



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAY 03 2007

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Marianne Thomsen, Plant Manager
Leprino Foods Company
311 North Sheridan Road
Remus, MI 49340

Re: Leprino Foods Company, Remus, Michigan, Consent Agreement and Final Order
Docket Nos.: CERCLA-05-2007-0009 EPCRA-05-2007-0017 MM-05-2007-0005

Dear Ms. Thomsen:

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 original CAFO with the Regional Hearing Clerk on MAY 03 2007.

Please pay the CERCLA civil penalty in the amount of \$14,625.00 in the manner prescribed in paragraphs 44 or 45, and reference you check with the billing document number 2750730B011 and the docket number CERCLA-05-2007-0009.

Please pay the EPCRA civil penalty in the amount of \$14,625.00 in the manner prescribed in paragraphs 46 or 47, and reference you check with the billing document number 2750744E014 and the docket number EPCRA-05-2007-0017.

Your payments are due on JUN 04 2007 (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 Charles V. Mikalian, Associate Regional Counsel, at (312) 886-2242. 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

Charles V. Mikalian (w/ enclosure)

Captain Eddie Washington, Chairperson (w/ enclosure)
Susan Parker (w/ enclosure)

Marcy Toney
Regional Judicial Officer

Andrew H. Perellis, Attorney (w/ enclosure)
Seyfarth Shaw, LLP
131 South Dearborn Street, Suite 2400
Chicago, IL 60603-5577 (certified)

The Corporation Company (w/ enclosure)
Registered Agent for Leprino Foods Company
30600 Telegraph Road
Bingham, MI 48025 (certified)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. CERCLA-05-2007-0009 EPCRA-05-2007-0017
)	MM-05-2007-0005
LEPRINO FOODS COMPANY)	Proceeding to Assess a Civil
Remus, Michigan)	Penalty under Section 109(b) of the
)	Comprehensive Environmental Response,
)	Compensation, and Liability Act, and
Respondent.)	325(b)(2) of the Emergency Planning and
)	Community Right-to-Know Act of 1986.
)	

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 (2005).

2. The Complainant is, by lawful delegation, the Branch Chief, Emergency Response Branch 1, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. Respondent is Leprino Foods Company, a corporation, doing business in the State of Michigan.

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) (2005).

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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Leprino Foods Company admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Leprino Foods Company 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.

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 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 state emergency planning commission (SERC) of any state likely to be affected by a release.

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

13. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), the U.S. EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Debt Collections Improvements 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, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations and Violations

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

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

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 311 North Sheridan Road, Remus, Michigan (Facility).

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

18. The Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
19. The Facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
20. 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).
21. Anhydrous ammonia has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.
22. Anhydrous ammonia is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. § 1910.1000, and 29 C.F.R. Subpart Z, § 1910.1000, Table Z-1.
23. Anhydrous ammonia is an "extremely hazardous substance" according to Section 302 of EPCRA, 42 U.S.C. § 11002(a)(2).
24. Anhydrous ammonia has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.
25. Anhydrous ammonia is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e).
26. At all times relevant to this CAFO, anhydrous ammonia was produced, used or stored at the Facility.
27. On June 16, 2006, at or about 11:30 a.m., a release occurred from the Facility of anhydrous ammonia (the Release).

28. The Facility initially calculated that the quantity of anhydrous ammonia released during the course of the Release was less than 100 pounds. Respondent subsequently discovered that a mistake had been made in the original calculation and that, in fact, in a 24 hour time period, the Release of anhydrous ammonia exceeded 100 pounds.

29. During the Release, approximately 1,308 pounds of anhydrous ammonia spilled, leaked, emitted, discharged, or escaped into the ambient air.

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

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

32. Respondent had knowledge of the Release on June 16, 2006, at approximately 11:30 a.m.

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

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

35. The Release was likely to affect Michigan.

36. At all times relevant to this CAFO, the Michigan State Emergency Response Commission was the state emergency response commission (SERC) for Michigan, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

37. Respondent notified the NRC of the Release on June 20, 2006, at 11:40 a.m.

38. Respondent was originally mistaken as to the quantity of anhydrous ammonia released during the Release and, as a result of this mistake, did not immediately notify the NRC as soon as Respondent had knowledge of the Release.

