

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

-----X	:	
In the Matter of	:	<u>CONSENT AGREEMENT</u>
	:	<u>AND</u>
Givaudan Flavors Corporation	:	<u>FINAL ORDER</u>
	:	
	:	<u>DOCKET NUMBER</u>
	:	EPCRA-02-2016-0801
Respondent.	:	
	:	
	:	
Proceeding under Section 325(c) of Title III	:	
of the Superfund Amendments and Reauthorization Act	:	
-----X	:	

U.S. Environmental Protection Agency Region 2
2016 JUN -9 AM 8:02
REGIONAL HEARINGS
CLERK

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 *et seq.* [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")].

Pursuant to 40 C.F.R. § 22.13(b) of 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 (July 1, 2000)) where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

The Director of the Division of Enforcement and Compliance Assistance the United States Environmental Protection Agency, Region 2, ("EPA" or "Complainant") alleges that Givaudan Flavors Corporation ("Givaudan" or "Respondent") located at 245 Merry Lane, East Hanover, (County Morris) New Jersey 07936 violated the requirements of Section 313 of EPCRA (42 U.S.C. § 11023) and the regulations promulgated pursuant to that Section, codified at 40 C.F.R. Part 372.

Under Section 313 of EPCRA and 40 C.F.R. § 372.22, an owner or operator of a facility subject to the requirements of Section 313 is required to submit annually, no later than July 1 of each year, a complete and correct Toxic Chemical Release Inventory Reporting Form R report, EPA Form 9350-1 (hereinafter "TRI Form R report"), for each toxic chemical listed under 40 C.F.R. § 372.65 and/or 40 C.F.R. § 372.28 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. Each required TRI Form R report must be submitted to the Regional Administrator of the Environmental Protection Agency and to the State in which the subject facility is located.

As an alternative to the requirements set forth above, pursuant to Section 313(f)(2) of EPCRA (42 U.S.C. § 11023(f)(2)) and 40 C.F.R. § 372.27, an owner or operator of a facility subject to the requirements of Section 313(b) with respect to the "manufacture, process or otherwise use" of a toxic chemical may apply an alternate threshold of one million (1,000,000) pounds per year to that chemical if the conditions set forth in 40 C.F.R. § 372.27(a) are met. If the aforementioned alternate threshold for a specific toxic chemical is applicable, such owners or operators, in lieu of filing a TRI Form R report, therefore, may submit an "Alternate Threshold Certification Statement" ("TRI Form A report") pursuant to 40 C.F.R. § 372.27(b). Pursuant to 40 C.F.R. § 372.27(e), EPA has excluded the Persistent Bioaccumulative Toxic Chemicals listed in 40 C.F.R. § 372.28 from eligibility for the Alternate Thresholds described in 40 C.F.R. § 372.27(a). [59 FR 61502, Nov. 30, 1994, as amended at 64 FR 58750, Oct. 29, 1999; as amended at 71 FR 76944, Dec. 22, 2006; as amended at 74 FR 19005, Apr. 27, 2009]

EPA and Givaudan Flavors Corporation agree that settling this matter by entering into this CAFO, pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated Findings of Fact or Conclusions of Law have been made. The following constitutes EPA's Findings of Fact and Conclusions of Law based upon information EPA obtained through February 1, 2016 subsequent to a letter of voluntary self-disclosure under the Audit Policy dated July 21, 2015.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. Respondent is Givaudan Flavors Corporation (TRI Facility ID.: 07936FRTZSMERRY).
2. At all times relevant hereto, Respondent has maintained a facility located at 245 Merry Lane, East Hanover, (County: Morris) New Jersey 07936-0560 which is the subject of this CAFO (hereinafter, "Respondent's facility").
3. Respondent is a "person" within the meaning of Section 329(7) of EPCRA (42 U.S.C. § 11049(7)).
4. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)) and by 40 C.F.R. § 372.3.
5. Respondent is an operator of a "facility" as that term is defined by Section 329(4) of EPCRA (42 U.S.C. § 11049(4)) and by 40 C.F.R. § 372.3.
6. Respondent's facility has ten (10) or more "full time employees" as that term is defined by 40 C.F.R. § 372.3.
7. Respondent's facility is in North American Industry Classification System ("NAICS") code 311930 (Primary Code – Flavoring Syrup and Concentrate Manufacturing).
8. Respondent's facility is subject to the requirements of Section 313(b) of EPCRA (42 U.S.C. § 11023(b)) and 40 C.F.R. § 372.22.
9. Ammonia is a listed chemical under 40 C.F. R. § 372.65.
10. Respondent was required to submit a timely, complete and correct TRI Form R report for ammonia for calendar year 2013 on or before July 1, 2014 to the Administrator of the EPA and to the State of New Jersey.
11. Respondent was required to submit a timely, complete and correct TRI Form R report for ammonia for calendar year 2012 on or before July 1, 2013 to the Administrator of the EPA and to the State of New Jersey.
12. Respondent was required to submit a timely, complete and correct TRI Form R report for ammonia for calendar year 2011 on or before July 1, 2012 to the Administrator of the EPA and to the State of New Jersey.
13. Respondent submitted the required TRI Form R reports for ammonia for calendar years 2013, 2012 and 2011 on September 18, 2015.

