



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

JAN 09 2020

Certified Mail - Return Receipt Requested # 7014 0150 0000 2404 8176

Thomas Wunderlich
Factory Manager
Gerber Products Company
4301 Harriet Avenue
Fort Smith, AR 72904

**RE: EPCRA 313 Consent Agreement & Final Order – Gerber Products Company
Docket No. EPCRA-06-2020-0500**

Dear Mr. Wunderlich:

Enclosed is the fully executed Consent Agreement and Final Order (CAFO) that has been filed with the Regional Hearing Clerk. Gerber has 30 days from the effective date of the CAFO to pay the \$24,450 civil penalty, as set forth in Section IV beginning on page 6. The effective date is stamped in the top right corner of the document.

If you have any questions, please contact David Riley by phone at 214-665-7298, or by email at riley.david@epa.gov.

Sincerely yours,

A handwritten signature in black ink, appearing to be "C. Seager", with a long horizontal line extending to the right.

Cheryl T. Seager
Director
Enforcement and Compliance Assurance Division
EPA Region 6

Enclosure

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

RECORDS UNIT
EPA REGION VI

IN THE MATTER OF:	§	
	§	EPA DOCKET NUMBER
	§	EPCRA-06-2020-0500
GERBER PRODUCTS COMPANY	§	
FORT SMITH, ARKANSAS	§	CONSENT AGREEMENT
	§	AND FINAL ORDER
	§	
RESPONDENT	§	
	§	

CONSENT AGREEMENT

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Gerber Products Company (Respondent or Gerber) 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 Respondent pursuant to 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3).

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

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein and waives all defenses which have been raised or could have been raised to the claims set forth in this CAFO.
4. Compliance with all the terms and conditions of this CAFO shall resolve federal civil liability for only those violations which are set forth herein.
5. 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. Respondent represents it is duly authorized to execute this CAFO and the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.
7. Respondent agrees the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.
8. Respondent hereby certifies that as of the date of the execution of this CAFO, 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 with: (a) ten or more full-time employees; (b) a Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), for which the corresponding North American Industry Classification System (NAICS) subsector or

industry codes are listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, that manufactured, processed, or otherwise used the chemical in excess of the threshold quantity 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, to complete and submit a toxic chemical release inventory Form R, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity, to the Administrator of EPA and to the State in which the facility is located by July 1, for the preceding calendar year.

10. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting 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.

Alternative reporting thresholds are set forth in 40 C.F.R. §§ 372.27 and 372.28.

11. Pursuant to Section 313(g)(1)(C)(iii) of EPCRA, 42 U.S.C. § 11023(g)(1)(C)(iii), and 40 C.F.R. § 372.85(b)(16), the Form R shall include information relative to waste treatment, including the type of wastestream containing the reported chemical, the treatment method applied to the wastestream, and an estimate of the efficiency of the treatment.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

12. Respondent is incorporated in the State of Michigan, and is authorized to do business in the State of Arkansas.

13. Respondent is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
14. Respondent owns and operates the facility at 4301 Harriet Avenue, Fort Smith, Arkansas, 72904.
15. Respondent’s facility identified in Paragraph 14 is a “facility” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.
16. At the time of the violations, Respondent’s facility had ten (10) or more “full-time employees” as that term is defined by 40 C.F.R. § 372.3.
17. The facility’s NAICS code 311422 (Specialty Canning) is within the subsector code 311 (Food Manufacturing), which is listed in 40 C.F.R. § 372.23(b).
18. The chemical category Nitrate Compounds is a “toxic chemical” within the meaning of 40 C.F.R. §§ 372.3 and 372.65.
19. During calendar years 2015, 2016, and 2017, the toxic chemical in Paragraph 18 was “manufactured”, as that term is defined by Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.3, at Respondent’s facility.
20. During calendar years 2015, 2016, and 2017, the toxic chemical in Paragraph 18 was treated at the facility.
21. On March 5, 2019, an off-site investigation was initiated to determine compliance of Respondent’s facility with Section 313 of EPCRA. During the off-site investigation, EPA determined that Form R reports for nitrate compounds submitted by Gerber for calendar years 2015, 2016, and 2017 did not include information relative to waste treatment.

B. VIOLATIONS

Count One – Data Quality Error for Nitrate Compounds for 2015

22. Complainant hereby restates and incorporates by reference Paragraphs 1 through 21.
23. During calendar year 2015, Respondent manufactured nitrate compounds at the Respondent's facility, in excess of the applicable threshold quantity.
24. Respondent submitted a Form R for nitrate compounds by July 1, 2016, that did not include information relative to waste treatment for calendar year 2015.
25. EPA finds Respondent violated Section 313(g)(1)(c)(iii) of EPCRA, 42 U.S.C. § 11023(g)(1)(c)(iii), and 40 C.F.R. § 372.85(b)(16) by failing to include information relative to waste treatment for calendar year 2015.

