



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAY 03 2013

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Andre P. Papantoniou  
Manager  
Pita Pan, LLC  
401 East Joe Orr Road  
Chicago Heights, Illinois 60411

Re: Pita Pan, LLC d/b/a Pita Pan Old World Bakery, Chicago Heights, Illinois Consent Agreement and Final Order, Docket No. EPCRA-05-2013-0014

Dear Mr. Papantoniou:

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 May 3, 2013.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$73,500 in the manner prescribed in paragraph 37, and reference your check with the docket number EPCRA-05-2013-0014.

Your payment is due on June 3, 2013.

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

Sincerely,

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

Enclosure

**RECEIVED**  
MAY 03 2013  
REGIONAL HEARING CLERK  
USEPA  
REGION 5

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	
	)	<b>DOCKET NO.: EPCRA-05-2013-0014</b>
<b>Pita Pan, LLC,</b>	)	
<b>d/b/a Pita Pan Old World Bakery,</b>	)	<b>PROCEEDING TO ASSESS A CIVIL</b>
<b>Chicago Heights, Illinois,</b>	)	<b>PENALTY UNDER SECTION 325(c)</b>
	)	<b>OF THE EMERGENCY PLANNING</b>
<b>RESPONDENT.</b>	)	<b>AND COMMUNITY RIGHT-TO-KNOW</b>
<hr/>	)	<b>ACT, 42 U.S.C. § 11045(c)</b>

**CONSENT AGREEMENT AND FINAL ORDER**

1. This is an administrative action commenced and concluded under sections 325(c)(1) and 325(c)(2) of the Emergency Planning and Community Right-to-know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) & 11045(c)(2), and sections 22.13(b) and 22.18(b)(2) and (3) of 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.

2. Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Pita Pan, LLC, d/b/a Pita Pan Old World Bakery, a limited liability corporation organized under the laws of the State of Illinois.

4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

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 terms of this CAFO and to the civil penalty assessed herein.

**JURISDICTION AND WAIVER OF THE RIGHT TO A HEARING**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the fact and liability 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 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations at 40 C.F.R. part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC) and the fire department with jurisdiction over the facility an MSDS for each hazardous chemical that is an extremely hazardous chemical present at the facility at any one time in an amount equal to or greater than 500 pounds or to submit a list of such chemicals. The owner or operator must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. part 370, require the owner or operator of a facility, which is required by the OSHA to prepare or have available a MSDS for a hazardous chemical, to prepare and submit to the SERC, LEPC and fire department with jurisdiction over the facility by March 1, 1988, and

annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. part 370). The form must contain the information required by section 312(d) of EPCRA, covering all extremely hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or greater than 500 pounds.

11. Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022, assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

12. Federal regulations, at 29 C.F.R. § 1910.1200(b)(1), require all employers to provide information to their employees about the hazardous chemicals to which they are exposed, including, but not limited to, an MSDS.

13. 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.

14. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes U.S. EPA to assess a civil penalty of up to \$10,000 for each EPCRA section 311 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. part 19 increased the statutory maximum penalty to \$11,000 per day of violation for EPCRA 311 violations that occurred after March 15, 2004, through January 12, 2009, and to \$16,000 per day of violation for violations that occurred after January 12, 2009.

15. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at

40 C.F.R. part 19 increased these statutory maximum penalties to \$32,500 per day of violation that occurred after March 15, 2004, through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

#### **ALLEGATIONS OF FACT AND LIABILITY**

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

17. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 401 East Joe Orr Road, Chicago Heights, Illinois (facility).

18. At all times relevant to this Complaint, Respondent was an employer at the facility.

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

20. Ammonia, which can irritate eyes and skin and cause respiratory distress, is classified as a physical or health hazard.

21. Anhydrous ammonia (CAS 7664-41-7) 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).

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

23. Anhydrous ammonia has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. part 370 and appendices A and B of 40 C.F.R. part 355.

24. As of December 31, 2007, anhydrous ammonia was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

25. During at least one period of time in each of calendar years 2008 and 2009, anhydrous ammonia was present at the facility in an amount equal to or greater than the minimum threshold level.

26. The OSHA requires Respondent to prepare, or have available, an MSDS for anhydrous ammonia.

27. Section 311 of EPCRA, 42 U.S.C. § 11021, required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 1, 2008, an MSDS for anhydrous ammonia.

