



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 12 2007

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Carolyn V. Wolski
Leonard, Street and Deinard
150 South Fifth Street, Suite 2300
Minneapolis, MN 55042

Re: Land O'Lakes, Inc., Kiel, Wisconsin, Consent Agreement and Final Order
Docket Nos: CERCLA-05-2007-0007; EPCRA-05-2007-0011 &
MM-05-2007-0003

Dear Ms. Wolski:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on October 12 2007.

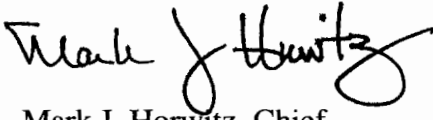
Please pay the CERCLA civil penalty in the amount of \$4,000 in the manner prescribed in paragraphs 10 and 12, and reference your check with the number BD 2750830B001 and docket numbers CERCLA-05-2007-0007 and MM-05-2007-0003.

Please pay the CERCLA civil penalty in the amount of \$500 in the manner prescribed in paragraphs 11 and 12, and reference your check with the number BD 2750844E001 and docket numbers EPCRA-05-2007-0011 and MM-05-2007-0003

Your payment is due on November 12 2007.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Erik Olson, Assistant Regional Counsel, at (312) 886-6829. Thank you for your assistance in resolving this matter.

Sincerely yours,



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

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Erik Olson
Office of Regional Counsel
U.S. EPA Region 5

Dawn Foss
Wisconsin SERC Contact

David Woodbury
Wisconsin DNR

Judge Spencer T. Nissen
Administrative Law Judge
U.S. EPA, Headquarters

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
)
Land O'Lakes, Inc.,)
Kiel, Wisconsin,) DOCKET NO. CERCLA-05-2007-0007
) EPCRA-05-2007-0011 &
) MM-05-2007-0003
)
Respondent.)
_____)

Consent Agreement and Final Order

1. The Complainant is, by lawful delegation, the Chief of the Chemical Emergency Preparedness and Prevention Section, Emergency Response Branch 1, United States Environmental Protection Agency (U.S. EPA), Region 5.
2. The Respondent is Land O'Lakes, Inc., a corporation doing business in Wisconsin.
3. On March 30, 2007, U.S. EPA filed the Complaint in this action against Respondent Land O'Lakes, Inc. The Complaint alleges that Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the National Response Center of a release which occurred at its facility in Kiel, Wisconsin on October 8, 2004; violated Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), by failing to immediately notify the Wisconsin State Emergency Response Commission (SERC) of the October 8, 2004 release and by failing to immediately notify the community emergency coordinator for the local emergency planning committee (LEPC) for an area likely to be affected by the release; and violated Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), by failing to provide a written follow-up emergency notice to the Wisconsin SERC and the LEPC as soon as practicable after the release occurred.
4. Respondent filed an Answer in which it challenged factual allegations, raised legal

defenses, and requested a hearing under Section 325(b)(1)(B) of EPCRA, 42 U.S.C. § 11045(b)(1)(B), and Section 109(a)(2)(B) of CERCLA, 42 U.S.C. § 9609(a)(2)(B).

Stipulations

5. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual and legal allegations in the Complaint, other than those it admitted in its Answer.

6. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).

7. The parties consent to the terms of this CAFO.

8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

9. In consideration of Respondent's attitude and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$4500.

10. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4000 civil penalty to settle the alleged CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

[for checks sent by regular U.S. postal service]

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

[for checks sent by overnight mail]

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

Contact: Natalie Pearson
314-418-4087

The check must note the following: Land O'Lakes, Inc., docket numbers CERCLA-05-2007-0007 and MM-05-2007-0003, and the billing document number 2750830B001.

11. Within 30 days after the effective date of this CAFO, Respondent must pay a \$500 civil penalty to settle 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:
[for checks sent by regular U.S. postal service]

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

[for checks sent by overnight mail]

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

Contact: Natalie Pearson
314-418-4087

The check must note the following: Land O'Lakes, Inc., docket numbers EPCRA-05-2007-0011 and MM-05-2007-0003, and the billing document number 2750844E001.

12. 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(s) and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

Ruth McNamara (SC-6J)
Chemical Emergency Preparedness and
Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

14. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 29, below, 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.

