



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

APR 15 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Gary R. Sheehan, Esq.
Kilpatrick Townsend & Stockton LLP
Suite 2800
1100 Peachtree Street
Atlanta, Georgia 30309

Re: Nestle Prepared Foods Company
Consent Agreement and Final Order
CAA-04-2014-1500(b)

Dear Mr. Sheehan:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2014-1500(b)) involving Nestle Prepared Foods Company. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the 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 Ms. Deanne Grant at (404) 562-9291.

Sincerely,

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

Caron B. Falconer
Chief
EPCRA Enforcement Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
 Nestle Prepared Foods Company)
)
 Respondent)
 _____)

Docket Number: CAA-04-2014-1500(b)

HEARING CLERK

2014 APR 15 PM 3:08

RECEIVED
EPA REGION IV

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (Consolidated Rules), published in 40 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency. Respondent is Nestle Prepared Foods Company (hereinafter, "Respondent").

2. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under the CAA to the Regional Administrators by the EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has re-delegated this authority to the Director, Air, Pesticides and Toxics Management Division. 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. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18, and agree 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 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. Respondent does business in the Commonwealth of Kentucky.

4. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is therefore subject to the provisions of the CAA and regulations promulgated there under.

5. Respondent operates a "stationary source" as that term is defined by Section 302(z) of the CAA, 42 U.S.C. § 7602(z). The Respondent's stationary source is located at 150 Oak Grove Drive, Mount Sterling, Kentucky 40353.

6. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

7. Pursuant to Section 112(r)(3) and 112(r)(7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 CFR Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 CFR § 68.130.

8. The Respondent, at its stationary source identified in Paragraph 5 of this CAFO, has one RMProgram covered process which stores or otherwise uses ammonia in amounts exceeding its applicable threshold of 10,000 pounds.

9. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 CFR §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 CFR § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

10. Respondent has submitted and registered an RMPlan to the EPA for the stationary source identified in Paragraph 5 of this CAFO. Respondent has developed an RMProgram accidental release prevention program for the stationary source identified in Paragraph 5 of this CAFO.

11. Based on an RMProgram compliance monitoring investigation initiated on February 14, 2012, the EPA alleges that the Respondent violated the codified rules governing the CAA Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 CFR Part 68 when it:

Failed to document persons responsible for implementing individual requirements of the risk management program, and define lines of authority through an organization chart or similar document as required by 40 CFR § 68.15(c);

Failed to document a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for selection as required by 40 CFR § 68.39(a);

Failed to document a description of the alternative release scenario identified, assumptions and parameters used, and the rationale for selection of the specific scenario as required by 40 CFR § 68.39(b);

Failed to retain documented resolution of process hazard analyses recommendations for the life of the process as required by 40 CFR § 68.67(g);

Failed to develop written operating procedures that address safety systems and their functions as required by 40 CFR § 68.69(a)(4);

Failed to prepare a record which contains the means used to verify that employees understood training for safety and health hazards as required by 40 CFR § 68.71(c);

Failure to certify evaluation of compliance audits at least every three years to verify that procedures and practices are adequate and are being followed as required by 40 CFR § 68.79(a);

Failed to complete a single registration form which includes the maximum quantity of each regulated substance or mixture in the process as required by 40 CFR § 68.160(a)(7);

Failed to revise and update the RMP within six months of a change that requires a revised process hazard analysis or hazard review as required by 40 CFR § 68.190(b)(5);

Failed to correct the RMP within six months of new accident history information as required by 40 CFR § 68.195(a).

III. Consent Agreement

12. 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.

13. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

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

15. Respondent certifies that as of the date of execution of this CAFO, to the best of the Respondent's knowledge after a good faith inquiry, it is compliant with the applicable requirements of Section 112(r) of the CAA.

16. 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. Neither the EPA nor Complainant waives 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.

17. 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 the RMProgram.

