



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

JUL 21 2015

CERTIFIED MAIL - RETURN RECEIPT # 7009 1680 0002 2748 4208

Todd Nelson
Plant Manager
Schreiber Foods, Inc.
923 County Road 176
Stephenville, TX 76401

Re: Schreiber Foods Inc.; Stephenville, Texas
Docket No. EPCRA-06-2015-0508

Dear Mr. Nelson:

Enclosed is the fully executed Consent Agreement and Final Order (CAFO) that has been filed with the Regional Hearing Clerk. Schreiber Foods has 30 days from the effective date of the CAFO to make payment of \$19,100.00, as set forth in Section IV beginning on page 6. The effective date is stamped in the top right corner of the document.

In the event you should have any further questions or concerns regarding this matter, please contact David Riley at 214-665-7298. Your cooperation in the settlement of this case is most appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Wren Stenger".

Wren Stenger
Director
Multimedia Planning and
Permitting Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2015 JUL 21 AM 10:23
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

SCHREIBER FOODS INC.
STEPHENVILLE, TEXAS

§
§
§
§ DOCKET NO. EPCRA-06-2015-0508
§
§
§
§
§
§

RESPONDENT

CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Schreiber Foods, Inc. (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 pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(e), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. For the purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO.

3. Respondent explicitly waives any right to contest the factual allegations or conclusions of law contained in this CAFO, as well as its right to appeal the Final Order set forth

herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. EPA and Respondent agree that the settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. This CAFO only resolves the causes of action alleged in this CAFO.

5. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.

7. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

8. Respondent hereby certifies that as of the date of the execution of this CAFO, Schreiber Foods, Inc. has corrected the violations alleged in this CAFO, and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, 40 C.F.R. Part 372, and Section 6607 of the Pollution Prevention Act, 42 U.S.C. § 13106.

II. STATUTORY AND REGULATORY BACKGROUND

9. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that (a) has ten or more full-time employees; (b) is an

establishment with a primary Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary North American Industry Classification System (NAICS) subsector or industry code listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) “manufactured, processed, or otherwise used” a toxic chemical listed under Subsection 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Subsection 313(d) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25, 372.27, or 372.28 during the calendar year, shall complete and submit a toxic chemical release form to the Administrator of EPA and to the State in which the subject facility is located by July 1 of the following year, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity during that preceding calendar year.

10. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical “manufactured or processed,” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year. Alternative reporting thresholds are set forth in 40 C.F.R. §§ 372.27 and 372.28.

11. Section 6607 of the PPA, 42 U.S.C. § 13106 requires that each owner or operator of a facility required to file an annual toxic chemical release form under Section 313 of EPCRA, 42 U.S.C. § 11023, for any toxic chemical shall include, with each such annual filing, a toxic chemical source reduction and recycling report for the preceding calendar year. The toxic chemical source reduction and recycling report shall cover each toxic chemical required to be

reported in the annual toxic chemical release form filed by the owner or operator under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c). Section 6607(b)(8) of the PPA, 42 U.S.C. § 13106(b)(8) provides that the toxic chemical reduction and recycling report shall include the amount of each toxic chemical from the facility which is treated (at the facility or elsewhere) during such calendar year and the percentage change from the previous year.

12. Section 6607(c) of the PPA, 42 U.S.C. § 13106(c) provides that Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) applies to the reporting requirements of Section 6607 of the PPA, 42 U.S.C. § 13106(c), in the same manner as to the reports required under Section 313 of EPCRA, 42 U.S.C. § 11023. EPA may modify the Form R required under Section 313 of EPCRA, 42 U.S.C. § 11023 to the extent deemed necessary to include the additional information required under Section 6607 of the PPA, 42 U.S.C. § 13106.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

13. Respondent is incorporated under the laws of the State of Wisconsin and is authorized to do business in the State of Texas.