14. Each of Respondent's failures to submit to the EPA a timely TRI Form R report as described in paragraphs 9 through 13 above, constitutes a failure to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 325(c) of EPCRA, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, etc., 40 C.F.R. § 22.18 (hereinafter, "Consolidated Rules"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees, as follows:

1. Respondent certifies herein that any and all EPA Toxic Chemical Release Inventory Forms submitted for the above-described violations comply with the requirements of Section 313 of EPCRA and the regulations set forth at 40 C.F.R. Part 372.

2. For the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of this Consent Agreement as applied to the facility as set forth in paragraphs 1 through 22, inclusive, and (b) neither admits nor denies the Findings of Fact and Conclusions of Law section, above.

3. Respondent shall pay a civil penalty totaling **FOURTEEN THOUSAND DOLLARS (\$14,000)**. Payment should be made by cashier's or certified check or by electronic fund transfer ("EFT"). If the payment is made by check, then the check should be made payable to the "Treasurer, United States of America," and mailed to:

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

The check should be identified with a notation thereon listing the following: "In The Matter of Givaudan Flavors Corporation" and "Docket Number EPCRA-02-2016-0801." Payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date"). If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Givaudan Flavors Corporation.**
- 7) Case Number: **EPCRA-02-2016-0801.**

Such EFT must be received on or before the due date of this CAFO. Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor (1631)
New York, NY 10007-1866

and

John Gorman, Chief
Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, NJ 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, 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, a late payment handling fee of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

4. Respondent agrees to undertake the following Supplemental Environmental Project ("SEP"), pursuant to the "Final EPA Supplemental Environmental Projects Policy Issued," 63 Federal Register 86 (May 5, 1998), pp. 24796-24804, which the parties agree is intended to secure significant environmental or public health protection and improvements.

a. Project Summary – Pollution Prevention

Givaudan agrees to undertake the following Pollution Prevention Supplemental Environmental Project ("SEP"), pursuant to the "Final EPA Supplemental Environmental Projects Policy Issued," 63 Federal Register 86 (May 5, 1998), pp. 24796-24804, which the parties agree is intended to secure significant environmental or public health protection through the substitution of ammonia with urea in its wastewater treatment process.

In an effort to utilize a less hazardous material and reduce potential impact on the environment, Givaudan is proposing a SEP to substitute the use of a TRI listed chemical with a non-TRI listed chemical. The East Hanover facility Wastewater Treatment Plant biologically treats water from the production areas. To maintain effective biological treatment of the wastewater, nutrients must be added to keep the biological media active enough to process the organics in the wastewater. There are different options for the types of nutrient media that may be used. The current system utilizes ammonia, a TRI listed chemical for the nutrient supply. The SEP proposal is to re-engineer the nutrient system and substitute urea, a non-TRI listed chemical, for the ammonia that is now used. Givaudan has estimated the upfront capital cost to replace ammonia with urea, including engineering design, equipment purchase and installation, to be approximately \$73,000 with an increase in annual raw material costs of approximately \$4,000 for the urea. EPA's enforcement economic model "PROJECT" estimates the value of the SEP at \$80,500 as a one-time expenditure that includes capital, labor costs and the increased cost of the urea. Givaudan shall include documentation of the expenditures made in connection with the SEP as part of the SEP final completion report. EPA proposes to mitigate the proposed penalty by 49.987% (\$40,150) of the SEP value. The cash portion of the proposed penalty would be \$14,000.

b. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent was not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or in compliance with state or local

requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP, and that it will not receive reimbursement for any portion of the SEP from any other person.

c. Respondent will purchase and install the above-listed equipment within nine months of the date of signature of the Final Order at the end of this document. If additional time is needed for execution of all required permits and approvals, Respondent will contact EPA for approval of an extension of time.

d. Whether Respondent has complied with the terms of this Consent Agreement and Final Order through implementation of the SEP project, as herein required, shall be the sole determination of EPA.

5. Respondent shall submit a SEP Completion Report to EPA. The report shall contain the following information.

- (i) Respondent shall submit a SEP Completion Report three months after the system is operational, but not more than one year after the date the Regional Administrator signed the Consent Agreement and Final Order at the end of this document.
- (ii) The SEP Completion Report will include a description of all pollution prevention activities (quantifiable results, if any) resulting from implementation of the SEP and any other successes / issues concerning full implementation of the proposed SEP over the preceding year and going forward.

6. Respondent agrees that failure to submit the SEP Progress Report and/or the SEP Completion Report shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 9, below.

7. Respondent shall maintain legible copies of documentation for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and Final Order, and Respondent shall provide the documentation of any such data to EPA within seven days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this Consent Agreement and Final Order, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

8. a. Following receipt of the report described in paragraph 5, above, EPA will do one of the following:

- (i) accept the report,
- (ii) reject the report, notify Respondent in writing of deficiencies in the SEP report and grant Respondent an additional 30 days in which to correct any deficiencies or
- (iii) reject the report and seek stipulated penalties in accordance with paragraph 9 herein.

b. If EPA elects to exercise option (ii) or (iii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten days of receipt of such notification. EPA and Respondent shall have an additional 30 days from the receipt by EPA of the notification of objection to reach agreement. If agreement is not reached on any such issue within this 30-day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement and Final Order.

