



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2011 SEP 28 A 10:25  
REGIONAL HEARING  
CLERK

September 28, 2011

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ira R. Halperin, Esq.  
Meltzer, Lippe, Goldstein & Breitstone, LLP  
190 Willis Avenue  
Mineola, NY 11501

Re: In the Matter of Seviroli Foods, Consent Agreement and Final Order

Dear Mr. Halperin:

Enclosed please find a copy of the fully-executed Consent Agreement and Final Order for the above-referenced case. The Final Order was signed on September 27, 2011. Please note, pursuant to Paragraph 4 of the Consent Agreement, payment of the penalty must be received by EPA on or before thirty calendar days after the date of signature of the Final Order.

If you have any questions, please call me at (212) 637-3164. Thank you for your cooperation and assistance in this matter.

Sincerely yours,

Jean H. Regna  
Assistant Regional Counsel  
Office of Regional Counsel

Enclosures

cc: Regional Hearing Clerk, Region 2 (with Original CAFO)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
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In the Matter of: )

Seviroli Foods )  
601 Brook Street )  
Garden City, New York, )

Respondent. )

CONSENT AGREEMENT AND  
FINAL ORDER

Docket Number: EPCRA-02-2011-4001

**PRELIMINARY STATEMENT**

1. This Consent Agreement and Final Order ("CA/FO") is issued pursuant to Section 325 of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11045. The Complainant in this action is the Director of the Emergency and Remedial Response Division of the United States Environmental Protection Agency, Region 2 ("EPA"), who has been delegated the authority to institute this action.

2. Pursuant to Section 22.13 of the Consolidated Rules of Practice, of Part 40 of the Code of Federal Regulations ("CFR") § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a CA/FO pursuant to 40 CFR §§ 22.18(b)(2) and (3).

3. EPA and Respondent Seviroli Foods ("Respondent") agree that settling this matter by entering into this CA/FO pursuant to 40 CFR § 22.13(b) and 40 CFR §§ 22.18(b)(2) and (3) is an appropriate means of resolving this case without litigation.

**STATUTORY BACKGROUND**

1. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations found at 40 CFR Part 370, provide that the owner or operator of a facility which is required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, *et seq.* ("OSHA") shall submit a completed emergency and hazardous chemical inventory form (Tier I or Tier II form) to the Local Emergency Planning Committee ("LEPC"), the State Emergency Response Commission ("SERC"), and the local fire department with jurisdiction over the facility, by March 1, 1988 (and annually thereafter). This inventory form must contain the information required by Section 312 of EPCRA and 40 CFR Part 370 for all hazardous chemicals which have been present at the facility at any one time during the preceding year in amounts equal to or greater than the threshold levels set forth in 40 CFR § 370.10.

2. Section 325 of EPCRA, 42 U.S.C. § 11045, provides for the assessment of penalties for violations of Section 312 of EPCRA.

### **FINDINGS OF FACT**

1. Respondent owns and/or operates a facility, located at 601 Brook Street, Garden City, New York (the "Facility"). The Facility includes an adjacent building located at 601 Commercial Avenue, Garden City, New York.

2. On or about March 29, 2011, EPA inspected the Facility. Respondent uses and has used anhydrous ammonia in its refrigeration systems at the Facility.

### **EPA'S CONCLUSIONS OF LAW**

1. Respondent is, and at all times referred to herein was, a "person," within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

2. Respondent owned and/or operated the Facility at the time of EPA's March 29, 2011 inspection and during the relevant periods described herein.

3. The Facility is a "facility," as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

4. Anhydrous ammonia is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with a minimum threshold level for reporting of 500 pounds pursuant to 40 C.F.R. § 370.10.

5. Anhydrous ammonia was present at the Facility in quantities above the threshold level set forth in 40 C.F.R. § 370.10 in the year 2010 and in prior years, and Respondent was required under OSHA to prepare or have available an MSDS for anhydrous ammonia for the Facility. Therefore, Respondent was required, pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, to submit a completed emergency and hazardous chemical inventory form (Tier I or Tier II form) for the anhydrous ammonia present at the Facility in each such calendar year to the LEPC, the SERC, and the fire department with jurisdiction over the Facility by March 1 of the following year.

6. As of the date of the EPA inspection, Respondent had not timely submitted completed emergency and hazardous chemical inventory forms (Tier I or Tier II form) for anhydrous ammonia for the Facility for the year 2010 and prior years to the LEPC, the SERC and/or the local fire department with jurisdiction over Respondent's Facility. Thus, Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 325 of EPCRA and 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), it is hereby agreed by and between Complainant and Respondent, as follows:

1. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent: a) admits the EPA has jurisdiction to commence a civil administrative proceeding for the violations alleged above; b) admits the Findings of Fact set forth above; c) consents to the assessment of the civil penalty as set forth below; d) consents to the issuance of the Final Order accompanying this Consent Agreement; and e) waives its right to contest the Findings of Fact or appeal the attached Final Order in any forum.

2. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

3. Respondent hereby certifies that it is now in compliance with all applicable requirements of Section 312 of EPCRA, 42 U.S.C. § 11022.

