



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

DEC 17 2010

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Edmond F. Opler
President
World's Finest Chocolate, Inc.
4801 South Lawndale Avenue
Chicago, Illinois 60632

Re: World's Finest Chocolate, Inc., Chicago, Illinois Consent Agreement and Final Order, Docket Nos EPCRA-05-2011-0004 - CERCLA-05-2011-0003

Dear Mr. Opler:

MM-05-2011-0001

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on DEC 17 2010.

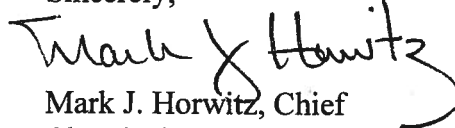
Please pay the Comprehensive Environmental Response, Compensation, and Liability Act civil penalty in the amount of \$1,000 in the manner prescribed in paragraph 57, and reference your check with the billing document number 2751130B003 and the docket number CERCLA-05-2011-0003.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$19,000 in the manner prescribed in paragraph 58, and reference your check with the billing document number 2751144E003 and the docket number EPCRA-05-2011-0004.

Your payments are due on JAN 18 2011 [within 30 days of filing date].

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Terence Stanuch, Associate Regional Counsel, at (312) 886-8044. Thank you for your assistance in resolving this matter.

Sincerely,



Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Jon England, Legal Counsel (w/ enclosure)
Kathy Allen (w/ enclosure)
IL SERC

David Loring (w/ enclosure)
Attorney
Schiff Hardin, LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606 (certified)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

MM-05-2011-0001

In the Matter of:)

) Docket No. CERCLA-05-2011-0003
) EPCRA-05-2011-0004

World's Finest Chocolate, Inc.)
Chicago, Illinois)

) Proceeding to Assess a Civil Penalty Under
) Section 109(b) of the Comprehensive
) Environmental Response, Compensation,
) and Liability Act, and Section 325(b)(2) of the
) Emergency Planning and Community Right-
) to-Know Act of 1986

Respondent.)

DEC 17 2010)

REGIONAL HEARING CLERK)
U.S. ENVIRONMENTAL)
PROTECTION AGENCY)

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(b)(2), 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, by lawful delegation, the Chief of the Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5.

3. Respondent is World's Finest Chocolate, Inc., a Delaware 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. Complainant and Respondent (collectively, 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 the Parties agree to the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. For purposes of this administrative action, 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), and any right to contest the allegations in this CAFO, and its right to appeal this CAFO pursuant to 40 C.F.R. § 22.18(b)(2).

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (“NRC”) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance’s reportable quantity.

10. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

11. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (“LEPC”) for any area likely to be affected by the release and to the state emergency planning commission (“SERC”) of any state likely to be affected by a release.

12. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

13. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments’ response to an emergency and pose serious threats to human health and the environment.

14. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous chemicals.

15. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January

31, 1997 through March 15, 2004, to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

16. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 4801 South Lawndale Avenue, Chicago, Illinois (the “Facility”).

19. At all times relevant to this CAFO, Respondent was in charge of the Facility.

20. Respondent’s Facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been stored, placed, or otherwise come to be located.

21. Respondent’s Facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. 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.

23. Respondent’s Facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

24. Anhydrous ammonia (CAS #7664-41-7) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Anhydrous ammonia (CAS #7664-41-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

26. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

27. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

28. Anhydrous ammonia (CAS #7664-41-7) is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

29. Anhydrous ammonia (CAS #7664-41-7) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

30. At all times relevant to this CAFO, anhydrous ammonia was produced, used or stored at Respondent’s Facility.

31. On May 19, 2009, at or about 1:00 a.m., a release occurred from Respondent’s facility of approximately 660 pounds of anhydrous ammonia (the “Release”).

32. In a 24 hour time period, the Release of anhydrous ammonia exceeded 100 pounds.

33. During the Release, approximately 660 pounds of anhydrous ammonia spilled, leaked, emitted, discharged, or escaped into the ambient air and/or air.

34. The Release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

35. The Release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

36. Respondent had knowledge of the Release on May 19, 2009, at approximately 1:00 a.m.

37. The Release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

38. The Release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

39. The Release was likely to affect Illinois.

40. At all times relevant to this CAFO, the Illinois Emergency Management Agency was the SERC for Illinois under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

41. The Release was likely to affect the City of Chicago, Illinois.

42. At all times relevant to this CAFO, the City of Chicago, Illinois was the LEPC for the City of Chicago, Illinois under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

43. Respondent notified the NRC of the Release on May 25, 2009, at 8:08 p.m.

44. Complainant alleges that Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the Release.

45. Respondent's failure to immediately notify the NRC of the Release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

46. Respondent notified the Illinois SERC of Release on May 20, 2009, at 4:30 p.m.

47. Complainant alleges that Respondent did not immediately notify the Illinois SERC after Respondent had knowledge of the Release.

48. Respondent's failure to immediately notify the Illinois SERC of the Release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

49. Respondent provided written follow-up emergency notice of the Release to the Illinois SERC on June 24, 2009.

50. Complainant alleges that Respondent did not provide the Illinois SERC with the written follow-up emergency notice of the Release as soon as practicable after the Release occurred.