IV. Final Order

18. Respondent agrees to pay a civil penalty of NINETEEN THOUSAND THREE HUNDRED NINETY SEVEN DOLLARS (\$19,397), to be paid within thirty (30) days of the effective date of this CAFO.

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

For payment sent via electronic transfer

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency";

For payment sent via U.S. Postal Service

U.S. Environmental Protection Agency
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000; or

For payment sent via overnight mail service (FedEx, UPS)

U.S. Environmental Protection Agency
Cincinnati Finance Center
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson @ 314-425-1818.

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

20. 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

Deanne Grant
EPCRA Enforcement Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

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

21. For the purposes of state and federal income taxation, 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 penalty payment shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

22. Respondent shall undertake and complete the following Emergency Planning and Preparedness project no later than 45 days after the effective date of this CAFO. Respondent shall expend no less than THIRTY EIGHT THOUSAND SEVEN HUNDRED FIFTY FOUR DOLLARS (\$38,754) for the SEP. EPA's approval of the SEP proposed by Respondent shall not be construed to constitute an endorsement by EPA of any of the equipment or technology to be purchased in connection with the SEP undertaken pursuant to this CAFO.

Training

Emergency Responder Refresher 8 hour training conducted by Industrial Consultants for 42 emergency response personnel who will respond to leaks or spills of ammonia for the purpose of stopping the leak or spill. The scope of the training shall include procedures for handling emergency responses, written emergency response plans, hazards confronting responders, material safety data sheets and terms, health effects of ammonia and other chemicals, how to prepare for emergencies, how to decontaminate responders and clean up ammonia spills, protective clothing, self contained breathing apparatuses (SCBAs) and respirators, and conducting mock scenarios with SCBAs and encapsulating suits. Training course shall include manuals and supplies for each trainee.

Incident Commander 8 hour training conducted by Industrial Consultants for 8 emergency response personnel who will respond to leaks or spills of ammonia for

the purpose of stopping the leak or spill. The scope of the training shall include development of HAZWOPER, impact of a chemical release, roles and responsibilities, hazard and risk assessment, equipment organization, information resources and organization, working with the media, all OSHA regulations relating to Incident Commanders, and on site surveys. Training course shall include manuals and supplies for each trainee.

Equipment: The Respondent shall donate the following to the Montgomery County Fire Department.

<u>Quantity</u>	<u>Description</u>
4	50' of 1/2" NFPA Kernmantle Lifeline Rope
4	100' of 1/2" NFPA Kernmantle Lifeline Rope
3	200' of 1/2" NFPA Kernmantle Lifeline Rope
8	Large Steel Locking Carabiners
8	XL Steel Locking Carabiners
1	8mm Prusik Cord 50' Long
8	Class 3 Rescue Harness for Confined Space Rescue
4	2" Single Pulleys
2	2" PM Single Pulleys
4	2" Double Pulleys
4	2.5" PM Double Pulleys
8	Rescue Helmets
1	SKED EVAC Rescue Tripod for Confined Space
1	MSA Altair 4X Gas Detector (O2, LEL, H2S, CO Sensors)
2	Rope Rescue 4 to 1 System
1	Super Vac NANOPAC Confined Space Ventilator w/ 25' duct
2	Additional 25' of Duct for NANOPAC
1	SKED Stretcher
2	Quick Don and Set Wristlets
1	Victim Chest Sling
2	15 Min Escape Breathing Apparatus, SafeEscape CBRN Respirator
4	Intrinsically Safe Flashlights (Vulcan/Streamlight) Rechargeable
4	10' of 1" Webbing, Tubular
4	20' of 1" Webbing, Tubular
4	30' of 1" Webbing, Tubular
12	Rope Rescue Grade Gloves
2	Anchor Plates
2	Gibbs Rescue Ascenders
1	Cable Winch, 120'
1	Stokes Basket, Rigid

