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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
Fleischmann's Vinegar Company, Inc., Sumner, Washington	)	Docket No. EPCRA-10-2014-0044
	)	
	)	CONSENT AGREEMENT AND FINAL ORDER
	)	
Respondent.	)	
	)	
	)	
	)	

I. AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, Washington 98101
(206) 553-1037

Penalties," 40 C.F.R. Part 22, EPA hereby issues and Fleischmann's Vinegar Company, Inc. ("Respondent") hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18, issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 has been delegated the authority to sign consent agreements between EPA and the party against whom an administrative penalty for violations of Section 312 of EPCRA is proposed to be assessed pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045.

2.3. A concise statement of the factual basis for alleging violations of EPCRA, together with specific references to the provisions of the statutes and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. 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 Occupational Safety and Health Administration ("OSHA") to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical, to prepare and submit an Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370) to the local emergency planning committee ("LEPC"), the state emergency response

commission ("SERC"), and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1. The form must contain the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), covering all hazardous chemicals required by OSHA to have an MSDS that are present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds.

3.2. Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), "facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled, or under common control with, such person).

3.3. Under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), "person" means, *inter alia*, a corporation.

3.4. The OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200(b), requires employers to provide information to their employees about hazardous chemicals to which they are exposed by means of, *inter alia*, an MSDS. The section applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

3.5. Ethyl alcohol is defined as a hazardous chemical under the OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200.

3.6. Anhydrous ammonia is defined as a hazardous chemical under the OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200.

3.7. Sodium hydroxide is defined as a hazardous chemical under the OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200.

3.8. The OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200(b), requires an MSDS to be prepared, or available, for ethyl alcohol, anhydrous ammonia, and sodium hydroxide.

3.9. Respondent is a corporation, incorporated in the state of Delaware.

3.10. Respondent owns and operates a facility located at 1115 Zehnder Street, Sumner, Washington ("Facility").

3.11. Respondent produces vinegar, for industrial use, at the Facility.

3.12. During 2011, Respondent stored approximately 304,000 pounds of ethyl alcohol at the Facility.

3.13. During 2011, Respondent stored approximately 2,300 pounds of anhydrous ammonia at the Facility.

3.14. During 2011, Respondent stored approximately 2,575 pounds of sodium hydroxide at the Facility.

3.15. Respondent did not timely submit an Emergency and Hazardous Chemical Inventory Form for ethyl alcohol, anhydrous ammonia, or sodium hydroxide, stored at the Facility to the LEPC, SERC, and fire department with jurisdiction over the facility, for calendar year 2011.

3.16. Under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), EPA may assess a civil penalty of up to $37,500 for each day of violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained this CAFO.

4.3. EPA has determined and Respondent agrees that an appropriate amount to settle this action is $15,600.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900
Mail Stop ORC-158
Seattle, Washington 98101

Suzanne Powers
U.S. Environmental Protection Agency
Region 10
Washington Operations Office
300 Desmond Drive S.E., Suite 102
Lacey, Washington 98503

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the assessed penalty under EPCRA, together with interest, handling charges, and nonpayment penalties, as set forth below. In any such collection action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of $15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.8. Respondent agrees to implement a Supplemental Environmental Project ("SEP") consisting of the design and construction of a secondary containment system at the Facility. Respondent agrees to implement and complete the SEP within 270 days of the effective date of this CAFO, in accordance with all provisions described in this Consent Agreement and Attachment A to this CAFO. The parties agree that this SEP is intended to secure significant environmental benefits by significantly reducing the risk of a release of hazardous chemicals into the environment by containing any spill or release of a hazardous substance on-site. Respondent certifies that the secondary containment system is designed to contain spills from 42 tanks stored on-site.