28. Section 312 of EPCRA, 42 U.S.C. § 11022, required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility on or before March 1 of the following calendar year a completed emergency and hazardous chemical inventory form including anhydrous ammonia for each of calendar year 2008 and 2009.

29. At all times relevant to this Complaint, the Illinois Emergency Management Agency was the SERC for the State of Illinois under section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

30. At all times relevant to this Complaint, the Suburban Cook County LEPC was the LEPC for Chicago Heights, Illinois, under section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

31. At all times relevant to this Complaint, the Chicago Heights Fire Department was the fire department with jurisdiction over the facility.

32. As of August 25, 2010, Respondent had not submitted to the SERC, LEPC or fire department with jurisdiction over the facility an MSDS for anhydrous ammonia or a list showing anhydrous ammonia.

33. Each day since March 30, 2008, Respondent has failed to submit to the SERC, LEPC and fire department with jurisdiction over the facility an MSDS or a list showing anhydrous ammonia constitutes a separate violation of section 311 of EPCRA, 42 U.S.C. § 11021.

34. As of August 25, 2010, Respondent had not submitted to the SERC, LEPC or fire department with jurisdiction over the facility a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia at its facility for calendar years 2008 or 2009.

35. Each day Respondent failed to submit to the SERC, LEPC or fire department with jurisdiction a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia since March 1, 2008, for calendar years 2008 and 2009 constitutes a separate violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### **PROPOSED CIVIL PENALTY**

36. Complainant has determined that an appropriate civil penalty to settle this action is \$73,500. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to this Respondent, its ability to pay, 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 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).

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$73,500 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's, certified or business check, payable to "Treasurer, United States of America," to:

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

The check must note the following: *In the Matter of Pita Pan, LLC, d/b/a Pita Pan Old World Bakery* and the docket number of this CAFO.

38. A transmittal letter must accompany the payment, stating Respondent's name, the case name, Respondent's complete address and the case docket number. Respondent must send a copy of the check and transmittal letter to:

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

James Entzminger (SC-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

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



40. 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.

41. 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**

42. In consideration of the penalty paid, this CAFO releases, waives and discharges only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

43. 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.

44. Respondent certifies that it is complying with sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 & 11022(a).

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

46. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

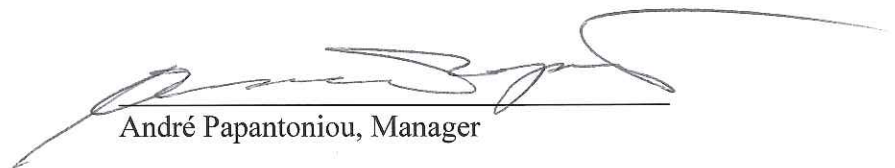
48. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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


**Pita Pan, LLC, d/b/a Pita Pan Old World Bakery, Respondent**

3-29-2013  
Date


  
André Papantoniou, Manager

**U.S. Environmental Protection Agency, Complainant**

4/26/2013  
Date

  
Sharon Jaffess, Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

4/26/2013  
Date

  
for Richard C. Karl  
Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of:**  
**Pita Pan, LLC, d/b/a Pita Pan Old World Bakery,**  
**Chicago Heights, Illinois**  
**Docket No.: EPCRA-05-2013-0014**

**FINAL ORDER**

This Consent Agreement and Final Order, as agreed to by the parties, will 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.

5-1-13

Date



Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

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**In the Matter of: Pita Pan, LLC d/b/a Pita Pan Old World Bakery, Chicago Heights, IL**  
**Docket No. EPCRA-05-2013-0014**

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**Certificate of Service**

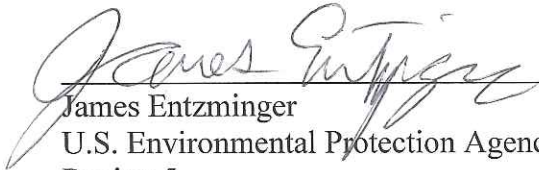
I, James Entzminger, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Alan J. Wolf, Attorney  
Robbins, Salomon & Patt, Ltd.  
180 North LaSalle Street, Suite 3300  
Chicago, Illinois 60601

Mr. Andre P. Papantoniou  
Manager  
Pita Pan, LLC  
401 East Joe Orr Road  
Chicago Heights, Illinois 60411

**RECEIVED**  
**MAY 03 2013**  
**REGIONAL HEARING CLERK**  
**USEPA**  
**REGION 5**

on the 3 day of May, 2013

  
James Entzminger  
U.S. Environmental Protection Agency  
Region 5