4	Miller Fall Harness for Victims
1	Full Length Backboard
1	Oregon Spine Splint, 1/2 Back
2	RQ3 Rescue Figure 8 Descender w/ears
1	PremAire Air-Line Respirator w/Portable Air Supply Assembly
1	Rope Rescue 4 to 1 System
1	SKED EVAC Recue Tripod for Confined Space
1	Cable Winch
9	Knee Pads
2	540 Belay Devices
2	Adjustable Anchor Straps
2	Multi Loop Anchor Straps
1	Victim Harness
1	Reeves Device, Reinforced
8	Headlamps
1	Freight (for both pages)

In the event that Respondent's actual purchase of training and equipment deviates from the descriptions specified above, Respondent shall provide information to EPA explaining the reason(s) for any such deviation. So long as the amount that Respondent spends equals or exceeds \$38,754, and the explanation for the deviation is acceptable to EPA, this provision shall be deemed to be satisfied. This Consent Agreement and Final Order shall not be construed to constitute EPA endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

23. Respondent certifies that neither it, nor, to the best of its knowledge, the recipient of the Emergency Planning and Preparedness SEP, is a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

24. Respondent has obtained and presented to EPA a separate written Certification from the recipient of the SEP, the Montgomery County Fire Department, that it is not a party to any open federal financial assistance transaction as stated in Paragraph 23.

25. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 22. If Respondent does not fully and timely complete the SEP, it shall be required to pay stipulated penalties pursuant to

Paragraph 31.

26. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

27. No later than sixty (60) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Deanne Grant at the address provided above. The Report shall include the following:

(a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(b) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than \$38,754, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 22.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

28. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

29. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

30. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental protection Agency for violations of Section 112(r)(7) of the Clean Air Act (CAA).”

31. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of THIRTY EIGHT THOUSAND SEVEN HUNDRED FIFTY FOUR DOLLARS (\$38,754), Respondent shall pay to the United States a stipulated penalty of the difference between \$38,754 and the actual SEP expenditure.

32. For purposes of Paragraph 31, whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

33. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

34. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

35. Pursuant to 31 U.S.C. § 3717, 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. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

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

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

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

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451

39. 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.


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V. Effective Date

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

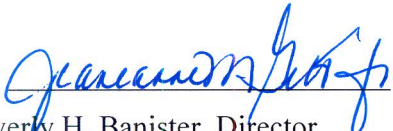
AGREED AND CONSENTED TO:

Nestle Prepared Foods Company

By:  Date: 2-27-14

IC Name: Yun Au (Typed or Printed)
Title: Chief Legal Officer & General Counsel (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 3-17-14
Beverly H. Banister, Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this _____ day of _____, 20__.

Susan B. Schub
Regional Judicial Officer

Docket Number: CAA-04-2014-1500(b)

APPROVED AND SO ORDERED this 14 day of April, 2014.

A handwritten signature in blue ink, reading "Heather McTeer Toney", written over a horizontal line.

Heather McTeer Toney
Regional Administrator

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 Nestle Prepared Foods Company, CAA-04-2014-1500(b), on the parties listed below in the manner indicated:

Caron B. Falconer
U. S. EPA, Region 4
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Ellen Rouch
U. S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

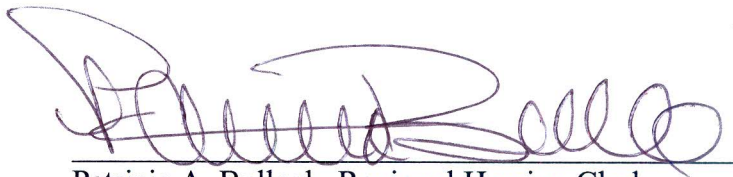
(Via EPA's internal mail)

Gary Sheehan
Kilpatrick Townsend & Stockton LLC
Suite 2800
1100 Peachtree Street
Atlanta, GA 30309

(Via Certified Mail -
Return Receipt Requested)

Date:

4-15-14



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