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

15. Respondent owns and operates a facility at 923 County Road 176, Stephenville, Texas, 76401.

16. Respondent owns and operates a "facility", as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

17. Respondent's facility has ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

18. Respondent's facility is in NAICS subsector or industry code 311513 (cheese manufacturing).

19. The chemical category nitrate compounds and the chemical nitric acid are "toxic chemicals" within the meaning of 40 C.F.R. §§ 372.3 and 372.65.

20. During the 2011 calendar year, nitrate compounds and nitric acid were "manufactured", "processed", and/or "otherwise used" as those terms are defined by 40 C.F.R. § 372.3, at the Respondent's facility. As such, Respondent is subject to the regulatory and statutory provisions cited herein.

21. On October 24, 2014, an inspection of Respondent's facility covering the 2009 through 2013 calendar years was conducted by a duly authorized representative of EPA, where the violations alleged below were discovered.

B. VIOLATIONS

Count One - Failure to Timely Report Nitrate Compounds for the 2011 Calendar Year

22. During the 2011 calendar year, Respondent manufactured nitrate compounds at the Respondent's facility in excess of the applicable threshold quantity.

23. Respondent failed to file a Form R for the identified toxic chemical by July 1 of 2012. The Form R was filed more than one year late.

24. Therefore, Respondent violated Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 by failing to submit a complete and accurate Form R for the identified

toxic chemical for the 2011 calendar year to the EPA and to the State of Texas by the applicable due date.

Count Two - Data Quality Error for Nitric Acid for Reporting Year 2011

25. During the 2011 calendar year, Respondent otherwise used nitric acid at the Respondent's facility in excess of the applicable threshold quantity.

26. Respondent filed a Form R for the identified toxic chemical that contained an incorrect amount for quantity of nitric acid treated onsite.

27. Therefore, Respondent violated Section 6607(b)(8) of the PPA, 42 U.S.C. § 13106(b)(8), by failing to submit a form that contained the correct amount of nitric acid treated onsite for the 2011 calendar year to the EPA and to the State of Texas by the applicable due date.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

28. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c)¹. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the nature, circumstances, extent and gravity of the alleged violations, and with respect to Respondent, ability to pay, lack of prior EPCRA Section 313 and PPA Section 6607 violations, the degree of

¹ The amount of penalty that can be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 per day of violation, for violations occurring between January 30, 1997 and March 15, 2004; and \$32,500 per day of violation for violations which occurred between March 15, 2004 and January 12, 2009; and to \$37,500 per day of violation for violations which occurred after January 12, 2009.

culpability, economic benefit or savings (if any) resulting from the violations, cooperation, institution of corrective actions, and other factors as justice may require, it is **ORDERED** that Respondent be assessed a civil penalty of **Nineteen Thousand, One-Hundred Dollars (\$19,100.00)**, which will settle the violations as alleged herein.

29. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the fully-assessed civil penalty of \$19,100.00, by 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 Service mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) 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(s) 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 = 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"

PLEASE NOTE: Docket number EPCRA-06-2015-0508 shall be clearly typed 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 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 Respondent's name and address, the case name, and docket number of the CAFO. Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

David Riley
EPCRA 313 Enforcement Officer
Toxics Section (6PD-T)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

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 or regulations.

C. COSTS

38. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

D. EFFECTIVE DATE

39. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

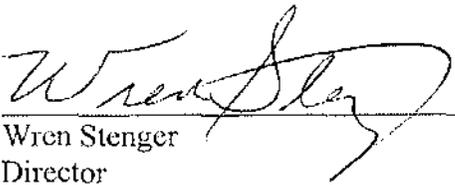
Date: 7-7-15



Todd Nelson
Plant Manager
Schreiber Foods, Inc.

FOR THE COMPLAINANT:

Date: 7/14/15



Wren Stenger
Director
Multimedia Planning and
Permitting Division
U.S. EPA Region 6

V. FINAL ORDER

Pursuant to 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 or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect 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. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 7-21-15



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2015, the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT # 7009 1680 0002 2748 4208

Todd Nelson
Plant Manager
Schreiber Foods, Inc.
923 County Road 176
Stephenville, TX 76401

Witnessed:



David Riley
EPCRA 313 Enforcement Officer
U.S. EPA Region 6

