



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

June 30, 2017

Via Certified Mail (7005 1820 0003 7458 2086) and Email

Tom Gilman
Director of Environmental Health & Safety
C.H. Guenther & Son, Inc.
P.O. Box 118
San Antonio, TX 78291
tgilman@chg.com

Re: Fully Executed EPCRA § 313 Consent Agreement & Final Order – Pioneer Frozen Foods, Inc., Docket No. EPCRA-06-2017-0505

Dear Mr. Gilman:

Please find enclosed the fully executed Complaint and Consent Agreement & Final Order (CAFO) which was filed with the Regional Hearing Clerk on June 30, 2017.

Pioneer Frozen Foods will have thirty (30) days from the filing date of the CAFO to submit its civil penalty of \$19,810.00 in the manner described in Section IV beginning on page 6. Should you have any questions, please feel free to contact me at (214) 665-7298 or riley.david@epa.gov. Thank you for your assistance with this matter.

Sincerely,

A handwritten signature in cursive script that reads "David Riley".

David Riley
EPCRA 313 Enforcement Officer

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

2017 JUN 30 AM 9:50
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

PIONEER FROZEN FOODS, INC.
DUNCANVILLE, TEXAS

RESPONDENT

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DOCKET NO. EPCRA-06-2017-0505

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division, United States Environmental Protection Agency (EPA) Region 6 (hereinafter, "Complainant"), and Pioneer Frozen Foods, Inc. (hereinafter, "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 the Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

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

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

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

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

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

8. The Respondent hereby certifies that as of the date of the execution of this CAFO, the Respondent 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) that 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 Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantities established under Subsection 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 to the Administrator of 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 quantities exceeding the established threshold quantity 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 submitting a toxic chemical release report (known as a "Form R") 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. Lower reporting thresholds for chemicals of special concern are set forth in 40 C.F.R. § 372.28.

11. According to 40 C.F.R. § 372.27, if a facility meets the conditions for submitting a Form R but did not manufacture, process, or otherwise use more than 1 million pounds of that toxic chemical, and if the annual reportable amount of that toxic chemical does not exceed 500 pounds, the owner or operator of a facility is not required to submit a Form R for that toxic chemical under 40 C.F.R. § 372.30, but must submit an alternate threshold certification statement

(known as a "Form A") containing the information required in 40 C.F.R. § 372.95. A Form A may not be utilized for those chemicals of special concern listed in 40 C.F.R. § 372.28.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

12. The Respondent is a corporation incorporated under the laws of the State of Texas and is authorized to do business in the State of Texas.

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

14. The Respondent currently owns and operates a facility located at 627 Big Stone Gap Road, Duncanville, Texas, 75137.

15. The facility identified in Paragraph 13 is a "facility", as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

16. The facility had ten or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3 for calendar years 2011 and 2013.

17. The facility's primary North American Industrial Classification System (NAICS) subsector or industry code 311412 (Frozen specialty food manufacturing) is covered under 40 C.F.R. § 372.23(b).

18. Ammonia is a toxic chemical within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

19. During calendar years 2011 and 2013, the Respondent's facility manufactured, processed, or otherwise used ammonia in excess of the applicable threshold quantities pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c) and 40 C.F.R. § 372.25.

20. On June 6, 2016, a representative from the EPA conducted an on-site inspection of the Respondent's facility. Based on information provided by the Respondent, the following violations are alleged.

B. VIOLATIONS

~~Count One Filing an Alternate Threshold Certification Statement (Form A) in Lieu of a Toxic Chemical Release Report (Form R) when The Facility Did Not Qualify~~

21. During the calendar year 2011, the Respondent otherwise used ammonia in excess of the applicable threshold quantity.

22. For that year, the Respondent filed a Form A in lieu of a Form R by July 1st of the following year.

23. According to information supplied by the Respondent, the annual reportable amount for ammonia for 2011 exceeded 500 pounds; therefore, the Respondent did not qualify for use of the Form A.

24. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit a complete and accurate Form R for ammonia for calendar year 2011 to the EPA and to the State of Texas by the applicable due date.

Count Two – Filing an Alternate Threshold Certification Statement (Form A) in Lieu of a Toxic Chemical Release Report (Form R) when The Facility Did Not Qualify

25. During the calendar year 2013, the Respondent otherwise used ammonia in excess of the applicable threshold quantity.

26. For that year, the Respondent filed a Form A in lieu of a Form R by July 1st of the following year.

27. According to information supplied by the Respondent, the annual reportable amount for ammonia for 2013 exceeded 500 pounds; therefore, the Respondent did not qualify for use of the Form A.

28. Therefore, the Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit a complete and accurate Form R for ammonia for calendar year 2013 to the EPA and to the State of Texas by the applicable due date.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

29. For the reasons set forth above, the 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 EPA to assess a civil penalty of up to Thirty-Seven Thousand Five Hundred Dollars (\$37,500) per day for each violation of EPCRA occurring after January 12, 2009 and before November 2, 2015.¹ Upon consideration of the entire record herein, including the

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 Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 per day of violation, for violations occurring between January 30, 1997 and March 15, 2004; and \$32,500 per day of

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 other factors as justice may require, including the Respondent's cooperation and good faith efforts to comply, it is **ORDERED** that the Respondent be assessed a civil penalty of **Nineteen Thousand, Eight Hundred Ten Dollars and no cents (\$19,810.00)**, which will settle the violations alleged herein.

30. Within thirty (30) days of the effective date of this CAFO, the Respondent shall ~~pay the fully assessed civil penalty of \$19,810.00 by certified check, cashier's check, or wire transfer, 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

violation for violations which occurred between March 15, 2004 and January 12, 2009; and to \$37,500 per day of violation for violations which occurred after January 12, 2009.

In the Matter of Pioneer Frozen Foods, Inc.; Docket No. EPCRA-06-2017-0505

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-06-2017-0505 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 the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

David Riley
EPCRA 313 Enforcement (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

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

31. 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.

32. If the Respondent fails to submit payment within thirty (30) days of the effective date of this Order, the 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.

33. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, 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 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).

34. EPA will also assess a \$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 \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In

addition, a penalty charge of up to six percent 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.

35. 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, 1997; Amended, April 12, 2001; for the purpose of demonstrating a history of "prior such violations".

B. RETENTION OF ENFORCEMENT RIGHTS

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

37. Nothing in this CAFO shall relieve the 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.

38. 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, contaminants, hazardous substances on, at or from the 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

39. Each party shall bear its own costs and attorney's fees. Furthermore, the 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. TERMINATION

40. This CAFO shall terminate upon receipt by the EPA of the Respondent's payment of the civil penalty and any accrued interest or late fees as described in Section IV (Terms of Settlement) Subsection A (Civil Penalty) above.

E. EFFECTIVE DATE

41. This CAFO, and any subsequent modifications, 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: 6-22-17



Tock McRae
General Counsel and Sr. Vice President
Pioneer Frozen Foods, Inc.

**PLEASE SIGN
& DATE**

FOR THE COMPLAINANT:

Date: 6/29/17

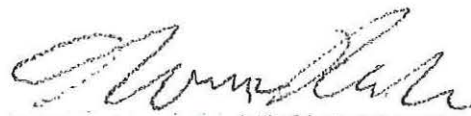


Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

V. FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 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 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 the 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. The 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 JUN 30 2017



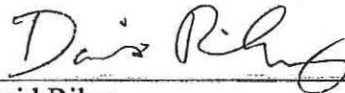
Thomas Rucki
Regional Judicial Officer
U.S. EPA Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 2017, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) 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 method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED # 7005 1820 0003 7458 2086

Via Email (PDF): tgilman@chg.com



David Riley
EPCRA 313 Enforcement Officer
U.S. EPA Region 6