51. Respondent's failure to provide written follow-up emergency notice to the Illinois SERC as soon as practicable after the Release occurred is a violation Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

52. Respondent notified the City of Chicago LEPC of the Release on May 19, 2009, and was in oral communication with the City of Chicago LEPC in the days immediately following the Release.

53. Respondent provided written follow-up emergency notice to the City of Chicago LEPC on June 30, 2009.

54. Respondent did not provide the City of Chicago LEPC with written follow-up emergency notice of the Release as soon as practicable after the release occurred.

55. Respondent's failure to provide written follow-up emergency notice to the City of Chicago LEPC as soon as practicable after the Release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Civil Penalty

56. In consideration of Respondent's implementation and performance of environmentally beneficial projects prior to the effective date of this CAFO, and Respondent's cooperation and willingness to quickly resolve this matter, U.S. EPA has determined that an appropriate total civil penalty to settle this action is \$20,000, to be divided in accordance with paragraphs 57 and 58 of this CAFO.

57. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,000 civil penalty for the alleged CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to:

- (a). for checks sent by regular U.S. postal service:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

- (b). for checks sent by express mail:

U.S. Bank
Government Lockbox 979076 U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: World's Finest Chocolate, Inc., the docket number of this CAFO and the billing document number 2751130B003.

- (c). for electronic funds transfer:

Respondent must pay the penalty by electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: World's Finest Chocolate, Inc., the docket number of this CAFO and the billing document number 2751130B003.

58. Within 30 days after the effective date of this CAFO, Respondent must pay a \$19,000 civil penalty for the alleged EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America" to:

- (a). for checks sent by regular U.S. postal service:

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

- (b). for checks sent by express mail:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: World's Finest Chocolate, Inc., the docket number of this CAFO and the billing document number 2751144E003.

- (c). for electronic funds transfer:

Respondent must pay the penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: World's Finest Chocolate, Inc., the docket number of this CAFO and the billing document number 2751144E003.

(d). for online payments using debit or credit card:

Respondent may pay online using an ACH debit or credit card. For payments online using an ACH debit or credit card please visit www.pay.gov. Using the Search Public Forms option on the tool bar (left side of page), enter SFO 1.1 in the search field. Open the form and complete the information requested.

59. 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 each payment. Respondent must also send a copy of the checks and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

James Entzminger (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Stanuch (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

61. If Respondent does not timely pay the civil penalty agreed to herein, 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.

62. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO: (a) 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; (b) Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due; and (c) the U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

Environmentally Beneficial Projects

63. Between May 19, 2009 (the date of the Release) and the effective date of this CAFO, Respondent has implemented and completed several environmentally beneficial projects ("EBP") at the Facility that were designed to protect public health and the environment.

64. As of the effective date of this CAFO, Respondent has spent in excess of \$135,000 for the purchase, installation and implementation of these EBPs at its Facility.

65. Respondent certifies that it has completed installation of all these EBPs at its Facility, and that it was not required to perform, develop or install any of these EBP by any law, regulation, grant, order or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for any of these EBP in any other enforcement action.

General Provisions

66. This CAFO resolves Respondent's liability only for federal civil penalties for the violations alleged in this CAFO.

67. 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.

68. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

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

70. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA and Sections 304, 311 and 312 of EPCRA.

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

72. Each person signing this consent 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.

73. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

74. This CAFO constitutes the entire agreement between the Parties.


In the Matter of:

World's Finest Chocolate, Inc., Chicago, Illinois

Docket Nos. CERCLA-05-2011-0003 EPCRA-05-2011-0004 MM-05-2011-0001


World's Finest Chocolate, Inc., Chicago, Illinois, Respondent

12/06/10
Date



Edmond F. Opler, President
World's Finest Chocolate, Inc.

U.S. Environmental Protection Agency, Complainant

12/15/10
Date


Jason H. El-Zein, Chief
Emergency Response Branch 1
for Superfund Division

12/15/10
Date


Richard C. Karl
Director
Superfund Division

In the Matter of:


World's Finest Chocolate, Inc., Chicago, Illinois

Docket Nos. CERCLA-05-2011-0003 EPCRA-05-2011-0004 MM-05-2011-0001

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, U.S. EPA, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12-16-10
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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DEC 17 2010
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U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:

World's Finest Chocolate, Inc., Chicago, Illinois

Docket Nos. CERCLA-05-2011-0003 EPCRA-05-2011-0004 MM-05-2011-0001

Certificate of Service

I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order, to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to World's Finest Chocolate, Inc. and their counsel by placing them in the custody of the United States Postal

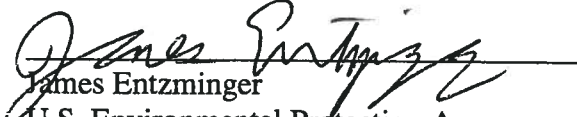
Service addressed as follows:

Mr. Edmond F. Opler
President
World's Finest Chocolate, Inc.
4801 South Lawndale Avenue
Chicago, Illinois 60632

David M. Loring
Attorney
Schiff Hardin, LLP
233 South Wacker Drive, Suite 6600
Chicago, Illinois 60606

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DEC 17 2010
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 17 day of December, 2010


James Entzminger
U.S. Environmental Protection Agency
Region 5