



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 1 8 2010

Gordon R. Alphonso
McGuireWoods LLP
1170 Peachtree Street N.E. Suite 2100
Atlanta, Georgia 30309

Re: ConAgra Foods, Inc.
Consent Agreement and Final Order - Docket No. CWA-04-2010-5131(b)

Dear Mr. Alphonso:

Enclosed please find a fully executed Consent Agreement and Final Order issued pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990.

Thank you for your assistance in the resolution of this matter. Please feel free to contact me at (404) 562-8976, or contact Brian Gross at (404) 562-8604, if you have any additional questions or comments. Legal questions should be directed to Bonnie Sawyer at (404) 562-9539.

Sincerely,

A handwritten signature in black ink that reads "Caroline Y. F. Robinson".

Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and
Compliance Branch
RCRA Division

3. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Big Branch Creek, Walnut Creek, and the Neuse River are navigable waters as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and are therefore subject to the jurisdiction of Section 311 of the Act.

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321 (b)(4), discharges of a hazardous substance in such quantities that have been determined may be harmful and thereby prohibited under Section 311(b)(3), 33 U.S.C. § 1321 (b)(3), are discharges of hazardous substances identified in 40 C.F.R. Part 116 in excess of the corresponding reportable quantity listed in 40 C.F.R. Part 117.

7. Solely for purposes of this Consent Agreement and Final Order, Respondent admits the jurisdictional statements contained herein.

Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

8. On June 9, 2009, Respondent discharged approximately 10,844 pounds or 108 reportable quantities of ammonia, which is identified as a hazardous substance in 40 C.F.R. Part 116, from its Facility, a portion of which was diverted to the Facility's waste water treatment system, and the remaining release entered into or upon Big Branch Creek, Walnut Creek and the Neuse River and/or their adjoining shorelines.

9. Respondent's June 9, 2009, discharge of ammonia from its Facility exceeded the reportable quantity found in 40 C.F.R. Part 117, and, therefore, was in a quantity that has been determined may be harmful under Section 311(b)(4), 33 U.S.C. § 1321(b)(4), in violation of Section 311(b)(3) of the Act.

Waiver of Rights

10. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

Penalty

11. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of Nineteen Thousand, and Fifty Nine Dollars (\$19,059).

Payment Terms

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

12. Respondent shall pay the amount of Nineteen Thousand, and Fifty Nine Dollars (\$19,059) no later than 30 days after the effective date of the Final Order.

13. Respondent shall remit the payment by means of a corporate cashier's or certified check, by electronic funds transfer (EFT), or on-line. If paying by check, the Respondent shall submit a corporate cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077

St. Louis, Missouri 63197-9000

If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
33 Liberty Street
New York, New York 10045

Field tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency." In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.

If Respondent chooses the On-Line Payment option, available through the Department of Treasury, this payment option can be accessed from the information below.

WWW.PAY.GOV

Enter sfo 1.1 in the search field
Open form and complete required fields.

14. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer or on-line payment, copies of the EFT or on-line confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Doug McCurry, Chief
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

16. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw from this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered pursuant to 40 C.F.R. § 22.45(c)(4)(ii).

17. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

18. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

19. The undersigned representative of Respondent hereby certifies that he or she is fully authorized to enter into and execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the attached Final Order.

20. The following attorney represents EPA in this matter and is authorized to receive service for EPA in the proceeding:

Brenda Luciano
Assistant Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9607
luciano.brenda@epa.gov

21. The following attorney represents Respondent in this matter and is authorized to receive service for Respondent in the proceeding:

Gordon Alphonso
McGuireWoods LLP
1170 Peachtree Street N.E. Suite 2100
Atlanta, Georgia 30309
(404) 443-5716
galphonso@mcguirewoods.com

Effective Date

22. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

For ConAgra Foods, Inc.:

Date: 6/3/10 ⁽²⁴³⁰⁾

Signature: Earl E. Ehret
Earl Ehret, Garner Plant Manager

For U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 6/29/10

Signature: G. Alan Farmer
G. Alan Farmer
Director
RCRA Division

1001 ...
Garner, North Carolina 27529

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UNDER 40 C.F.R. § 22.13(b)

Respondent

Docket No. CWA-04-2010-5131(b)

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

ConAgra Foods, Inc., the Respondent, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2010-5131(b).

Date: 8/11/10

Signature: A. Stanley Meiburg
A. Stanley Meiburg
Acting 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 ConAgra Foods, Inc., Docket No. CWA-04-2010-5131(b), on the parties listed below in the manner indicated:

Bonnie Sawyer
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(Via EPA's internal mail)

Quantindra Smith
RCRA and OPA Enforcement and Compliance Branch
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

(Via EPA's internal mail)

Gordon Alphonso
McGuireWoods LLP
1170 Peachtree Street N.E. Suite 2100
Atlanta, Georgia 30309

(Via Certified Mail)

Dated this 18th day of August, 2010.


Ms. Patricia Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960