



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR - 4 2020

REPLY TO THE ATTENTION OF

ELECTRONIC SERVICE
VIA EMAIL

Thomas Braun
Attorney for Dole Packaged Foods, LLC
Steel Rives, LLP
33 South Sixth Street, Suite 4200
Minneapolis, Minnesota 55402

Re: Dole Packaged Foods, LLC, Decatur, Michigan, Consent Agreement and Final Order
Docket No. **EPCRA-05-2020-0008**

Dear Mr. Braun:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on March 4, 2020.

Please have your client pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$60,000 in the manner prescribed in paragraph 56 and reference your check with the docket number **EPCRA-05-2020-0008**.

Your client's payment is due on April 3, 2020.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Puja Lakhani, Associate Regional Counsel, at (312) 353-3190. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

cc: Captain Emmitt McGowan, Chairperson (w/ enclosure)
State Emergency Response Commission
EMHSD/Michigan Department of State Police
Post Office Box 30634
Lansing, Michigan 48909

Michael Young (w/ enclosure)
State Emergency Response Commission
Michigan Department of Environmental Quality
Post Office Box 30457
Lansing, Michigan 48909

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)
)
Dole Packaged Foods, LLC)
Decatur, Michigan,)
)
Respondent.)

Docket No. EPCRA-05-2020-0008
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 Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Dole Packaged Foods, LLC, a California Limited Liability Company doing business in the State of Michigan.
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 the terms of the 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) or safety data sheet (SDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, 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 U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state commissions, local committees, and fire departments in planning for emergencies and makes information on

chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, an MSDS or SDS.

12. 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 C.F.R. § 1910.1200(c).

13. 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.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of 103, EPCRA Section 312. 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 each violation that occurred after March 15, 2004 through January 12, 2009, to \$37,500 per day of violation for each violation that occurred after January 12, 2009 through November 2, 2015. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015), amending 28 U.S.C. § 2461 note, and the implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$53,907 per day of violation for each violation that occurred after November 2, 2015 and for which penalties are assessed on or after August 1, 2016 but before January 15, 2017, to \$54,789 per day of violation that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2017 but before January 15, 2018, to \$55,907 per day of violation for

each violation that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018 but before February 6, 2019, to \$57,317 per day of violation for each violation that occurred after November 2, 2015 and for which penalties are assessed on or after February 6, 2019 but before January 13, 2020, and to \$58,328 per day of violation for each day that occurred after November 2, 2015 and for which penalties are assessed on or after January 13, 2020.

Factual Allegations and Alleged Violations

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

16. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 101 West Bronson Street, Decatur, Michigan (facility).

17. At all times relevant to this Complaint, Respondent was an employer at the facility.

18. 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.

19. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Anhydrous ammonia (CAS #7664-41-7) is classified as a physical or health hazard, a simple asphyxiant, or hazard not otherwise classified.

21. Anhydrous 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).

22. Anhydrous ammonia (CAS #7664-41-7) is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

23. Anhydrous ammonia (CAS #7664-41-7) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

24. Sulfuric acid (CAS #7664-93-9) is classified as a physical or health hazard, or hazard not otherwise classified.

25. Sulfuric acid (CAS #7664-93-9) 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).

26. Sulfuric acid (CAS #7664-93-9) is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

27. Sulfuric acid (CAS #7664-93-9) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

28. Lead (CAS #7439-92-1) is classified as a physical or health hazard, or hazard not otherwise classified.

29. Lead (CAS #7439-92-1) 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).

30. Lead (CAS #7439-92-1) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

31. During at least one period of time in calendar year 2016, anhydrous ammonia, sulfuric acid, and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

32. During at least one period of time in calendar year 2017, anhydrous ammonia, sulfuric acid, and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

33. During at least one period of time in calendar year 2018, anhydrous ammonia, sulfuric acid, and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

34. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including anhydrous ammonia, sulfuric acid, and lead on or before March 1, 2017, for calendar year 2016.

35. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including anhydrous ammonia, sulfuric acid, and lead on or before March 1, 2018, for calendar year 2017.

36. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including anhydrous ammonia, sulfuric acid, and lead on or before March 1, 2019, for calendar year 2018.

