



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

CERTIFIED MAIL- RETURN RECEIPT REQUESTED: 7001 0360 0003 6674 8155

René L. Rimelspach
Counsel – Commercial Transactions
Legal & Government Affairs
222 Merchandise Mart Plaza, Suite 1300
Chicago, Illinois 60654

Re: ConAgra Foods Packaged Foods, LLC: U.S. EPA Docket No. CAA-06-2017-3356

Dear Ms. Rimelspach:

Enclosed is the fully executed Consent Agreement and Final Order (CAFO) agreed upon by the parties to the above referenced matter. You should have already received an electronic copy of the CAFO. The CAFO becomes final upon filing with the Regional Hearing Clerk, which is indicated by the date stamp.

If you have questions, please do not hesitate to contact me at (214) 665-8151 or by e-mail at moore.nathaniel@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathaniel Moore".

Nathaniel Moore
Assistant Regional Counsel

Enclosure

FILED

2017 APR 27 PM 5: 11

REGIONAL HEARING CLERK
EPA REGION VI

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

IN THE MATTER OF:	§	EPA DOCKET NO.
	§	CAA-06-2017-3356
	§	
CONAGRA FOODS PACKAGED	§	CONSENT AGREEMENT
FOODS, LLC	§	AND FINAL ORDER
RUSSELLVILLE, ARKANSAS	§	
	§	
RESPONDENT	§	
	§	

CONSENT AGREEMENT

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and ConAgra Foods Packaged Foods, LLC (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 is brought by EPA pursuant to sections 113(a)(3)(A) and 113(d)(1)(B) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).

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

4. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement, and waives all defenses, which have been raised or could have been raised to the claims set forth in this CAFO.

5. Full payment of the penalty shall not affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law and shall only resolve respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

6. Respondent consents to the following: issuance of the CAFO hereinafter recited; and the assessment and payment of the stated civil penalty in the amount, and by the method set forth in this CAFO.

II. STATUTORY AND REGULATORY BACKGROUND

7. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

8. Pursuant to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source producing, processing, handling or storing substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, has a general duty to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur.

9. Under Sections §§ 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, the Administrator may issue an order assessing a civil administrative penalty.

10. As adjusted by the 2017 Civil Monetary Penalty Inflation Adjustment Rule (2017 Rule) (82 Fed. Reg. 3633), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$45,268.00 per day of violation for a violation occurring after November 2, 2015 and assessed on or after January 15, 2017.

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines person as an “individual, corporation, partnership, association [. . .] and any officer, agent, or employee thereof.”

12. “Owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source” as:

any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

14. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as “an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.”

15. “Regulated substance” is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in § 68.130.

III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

16. Respondent is a foreign limited liability company incorporated under the laws Delaware and registered to do business in the State of Arkansas.

17. Respondent is a “person” as that term is defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. The facility is a “stationary source” as that term is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

19. Respondent is the “owner or operator” as those terms are defined by section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

20. Respondent owns and operates the facility located at 3100 East Main Street in Russellville, Arkansas.

21. Respondent’s facility is a frozen food processing facility which primarily produces frozen dinners and entrees. As part of this process, Respondent uses ammonia in its plate freezers.

22. Ammonia (anhydrous) is a regulated toxic substance under Section 112(r) of the CAA, 42 U.S.C. § 7412, listed under Table 1 to 40 C.F.R. § 68.130.

23. On May 2, 2016 at approximately 2:35 p.m., a change in position of the stacking trays or plates located in Plate Freezer 1-6 caused the routine horizontality alarm to sound indicating that the plates were askew and out of acceptable specification for operation. Maintenance personnel visually inspected the system components and performed activities consistent with the standard operating procedure to reset the trays. However, the horizontality alarm was not fixed by following the standard operating procedure and the machine was not returned to normal operation.

Personnel observed all equipment components in place and observed some oil seepage around a hydraulic cylinder.

24. On May 2, 2016, at 3:45 p.m., Respondent's employee detected an ammonia odor.

25. Between 2:35 and 3:45 p.m., the weight of the plates and the frame shifted, placing undue stress on the hydraulic equipment mountings. The significant weight load on the hydraulic components caused the bolts securing the equipment to shear off and fail. As a result, this pulled unduly on the refrigeration hoses, containing ammonia, to loosen and rupture.

26. On May 2, 2016, at approximately 4:15 p.m., it was determined that the release of ammonia would exceed 100 pounds and the maintenance manager contacted the hazmat team.

27. On May 2, 2016, at approximately 4:45 p.m., the final valve to Plate Freezer 1-6, was "valved" off, thus isolating the pressure to the unit and ending the release.

28. The immediate area was evacuated, in addition to workers in a nearby area due to increased vapor concentrations of ammonia.

29. Due to the release, Respondent sustained property damage to seven freezer plates and a hydraulic cylinder.

30. Respondent estimated a total release of 1559 pounds of ammonia (anhydrous).

31. The release of chemicals at the facility on May 2, 2016, constituted an "accidental release" as that term is defined by section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

32. Pursuant to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source producing, processing, handling or storing substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, has a general duty to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility,

taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur.

33. Respondent's failure constitutes a violation of the general duty clause in section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

34. Respondent is therefore subject to the assessment of penalties pursuant to sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), for at least one day of violation of the general duty clause of section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1).

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

35. Pursuant to the authority granted in sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the Respondent's business, the economic impact of the penalty on the Respondent's business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation (if any), the economic benefit of noncompliance, the seriousness of the violation, and Respondent's cooperation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is **\$35,600.00**.

36. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty 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 ways: regular U.S. Postal Service mail (including certified mail); overnight mail; or wire transfer.

ConAgra Foods Packaged Foods, LLC
Docket No. CAA-06-2017-3356

For U.S. Postal Service mail, the check 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., FedEx), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines and 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 No. 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 CAA-06-2017-3356 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. The 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:

Tami Sundquist
Enforcement Officer (6EN-AS)
Compliance Assurance and Enforcement Division

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

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received in the Region.

37. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

39. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty

charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. PARTIES BOUND

40. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. RETENTION OF ENFORCEMENT RIGHTS

41. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

42. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

43. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Facility. Furthermore, except as specifically set forth herein, nothing in this CAFO shall be construed to prevent or limit EPA's civil and 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.

44. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the

principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to this CAFO.

D. COSTS

45. 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.

E. EFFECTIVE DATE

46. 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:

4/24/2017
Date


ConAgra Foods Packaged Foods, LLC

FOR THE COMPLAINANT:


4/27/2017
Date


Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division
U.S. EPA Region 6

FINAL ORDER

Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 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 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 civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 4-27-17


Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 27 day of April, 2017, the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 7001 0360 0003 6674 8155

RENÉ L. RIMELSPACH
Counsel – Commercial Transactions
Legal & Government Affairs
222 Merchandise Mart Plaza, Suite 1300
Chicago, Illinois 60654

Date: 4-27-2017



U.S. EPA, Region 6
Dallas, Texas