



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

APR 17 2019

REPLY TO THE ATTENTION OF

**ELECTRONIC SERVIC**  
**VIA E-MAIL**

Ann E. Prouty  
Attorney  
Faegre Baker Daniels LLP  
3200 Wells Fargo Center  
1700 Lincoln Street  
Denver, Colorado 80203-4532

Re: General Mills, Inc. Wellston, Ohio, Consent Agreement and Final Order  
Docket Nos. MM-05-2019-0002 CERCLA-05-2019-0002 EPCRA-05-2019-0004

Dear Ms. Prouty:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on April 17, 2019.


Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$15,738 in the manner prescribed in paragraph 65, and reference your check with the billing document number 2751930B003 and the docket number CERCLA-05-2019-0002.

Please have your client pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$127,332 in the manner prescribed in paragraph 67, and reference your check with the docket number EPCRA-05-2019-0004.

Your client's payments are due on May 17, 2019.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jeffery Trevino, Associate Regional Counsel, at (312) 886-6729. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

cc: Ms. Cindy DeWulf, Co-Chairperson (w/ enclosure)  
Ohio EPA – SERC  
Post Office Box 1049  
Columbus, Ohio 43216-1049

Ms. Sima Merick, Co-Chairperson (w/ enclosure)  
State Emergency Response Commission  
Ohio Emergency Management Agency  
2855 West Dublin-Granville Road  
Columbus, Ohio 43235-2206

Jeff Beattie (w/ enclosure)  
Ohio Environmental Protection Agency  
Post Office Box 1049  
Columbus, Ohio 43216-1049

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5 MM-05-2019-0002

In the Matter of:

General Mills, Inc.  
Wellston, Ohio,

Respondent.



Docket Nos. CERCLA-05-2019-0002 EPCRA-05-2019-0004

Proceeding to Assess a Civil Penalty Under  
Section 109(b) of the Comprehensive  
Environmental Response, Compensation and  
Liability Act, and Section 325(b)(2) of the  
Emergency Planning and Community Right-  
to-Know Act of 1986

Consent Agreement and Final Order

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2) and Sections 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.

2. The Complainant is, by lawful delegation, the Chief of Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is General Mills, Inc., a Delaware corporation doing business in the State of Ohio.

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. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

7. For the purposes of this proceeding only, Respondent admits the jurisdictional allegations in this CAFO. Respondent has disputed the factual allegations and legal conclusions set forth in this CAFO and provided EPA with additional information in support of its position. For the purposes of this proceeding only, Respondent neither admits nor denies the factual allegations and legal conclusions in this 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

11. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

12. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

13. Under Section 329(5) of EPCRA, 42 U.S.C. § 11049, (referring to Section 311(e) of EPCRA, 42 U.S.C. § 11021(e)), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

14. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

15. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.*, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$32,500 per day of violation for each violation that occurred after March 15, 2004, through January 12, 2009, and to \$37,500 per day of violation for each violation that occurred after January 12, 2009, through November 2, 2015. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No.

114-74, § 701, 129 Stat. 584, 599 (2015), amending 28 U.S.C. § 2461 *et seq.*, and the implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$53,907 per day of violation for each violation that occurred after November 2, 2015, and for which penalties are assessed on or after August 1, 2016 but before January 15, 2017, to \$54,789 per day of violation for each violation that occurred after November 2, 2015, and for which penalties are assessed on or after January 15, 2017, but before January 15, 2018, and to \$55,907 per day of violation for each violation that occurred after November 2, 2015, and for which penalties are assessed on or after January 15, 2018.

### **Factual Allegations and Alleged Violations**

16. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 2403 South Pennsylvania Avenue, Wellston, Ohio (the “Facility”).

19. At all times relevant to this Complaint, Respondent was in charge of the Facility.

20. Respondent’s Facility consists of a building, structure, equipment, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

21. Respondent’s Facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. Respondent’s Facility 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.

23. Respondent's Facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

24. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. Anhydrous ammonia is classified as a physical or health hazard, a simple asphyxiant, or hazard not otherwise classified.

27. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous chemical" within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

28. At all times relevant to this Complaint, Respondent produced, used or stored anhydrous ammonia at the facility.

29. Anhydrous ammonia (CAS #7664-41-7) is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

30. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

31. On August 21, 2017, beginning at or about 5:30 a.m. and continuing until 9:00 a.m., a release occurred from Respondent's facility of approximately 600 pounds of anhydrous ammonia (the Release).

32. In a 24-hour time period, the Release of anhydrous ammonia exceeded 100 pounds.

33. During the Release, approximately 600 pounds of anhydrous ammonia spilled, leaked, pumped, emitted, discharged, or escaped, into the facility in liquid form, into ambient air, and/or into the air.

34. The Release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

35. The Release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

36. Respondent had knowledge of the commencement of the Release on August 21, 2017, at approximately 5:30 a.m.

37. The Release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

38. The Release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

39. The release was likely to affect Ohio.

40. At all times relevant to this Complaint, the Ohio Environmental Protection Agency was the SERC for Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

41. The release was likely to affect Jackson County, Ohio.

42. At all times relevant to this Complaint, the Jackson County LEPC was the LEPC for Jackson County, Ohio under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

**Count 1**  
(Failure to Notify NRC)

43. Complainant incorporates paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.

44. Respondent notified the NRC of the Release on August 21, 2017, at 9:04 a.m.



45. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the Release.