4. Respondent agrees to pay a civil penalty in the total amount of twenty one thousand two hundred and fifty dollars (\$21,250.00), as described below. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (“EFT”). Payment of the penalty must be received by EPA on or before thirty calendar days after the date of signature of the Final Order at the end of this document (hereinafter referred to as the “due date”).

If the payment is made by check, then the check shall be made payable to the “Treasurer, United States of America” and shall be mailed to:

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

The check shall be identified with a notation listing the following: “In the Matter of Seviroli Foods” and shall bear thereon “Docket Number EPCRA-02-2011-4001.”

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment (\$21,250)
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment:  
68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”
- f. Name of Respondent: Seviroli Foods
- g. Case Number: EPCRA-02-2011-4001

If payment is made by check, Respondent shall simultaneously furnish proof that such payment has been made to:

Jean H. Regna  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 17th Floor  
New York, New York 10007

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007.

If payment is made by EFT, Respondent shall simultaneously send a letter to each of the above addressees which references the date of the EFT, the payment amount, the name of the case, the case number, and Respondent's name and address.

- a) Failure to pay the penalty in full according to the above provisions may result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for appropriate enforcement, including collection of the amount set forth in this Paragraph plus allowable interest and such other penalties as provided for in this Consent Agreement.
- b) Further, if payment is not received on or before the due date, Respondent agrees to the assessment of interest, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, Respondent agrees to pay a late payment handling charge of \$15 for each thirty day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c) Respondent agrees that a 6% per annum penalty will also be applied on any principal amount not paid within ninety days of the due date.

5. The penalties specified in Paragraph 4, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or Federal taxes.

6. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liability that might have attached under Section 312 of EPCRA, 42 U.S.C. § 11022, as a result of the violations set forth in the "EPA Conclusions of Law" section, above, and Respondent's payment of the civil penalty in accordance with the terms and conditions of this section shall resolve any such liability.

7. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and its terms and conditions, including payment of the full amount of the

civil penalty in accordance with the terms set forth above. Respondent also consents to the issuance of the accompanying Final Order.

8. Respondent waives its right to request and/or obtain a hearing on this Consent Agreement, or the accompanying Final Order, including any right to contest any of the Findings of Fact and EPA Conclusions of Law set forth in said Consent Agreement and any right to contest any of the terms or conditions set forth in said Consent Agreement.

9. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions between EPA staff and the Regional Judicial Officer of EPA Region 2, and further waives the right to be served with and to reply to any memorandum or communication addressed by EPA staff to the Regional Judicial Officer, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

10. This CA/FO and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CA/FO or any of its terms and conditions.

11. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, State, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State, or local permit. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

12. Each party hereto shall bear its own costs and fees in this matter.

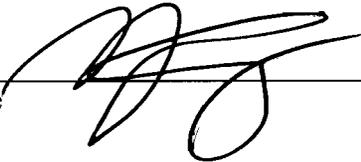
13. Full and complete satisfaction of the requirements of this CA/FO shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

14. The person signing below on behalf of Respondent hereby certifies that he or she is fully authorized by Respondent to execute this Consent Agreement on behalf of Respondent and to legally bind Respondent to this Consent Agreement in accordance with all of the terms and conditions contained herein.

15. The Director of the Emergency and Remedial Response Division of EPA Region 2 has been delegated the authority to sign the Consent Agreement in this action, and the Regional Judicial Officer of EPA Region 2 has been delegated the authority to sign the Final Order in this action.

16. Respondent consents to service upon Respondent of a copy of this CA/FO by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

For Respondent  
Seviroli Foods:

Signature 

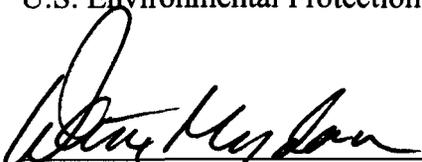
Date: 9/21/2011

Joseph Seviroli  
Name (Printed or Typed)

President  
Title (Printed or Typed)

Consent Agreement In the Matter of Seviroli Foods  
Docket Number: EPCRA-02-2011-4001

For Complainant  
U.S. Environmental Protection Agency:



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Walter Mugdan, Director  
Emergency and Remedial Response  
Division, Region 2

Date: Sept. 27, 2011

In the Matter of Seviroli Foods  
Docket Number: EPCRA-02-2011-4001

**FINAL ORDER**

The Consent Agreement In the Matter of Seviroli Foods, Docket Number: EPCRA-02-2011-4001, signed on behalf of Respondent Seviroli Foods and the Environmental Protection Agency, is hereby approved, incorporated herein, and issued by U.S. EPA as a Final Order. The effective date of this Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

Sept 27, 2011  
Date

Helen Ferrara

Helen Ferrara  
Regional Judicial Officer  
U.S. EPA, Region 2

**In the Matter of Seviroli Foods, Docket No. EPCRA-02-2011-4001**

**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order, bearing Docket Number EPCRA-02-2011-4001 in the following manner to the respective addressees below:

**Original and one copy by hand-delivery to:**

Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

**Copy by Certified Mail,  
Return Receipt Requested to:**

Ira R. Halperin, Esq.  
Meltzer, Lippe, Goldstein & Breitstone, LLP  
190 Willis Avenue  
Mineola, NY 11501

Dated:  
New York, New York

Brenda Hadley - 9/28/11