

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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)
IN THE MATTER OF:)
)
MilMar Food Group II, LLC)
One 6 ½ Station Road)
Goshen, New York 10924 .)
)
Respondent.)
-----X

Docket No. EPCRA-02-2010-4002

CONSENT AGREEMENT AND
FINAL ORDER

Under Section 325 of the Emergency
Planning and Community Right to
Know Act ("EPCRA"), 42 U.S.C. § 11045

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 DEC 15 A 10:09
GENERAL HEARING
CLERK

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency ("EPA"), Region 2 and Respondent, MilMar Food Group II, LLC, by their undersigned representatives, hereby consent and agree as follows:

1. EPA initiated this proceeding for the assessment of civil penalties pursuant to Section 325 of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11045, by issuing an Administrative Complaint, Docket No. EPCRA-02-2010-4002 (hereinafter, the "Complaint"), against Respondent on September 29, 2010.
2. Respondent is the owner and/or operator of a facility located at One 6 ½ Station Road, Goshen, New York 10924 (hereinafter, the "Facility").
3. The Complaint charged Respondent with the following counts:
 - a. one count for violation of EPCRA § 312 for Respondent's failure to file a Tier I/Tier II form for the year 2007 by March 1, 2008 with the Local Emergency Planning Committee ("LEPC"), State Emergency Response Commission ("SERC"), and/or the local fire department;
 - b. one count for violation of EPCRA § 312 for Respondent's failure to file a Tier I/Tier II form for the year 2008 by March 1, 2009 with the LEPC, SERC, and/or the local fire department; and
 - c. one count for violation of EPCRA § 312 for Respondent's failure to file a Tier I/Tier II form for the year 2009 by March 1, 2010 with the LEPC, SERC, and/or the local fire department.
4. Respondent hereby certifies that it has fulfilled all reporting obligations for the violations cited in the Complaint. Respondent also hereby certifies that it is in compliance with all

relevant reporting requirements of EPCRA Section 312, 42 U.S.C. § 11022, with respect to its Facility.

5. Respondent admits the jurisdictional allegations set forth in the Complaint.
6. Pursuant to Section 325 of EPCRA, and taking into consideration the nature of the violations and other mitigating factors, EPA has determined that an appropriate civil penalty to settle this action is thirteen thousand seven hundred seventy dollars (\$13,770).
7. Respondent consents to the issuance of this Consent Agreement and the Final Order and consents for the purposes of settlement to the assessment of the civil penalty cited in the foregoing paragraph.
8. Respondent agrees to pay thirteen thousand seven hundred seventy dollars (\$13,770) as a civil penalty for the counts alleged in the Complaint and set forth in Paragraph 3, above. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer ("EFT"). Payment of the penalty must be received by EPA on or before thirty (30) calendar days after the date of signature of the Final Order at the end of this document (hereinafter referred to as the "due date").

If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America" and shall be mailed to:

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

The check shall be identified with a notation listing the following: In the Matter of MilMar Food Group II, LLC and shall bear thereon the Docket Number EPCRA-02-2010-4002.

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: MilMar Food Group II, LLC
- g. Case Number: EPCRA-02-2010-4002

If payment is made by check, Respondent shall simultaneously furnish proof that such payment has been made to:

Carol Y. Berns
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007.

If payment is made by EFT, Respondent shall simultaneously send a letter to each of the above addressees which references the date of the EFT, the payment amount, the name of the case, the case number, and Respondent's name and address.

- a) Failure to pay the penalty in full according to the above provisions may result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for appropriate enforcement, including collection of the amount set forth in this Paragraph, plus allowable interest and such other penalties as provided for in this Consent Agreement.
 - b) Further, if payment is not received on or before the due date, Respondent agrees to the assessment of interest, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, Respondent agrees to pay a late payment handling charge of \$15 for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
 - c) Respondent agrees that a 6% per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the due date.
9. The penalties specified in Paragraph 8, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or Federal taxes.

II. GENERAL PROVISIONS

10. Respondent neither admits nor denies the factual allegations contained in the Complaint. Respondent waives any right to contest the allegations contained in the Complaint and/or to appeal the Final Order accompanying this Consent Agreement.
11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions between EPA staff and the Regional Judicial Officer, and further waives the right to be served with and to reply to any memorandum or communication addressed by EPA staff to the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
12. This Consent Agreement and the 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. Nothing in this Consent Agreement and the Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this Consent Agreement and the Final Order shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
13. Each party to this action shall bear its own costs and attorneys' fees.
14. Full and complete satisfaction of the requirements of this Consent Agreement and Final Order shall resolve Respondent's liability for Federal civil penalties only for the violations alleged in the Complaint.
15. The person signing below on behalf of Respondent hereby certifies that he or she is fully authorized by Respondent to execute this Consent Agreement on behalf of Respondent and to legally bind Respondent to this Consent Agreement in accordance with all of the terms and conditions contained herein.
16. The Director of the Emergency and Remedial Response Division of EPA Region 2 has been delegated the authority to sign the Consent Agreement in this action, and the Regional Judicial Officer of EPA Region 2 has been delegated the authority to sign the Final Order in this action.
17. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

Consent Agreement in the Matter of MilMar Food Group II, LLC,
Docket No. EPCRA-02-2010-4002

For Respondent
MilMar Food Group II, LLC:



Signature

Date: 12-9-10

Martin Hoffman
Name (Printed or Typed)

President / CEO
Title (Printed or Typed)

Consent Agreement In the Matter of MilMar Food Group II, LLC,
Docket No. EPCRA-02-2010-4002

For Complainant
U.S. Environmental Protection Agency:



Walter Mugdan, Director
Emergency and Remedial Response
Division, Region 2

Date: Dec. 14, 2010

In the Matter of MilMar Food Group II, LLC,
Docket No. EPCRA-02-2010-4002

FINAL ORDER

As Regional Judicial Officer of the EPA, Region 2, I ratify the foregoing Consent Agreement in the Matter of MilMar Food Group II, LLC, Docket No. EPCRA-02-2010-4002. The Consent Agreement, signed on behalf of Respondent MilMar Food Group II, LLC and EPA, is hereby approved, incorporated herein, and issued, as a Final Order. The effective date of this Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, NY.

December 15, 2010
Date



Helen Ferrara
Regional Judicial Officer
U.S. EPA, Region 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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) Planning and Community Right to
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-----X

CERTIFICATION OF SERVICE

This is to certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing Docket Number EPCRA-02-2010-4002, in the following manner to the respective addressees listed below:

Original and One Copy by hand delivery to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by certified mail to:

Roy Makinen
Vice President
MilMar Food Group II, LLC
One 6 ½ Station Road
Goshen, NY 10924

Date: 12.15.10
Name: Rayetta Martin
Title: Secretary