



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JAN 15 2014

UNITED PARCEL SERVICE

Mr. F. Edwin Hallman, Jr.
Hallman & Wingate LLC
166 Anderson Street, S.E.
Suite 210
Marietta, Georgia 30060

Re: U.S. Biofuels, Inc.
Consent Agreement and Final Order
Docket Number: EPCRA-04-2014-2000(b)

Dear Mr. Hallman:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 matter (Docket No. EPCRA-04-2014-2000(b)), involving U.S. Biofuels, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on the date of 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 you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the U.S. Environmental Protection Agency. If you have any questions with regards 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 Bonnie Sawyer at (404) 562-9539 or Patricia Rubin at (404) 562-8989.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Falconer".

Caron B. Falconer
Chief
EPCRA Enforcement Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
U.S. Biofuels, Inc.) Docket Number: EPCRA-04-2014-2000(b)
)
Respondent.)
_____)

RECEIVED
EPA REGION IV
2014 JAN 15 AM 7:44
HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is U.S. Biofuels, Inc.

2. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent is U.S. Biofuels, Inc., a corporation doing business in the State of Georgia.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

6. Respondent owns and operates a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 555 W. Hermitage Road, Rome, Georgia.

III. EPA's Allegations of Violations

Violations of EPCRA Section 312

8. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, on or before March 1 annually, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 C.F.R. Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

9. At some time during the calendar years of 2011 and 2010, sulfuric acid was present at the facility in an amount equal to or greater than 500 pounds.

10. Sulfuric acid is a "hazardous chemical" as defined by Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), and 40 C.F.R. § 370. Sulfuric acid is also an "extremely hazardous substance" as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 355.61, and is also listed as an extremely hazardous substance in 40 C.F.R. Part 355, Appendices A and B, with a TPQ of 500 pounds, for which Respondent is required to prepare or have available an MSDS under OSHA at its facility.

11. Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for sulfuric acid to the SERC, the LEPC, and fire department with jurisdiction over the facility for calendar years 2011 and 2010 by March 1st of the following year.

12. EPA alleges that Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar years 2011 and 2010 and is therefore subject to the assessment of civil penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

13. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 for each violation of Section 312 that occurred after January 12, 2009. Each day a violation of Section 312 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by Administrative Order.

Violations of EPCRA Section 313

14. 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 10 or more full-time employees; (b) is in a Standard Industrial Classification (SIC) major group or industry listed in 40 C.F.R. § 372.23(a) for which the corresponding North American Industry Classification System (NAICS) subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and 372.23(c); and (c) manufactured, processed, or otherwise used a toxic chemical listed in Section 313(c) and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under EPCRA Section 313(f) and set forth in 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory reporting Form R (EPA Form 9350-1) to the Administrator of EPA and to the State in which the facility is located, by July 1st for the preceding calendar year 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 the preceding calendar year.

15. As set forth at EPCRA Section 313(f) and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds per calendar year. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds.

16. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3 at its facility.

17. Respondent's facility is classified under SIC Code 2841 and the NAICS Code 325199.

18. Respondent's facility is classified in a covered SIC code as described at 40 C.F.R. § 372.22 and in a covered NAICS code as described at 40 C.F.R. § 372.23.

19. Methanol is a toxic chemical listed under EPCRA Section 313(c) and 40 C.F.R. § 372.65.

20. Respondent's facility otherwise used methanol in excess of the 10,000 pound threshold quantity established under EPCRA Section 313(f) and 40 C.F.R. § 372.25, during calendar year 2010.

21. Respondent failed to submit a Form R for methanol to the Administrator of EPA and to the official designated by the Governor of the State of Georgia by July 1st of the required reporting year.

22. EPA alleges that Respondent violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, at its facility for calendar year 2010 and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

23. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$37,500 for each violation of

Section 313 that occurred after January 12, 2009. Each day a violation of Section 313 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by an Administrative Order.

IV. Consent Agreement

24. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

25. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

26. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

28. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

29. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of EPCRA.

V. Final Order

30. Respondent is assessed a civil penalty of TWENTY FOUR THOUSAND FOUR HUNDRED SEVENTY DOLLARS (\$24,470), (plus \$154.64 in interest), for the violations alleged in Section III. Quarterly payments will be made to complete payment of the entire civil penalty including interest. The first payment is due within thirty (30) days of the effective date of the CAFO, and subsequent payments will be made in one hundred twenty (120) day intervals thereafter, according to the payment schedule in this CAFO. Including the civil penalty and interest, the total amount that will be paid upon completion of all payments will be TWENTY FOUR THOUSAND SIX HUNDRED TWENTY FOUR DOLLARS and SIXTY-FOUR CENTS (\$24,624.64). Respondent shall make payments in accordance with the following schedule:

Payment	Principal	Interest	Payment Amount	Payment Due Date
1	\$6,094.31	\$61.85	\$6,156.16	Within 30 days of effective date of CAFO
2	\$6,110.16	\$46.00	\$6,156.16	Within 150 days of effective date of CAFO
3	\$6,124.68	\$31.48	\$6,156.16	Within 270 days of effective date of CAFO
4	\$6,140.85	\$15.31	\$6,156.16	Within 390 days of effective date of CAFO
Total:	\$24,470.00	\$154.64	\$24,624.64	

31. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to "Treasurer, United States of America," to one of the following addresses:

BY MAIL

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

BY OVERNIGHT

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1818

The check shall reference on its face the name and the Docket Number of the CAFO.

32. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Patricia Rubin
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

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

33. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) and all accrued interest shall become immediately due and payable on the 31st day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.

34. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

35. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of \$24,470 within thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

36. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. 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). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

37. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

38. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

39. This CAFO shall be binding upon the Respondent, its successors and assigns.

40. The following individual is authorized to receive service for EPA in this proceeding:

Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451

41. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

THIS SECTION INTENTIONALLY LEFT BLANK

VI. Effective Date

42. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

U.S. Biofuels, Inc.

By: M. Laznik Date: 12/4/13
Name: MICHAEL LAZNIK (Typed or Printed)
Title: CFO, US Biofuels Inc (Typed or Printed)

U.S. Environmental Protection Agency

By: Carol G. Kember for Date: 12/19/13
Jeanne M. Gettle, Acting Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 14 day of Jan. 2013.

Susan B. Schub
Susan B. Schub
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 : U.S. Biofuels Inc., Docket Number:
EPCRA-04-2014-2000(b), on the parties listed below in the manner indicated:

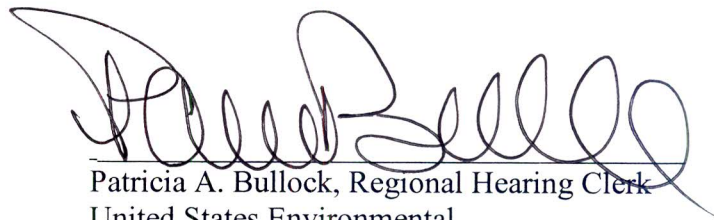
Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, Georgia 30303

Bonnie Sawyer (Via EPA' internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, Georgia 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, Georgia 30303

F. Edwin Hallman, Jr. (Via Certified Mail—Return Receipt Requested)
166 Anderson Street, SE Suite 210
Marietta, Georgia 30060

Date: 1-15-14



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