37. At all times relevant to this Complaint, the Michigan SERC was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

38. At all times relevant to this Complaint, the Van Buren County LEPC was the LEPC for Van Buren County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

39. At all times relevant to this Complaint, the Decatur-Hamilton Fire Department was the fire department with jurisdiction over the facility.

Count 1 (EPCRA 312/Past Year)

40. Complainant incorporates paragraphs 1 through 39 of this CAFO as if set forth in this paragraph.

41. On October 28, 2019, Respondent submitted a revised Tier II form to the SERC, LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form that included anhydrous ammonia, sulfuric acid, and lead for calendar year 2016.

42. Each day Respondent failed to submit to the LEPC and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead, by March 1, 2017, for calendar year 2016, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 2 (EPCRA 312/Past Year)

43. Complainant incorporates paragraphs 1 through 39 of this CAFO as if set forth in this paragraph.

44. On October 28, 2019, Respondent submitted a revised Tier II form to the SERC, LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form that included anhydrous ammonia, sulfuric acid, and lead, for calendar year 2017.

45. Each day Respondent failed to submit to the LEPC and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead by March 1, 2018, for calendar year 2017, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 3 (EPCRA 312/SERC)

46. Complainant incorporates paragraphs 1 through 39 of this CAFO as if set forth in this paragraph.

47. On September 3, 2019, Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead, for calendar year 2018.

48. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead, by March 1, 2019, for calendar year 2018 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 4 (EPCRA 312/LEPC)

49. Complainant incorporates paragraphs 1 through 39 of this CAFO as if set forth in this paragraph.

50. On September 6, 2019, Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead, for calendar year 2018.

51. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead, by March 1, 2019, for calendar year 2018, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 5 (EPCRA 312/fire department)

52. Complainant incorporates paragraphs 1 through 39 of this CAFO as if set forth in this paragraph.

53. On October 29, 2019, Respondent submitted to the Decatur-Hamilton Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead, for calendar year 2018.

54. Each day Respondent failed to submit to the Decatur-Hamilton Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead, by March 1, 2019, for calendar year 2018, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

55. Complainant has determined that an appropriate civil penalty to settle this action is \$60,000 for the EPCRA violations. 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, effect on ability to continue to do business, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. 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).

56. Within 30 days after the effective date of this CAFO, Respondent must pay a \$60,000 civil penalty for the EPCRA violations. Respondent must pay the penalty 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
SWIFT address: FRNYUS33

In the comment or description field of the electronic funds transfer, state the following: Dole Packaged Foods, LLC and the docket number of this CAFO.

For Automated Clearinghouse (ACH) also known as REX or remittance express, by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state the following: Dole Packaged Foods, LLC and the docket numbers of this CAFO.

57. Respondent must send a copy of the payment and include a transmittal letter to:

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

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

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

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

59. If Respondent does not timely pay the civil penalty, U.S. 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.

60. 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

61. The parties consent to service of this CAFO by email at the following valid email addresses: lakhani.puja@epa.gov (for Complainant) and thomas.braun@stoel.com Attorney (for Respondent):

62. Full payment of the penalty and compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

64. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

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

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

68. 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.


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

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

In the Matter of: **Dole Packaged Foods, LLC, Decatur, Michigan**
Docket No. EPCRA-05-2020-0008

Dole Packaged Foods, LLC, Respondent


2/27/20
Date



Timothy J. Oswald
Senior Vice President-General Counsel
Dole Packaged Foods, LLC

U.S. Environmental Protection Agency, Complainant

3/03/2020
Date



Jason El-Zein
Chief, Emergency Response Branch I
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

3/3/2020
Date



Douglas Ballotti
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Dole Packaged Foods, LLC, Decatur, Michigan
Docket No. EPCRA-05-2020-0008

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.

3/4/2020
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the Matter of: Dole Packaged Foods, LLC, Decatur, Michigan
Docket No. EPCRA-05-2020-0008

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on March 4, 2020 in the following manner to the addressees:

Copy by E-Mail

Attorney for Respondent: Thomas Braun
Attorney for Dole Packaged Foods, LLC
Stoel Rives, LLP
33 South Sixth Street, Suite 4200
Minneapolis, Minnesota 55402
Thomas.braun@stoel.com


Copy by E-mail to

Attorney for Complainant: Puja Lakhani
Lakhani.puja@epa.gov

Copy by E-mail to

Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: March 4, 2020


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5