



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:)
)
Knouse Foods Cooperative, Inc.)
800 Peach Glen-Idaville Road)
Peach Glen, Pennsylvania)
17375,)
)
Respondent.)
)
)
Knouse Foods Cooperative, Inc.)
800 Peach Glen-Idaville Road)
Peach Glen, Pennsylvania)
17375,)
)
Facility.)
)
)

EPA Docket No.: CERC-03-2008-0381
EPA Docket No.: EPCRA-03-2008-0381

Proceedings Pursuant to Sections 103 and 109
of the Comprehensive Environmental Response,
Compensation, and Liability Act, as amended,
42 U.S.C. §§ 9603, 9609, and Sections 304, 311,
312 and 325 of the Emergency Planning and
Community Right-to-Know Act of 1986,
42 U.S.C. §§ 11004, 11021, 11022, 11045

09/02/2008 - 5 PM 1:55

RECEIVED

CONSENT AGREEMENT AND FINAL ORDER

Statutory Authority

This Consent Agreement ("CA") is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22, ("Part 22"), in Section 22.18(b)(2). The President has delegated his authority under Section 109 of CERCLA, 42 U.S.C. § 9609, to the Administrator. The Administrator has delegated that authority and the authority delegated to him under Section 325 of EPCRA, 42 U.S.C. § 11045, to the Regional Administrator of EPA, Region III, who has re-delegated those authorities to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

Preliminary Statement and Stipulations

The Respondent, Knouse Foods Cooperative, Inc. ("Respondent" or "Knouse"), by its attorney or other authorized representative, and EPA stipulate as follows:

1. EPA issued an Administrative Complaint ("Complaint") against Respondent, docketed at Nos. CERC-03-2008-0381 and EPCRA-03-2008-0381, on July 23, 2008. The Complaint alleges that Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603, by failing to immediately notify the National Response Center ("NRC") of the September 21, 2006 release of ammonia ("Release") from Respondent's facility located at 800 Peach Glen-Idaville Road in Peach Glen, Pennsylvania, ("Facility"). The Complaint also alleges that Respondent violated Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), by failing to immediately report the Release to the State Emergency Response Commission for the Commonwealth of Pennsylvania ("SERC"). The Complaint further alleges that Respondent violated Section 311 of EPCRA, 42 U.S.C. § 10021, by failing to submit to the SERC, Local Emergency Planning Committee ("LEPC"), and local fire department either material safety data sheets ("MSDSs") for sulfuric acid/lead-acid batteries and calcium hydroxide, or lists of hazardous chemicals identifying sulfuric acid/lead-acid batteries and calcium hydroxide, as present at the Facility. The Complaint also alleges that Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, by failing to submit complete and accurate Emergency and Hazardous Chemical Inventory Forms to the SERC, LEPC, and local fire department for calendar years 2004, 2005, and 2006.

2. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations of the Complaint.

3. For the purpose of this proceeding, Respondent neither admits nor denies the specific factual allegations contained in the Complaint, but expressly waives any of its rights to contest said allegations.

4. For the purpose of this proceeding, Respondent expressly waives its rights to a hearing and to appeal this CA and accompanying Final Order (collectively, the "CA/FO") under Section 109 of CERCLA, 42 U.S.C. § 9606, and Section 325 of EPCRA, 42 U.S.C. § 11045.

5. EPA incorporates by reference the factual allegations contained in the Complaint as EPA's Findings of Fact for this CA.

6. Based upon EPA's Findings of Fact, EPA concludes that Respondent violated the provisions of Section 103 of CERCLA, 42 U.S.C. § 9603, by failing to report the Release immediately to the NRC; Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), by failing to report the Release immediately to the SERC; Section 311 of EPCRA, 42 U.S.C. § 10021, by failing to submit to the SERC, LEPC, and local fire department MSDSs, for, or lists identifying, sulfuric acid/lead-acid batteries and calcium hydroxide as present at the Facility; and, Section 312 of EPCRA, 42 U.S.C. § 11022, by failing to provide complete and accurate

Emergency and Hazardous Chemical Inventory Forms to the SERC, LEPC, and local fire department for calendar years 2004, 2005, and 2006.