15. 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, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

16. Respondent must complete a supplemental environmental project (SEP) designed to

protect the environment and public health by: 1) detecting and sounding an alarm for any abnormal wastewater pH levels, thereby allowing the facility to stop the release of any acid/base materials that could harm the Kiel Wastewater Utility or its receiving waters, the Sheboygan River; and 2) shutting down the flow of ammonia to the facility refrigeration system in the event of an ammonia release, thereby reducing the volume of any accidental ammonia release and the hazards to human health associated with such a release.

17. At its Kiel facility, Respondent must complete the SEP as follows:

- a. Purchase and install a controller/alarm unit that will notify plant personnel if the pH of wastewater from the cheese plant or whey plant is below or above certain levels that have been pre-determined by the plant. The system will monitor pH at two locations in the plant, the cheese plant flume and the whey plant flume, and wirelessly transmit data to the plant computer alarm system. The system includes an audible alarm and a visible alarm near the office of the cheese plant foreperson.
- b. Purchase and install an ammonia shutdown control system that can be activated remotely in the event of an ammonia release from the facility's refrigeration system. The system will consist of 1) two king liquid solenoid valves, one each installed in the high pressure ammonia piping to the cheese plant and to the whey plant, located in the engine room; 2) a new electrical panel located outside the engine room containing three glass break switches that a) shut down the ammonia compressors, b) shut down the liquid king solenoid valve leading to the cheese plant, and c) shut down the liquid king solenoid valve leading to the whey plant.

18. Respondent must spend at least \$16,875 to purchase and install the SEP equipment.

19. Respondent must complete the installation of the SEP equipment by April 30, 2008.

20. Respondent must continuously use or operate the equipment installed as the SEP for one year following its installation.

21. Respondent certifies that it is not required to perform or develop the SEP 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 the SEP in any other enforcement action.

22. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

23. Respondent must maintain copies of the underlying research and data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

24. Respondent must submit a SEP completion report to U.S. EPA by July 31, 2008. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

25. Respondent must submit all notices and reports required by this CAFO by first class mail to Ruth McNamara of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 12, above.

26. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

27. Following receipt of the SEP completion report described in paragraph 24, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 29.

28. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 29, below.

29. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph [18], above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph [18].
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$5,000 in addition to any penalty required under subparagraph a, above.
- c. If Respondent halts or abandons work on the SEP, the Respondent must pay a stipulated penalty of \$5,000 in addition to the penalty required

under subparagraph a, above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.

- d. If Respondent fails to comply with the schedule in paragraph [19] for implementing the SEP, fails to submit timely the SEP completion report required by paragraph [25], above, Respondent must pay stipulated penalties for each failure to meet any applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$50	1st through 14th day
\$100	15th through 30th day
\$150	31st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

30. U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

31. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 10-15, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

32. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for alleged violations of Section 103 of CERCLA and Section 304 of EPCRA."

33. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

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

General Provisions

35. Pursuant to the rules of practice governing administrative settlements, specifically 40 C.F.R. section 22.18(c), this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint, and 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.

36. 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.

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

38. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA.

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

40. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

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

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

Land O'Lakes, Inc., Respondent

10-5-07
Date

Ken Litke
Ken Litke, Vice President
Dairy Foods Operations & Supply Chain
Land O'Lakes, Inc.

U.S. Environmental Protection Agency, Complainant

10-11-07
Date

Jason El-Zein
Jason El-Zein, Acting Chief
Emergency Response Branch 1
Superfund Division

10-12-07
Date

Richard C. Karl
Richard C. Karl, Director
Superfund Division

In the Matter of:

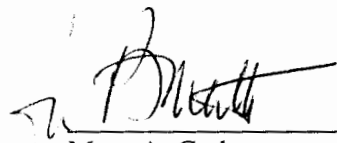
Land O'Lakes, Inc.

Docket No. CERCLA-05-2007-0007, EPCRA-05-2007-0011 & MM-05-2007-0003

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.

10-12-07
Date



Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of:

Land O'Lakes, Inc.

Docket No. CERCLA-05-2007-0007, EPCRA-05-2007-0011 & MM-05-2007-0003

Certificate of Service

I, Ruth McNamara, certify that I hand delivered one original and one copy of the Consent Agreement and Final Order, docket no. CERCLA-05-2007-0007, EPCRA-05-2007-0011 & MM-05-2007-0003, to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and mailed one original copies by first-class, postage prepaid, certified mail, return receipt requested, to Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Carolyn V. Wolski
Leonard, Street and Deinard
150 South Fifth Street, Suite 2300
Minneapolis, MN 55042

on the 12 day of OCTOBER, 2007



Ruth McNamara
U.S. Environmental Protection Agency
Region 5