



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

SEP 30 2016

REPLY TO THE ATTENTION OF:

ELECTRONIC TRANSFER
VIA EMAIL

Mr. Douglas Rollo
Attorney
Gordon Food Service, Inc.
1300 Gezon Parkway
Wyoming, Michigan 49509

Re: Gordon Food Service, Inc., Brighton, Michigan, Consent Agreement and Final Order
Docket No. EPCRA-05-2016-0020

Dear Mr. Rollo:


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 September 30, 2016.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$43,524 in the manner prescribed in paragraph 61, and reference your check with the docket number EPCRA-05-2016-0020.

Your payment is due on October 31, 2016.

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 Erik Olson, Associate Regional Counsel, at (312) 886-6829. Thank you for your assistance in resolving this matter.

Sincerely,


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

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

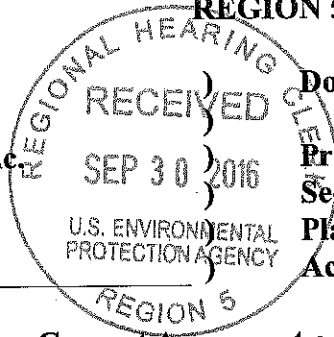
In the Matter of:

Gordon Food Service, Inc.
Brighton, Michigan,

Respondent.

Docket No. EPCRA-05-2016-0020

Proceeding to Assess a Civil Penalty Under
Section 325(c)(1) and (c)(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 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) and (c)(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 the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Gordon Food Service, Inc., 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. 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. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations 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 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC) and the fire department with jurisdiction over the facility an MSDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, and for each extremely hazardous chemical present at the facility in an amount equal to or greater than 500 pounds, or the threshold planning quantity (TPQ), whichever is lower, or to submit a list of such chemicals. The owner or operator must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the OSHA

to prepare or have available an MSDS for a hazardous chemical, to submit to the SERC, community coordinator for the LEPC and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

11. Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a), assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

12. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, an MSDS.

13. 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.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$37,500 per day of violation.

that occurred after January 12, 2009.

15. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes U.S. EPA to assess a civil penalty of up to \$10,000 for each EPCRA Section 311 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$11,000 per day of violation for EPCRA 311 violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

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

17. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 7770 Kensington Court, Brighton, Michigan (facility).

18. At all times relevant to this CAFO, Respondent was an employer at the facility.

19. 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.

20. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

21. Lead is classified as a physical or health hazard, or hazard not otherwise classified.

22. Lead (CAS #7349-92-1) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

23. Lead (CAS #7349-92-1) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

24. As of December 31, 2012, lead was present at the facility at any one time in an

amount equal to or greater than the minimum threshold level.

25. During at least one period of time in calendar year 2012, lead was present at the facility in an amount equal to or greater than the minimum threshold level.

26. During at least one period of time in calendar year 2013, lead was present at the facility in an amount equal to or greater than the minimum threshold level.

27. During at least one period of time in calendar year 2014, lead was present at the facility in an amount equal to or greater than the minimum threshold level.

28. OSHA requires Respondent to prepare, or have available, an MSDS for lead.

29. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 31, 2013, an MSDS for lead or a list including lead.

30. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including lead on or before March 1, 2013, for calendar year 2012.

31. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including lead on or before March 1, 2014, for calendar year 2013.

32. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including lead on or before March 1, 2015, for calendar year 2014.

33. At all times relevant to this CAFO, the Citizen-Community Emergency Response Coordinating Council was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

34. At all times relevant to this CAFO, the Livingston County LEPC was the LEPC for Livingston County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

35. At all times relevant to this CAFO, the Green Oak Township Fire Department was the fire department with jurisdiction over the facility.

Count 1 (EPCRA 311/SERC)

36. Complainant incorporates paragraphs 1 through 35 of this CAFO as if set forth in this paragraph.

37. Respondent submitted to the SERC an MSDS for lead or a list showing lead on July 24, 2015.

38. Each day Respondent failed to submit to the SERC an MSDS or a list for lead by March 31, 2013, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 2 (EPCRA 311/LEPC)

39. Complainant incorporates paragraphs 1 through 35 of this CAFO as if set forth in this paragraph.

40. Respondent submitted to the LEPC an MSDS for lead or a list showing lead on July 24, 2015.

41. Each day Respondent failed to submit to the LEPC an MSDS or a list for lead by March 31, 2013, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 3 (EPCRA 311/fire department)

42. Complainant incorporates paragraphs 1 through 35 of this CAFO as if set forth in this paragraph.

43. Respondent submitted to the Green Oak Township Fire Department an MSDS for lead or a list showing lead on July 24, 2015.

