



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

FEB 27 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David Hilliard
Ken's Foods, Inc.
155 King Mill Road
McDonough, Georgia 30253

Re: Ken's Foods, Inc.
Consent Agreement and Final Order
Docket Number EPCRA-04-2013-2004(b)

Dear Mr. Hillard:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 matter (Docket No. EPCRA-04-2013-2004(b)) involving Ken's Foods, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the Environmental Protection Agency. If you have any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Mr. Karl Wilson at (404) 562-9295.

Sincerely,

A handwritten signature in blue ink that reads "Caron B. Falconer".

Caron B. Falconer
Chief
EPCRA Enforcement Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
Ken's Foods, Inc.)
)
Respondent.)
_____)

Docket Number: EPCRA-04-2013-2004(b)

RECEIVED
EPA REGION IV
2013 FEB 27 PM 2:15
HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Ken's Foods, Inc.

2. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent is Ken's Foods, Inc., a corporation doing business in the State of Georgia.

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

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

7. Respondent's facility is located at 155 King Mill Road, McDonough, Georgia 30253.

III. EPA's Allegations of Violations

8. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, by March 1, 1988, and on or before March 1 annually thereafter, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 C.F.R. Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

9. At some time during the calendar year of 2010, sulfuric acid was present at the facility in an amount equal to or greater than 500 pounds.

10. Sulfuric acid is a "hazardous chemical" as defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5) and 40 C.F.R. § 355.61, and is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), 40 C.F.R. § 355.61, for which Respondent is required to prepare or have available an MSDS under OSHA at its facility. Sulfuric acid is also listed as an extremely hazardous substance in 40 C.F.R. Part 355, Appendix A.

11. Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for sulfuric acid to the SERC with jurisdiction over the facility for calendar year 2010, by March 1 of the following year.

12. EPA alleges that Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar year 2010 and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

13. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$37,500 for each violation of Section 312 that occurred after January 12, 2009. Each day a violation of Section 312 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by Administrative Order.

IV. Consent Agreement

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

15. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

16. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

17. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

18. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

19. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for a violation of any federal or state statute, regulation or permit; to initiate an action for imminent and substantial endangerment; or to pursue criminal enforcement.

20. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of EPCRA.

V. Final Order

21. Respondent shall pay a civil penalty of SIX THOUSAND NINETY FOUR DOLLARS (\$6,094), for the violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

22. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to one of the following addresses:

BY MAIL

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

BY OVERNIGHT

U.S. Bank
Government Lockbox 979077 US
EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

The check shall reference on its face the name and the Docket Number of the CAFO.

23. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Karl Wilson
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

24. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

25. Respondent shall undertake and complete, in accordance with the approved SEP in this matter, the following Emergency Planning and Preparedness project within 90 days of the effective date of this CAFO. Cash donations shall not be used to satisfy the terms and conditions of this CAFO. Ken's Foods, Inc., shall spend TWENTY THREE THOUSAND SIX HUNDRED FIFTY NINE DOLLARS (\$23,659) for the purchase and donation of equipment to the Henry County Fire Department as outlined below:

- 1 Smoke Machine
- 1 Adult Manikin
- 1 Child Manikin
- 1 Laptop Computer for Training
- 1 Fire Studio 5 Software
- 1 Gas Meter Trainer
- 1 Smart Dummy
- 1 Industrial Door Forced Entry Simulator
- 2 New York Roof Hook 6'
- 2 New York Roof Hook 8'
- 2 Pro Bar Halligan-type Forcible Entry Tool

- 2 Kockek: Line Gauge 1.5”
- 2 Kockek: Line Gauge 2.5”
- 3 Honda EU Series Generator – 2000 Watt

26. Respondent agrees that the cost of performing the SEP exceeds the minimum required SEP expenditure of \$22,851.

27. Respondent certifies that neither it, nor to the best of its knowledge, the recipient of the Emergency Planning and Preparedness SEP, is a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

28. Respondent has obtained and presented to EPA a separate written certification from the recipient of the Emergency Planning and Preparedness SEP, that certifies that the Recipient, Henry County Fire Department, is not a party to any open federal financial assistance transaction as stated in Paragraph 27.

29. Respondent agrees that EPA may conduct an inspection at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

30. No later than seventy five (75) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Karl D. Wilson at the address provided above.

The Report shall include the following:

- (a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
- (b) copies of appropriate documentation, including invoices and receipts, showing a total expenditure of TWENTY THREE THOUSAND SIX HUNDRED FIFTY NINE DOLLARS (\$23,659), or greater, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 25.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

31. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

32. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986."

33. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 25. If Respondent fails to timely and fully complete any part of the Emergency Planning and Preparedness SEP in Paragraph 25, including failure to spend the minimum amount of TWENTY TWO THOUSAND EIGHT HUNDRED FIFTY ONE DOLLARS (\$22,851), Respondent shall pay to the United States a stipulated penalty of the difference between \$22,851 and the actual amount spent. For purposes of this paragraph, whether Respondent has fully and timely completed the SEP shall be in the sole discretion of the EPA.

34. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

35. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

36. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP

37. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

38. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

39. This CAFO shall be binding upon the Respondent, its successors and assigns.

40. The following individual is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451

41. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

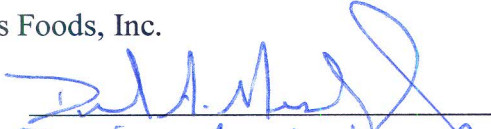
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VI. Effective Date


42. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

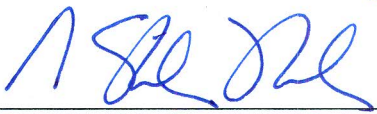
Ken's Foods, Inc.

By:  Date: 1/30/13
Name: DAVID A. Musko (Typed or Printed)
Title: Vice President of Engineering (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 2/7/13
Beverly H. Banister
Director
Air, Pesticides & Toxics
Management Division

APPROVED AND SO ORDERED this 21st day of February, 2013.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

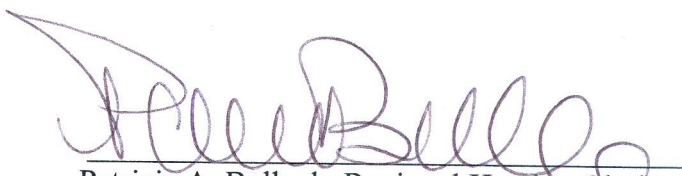
I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of, Ken's Foods, Inc., Docket Number: EPCRA-04-2013-2004(b), on the parties listed below in the manner indicated:

Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, Georgia 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, Georgia 30303

David Hilliard (Via Certified Mail - Return Receipt Requested)
Ken's Foods, Inc.
155 King Mill Road
McDonough, Georgia 30253

Date: 2-27-13


Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511