4.9. Respondent's deadline to perform the SEP shall be excused or extended if such performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of Respondent, including its employees, agents, consultants, and contractors, which could not be overcome by due diligence and which delays or prevents performance of a SEP within the specified time period. A Force Majeure events does not include, *inter alia*, increased cost of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.10. Respondent also certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by another agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. For federal income tax purposes, Respondent agrees that it will neither capitalize in inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

4.11. Respondent hereby certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP described in Attachment A.

4.12. Respondent shall submit a SEP Completion Report to EPA within 300 days after the effective date of the CAFO. The SEP Completion Report shall contain the following information:

a. A description of the SEP as implemented;

b. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;

c. A description of any problems encountered and the solutions thereto; and

d. A description of the environmental and public health benefits resulting from implementation of the SEP.

4.13. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail, overnight mail, or hand delivery to:

Suzanne Powers
U.S. Environmental Protection Agency, Region 10
Washington Operations Office
300 Desmond Drive S.E., Suite 102
Lacey, Washington 98503

4.14. Respondent agrees that EPA may inspect Respondent's records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.15. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this CAFO until the SEP Completion Report is accepted pursuant to Paragraph 4.16, and Respondent shall provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this CAFO, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such a document or report is true, accurate, and not misleading by signing the following statement:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

4.16. Following receipt of the SEP Completion Report described in Paragraph 4.12, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent in writing, of deficiencies in the Report, and provide Respondent an additional 30 days in which to correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 4.18.

4.17. If Respondent fails to satisfactorily complete the SEP as contemplated by this CAFO and this failure was not caused solely by events which constitute a Force Majeure as defined by Paragraph 4.9, then stipulated penalties shall be due and payable by Respondent to EPA upon demand in accordance with Paragraph 4.18.

4.18. If Respondent fails to satisfactorily complete the SEP required by this CAFO, Respondent shall pay stipulated penalties, upon written demand from EPA, in the following amount for each day that the SEP remains incomplete:

Period of Noncompliance	**Penalty Per Violation Per Day**
1st through 7th day	$100
8th through 21st day	$250
22nd through 30th day	$500
Greater than 30 days	$1,000

4.19. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP is reserved to the sole discretion of EPA.

4.20. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraphs 4.5 and 4.6. Interest and late charges shall be paid as stated in Paragraph 4.7.

4.21. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the 'Emergency Planning and Community Right-to-Know Act.'"

4.22. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraphs 4.7, 4.8, and 4.18, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.23. This CAFO 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.

4.24. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.25. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violations alleged in Part III above.

4.26. Each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.27. Respondent expressly waives any right to contest the allegations and waives any rights to appeal the Final Order set forth in Part V.

4.28. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.29. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

STIPULATED AND AGREED:

FOR FLEISCHMANN'S VINEGAR COMPANY, INC.:

_____ Dated: 1/24/2014
Signature

Print Name: Sylvain Norton
Title: V.P. Regulatory & Technology

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

_____ Dated: 2/4/2014
Edward J. Kowalski, Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to EPCRA for the particular violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of EPCRA and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 26th day of February, 2014.

M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : Fleischmann's Vinegar Company, Inc., Docket No.: EPCRA-10-2014-0044**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Kris Leefers, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Dr. Sylvain Norton
Fleischmann's Vinegar
12604 Hidden Creek Way, Suite A
Cerritos, California 90703

DATED this 26th day of February, 2014

Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

ATTACHMENT A

IN THE MATTER OF: Fleischmann's Vinegar Company, Inc.
EPA DOCKET NO. EPCRA-10-2014-0044
SUPPLEMENTAL ENVIRONMENTAL PROJECT ("SEP")

Respondent will design and construct a secondary containment system at the Fleischmann's Vinegar Company, Inc. facility, located at 1115 Zehnder Street, Sumner, Washington ("Fleischmann's Vinegar Facility"). Respondent certifies that the secondary containment system is designed to contain spills from 42 tanks at the Fleischmann's Vinegar Facility.

Materials and Labor

Respondent will purchase materials necessary for construction of the secondary containment system at the Fleischmann's Vinegar Facility including dirt, asphalt covering for the berms, fencing, materials for the new 12 foot storm line, a submersible pump, and any other necessary materials. Respondent will pay for any and all labor, skilled and unskilled, necessary for design and construction of the secondary containment system at the Fleischmann's Vinegar Facility.

Estimated cost, Materials and Labor: $109,069