39. According to U.S. EPA, Respondent's failure to notify immediately the NRC of the Release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). Each subsequent day that Respondent failed to notify the NRC of the Release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

40. After discovering the mistake in the original calculation, Respondent notified the SERC of the Release on June 20, 2006, at 3:47 p.m.

41. Respondent did not immediately notify the SERC after Respondent had knowledge of the Release.

42. Respondent's failure to immediately notify the SERC of the Release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). Each subsequent day that Respondent failed to notify the SERC of the Release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Civil Penalty

43. In consideration of the nature, circumstances, extent and gravity of the violations, and the Respondent's ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violations and other factors as justice may require, U.S. EPA has determined that an appropriate total civil penalty to settle this action is \$29,250.00. This total amount includes a \$14,625.00 civil penalty to settle the CERCLA violation and a \$14,625.00 civil penalty to settle the EPCRA violation.

44. Within 30 days after the effective date of this CAFO, Respondent must pay a \$14,625.00 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. EPA, Region 5
ATTN: Superfund Accounting
P.O. Box 371531
Pittsburgh, PA 15251-7531

The check must note the case title of this matter: Lepirino Foods Company, the docket number of this CAFO, and the billing document number 2750730B011.

45. Alternatively, Respondent may pay by wire transfer to Federal Reserve Bank of New York, Routing Number 021030004 for Account Number 68010727, U.S. EPA. The wire payment must have the billing document number 2750730B011.

46. Within 30 days after the effective date of this CAFO, Respondent must pay a \$14,625.00 civil penalty for the EPCRA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Region 5
ATTN: Finance
P.O. Box 371531
Pittsburgh, PA 15251-7531

The check must note the case title of this matter: Lepirino Foods Company, the docket number of this CAFO, and the billing document number 2750744E014.

47. Alternatively, Respondent may pay by wire transfer to Federal Reserve Bank of New York, Routing Number 021030004 for Account Number 68010727, U.S. EPA. The wire payment must have the billing document number 2750744E014.

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

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

James Entzminger
Chemical Emergency Preparedness
and Prevention Section (SC-6J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Charles V. Mikalian (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

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

50. If Respondent does not timely pay the civil penalty, 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.

51. 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 six percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

53. 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.

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

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

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

57. 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.

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

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

Consent Agreement and Final Order

IN THE MATTER OF: Leprino Foods Company

Docket No. CERCLA-05-2007-0009 EPCRA-05-2007-0017

MM-05-2007-0005

U.S. Environmental Protection Agency, Complainant

Richard C Karl

Richard C. Karl, Director
Superfund Division
U.S. EPA Region 5

4-30-07

Date

Leprino Foods Company, Respondent

Thomas S. Hyatt

Senior Vice President - Production Operations

Name, Title
Leprino Foods Company

4/17/2007

Date

Consent Agreement and Final Order

IN THE MATTER OF: Leprino Foods Company


Docket No. CERCLA-05-2007-0009 EPCRA-05-2007-0017

MM-05-2007-0005

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. IT IS SO ORDERED.

Date: 5/2/07



aw Mary A. Gade
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

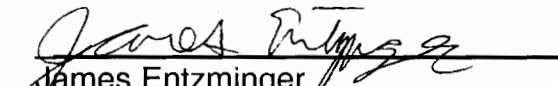
Certificate of Service

I, James Entzminger, certify that I personally filed the original and one copy of the Consent Agreement and Final Order, docket number CERCLA-05-2007-0009 EPCRA-05-2007-0017 **MM-05-2007-0005** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, via interoffice mail, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent by placing said copies in the custody of the United States Postal Service addressed as follows:

The Corporation Company
Registered Agent for Leprino Foods Company
30600 Telegraph Road
Bingham, MI 48025

Marianne Thomsen, Plant Manager
Leprino Foods Company
311 North Sheridan Road
Remus, Michigan 49340

on the 3 day of May, 2007.


James Entzminger
U.S. Environmental Protection Agency
Region 5