Count Two – Data Quality Error for Nitrate Compounds for 2016

26. Complainant hereby restates and incorporates by reference Paragraphs 1 through 21.
27. During calendar year 2016, Respondent manufactured nitrate compounds at the Respondent's facility, in excess of the applicable threshold quantity.
28. Respondent submitted a Form R for nitrate compounds by July 1, 2017 that did not include information relative to waste treatment for calendar year 2016.
29. EPA finds Respondent violated Section 313(g)(1)(c)(iii) of EPCRA, 42 U.S.C. § 11023(g)(1)(c)(iii), and 40 C.F.R. § 372.85(b)(16) by failing to include information relative to waste treatment for calendar year 2016.

Count Three – Data Quality Error for Nitrate Compounds for 2017

30. Complainant hereby restates and incorporates by reference Paragraphs 1 through 21.

31. During calendar year 2017, Respondent manufactured nitrate compounds at the Respondent's facility, in excess of the applicable threshold quantity.
32. Respondent submitted a Form R for nitrate compounds by July 1, 2018 that did not include information relative to waste treatment for calendar year 2017.
33. EPA finds Respondent violated Section 313(g)(1)(c)(iii) of EPCRA, 42 U.S.C. § 11023(g)(1)(c)(iii), and 40 C.F.R. § 372.85(b)(16) by failing to include information relative to waste treatment for calendar year 2017.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

34. For the reasons set forth above, 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 Fifty-Five Thousand Nine Hundred and Seven Dollars (\$55,907) per day per violation of EPCRA.¹ Upon consideration of the entire record herein, including the 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 with respect to Respondent's ability to pay, history of prior EPCRA

¹ The statutory maximum penalty level under Section 325(c) of EPCRA, 42 USC 11045(c) has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701). EPA implements these adjustments through rulemaking which are codified in 40 CFR Part 19. As adjusted by the *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule (2018 Rule)* (83 Fed. Reg. 1194), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$55,907 per violation per day of violation occurring after November 2, 2015 and where penalties are assessed on or after January 15, 2018.

Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and other factors as justice may require, it is **ORDERED** that Respondent be assessed a civil penalty of **Twenty-Four Thousand Four Hundred Fifty Dollars and No Cents (\$24,450.00)**.

35. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the assessed civil penalty 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 U.S. Postal Service 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

Gerber Products Company
Docket No. EPCRA 06-2020-0500

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-06-2020-0500 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 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 Respondent's name and address, the case name, and docket number of the CAFO. 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 Inspector/Enforcement Officer
U.S. EPA, Region 6
Toxics Enforcement Section (ECDST)
1201 Elm Street, Suite 500
Dallas, TX 75270-2102;

Lorena Vaughn
Regional Hearing Clerk
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

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

36. 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.

37. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action to collect the penalty in an appropriate district court of the United States pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f).

38. 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)

39. 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 (6%) 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.

40. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

41. 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, 1992 (Amended: 1996, 1997, and 2001; and updated in accordance with the 2016 Civil Monetary Penalty Inflation Adjustment Rule on February 24, 2017) for the purpose of demonstrating a history of “prior such violations.”

B. RETENTION OF ENFORCEMENT RIGHTS

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

43. Nothing in this CAFO shall relieve 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.

44. Nothing in this CAFO shall limit the power and authority of 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 Respondent’s facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA’s civil and criminal authorities, or that

of Federal, State, or local agencies or departments to obtain penalties or injunctive relief under Federal, State, or local laws or regulations.

C. COSTS

45. Each party shall bear its own costs and attorney's fees. Furthermore, 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.

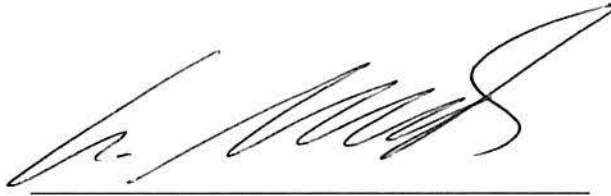
D. EFFECTIVE DATE

46. This CAFO 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: 12/12/14



Thomas Wunderlich
Factory Manager
Gerber Products Company
Fort Smith, AR

FOR THE COMPLAINANT:

Date: 12-31-19



Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division
U.S. EPA Region 6
Dallas, TX

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 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. 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 1/8/2020



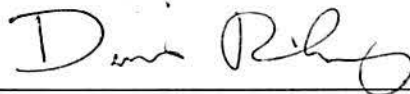
Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January 2020, 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, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, 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 # 7014 0150 0000 2404 8176

Gerber Products Company
4301 Harriet Avenue
Fort Smith, AR 72904
Attn: Thomas Wunderlich



David Riley
EPCRA 313 Inspector/Enforcement Officer
U.S. EPA Region 6
Toxics Enforcement Section (ECDST)

