

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY MAR 24 AM 8:51
REGION 6
DALLAS, TEXAS REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)
)
)
GENERAL MILLS OPERATIONS LLC) DOCKET NO. CAA-06-2021-3323
ALBUQUERQUE, NEW MEXICO)
)
RESPONDENT)
_____)

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 6 (EPA or Complainant) and General Mills Operations LLC (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Section 112(r)(1) of the Clean Air Act (CAA or the Act), 42 United States Code (U.S.C.) § 7412(r)(1), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

3. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO. 40 C.F.R. § 22.18(b)(2).

4. The Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein and waives all defenses which have been raised or

could have been raised to the claims set forth in this CAFO. 40 C.F.R. § 22.18(b)(2).

5. The Respondent does not waive any rights or defenses which may have been raised or could be raised in any state law proceeding. This CAFO may not be used in any federal or state proceeding except proceedings by EPA to enforce this CAFO. This CAFO shall not be used as evidence of any legal or factual admission by Respondent.

6. Compliance with all the terms and conditions of this CAFO shall resolve the Respondent's liability for federal civil penalties for those violations and facts which are set forth herein. EPA does not intend to pursue additional enforcement related to the violations or facts which are set forth herein.

7. The Respondent consents to the issuance of this CAFO and to the assessment and payment of the civil penalty in the amount and by the method set forth in this CAFO, and to the conditions specified in this CAFO. 40 C.F.R. § 22.18(b)(2).

8. The Respondent shall not assert, and may not maintain, any defense or claim based upon the principle of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

9. Nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive and criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under federal, state, or local laws or regulations, except as provided in the release for federal, civil monetary penalties for the violations specifically identified in this CAFO. 40 C.F.R. § 22.18(b)(2).

10. The Respondent represents that the undersigned representative is fully authorized to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the

Respondent to the terms and conditions of this CAFO.

11. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors, and assigns.

II. STATUTORY AND REGULATORY BACKGROUND

12. Sections 112(r)(1) and (3) of the CAA, 42 U.S.C. § 7412(r)(1) and (3), provide that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance, pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and to minimize the consequences of any such release that does occur.

13. On November 15, 1990, Congress amended the CAA and added Section 112(r)(1), commonly known as the General Duty clause. Pursuant to Section 112(r)(1), the owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as Section 654, Title 29 of the United States Code, to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

14. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the Administrator is authorized to hold owners and operators of facilities that have regulated and other extremely hazardous substances responsible for ensuring that their chemicals are managed safely. In this regard, owners and operators who have these substances must adhere, at a minimum, to recognized industry standards and practices (as well as any applicable government regulations) in order to be in compliance with the general duty clause.

15. Pursuant to Section 112(r)(1), EPA recognizes that unique circumstances may make a particular standard inapplicable. Also, there may be instances in which a facility must address specific conditions that are not addressed by industry standards, practices, or government regulations. Such a facility must nevertheless address its specific conditions in order to be in compliance with the general duty clause. Finally, there may be situations in which an existing industry standard or practice is simply inadequate to prevent accidents. In such situations, EPA may exercise its authority to require an owner or operator to implement additional measures to address the hazard.

16. Pursuant to Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA, including, but not limited to, the general duty clause, or a requirement or prohibition of any rule promulgated under the CAA, but other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA (42 U.S.C. §§ 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A)), the Administrator may issue an order assessing a civil administrative penalty.

17. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and as adjusted by the transmittal of the *Civil Monetary Penalty Inflation Adjustment*, 85 Federal Register (FR) 83818 - 83821 (December 23, 2020), and 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$48,762 per violation per day of violation occurring after November 2, 2015, where penalties are assessed on or after December 23, 2020.

18. "Accidental release" is defined in Section 112(r)(2)(A) as "an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from

a stationary source."

19. "Extremely hazardous substance" is not defined in Section 112(r). However, such substances are not limited to the list of regulated substances listed under Section 112(r) nor the extremely hazardous substances listed under EPCRA¹.

20. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

21. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as including an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

22. "Regulated substance" is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in § 68.130.