44. Each day Respondent failed to submit to the Green Oak Township Fire Department an MSDS or a list for lead by March 31, 2013, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 4 (EPCRA 312/2012)

45. Complainant incorporates paragraphs 1 through 35 of this CAFO as if set forth in this paragraph.

46. As of July 23, 2015, Respondent had not submitted to the SERC, the LEPC, and the Green Oak Township Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including lead for calendar year 2012.

47. Each day Respondent failed to submit to the SERC, the LEPC, and the Green Oak Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including lead by March 1, 2013, for calendar year 2012 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 5 (EPCRA 312/2013)

48. Complainant incorporates paragraphs 1 through 35 of this CAFO as if set forth in this paragraph.

49. As of July 23, 2015, Respondent had not submitted to the SERC, the LEPC, and the Green Oak Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including lead for calendar year 2013.

50. Each day Respondent failed to submit to the SERC, the LEPC, and the Green Oak Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including lead by March 1, 2014, for calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 6 (EPCRA 312/SERC)

51. Complainant incorporates paragraphs 1 through 35 of this CAFO as if set forth in this paragraph.

52. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including lead on July 24, 2015, for calendar year 2014.

53. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including lead by March 1, 2015, for calendar year 2014 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 7 (EPCRA 312/LEPC)

54. Complainant incorporates paragraphs 1 through 35 of this CAFO as if set forth in this paragraph.

55. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including lead on July 24, 2015, for calendar year 2014.

56. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including lead by March 1, 2015, for calendar year 2014 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 8 (EPCRA 312/fire department)

57. Complainant incorporates paragraphs 1 through 35 of this CAFO as if set forth in this paragraph.

58. Respondent submitted to the Green Oak Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including lead on July 24, 2015, for calendar year 2014.

59. Each day Respondent failed to submit to the Green Oak Township Fire Department

a completed Emergency and Hazardous Chemical Inventory Form including lead by March 1, 2015, for calendar year 2014 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

60. Complainant has determined that an appropriate civil penalty to settle this action is \$43,524 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).

61. Within 30 days after the effective date of this CAFO, Respondent must pay a \$43,524 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

for checks sent by express mail, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Gordon Food Service, Inc. and the docket number of this
CAFO EPCRA-05-2016-0020

62. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter 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

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

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

64. 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.

65. 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

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

67. 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.

68. Respondent certifies that it is complying with Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a).

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

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

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

72. 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.

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

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

75. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: olson.erik@epa.gov (for Complainant), and Douglas Rollo at doug.rollo@gfs.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

Gordon Food Service, Inc., Respondent

9/09/16
Date

Darrick Beauford
Darrick Beauford
Director of Warehousing
Gordon Food Service, Inc.

U.S. Environmental Protection Agency, Complainant

09-27-2016

Date

M. Cecilia Moore

M. Cecilia Moore, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

9/28/2016

Date

Douglas Ballotti

Douglas Ballotti, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

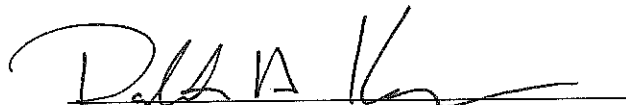
In the Matter of: Gordon Food Service, Inc., Brighton, Michigan
Docket No. EPCRA-05-2016-0020

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.

9/29/16

Date



Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: Gordon Food Service, Inc., Brighton, Michigan
Docket No. EPCRA-05-2016-0020

Certificate of Service

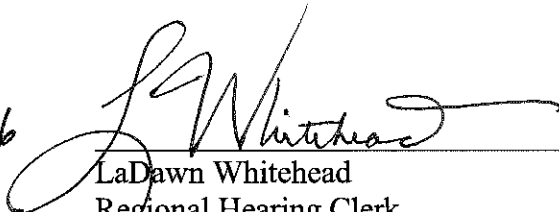
I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on September 30, 2016 in the following manner to the addressees:

Copy by E-mail
Attorney for Respondent: Douglas Rollo
Doug.rollo@gfs.com

Copy by E-mail to
Attorney for Complainant: Erik Olson
Olson.erik@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: September 30, 2016



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