46. Respondent's failure to immediately notify the NRC of the Release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

**Count 2**  
(Failure to Notify SERC)

47. Complainant incorporates paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.

48. Respondent notified the Ohio SERC of the Release on August 10, 2018, at 11:38 a.m.

49. Respondent did not immediately notify the SERC after Respondent had knowledge of the Release.

50. Respondent's failure to immediately notify the SERC of the Release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

**Count 3**  
(Failure to Notify LEPC)

51. Complainant incorporates paragraph 1 through 42 of this CAFO as if set forth in this paragraph.

52. Respondent notified the LEPC of the Release on August 21, 2017, at 9:10 a.m.

53. Respondent did not immediately notify the LEPC after Respondent had knowledge of the Release.

54. Respondent's failure to immediately notify the LEPC of the Release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

**Count 4**

(Failure to Provide SERC Timely Written Notice)

55. Complainant incorporates paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.

56. Respondent provided written follow-up emergency notice of the Release to the SERC on August 31, 2018.

57. Respondent did not provide the SERC written follow-up emergency notice of the Release as soon as practicable after the Release occurred.

58. Respondent's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the Release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

**Count 5**

(Failure to Provide LEPC Timely Written Notice)

59. Complainant incorporates paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.

60. Respondent had provided written follow-up emergency notice of the Release to the LEPC on August 31, 2018.

61. Respondent did not provide the LEPC written follow-up emergency notice of the Release as soon as practicable after the release occurred.

62. Respondent's failure to provide written follow-up emergency notice of the Release to the LEPC as soon as practicable after the Release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

**Civil Penalty**

63. Complainant has determined that an appropriate civil penalty to settle this action is \$15,738 for the CERCLA violation. In determining the penalty amount, Complainant

considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. EPA's 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, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

64. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,738 civil penalty for the CERCLA violation. Respondent must pay the penalty by submitting an electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

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

In the comment or description field of the electronic funds transfer, state the following: General Mills, Inc., the docket number of this CAFO and the billing document number 2751930R003.

65. Complainant has determined that an appropriate civil penalty to settle this action is \$127,332 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's 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, dated September 30, 1999  
(EPCRA/CERCLA Enforcement Response Policy).

66. Within 30 days after the effective date of this CAFO, Respondent must pay a \$127,332 civil penalty for the EPCRA violations. Respondent must pay the penalty by submitting an electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

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

In the comment or description field of the electronic funds transfer, state the following: General Mills, Inc. and the docket number of this CAFO.

67. Respondent must send a copy of the payment methodology to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

James Entzminger (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Jeffery Trevino (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

69. If Respondent does not timely pay 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. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

70. 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 amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

71. Pursuant to 40 C.F.R. §§ 22.5 and 22.6, the parties consent to service of this CAFO by email at the following email addresses: [trevino.jeffery@epa.gov](mailto:trevino.jeffery@epa.gov) (for Complainant) and [ann.prouty@FaegreBD.com](mailto:ann.prouty@FaegreBD.com) (for Respondent). See 40 C.F.R. §§ 22.5-6.

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

73. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

74. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

75. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA and other applicable federal, state and local laws and regulations.

76. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

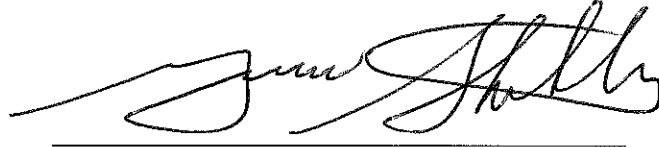
78. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

79. Each party agrees to bear its own costs and attorney's fees in this action.

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


**General Mills, Inc., Respondent**

4-5-19  
Date

  
Gregg Stedronsky  
Vice President  
General Mills, Inc.


**U.S. Environmental Protection Agency, Complainant**

4-10-19  
Date

  
Jason El-Zein, Chief  
Emergency Response Branch 1  
U.S. Environmental Protection Agency  
Region 5

Michael En Hans  
for JEZ

4/11/19  
Date

  
Thomas Richard Short, Jr., Acting Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

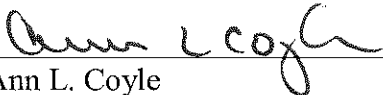
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**In the Matter of: General Mills, Inc., Wellston, Ohio**  
**Docket No. MM-05-2019-0002 CERCLA-05-2019-0002 EPCRA-05-2019-0004**

**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.

4/16/19  
Date

  
\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
Region 5  
U.S. Environmental Protection Agency



**Certificate of Service**

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on April 17, 2019 in the following manner to the addressees:

Copy by E-mail  
Attorney for Respondent:

Ann E. Prouty, Partner  
Faegre Baker Daniels LLP  
3200 Wells Fargo Center  
1700 Lincoln Street  
Denver, CO 80203-4532  
[ann.prouty@faegrebd.com](mailto:ann.prouty@faegrebd.com)

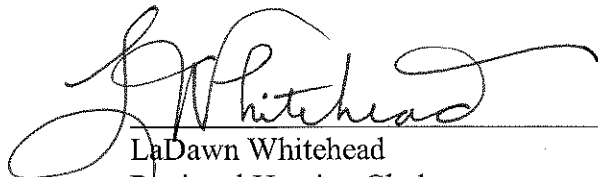
Copy by E-mail to  
Attorney for Complainant:

Jeffery M. Trevino  
[trevino.jeffery@epa.gov](mailto:trevino.jeffery@epa.gov)

Copy by E-mail to  
Regional Judicial Officer:

Ann L. Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

April 17, 2019  
Dated: \_\_\_\_\_

  
\_\_\_\_\_  
LaDawn Whitehead  
Regional Hearing Clerk  
Region 5  
U.S. Environmental Protection Agency