23. "Stationary source" is defined in Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities

¹ Although there is no definition for extremely hazardous substances, the legislative history of the 1990 Clean Air Act Amendments suggests criteria which EPA may use to determine if a substance is extremely hazardous. The Senate Report stated the intent that the term "extremely hazardous substance" would include any agent "which may or may not be listed or otherwise identified by any Government agency which may as the result of short-term exposures associated with releases to the air cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity" (Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989) - "Senate Report"). Further, the Senate Report states, "the release of any Reference sources which may be used to establish that a substance may be extremely hazardous include: EPA's Toxic Substances Control Act Inventory (see www.epa.gov), National Institute of Occupational Safety and Health (see www.cdc.gov/niosh/homepage), Occupational Safety Health Administration (see www.osha.gov), American Conference of Governmental Industrial Hygienists (see www.acgih.org), Agency for Toxic Substances Disease Registry (see www.cdc.gov/atsdrhome), Centers for Disease Control (see www.cdc.gov) and National Fire Protection Association (see www.nfpa.org), or a substance which causes death or serious injury because of its acute toxic effect, or as a result of an explosion or fire, or which causes substantial property damage by blast, fire, corrosion or other reaction, would create a presumption that such substance is extremely hazardous." *Senate Report at 211.*

(i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

24. General Mills Operations LLC (Respondent) is a Delaware limited liability company authorized to do business in the State of New Mexico.

25. The Respondent is a “person” is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

26. At all times relevant to this CAFO, Respondent owned and operated the facility located at 3501 Paseo Del Norte Ave, Albuquerque, NM 87113 (“Facility”).

27. The Facility’s North American Industry Classification System (NAICS) code for the facility is 311230 Breakfast Cereal Manufacturing.

28. The Respondent operates a manufacturing facility that produces cereal products and snack bars. A refrigeration system is used for operation of chillers, compressors and condensers that support manufacturing activities, including the cereal processing area. The refrigeration system uses anhydrous ammonia.

29. Anhydrous ammonia is an extremely hazardous substance.

30. The Occupational Safety and Health Administration specifies the permissible exposure limit for ammonia gas as 50 parts per million (ppm) for an eight-hour time weighted average (TWA), allowing a higher limit of 100 ppm for a shorter four-hour TWA. The immediately dangerous to life and health (IDLH) concentration for this chemical is 300 ppm.

31. Based on the quantity of the extremely hazardous substance present at the facility,

the published occupational exposure limits, the facility's NAICS code, and an evaluation of on-site and off-site receptors, the refrigeration system in question at the Respondent's facility is subject to the following requirements of the general duty clause:

- a. Identify hazards which may result from accidental releases using appropriate hazard assessment techniques;
 - b. Design and maintain a safe facility taking such steps as are necessary to prevent releases;
- and,
- c. Minimize the consequences of accidental releases which do occur.

32. On March 27, 2020, General Mills contractor utility technicians smelled ammonia. At the same time, they received a call from General Mills operations that there was a strong smell of ammonia in the cereal processing area. The plant personnel immediately evacuated the facility and called the City of Albuquerque fire department. After 2:00 am on March 28, 2020, fire department emergency responders entered the ammonia room and shut the main refrigeration system valve (the "King Valve"). General Mills personnel were then cleared by the fire department to go into the distribution area to start the ammonia compressors to move the ammonia supply into the receiver.

33. After starting up the compressors, General Mills personnel observed oil under Ammonia Compressor #1 East. They isolated the compressor, opened doors, and actuated additional exhaust fans to boost ventilation in the affected areas. General Mills personnel discovered the gasket on Compressor #1 East oil filter extending outside of the flange, which caused the leak of oil and ammonia.

34. The release event resulted in the loss of approximately 2,989 pounds ammonia to the

atmosphere. The measured concentrations near the entrance to the ammonia room taken by the fire department during mitigation of the release over several hours varied from 38 to greater than 250 ppm.

35. During the release, air monitoring and personal protective equipment which would have allowed trained facility personnel to mitigate the duration and quantity of the release more quickly were stored in the area immediately affected by the incident, and therefore were not immediately available.

