



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
February 18, 2022

ELECTRONIC SERVICE VIA EMAIL
RETURN RECEIPT REQUESTED

Ken Podpeskar
Attorney for Bob Evans Farms, Inc.
The Environmental Law Group, Ltd.
2263 Waters Drive
Mendota Heights, Minnesota 55120

Re: Bob Evans Farms, Inc., Hillsdale, Michigan, Consent Agreement and Final Order
Docket Nos. MM-05-2022-0005 CERCLA-05-2022-0005 EPCRA-05-2022-0006

Dear Mr. Podpeskar:

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 February 18, 2022.

Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$10,548 in the manner prescribed in paragraph 60 and reference your check with the billing document number 2752230B006 and the docket number CERCLA-05-2022-0005.

Please have your client pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$47,090 in the manner prescribed in paragraph 62 and reference your check with the docket number EPCRA-05-2022-0006.

Your client's payments are due on March 21, 2022.

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 Robert Guenther, Associate Regional Counsel, at (312) 886-0566. Thank you for your assistance in resolving this matter.

Sincerely,

MICHAEL HANS Digitally signed by MICHAEL HANS
Date: 2022.02.14 12:51:03 -0600

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

Enclosure

cc: Captain Kevin Sweeney, Chairperson (w/enclosure)
State Emergency Response Commission
EMHSD/Michigan Department of State Police
Post Office Box 30634
Lansing, Michigan 48909
sweeneyk@michigan.gov

Michael Young (w/enclosure)
State Emergency Response Commission
Michigan Department EGLE
Post Office Box 30457
Lansing, Michigan 48909
YOUNGM1@michigan.gov

Jay Eickholt (w/enclosure)
State Emergency Response Commission
Michigan Department EGLE
Post Office Box 30457
Lansing, Michigan 48909
EickholtJ1@michigan.gov

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 or legal 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 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), and section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. 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).

12. 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.

13. 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).

14. Under section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given by 29 C.F.R. § 1910.1200(c).

15. 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.

16. 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), authorize 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 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 note, and the implementing regulations at 40 C.F.R. part 19 increased the statutory maximum penalty to \$62,689 per day of violation for each day that

occurred after November 2, 2015, and for which penalties are assessed on or after January 12, 2022.

Factual Allegations and Alleged Violations

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

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

19. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 200 North Wolcott Street, Hillsdale, Michigan (facility).

20. At all times relevant to this CAFO, Respondent was in charge of the facility.

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

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

23. 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.

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

25. 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).

26. Anhydrous ammonia has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. part 302, table 302.4.

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

28. Anhydrous ammonia 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).

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

30. Anhydrous ammonia is an “extremely hazardous substance” according to section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

31. Anhydrous ammonia has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. part 355, appendix A.

32. On May 14, 2021, at or about 1:30 a.m., a release occurred from Respondent’s facility of approximately 361 pounds of anhydrous ammonia (the release).

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

34. During the release, approximately 361 pounds of anhydrous ammonia leaked, pumped, emitted, discharged, or escaped into the ambient air.

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

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

37. Respondent had knowledge of the release on May 14, 2021, at approximately 1:30 a.m.

38. The release was one for which notice was required under section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

39. The release required notice under section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

40. The release was likely to affect Michigan.

41. At all times relevant to this CAFO, the Michigan SERC was the SERC for Michigan under section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

42. The release was likely to affect Hillsdale County, Michigan.

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

Count 1 (failure to notify NRC)

44. Respondent notified the NRC of the release on May 14, 2021, at 6:30 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. Respondent notified the Michigan SERC of the release on May 14, 2021, at 9:00 a.m.

48. Respondent did not immediately notify the Michigan SERC after Respondent had knowledge of the release.

49. Respondent's failure to immediately notify the Michigan 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)

50. Respondent notified the Hillsdale County LEPC of the release on May 14, 2021, at 11:37 a.m.

51. Respondent did not immediately notify the Hillsdale County LEPC after Respondent had knowledge of the release.

52. Respondent's failure to immediately notify the Hillsdale County LEPC of the release is a violation of section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 4 (written notice to SERC)

53. As of July 7, 2021, Respondent had not provided written follow-up emergency notice of the release to the Michigan SERC.

54. Respondent did not provide the Michigan SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

55. Respondent's failure to provide written follow-up emergency notice to the Michigan 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 (written notice to LEPC)

56. As of July 7, 2021, Respondent had not provided written follow-up emergency notice of the release to the Hillsdale County LEPC.

57. Respondent did not provide the Hillsdale County LEPC 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 of the release to the Hillsdale County 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

59. Complainant has determined that an appropriate civil penalty to settle this action is \$10,548 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).

60. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,548 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: Bob Evans Farms, Inc., the docket number of this CAFO, and the billing document number.

61. Complainant has determined that an appropriate civil penalty to settle this action is \$47,090 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, effect on ability to continue to do business, 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 EPCRA/CERCLA Enforcement Response Policy.

62. Within 30 days after the effective date of this CAFO, Respondent must pay a \$47,090 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: Bob Evans Farms, Inc., and the docket number of this CAFO.

63. Respondent must send a copy of the electronic funds transfer payment to:

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

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

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

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

65. 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. Respondent agrees that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

66. 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

67. The parties' consent to service of this CAFO by email at the following valid email addresses: guenther.robert@epa.gov (for Complainant) and kpodpeskar@envirolawgroup.com (for Respondent).

68. Full payment of the penalty and compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

69. 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.

70. 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.

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

72. This CAFO is a “final order” for purposes of U.S. EPA’s EPCRA/CERCLA Enforcement Response Policy.

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

74. 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.


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

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

In the Matter of: Bob Evans Farms, Inc., Hillsdale, Michigan
Docket Nos. MM-05-2022-0005 CERCLA-05-2022-0005 EPCRA-05-2022-0006

Bob Evans Farms, Inc., Respondent

1/24/22
Date


Colin Daly
General Counsel
Bob Evans Farms, Inc.


U.S. Environmental Protection Agency, Complainant

2/14/22
Date

Jason El-Zein Digitally signed by Jason El-Zein
Date: 2022.02.14 16:01:46 -05'00'

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

2/15/22
Date


Digitally signed by DOUGLAS BALLOTTI
Date: 2022.02.15 11:05:02 -06'00'

Douglas Ballotti
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Bob Evans Farms, Inc., Hillsdale, Michigan

Docket Nos. MM-05-2022-0005 CERCLA-05-2022-0005 EPCRA-05-2022-0006

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.

**ANN
COYLE** Digitally signed
by ANN COYLE
Date: 2022.02.15
14:26:41 -06'00'

Date

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

In the Matter of: Bob Evans Farms, Inc., Hillsdale, Michigan

Docket Nos. MM-05-2022-0005 CERCLA-05-2022-0005 EPCRA-05-2022-0006

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 February 18, 2022 in the following manner to the addressees:

Electronic Service via E-Mail

Return Receipt Requested: Ken Podpeskar
Attorney for Bob Evans Farms, Inc.
The Environmental Law Group, Ltd.
2263 Waters Drive
Mendota Heights, Minnesota 55120
kpodpeskar@envirolawgroup.com

Copy by E-mail to
Attorney for Complainant: Robert Guenther
Guenther.robert@epa.gov

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

Dated: _____

Isidra Martinez
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5