



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 18 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kendle Wagner
Chief Engineer
Baldinger Bakery LLC
1256 Phalen Boulevard
St. Paul, Minnesota 55106

Re: Baldinger Bakery LLP, St. Paul, Minnesota
Consent Agreement and Final Order **EPCRA-05-2014-0002**

Dear Mr. Wagner:

Enclosed please find one copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA filed original CAFO with the Regional Hearing Clerk on November 18, 2013.

Please have your client pay the EPCRA civil penalty in the amount of \$38,000 in the manner prescribed in paragraph 32, reference your payment with the EPCRA docket number **EPCRA-05-2014-0002**

The payment is due on December 18, 2013.

Please feel free to contact Ruth McNamara at (312) 353-3193 or by e-mail at mcnamara.ruth@epa.gov if you have any questions regarding the enclosed documents.

Please direct any legal questions to Reginald Pallesen, Assistant Regional Counsel, at (312) 886-0555 or by e-mail at pallesen.reginald@epa.gov. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Baldinger Bakery LLP
St. Paul, Minnesota

Respondent.



Docket No. EPCRA-05-2014-0002

Proceeding to Assess a Civil Penalty
Under Section 325(c)(1) of the Emergency
Planning and Community Right-to-Know
Act of 1986

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency, Region 5.

3. Respondent is Baldinger Bakery LLP (Baldinger), a business operating in the State of Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC), and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

11. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

12. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009 and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

13. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 1256 Phalen Boulevard, St. Paul, Minnesota.

15. At all times relevant to this CAFO, Respondent was an employer at the facility.

16. Respondent’s facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

17. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

18. Ammonia is classified as a physical and health hazard.
19. Ammonia CAS# 7664-41-7 is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
20. Ammonia is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).
21. Ammonia CAS# 7664-41-7 has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.
22. During at least one period of time in calendar year 2011, ammonia was present at Respondent’s facility in an amount equal to or greater than the minimum threshold level.
23. OSHA requires Respondent to prepare, or have available, an MSDS for ammonia.
24. Respondent was required to submit to the SERC and fire department on or before March 1, 2012, a completed emergency and hazardous chemical inventory form including ammonia for calendar year 2011.
25. At all times relevant to this CAFO, the Minnesota Department of Homeland Security was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).
26. At all times relevant to this CAFO, the St. Paul Fire Department was the fire department with jurisdiction over Respondent’s facility.
27. As of February 11, 2012, Respondent had not submitted to the SERC and St. Paul Fire Department a completed Emergency and Hazardous Chemical Inventory Form including ammonia for calendar year 2011.
28. Each day that Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including ammonia by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

29. Each day that Respondent failed to submit to the St. Paul Fire Department a completed Emergency and Hazardous Chemical Inventory Form including ammonia by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

30. Complainant has determined that an appropriate civil penalty to settle this action is \$38,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act*, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

31. Within 30 days after the effective date of this CAFO, Respondent must pay a civil penalty in the amount of \$38,000 for the EPCRA violations by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

The comment or description field of the electronic funds transfer must include "In the Matter of Baldinger Bakery LLP" and the docket number of this CAFO. A transmittal letter, stating

Respondent's name, the case title and the case docket, along with a copy of the receipt for the wire transfer, must be sent to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Ruth McNamara
Chemical Emergency Preparedness
and Prevention Section (SC-5J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Reginald A. Pallesen
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

32. This civil penalty is not deductible for federal tax purposes.

33. If Respondent does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

34. Pursuant to 31 C.F.R. §901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

35. This CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

36. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

37. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

38. This CAFO does not affect Respondent's responsibility to comply with EPCRA and CERCLA and other applicable federal, state and local laws and regulations.

39. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

40. The terms of this CAFO bind Respondent and its successors and assigns.

41. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.


42. Each party agrees to bear its own costs and attorney's fees in this action.

43. This CAFO constitutes the entire agreement between the parties.

**In the Matter of: Baldinger Bakery LLP, St. Paul, Minnesota
Docket No.**

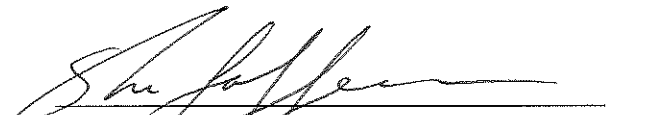
Baldinger Bakery LLP, Respondent

10-28-2013
Date

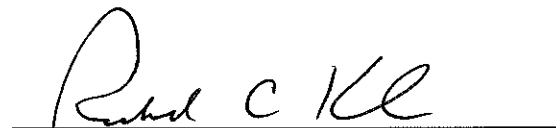

Kendle Wagner
Chief Engineer
Baldinger Bakery LLP

U.S. Environmental Protection Agency, Complainant

11/8/13
Date


Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

11-8-13
Date



Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Baldinger Bakery LLP, St. Paul, Minnesota
Docket No. EPCRA-05-2014-0002

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11-12-13
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5



In the Matter of: Baldinger Bakery LLP, St. Paul, Minnesota
Docket No. EPCRA-05-2014-0002

Certificate of Service

I, Ruth McNamara, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed a copy of the CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Kendle Wagner
Chief Engineer
Baldinger Bakery LLP
1256 Phalen Boulevard
St. Paul, Minnesota 55106



on the 18th day of November, 2013

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5