9. a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement and Final Order relating to the performance of the SEP described in paragraph 4, above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP as described in paragraph 4, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to paragraph 9, Respondent shall pay a stipulated penalty to the United States in the amount of \$40,150. This penalty amount is based on the Respondent being granted a 49.987% penalty mitigation for the proposed SEP.

- (ii) If the SEP is not completed satisfactorily, but Respondent: a) made in good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90% of the amount of money, which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.
- (iii) If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States such that at least \$40,150 was spent plus 20%.
- (iv) If the SEP is satisfactorily completed, and Respondent spent at least 90% of the amount of money that was required to be expended on the SEP, Respondent shall not pay any stipulated penalty.

b. The determination of whether the SEP has been satisfactorily completed, whether Respondent has made a good faith timely effort to implement the SEP, whether specific expenditures that have been made are creditable toward the required SEP expenditures and/or whether the reason for submitting a late reports is acceptable shall be at the sole discretion of EPA.

c. A stipulated penalty under subparagraph 9.a (iii), shall begin to accrue on the day after the Completion Report is due.

d. Respondent shall pay any stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 3, herein. Interest and late charges shall be paid as stated in paragraph 3, herein.

10. Complainant, at her discretion, may waive any stipulated penalties specified above.

11. Any public statement, oral or written, made by Respondent making reference to this 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 313 of EPCRA, 42 U.S.C. § 11023 and regulations pursuant to that Section, 40 C.F.R. Part 372."

12. a. If any event occurs, which causes or may cause delays in the completion of the SEP as required under this Consent Agreement and Final Order, Respondent shall notify EPA in writing within ten (10) days of the delay or Respondent's knowledge of the anticipated delay,

whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this Agreement based on such incident.

b. If the parties agree that the delay, or anticipated delay, in compliance with this Consent Agreement and Final Order has been, or will be, caused by circumstances entirely beyond the control of Respondent, the time for performance of the SEP may be extended for a period no longer than the delay resulting from such circumstances. In such an event, the parties shall negotiate the extension of time.

c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement and Final Order has been, or will be, caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision, and any delays in completion of the SEP shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of actions called for by this Consent Agreement and Final Order shall not, in any event, be a basis for changes in this Consent Agreement and Final Order or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

13. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred, in the performance of the SEP.

14. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of all civil liabilities under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.) and the regulations promulgated thereunder, 40 C.F.R. Part 372, that attach or might have attached as a result of the Findings of Fact and Conclusions of Law set out above.

15. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

16. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

17. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

18. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

19. Each party hereto agrees to bear its own costs and fees in this matter.

20. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

Givaudan Flavors Corporation

BY: 

Authorizing Signature


NAME: DAVID B. SCHUSTER

(PLEASE PRINT)

TITLE: DIRECTOR, EH+S

DATE: MAY 19, 2016

COMPLAINANT:



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

PATRICK DONAGHE FOR D.L.

DATE: MAY 20, 2016

In the Matter of:

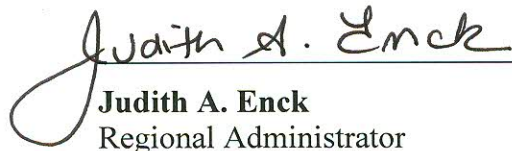
Givaudan Flavors Corporation

Docket Number EPCRA-02-2016-0801

FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of **In the Matter of Givaudan Flavors Corporation** bearing **Docket No. EPCRA-02-2016-0801**. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. §§ 22.13(b) and 22.18(b) (3) and shall constitute an order issued under authority of Section 325(c) of EPCRA 42 U.S.C. § 11045(c).

DATE: 5.31.16



Judith A. Enck
Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

In the Matter of Givaudan Flavors Corporation

Docket No. EPCRA-02-2016-0801

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced Docket Number, in the following manner to the respective addressees below:

Original and One Copy
by Interoffice Mail:

Ms. Karen Maples, Regional Hearing Clerk
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor (1631)
New York, New York 10007-1866

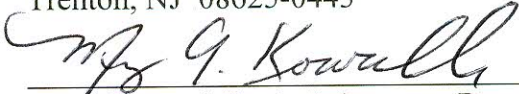
Copy by Certified Mail,
Return Receipt Requested:

Mr. William S. Hatfield
Director Real Property & Environmental
Gibbons P.C.
One Gateway Center
Newark, New jersey 07102

Copy by Mail:

Mr. Andrew Oppermann
New Jersey Department of Environmental Protection
Division of Environmental Safety and Health
Office of Pollution Prevention and Right-To-Know
22 S. Clinton Avenue, 3rd Floor
P.O. Box 443
Trenton, NJ 08625-0443

Dated: 6-3-16


Pesticides and Toxic Substances Branch
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-105)
Edison, New Jersey 08837-3679