7. As a result of EPA's conclusion that Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 304(a) and (b), 311, and 312 of EPCRA, 42 U.S.C. §§ 11004(a) and (b), 11021, 11022, EPA has determined that Respondent is liable for a civil penalty. In determining the amount of the civil penalty, the following factors have been taken into consideration: the nature, circumstances, extent and gravity of the violation or violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require. The agreed upon penalty is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (September 30, 1999)*.

Penalty

8. In settlement of the above-captioned action, Respondent consents to the assessment of a civil penalty of **\$85,000.00**. Based on the foregoing Stipulations and Findings, the parties, by their attorneys or authorized officials, hereby agree to the following:

Payment Terms

9. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, Respondent must pay the civil penalty no later than 30 days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent by submitting the CERCLA penalty of \$7,055.00 and the EPCRA penalty of \$77,945.00 by wire transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

10. The Respondent shall submit proof of the wire transfer, noting the title and docket numbers of this case, to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Allison F. Gardner (3RC42)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

11. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States, as well as a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

12. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. 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).

13. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

14. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

15. Failure by the Respondent to pay the penalty assessed by the Final Order ("FO") in full by the final due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the \$85,000.00 penalty shall not be subject to review.

General Provisions

16. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this CA on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this CA and to legally bind Respondent to the terms and conditions of the CA and accompanying FO.

17. The CA/FO does not constitute a waiver, suspension or modification of the requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, or Sections 304, 311, or 312 of EPCRA, 42 U.S.C. §§ 11004, 11021, 11022, or any regulations promulgated thereunder.

18. This CA/FO resolves only those civil claims which are alleged in the Complaint. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

19. Each party to this action shall bear its own costs and attorney's fees.

20. By entering into this CA/FO, the Respondent does not admit any liability for the civil claims alleged in the Complaint.

FOR KNOUSE FOODS COOPERATIVE, INC.

C. Robert Binkley
SIGNATURE

October 17, 2008
DATE

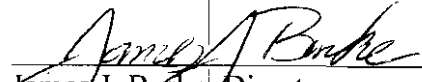
Name: C. Robert BINKLEY

Title: V.P., TECHNICAL SERVICES

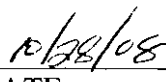
In re: Knouse Foods Cooperative, Inc.

EPA Docket Nos. CERC-03-2008-0381
EPCRA-03-2008-0381

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



James J. Burke, Director
Hazardous Site Cleanup Division



DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:)	EPA Docket No.: CERC-03-2008-0381
)	EPA Docket No.: EPCRA-03-2008-0381
Knouse Foods Cooperative, Inc.)	
800 Peach Glen-Idaville Road)	
Peach Glen, Pennsylvania)	
17375,)	
)	
Respondent.)	
)	Proceedings Pursuant to Sections 103 and 109
)	of the Comprehensive Environmental Response,
Knouse Foods Cooperative, Inc.)	Compensation, and Liability Act, as amended,
800 Peach Glen-Idaville Road)	42 U.S.C. §§ 9603, 9609, and Sections 304, 311,
Peach Glen, Pennsylvania)	312 and 325 of the Emergency Planning and
17375,)	Community Right-to-Know Act of 1986,
)	42 U.S.C. §§ 11004, 11021, 11022, 11045
Facility.)	
)	
)	

FINAL ORDER

Pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

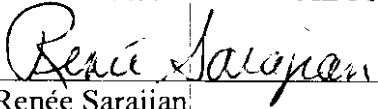
In re: Knouse Foods Cooperative, Inc.

EPA Docket Nos. CERC-03-2008-0381
EPCRA-03-2008-0381

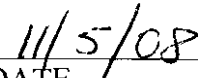
Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Renée Sarajian
Regional Judicial Officer
EPA, Region III



DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:)
)
Knouse Foods Cooperative, Inc.)
800 Peach Glen-Idaville Road)
Peach Glen, Pennsylvania)
17375,)
)
Respondent.)
)
)
)
Knouse Foods Cooperative, Inc.)
800 Peach Glen-Idaville Road)
Peach Glen, Pennsylvania)
17375,)
)
Facility.)
)
)
)

EPA Docket No.: CERC-03-2008-0381
EPA Docket No.: EPCRA-03-2008-0381


Consent Agreement and Final Order

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent by first class mail to:

Curtis N. Stambaugh, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, Pennsylvania 17108-1166

11/5/08
DATE


Allison F. Gardner (3RC42)
Senior Assistant Regional Counsel
Counsel for Complainant
(215) 814-2631