36. Following the incident, and prior to receipt of written response to the Complainant's May 8, 2020, information request, Respondent identified 17 corrective actions, of which 16 were completed by the end of May 2020, while one final measure was scheduled to be completed by the end of December 2020. The corrective actions included updating purchase specifications for the critical equipment components involved in the incident, updated communication to personnel affected by the corrective actions implemented, relocation of monitoring and response equipment to an accessible area away from the ammonia system, and revising and updating the facility's emergency response plan,

IV. VIOLATIONS

Count 1: General Duty Clause [Clean Air Act § 112(r)(1)] - Failure to minimize the consequences of an accidental release when it occurred.

37. Certain monitoring and personal protective equipment which would have allowed trained facility personnel to mitigate the duration and quantity of the release more quickly were located in the area of the release, and therefore not immediately available.

38. Therefore, the Respondent violated the General Duty Clause of Section 112(r)(1)

of the CAA by failing to design and maintain a safe facility as necessary to prevent the release and failed to minimize the consequences of the accidental release when it occurred.

V. CIVIL PENALTY AND TERMS OF SETTLEMENT

39. Upon consideration of the entire record herein, and upon consideration (in addition to such other factors as justice may require) of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply (including Respondent's prompt corrective actions as described above), the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation, the parties agree that forty thousand dollars (\$40,000) is an appropriate penalty to resolve this matter.

40. Within thirty (30) days of the effective date of this fully executed CAFO, the Respondent shall pay the assessed civil penalty by company check, certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check should be remitted to:

U.S. Bank
Government Lockbox 979077

US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency" with a phone number of
(412) 234-4381".

PLEASE NOTE: Docket Number CAA-06-2021-3323 shall be clearly typed or written on the check or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also transmit by electronic mail a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Diana L. Lundelius, CHMM
Enforcement Officer
Chemical Accident Prevention Section (ECDAC)
U.S. EPA, Region 6
Lundelius.Diana@EPA.gov

Lorena Vaughn
Regional Hearing Clerk (ORCD)
U.S. EPA, Region 6
Vaughn.Lorena@EPA.gov

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

41. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

42. If the Respondent fails to submit payment within thirty (30) days of the effective date of this CAFO, the Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth below.

43. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

44. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any

portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

45. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

46. This CAFO is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the CAA Stationary Source Penalty Policy, and the Combined Enforcement Policy for CAA Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012).

VI. RETENTION OF ENFORCEMENT RIGHTS

47. Except as set forth in Paragraph 6, EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of federal or state laws, regulations, statutes, or permitting programs.

48. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

49. Nothing in this CAFO shall limit the power and authority of EPA or the United

States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or regulated or other extremely hazardous substances at, on, or from the Respondent's facility.

50. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, or criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under other federal, state, or local laws, regulations, or subparts thereof.

51. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: Clay.Jeffrey@EPA.gov

To Respondent: tee.madrid@genmills.com

VII. COSTS

52. Each party shall bear its own costs and attorney's fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

Date: _____

Eric Gonzalez Digitally signed by Eric Gonzalez
Date: 2021.03.22 13:52:57 -06'00'

General Mills Operations, LLC

FOR THE COMPLAINANT:

Date: _____

STEPHEN GILREIN

Digitally signed by STEPHEN GILREIN
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=STEPHEN GILREIN,
0.9.2342.19200300.100.1.1+68001003651794
Date: 2021.03.23 13:06:18 -05'00'

Cheryl T. Seager
Director
Enforcement and Compliance
Assurance Division
U.S. EPA Region 6

FINAL ORDER

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

Rucki, Thomas

Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2021.03.23 13:40:37 -05'00'

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was electronically delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, and that a true and correct copy was sent this day in the following manner to the addresses:

Copy via email to Complainant:

Clay.Jeffrey@EPA.gov

Copy via email to Respondent:

tee.madrid@genmills.com

Anthony Madrid
Facilities Engineer
General Mills Operations LLC
3501 Paseo Del Norte Ave
Albuquerque, NM 87113

Copy via email to Regional Hearing Clerk:

Vaughn.lorena@EPA.gov

Office of Regional Counsel
U.S. EPA Region 6, Dallas, Texas