



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 20 2007

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0185 7736

Steven P. Case
McGrath North Mullin & Kratz, PC LLO
First National Tower
Suite 370
1601 Dafge St.
Omaha, ME 68102

Consent Agreement and Final Order, Docket No. EPCRA-05-2008-0004

Dear Mr. Case:

I have enclosed an original signed copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on December 20, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$20,733 is to be paid in the manner prescribed in paragraph 32 and 33. Please be certain that the number **BD 2750844E007** and the docket number are written on both the transmittal letter and on the check. The payment is due by January 22, 2008.

Thank you for your cooperation in resolving this matter.

Sincerely,

for Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Luis Oviedo, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. EPCRA-05-2008-0004
)
Conagra Foods, Inc.) Proceeding to Assess a Civil Penalty
Carol Stream, Illinois,) Under Section 325(c) of the Emergency
) Planning and Community Right-to-Know
Respondent.) Act of 1986, 42 U.S.C. § 11045(c)

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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c), 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) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Conagra Foods, Inc., a corporation doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
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 assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual 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.

9. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023.

Statutory and Regulatory Background

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed, or otherwise used a toxic chemical in an amount in excess of an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and 40 C.F.R. § 372.25, 40 C.F.R. § 372.28, 40 C.F.R. §§ 372.25 and 372.28, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of U.S. EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years

including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. The U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 of EPCRA that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 of EPCRA that occurred after March 15, 2004, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

13. Respondent is a "person" as that term is defined at Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at Conagra Foods, Inc., 195 Alexandria Way, Carol Stream, Illinois (facility).

15. At all times relevant to this CAFO, Respondent had "10 or more full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

16. 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.

17. Respondent's facility is a "facility" as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

18. The facility has a SIC code of 2099, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.22.

Count 1

19. Complainant incorporates by reference the allegations contained in paragraphs 1 through 18 of the Complaint.

20. During calendar year 2003, Respondent's facility "processed," as that term is defined at 40 C.F.R. § 372.3, sodium nitrite, CAS No. 7632-00-0, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 95,946 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

21. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for sodium nitrite for calendar year 2003 by July 1, 2004.

22. Respondent did not submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for sodium nitrite for calendar year 2003 by July 1, 2004.

23. Respondent submitted Form R for sodium nitrite to the Administrator of U.S. EPA on August 30, 2006 for calendar year 2003.

24. Respondent's failure to submit timely a Form R for sodium nitrite to the Administrator of U.S. EPA for calendar year 2003 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count 2

25. Complainant incorporates by reference the allegations contained in paragraphs 1

through 18 of the Complaint.

26. During calendar year 2005, Respondent's facility "processed," as that term is defined at 40 C.F.R. § 372.3, sodium nitrite, CAS No. 7632-00-0, a chemical category or CAS No. listed under 40 C.F.R. § 372.65, in the amount of 117,912 pounds which is greater than 25,000 pounds, the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

27. Respondent was required to submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for sodium nitrite for calendar year 2005 by July 1, 2006.

28. Respondent did not submit to the Administrator of U.S. EPA and to the State of Illinois a Form R for sodium nitrite for calendar year 2005 by July 1, 2006.

29. Respondent submitted Form R for sodium nitrite to the Administrator of U.S. EPA on August 30, 2006 for calendar year 2005.

30. Respondent's failure to submit timely a Form R for sodium nitrite to the Administrator of U.S. EPA for calendar year 2005 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Civil Penalty

31. In determining the appropriate penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior 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 Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended) (April 12, 2001)*. Based on that analysis, and pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, the

Complainant determined that an appropriate civil penalty to settle this action is \$20,733.00.

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,733.00 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

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

[for checks sent by express mail]

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note the case title, the docket number of this CAFO and the billing document number.

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

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Terry Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Luis Oviedo (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604]

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

35. If Respondent does not pay the civil penalty timely, 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. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

36. 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, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

37. The costs of the SEP are not deductible or depreciable for federal tax purposes.

General Provisions

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

39. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

41. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response

Policy for Section 313 of EPCRA.

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

43. Each person signing this 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.

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

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

Conagra Foods, Inc., Respondent

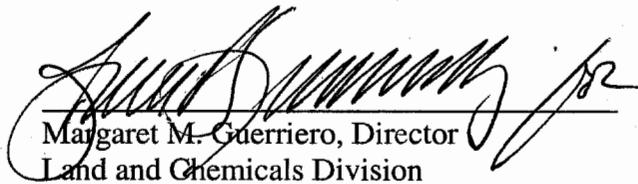
11/28/07
Date



Kimber Mayhak, Plant Manager
Conagra Foods, Inc.

United States Environmental Protection Agency, Complainant

12/11/07
Date



Margaret M. Guerriero, Director
Land and Chemicals Division

EPCRA-05-2008-0004

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In the Matter of:
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Final Order

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

12-18-07
Date



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

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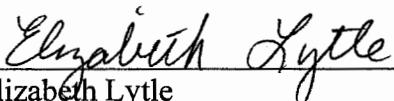
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Conagra Foods, Inc., was filed on December 20, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0185 7736, a copy of the original to the Respondents:

Steven P. Case
McGrath North Mullin & Kratz, PC LLO
First National Tower
Suite 370
1601 Dafge St.
Omaha, ME 68102

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Luis Oviedo, Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Elizabeth Lytle
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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