



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

FEB 25 2016

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Kevin N. McMurray, Esq.  
Frost Brown Todd, LLC  
3300 Great American Tower  
301 East Fourth Street  
Cincinnati, Ohio 45202-4182

Re: Kroger Limited Partnership II d/b/a Country Oven Bakery  
Consent Agreement and Final Order  
Docket No. EPCRA-04-2015-2023(b)

Dear Mr. McMurray:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document, "SEC" refers to the Securities and Exchange Commission.

Should you or your client have any questions concerning this matter or Kroger Limited Partnership II d/b/a Country Oven Bakery's compliance status in the future, please contact Ms. Ellen Rouch of the EPA staff at (404) 562-9575.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney  
Chief  
Chemical Safety & Enforcement Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

HEARING CLERK

2016 FEB 25 AM 7:00

USEPA REGION 4  
OFFICE OF REGIONAL  
ADMINISTRATION

IN THE MATTER OF: )  
)  
Kroger Limited Partnership II )  
d/b/a Country Oven Bakery ) Docket Number: EPCRA-04-2015-2023(b)  
)  
Respondent. )  
\_\_\_\_\_ )

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 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 pursuant to the Consolidated Rules of Practice Governing 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 Kroger Limited Partnership II d/b/a Country Oven Bakery. Kroger Limited Partnership II is an Ohio limited partnership.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609, and 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 CERCLA and under EPCRA to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004, and the authority under EPCRA by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, 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(b) 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, Kroger Limited Partnership II d/b/a Country Oven Bakery, is an Ohio limited partnership doing business in the Commonwealth of Kentucky.

5. Respondent is a "person" and is the "owner and operator" of a "facility" as those terms are defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 101 (20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), respectively.

6. Respondent's facility is located at 2840 Pioneer Drive, Bowling Green, Kentucky (the "Facility").

## **III. EPA's Allegations of Violations**

### **Violation of Section 103(a) of CERCLA**

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment, and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances, This list, which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ.

9. Respondent was in charge of the Facility on May 7, 2014.

10. Ammonia is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 100 pounds, as specified in 40 C.F.R. § 302.4.

11. On May 7, 2014, a release of ammonia above the RQ at the Facility.

12. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than its RQ at Respondent's Facility, and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

13. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after December 6, 2013. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

#### Violation of Section 304(a) of EPCRA

14. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and the regulations found at 40 C.F.R. § 355 of Subpart C, require the owner or operator of a facility at which hazardous chemicals are produced, used, or stored, to immediately notify the State Emergency Response Commission (SERC), and Local Emergency Planning Committee (LEPC), when there has been a release of a CERCLA hazardous substance, or an EPCRA extremely hazardous substance, in an amount equal to or greater than the RQ. Section 304(a) does not apply to any release that results in exposure to persons solely within the site or sites on which a facility is located.

15. Respondent was the owner or operator of the Facility on May 7, 2014.

16. At all times relevant to this matter, the Facility produced, used, or stored "hazardous chemicals" as defined under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and under 29 C.F.R. § 1910.1200(c).

17. Ammonia is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 C.F.R. Part 355, Appendices A & B.

18. On May 7, 2014, a release of ammonia above the RQ at the Facility. EPA alleges that the release resulted in the potential for exposure to persons beyond the site or sites on which the Facility is located.

19. EPA alleges that Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than the RQ at Respondent's Facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

20. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$37,500 for each violation of Sections 304(a) and (c) of EPCRA, 42 U.S.C. § 11004(a), that occurred after December 6, 2013. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

#### IV. Consent Agreement

21. 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.

22. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

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

24. Respondent certifies that to the best of its knowledge and belief, as of the date of execution of this CAFO, the Facility is currently in compliance with all relevant provisions of Section 103 of CERCLA and Section 304 of EPCRA.

25. Compliance with this CAFO shall resolve the allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA, CERCLA or other applicable laws and regulations.

26. 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 CERCLA and EPCRA.

#### **V. Final Order**

27. Respondent shall pay a CERCLA civil penalty of **FOURTEEN THOUSAND SIX HUNDRED AND TWO DOLLARS (\$14,602)** for the CERCLA violation alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

28. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

**BY MAIL**

U.S. Environmental Protection  
Agency  
Superfund Payments  
Cincinnati Finance Center -  
P.O. Box 979076  
St. Louis, MO 63197-9000

**BY OVERNIGHT**

U.S. Environmental Protection  
Agency  
Government Lockbox 979076  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
(314) 425-1818

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

29. Respondent shall pay an EPCRA civil penalty of **FOURTEEN THOUSAND SIX HUNDRED AND THREE DOLLARS (\$14,603)** for the EPCRA violation alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

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

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

BY MAIL

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

BY OVERNIGHT

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis MO 63101  
(314) 425-1818

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

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

Ms. Kerry Platt  
U.S. EPA, Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

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

32. 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.

33. 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.

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

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

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

Robert W. Bookman  
U.S. EPA, Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9169

37. 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.

THIS SECTION INTENTIONALLY LEFT BLANK

**VI. Effective Date**

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

AGREED AND CONSENTED TO:

Kroger Limited Partnership II d/b/a Country Oven Bakery  
By: KRGP Inc., an Ohio corporation, general partner

By: [Signature] Date: 2/1/16

Name: Rick J. Landrum (Typed or Printed)

Title: Vice President (Typed or Printed)



U.S. Environmental Protection Agency

By: [Signature] Date: 2-12-16  
Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 24<sup>th</sup> day of February, 2016.

[Signature]  
Tanya Floyd  
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 Kroger Limited Partnership d/b/a Country Oven Bakery, Docket Number: EPCRA-04-2015-2023(b), on the parties listed below in the manner indicated:

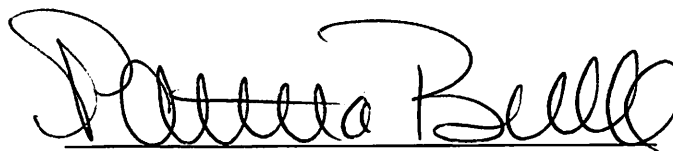
Robert W. Bookman (Via EPA's internal mail)  
Chemical Management  
and Emergency Planning Section  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, GA 30303

Ellen Rouch (Via EPA's internal mail)  
U.S. EPA Region 4  
Office of Regional Counsel  
61 Forsyth Street  
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)  
Senior Attorney  
U.S. EPA Region 4  
Office of Regional Counsel  
61 Forsyth Street  
Atlanta, GA 30303

Kevin N. McMurray (Certified Mail—Return Receipt Requested)  
Frost Brown Todd, LLC  
3300 Great American Tower.  
301 East Fourth Street  
Cincinnati, OH 45202

Date: 2-25-16



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