

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

FILED

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

IN THE MATTER OF:

The Pictsweet Company,

Respondent.

Docket Nos. 09

CERCLA 9-2007-

EPCRA 9-2007-

00004
0020

CONSENT AGREEMENT
AND
FINAL ORDER PURSUANT TO
40 C.F.R. §§ 22.13 and 22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX. Respondent is The Pictsweet Company, a corporation organized under the laws of the state of Delaware.
2. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603, Section 304 of EPCRA, 42 U.S.C. § 11004, and their respective implementing regulations.

9. Respondent is, and at all times referred to herein was, a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
10. The real property, including improvements thereto, located at 732 S. Hanson Way in Santa Maria, California (the "Facility"), is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
11. At all times relevant to this CA/FO, the Facility produced, used or stored ammonia, Chemical Abstract Service No. 7664-41-7.
12. The Administrator of the EPA, as required under Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), has published a list of substances designated as "Hazardous Substances," which, when released into the environment, may present substantial danger to public health or welfare or the environment, and has promulgated regulations establishing the quantity of certain Hazardous Substances, the releases of which are required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). This list, including the corresponding RQs for each Hazardous Substance, is codified at 40 C.F.R. Part 302, Table 302.4.
13. The Administrator of the EPA, as required under Section 302 of EPCRA, 42 U.S.C. § 11002, has published a list of substances designated as "Extremely Hazardous Substances," which, when released into the environment, may present substantial danger to public health or welfare or the environment, and has promulgated regulations establishing the quantity of an Extremely Hazardous Substance, the release of which is required to be reported under Section 304 of EPCRA, 42 U.S.C. § 11004. This list,

close to the time that it occurred.

21. The person in charge of the Facility did not notify the NRC until approximately 13 hours after the release occurred.
22. By failing to immediately notify the NRC as soon as it had knowledge of this release of a reportable quantity of ammonia, Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
23. Respondent is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

COUNT II

(Violation of Section 304 of EPCRA)

24. Paragraphs 1 through 17 above are incorporated herein by this reference as if they were set forth here in their entirety.
25. Based on information supplied by Respondent, a release occurred on July 13, 2006. More than one hundred (100) pounds (the RQ) of ammonia was released from the Facility.
26. Respondent had knowledge of the release of ammonia which occurred on July 13, 2006 close to the time that it occurred.
27. Respondent did not notify the SERC until approximately 8 hours after the release occurred.
28. By failing to immediately notify the SERC as soon as it had knowledge of this release of a reportable quantity of ammonia, Respondent violated Section 304 of CERCLA, 42 U.S.C. § 11004.

F. ADMISSIONS AND WAIVERS

32. For purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to by Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 C.F.R. §§ 22.4 and 22.37. Further, for the purposes of this proceeding, Respondent admits to the general allegations of facts and law set forth in Sections B and C of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
33. Respondent neither admits nor denies any allegations of fact or law set forth in Section D of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, or Section 325 of EPCRA, 42 U.S.C. § 11045, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

I. PAYMENT OF CIVIL PENALTY

40. Respondent hereby consents to the assessment of and agrees to pay a civil penalty of **THIRTY-ONE THOUSAND, FOUR HUNDRED, AND THIRTY-FOUR DOLLARS (\$31,434)** in settlement of the violations set forth in Section D above. This Consent Agreement and Final Order constitutes a settlement of all claims for the violation of Section 103 of CERCLA and Section 312 of EPCRA alleged in Section D above.
41. Within thirty (30) days of the Effective Date of this CA/FO, Respondent shall submit two separate certified or cashier's checks as identified below:
- a. CERCLA § 109 Penalties: Respondent shall submit a certified or cashier's check in the amount of **FIFTEEN THOUSAND, SEVEN HUNDRED AND SEVENTEEN DOLLARS (\$15,717)**, payable to "EPA Hazardous Substance Superfund," which shall be sent to:
- U.S. EPA, Region IX
Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251
- b. EPCRA § 325 Penalties: Respondent shall submit a certified or cashier's check in the amount of **FIFTEEN THOUSAND, SEVEN HUNDRED AND SEVENTEEN DOLLARS (\$15,717)**, payable to "Treasury, United States of America," which shall be sent to:

J. DELAY IN PERFORMANCE / STIPULATED PENALTIES

44. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.
45. For failure to submit a payment to EPA by the time required in this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.
46. Payment of stipulated penalties for failure to make the payment described in Paragraph 41(a) shall be made in accordance with the procedure set forth for payment of penalties in Paragraph 41(a). Payment of stipulated penalties for failure to make the payment described in Paragraph 41(b) shall be made in accordance with the procedure set forth for payment of EPCRA penalties in Paragraph 41(b).
47. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this Agreement or with CERCLA or EPCRA and their implementing regulations.
48. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

53. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

L. OTHER CLAIMS


54. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

M. MISCELLANEOUS

55. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
56. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
57. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
58. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.


IT IS SO AGREED,

9/11/07
Date



Laird R. Jones
General Counsel and Secretary
The Pictsweet Company

17 September 2007
Date




for Keith Takata
Director
Superfund Division
United States Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket Nos. CERCLA 9-2007-~~000~~ and EPCRA 9-2007-00~~20~~) be entered and that Respondent pay a civil penalty in the amount of **THIRTY-ONE THOUSAND, FOUR HUNDRED, AND THIRTY-FOUR DOLLARS (\$31,434)**.

09/20/07

Date

A handwritten signature in blue ink, appearing to read "Steven Jawgiel", is written over a horizontal line.

Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

Docket No. CERCLA - 09-2007-
EPCRA - 09-2007-

8826

I hereby certify that the original copy of the foregoing CAFO with the Docket number referenced above, has been filed with the Region 9 Hearing Clerk and that a copy was sent by certified mail, return receipt requested, to:

Laird R. Jones
General Counsel and Secretary
The Pictsweet Company
Ten Pictsweet Drive
Bells TN 38006

09-20-07
Date

Danielle E Carr
Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105