stated above;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this Agreement;
- (f) consents to any Permit Action;
- (g) waives any rights to contest the alleged violations of law set forth in Section E of this Consent Agreement; and
- (h) waives its rights to appeal the Order accompanying this Agreement.

18. For the purpose of this Agreement, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Western District of Kentucky;
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and

- (f) certifies that, to the best of its knowledge and, as of its execution of this Agreement, the stationary source identified in this Agreement is currently in compliance with all relevant requirements of 40 C.F.R. Part 68.

19. Penalty Payment. Respondent agrees to:

- a) pay the civil penalty of **FIFTY- SEVEN THOUSAND FOUR HUNDRED DOLLARS (\$57,400)** ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement;
- b) pay the EPA Penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," or by electronic transfer to one of the following addresses:

For payment sent via electronic transfer

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, New York 10045

Beneficiary: "U.S. Environmental Protection Agency";

For payment sent via standard delivery

U.S. Environmental Protection Agency

Cincinnati Finance Center Box 979077

St. Louis, MO 63197-9000; or

For payment sent for signed receipt confirmation (FedEx, DSL, UPS, USPS Certified)

U.S. Environmental Protection Agency

Cincinnati Finance Center Box 979077

1005 Convention Plaza

SL-MO-C2GL

St. Louis, MO 63101

Delivery Location Phone Number: 314-425-1819.

The check shall reference on its face the name and the Docket Number of the CAFO. Within 24 hours of payment of the EPA Penalty, send a separate copy of the check or confirmation of electronic transfer, and a written statement that payment has been made in accordance with this Agreement, to the following persons at the following addresses:

Regional Hearing Clerk

U.S. EPA Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

Kerry Platt  
Chemical Management and Emergency  
Planning Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

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

20. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

21. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

22. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

23. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

24. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, to the best of its knowledge, and based

on a good faith investigation, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

25. Except as qualified by Paragraph 20, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER**

26. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts alleged above.

27. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

28. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

29. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon written agreement of both parties, and approval of the Regional Judicial Officer.

30. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

31. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

32. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

33. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

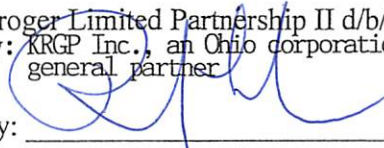


**H. EFFECTIVE DATE**

34. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk. The foregoing Consent Agreement in the Matter of Kroger Limited Partnership II d/b/a Country Oven Bakery, Docket No. CAA-04-2015-8008(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

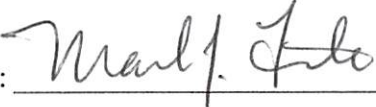
Kroger Limited Partnership II d/b/a Country Oven Bakery  
By: KRGP Inc., an Ohio corporation,  
general partner

By:  Date: 9/9/16  
Name: Rick J. Landrum (Typed or Printed)  
Title: Vice President (Typed or Printed)



FOR COMPLAINANT:

U.S. Environmental Protection Agency

By:  Date: 9/14/16

for Jeaneanne M. Gettle  
Acting Director  
Air, Pesticides and Toxics Management Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
BEFORE THE ADMINISTRATOR**

**IN THE MATTER OF:**

Kroger Limited Partnership II  
d/b/a Country Oven Bakery

Respondent.

**Docket No.**

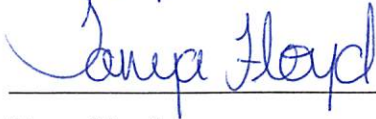
CAA-04-2015-8008(b)

**FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

SO ORDERED this 15<sup>th</sup> day of September, 2016.

  
\_\_\_\_\_

Tanya Floyd  
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 Kroger Limited Partnership II d/b/a/ Country Oven Bakery, CAA-04-2015-8008(b), on the parties listed below in the manner indicated:

Robert W. Bookman  
U. S. EPA, Region 4  
Air, Pesticides and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA's internal mail)

Ellen Rouch  
U. S. EPA, Region 4  
Office of Regional Counsel  
61 Forsyth Street  
Atlanta, GA 30303

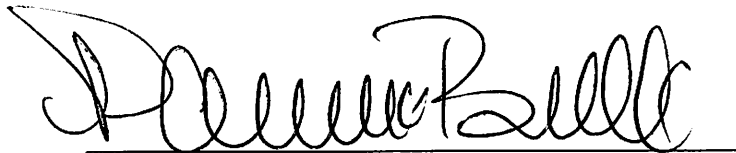
(Via EPA's internal mail)

Kevin McMurray  
Frost Brown Todd, LLC  
3300 Great American Tower  
301 East Fourth Street  
Cincinnati, OH 45202-4182

(Via Certified Mail -  
Return Receipt Requested)

Date:

9-20-16



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