



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 15 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Gary Sheehan
Kilpatrick Stockton, LLP
1100 Peachtree Street
Atlanta, Georgia 30309

SUBJECT: Sunset Farm Foods, Inc.
Consent Agreement and Final Order
Docket No. EPCRA-04-2008-2038(b)

Dear Mr. Sheehan:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) matter (Docket No. EPCRA-04-2008-2038(b)) involving Sunset Farm Foods, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the Environmental Protection Agency (EPA). If you have any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Ms. Erika White at (404) 562-9195.

Sincerely,

A handwritten signature in black ink, appearing to read "Caron B. Falconer".

Caron B. Falconer
Chief, EPCRA Enforcement Section

Enclosures

Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent is a corporation doing business in the State of Georgia.
5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
6. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
7. Respondent's facility is located at 1201 Madison Hwy, Valdosta, Georgia.
8. Respondent is an "owner or operator" of the facility as that term is defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).
9. 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 initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended. The list is codified at 40 CFR Part 302.
10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 CFR § 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 reportable quantity (RQ).
11. Respondent was in charge of the facility during the relevant period described below.
12. Anhydrous 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 CFR § 302.4.
13. On August 20, 2007, Respondent had a release of anhydrous ammonia above the RQ at the facility.
14. 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 anhydrous 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.

15. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 CFR Part 19, EPA may assess a penalty not to exceed \$32,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred on or after March 15, 2004. 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 an Administrative Order.

16. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) and 40 CFR § 355.40, 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 extremely hazardous substance in an amount equal to or greater than the reportable quantity.

17. Respondent was the owner or operator of the facility during the relevant period, described below.

18. 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 CFR § 1910.1200(c).

19. Anhydrous ammonia is an extremely hazardous substance as that term is defined by EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 CFR Part 355.20.

20. On August 20, 2007, Respondent had a release of anhydrous ammonia above the RQ at the facility.

21. 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 anhydrous 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.

22. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 CFR Part 19, EPA may assess a penalty of not more than \$32,500 for each violation of Section 304(a) that occurred on or after March 15, 2004. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

III. Consent Agreement

23. 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.

24. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

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

26. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

27. Respondent certifies that as of the date of its execution of this CAFO, to the best of its knowledge, it is in compliance with all relevant requirements of EPCRA and CERCLA.

28. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

29. 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.

IV. Final Order

30. Respondent is assessed a civil penalty of ONE THOUSAND SEVEN DOLLARS (\$1,007) for resolution of the alleged CERCLA violation which shall be paid within thirty (30) days of the effective date of this CAFO.

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

BY MAIL

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

BY OVERNIGHT

U.S. Bank
Attention: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

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

32. Respondent is assessed a civil penalty of TWO THOUSAND FIFTEEN DOLLARS (\$2,015) resolution of the alleged EPCRA violation which shall be paid within thirty (30) days of the effective date of this CAFO.

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

BY MAIL

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

BY OVERNIGHT

U.S. Bank
Attention: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

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

34. 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 the following addresses:

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

Erika L. White
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, GA 30303

35. Respondent shall undertake and complete, in accordance with the approved SEP in this matter, the following Pollution Reduction project based on the schedule below. Respondent shall purchase and install an Ammonia Refrigeration Monitoring System at the facility located at 1201 Madison Hwy, Valdosta, GA. Sunset Farm Foods shall expend not less

than NINE-THOUSAND AND SIXTY-SEVEN DOLLARS (\$9,067) for the purchase and installation of the Ammonia Refrigeration System. The aforementioned system shall monitor the following existing equipment for run status and alarm/failure status:

- (6) Reciprocating Compressors
- (1) Screw Compressor
- (2) Evaporative Condensers
- (3) Vessels
- (1) Transfer system

The following hardware and instrumentation shall also be installed:

- (1) FES GForce Panel
- (2) Pressure transducers, 0-100 psia
- (1) Pressure transducer, 0-500 psig

The following is the schedule by which the SEP shall be completed:

- System Survey within 2 weeks of the effective date of this CAFO
- Approval Drawings within 4 weeks of the effective date of this CAFO
- Panel Shipment within 12 weeks days of the effective date of this CAFO
- Field wiring within 15 weeks of the effective date of this CAFO
- Commissioning within 18 weeks of the effective date of this CAFO

In order for Respondent to receive credit for the SEP, it must fully and timely complete the SEP project. If Respondent does not fully and timely complete the project, it shall be required to pay a stipulated penalty pursuant to paragraph 40 herein; irrespective of the amount of money the Respondent has spent.

36. Respondent agrees that EPA may inspect the facility at any time in order to confirm the SEP is being undertaken in conformity with the representations made herein.

37. No later than thirty (30) calendar days after the completion of the project, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Erika L. White at the address provided above. The Report shall include the following:

- (a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
- (b) copies of appropriate documentation, including invoices and receipts, showing that the project described in paragraph 35 was fully paid for.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

38. For Federal Income Tax purposes, Sunset Farm Foods agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

39. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

40. Any public statement, oral or written, by Respondent making any reference to the 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 304 of the Emergency Planning and Community Right-to-Know Act of 1986."

41. If Respondent fails to timely and fully complete any part of the SEP, Respondent shall pay to the United States a stipulated penalty in the amount of \$11,334.

For purposes of this paragraph, whether Respondent has fully and timely completed the SEP and whether Respondent made a good faith effort to do so shall be in the sole discretion of EPA.

42. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

43. Respondent shall pay any stipulated penalties that accrue under this CAFO within fifteen (15) calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

44. For the purposes of state and federal income taxation, 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.

45. 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 date of entry of the 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.

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

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

48. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Caron Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-8451

48. 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.

V. Effective Date

47. 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:

Sunset Farm Foods, Inc.

By: Thomas G. Carroll Date: 7/3/08
 Name: Thomas G. Carroll Title: Sec/Treas

U.S. Environmental Protection Agency

By: Beverly H. Banister Date: 6/24/08
 Beverly H. Banister, Director
 Air, Pesticides & Toxics
 Management Division
 Region 4

APPROVED AND SO ORDERED this 14th day of July, 2008.

Susan B. Schub
 Susan B. Schub
 Regional Judicial Officer

CERTIFICATE OF SERVICE

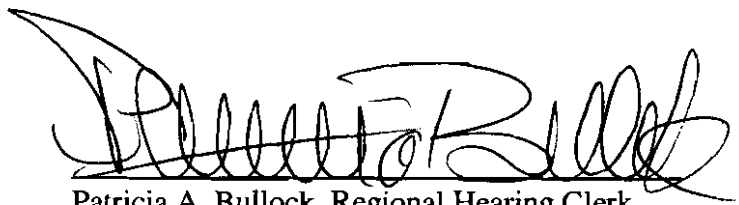
I hereby certify that I have this day served a true and correct copy of the foregoing
Consent Agreement and Final Order, In the Matter of Sunset Farm Foods, Docket
No. EPCRA 04-2008-2038(b), on the parties listed below in the manner indicated:

Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

Jennifer Lewis (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Mr. Gary Sheehan (Certified Mail - Return Receipt Requested)
Kilpatrick Stockton, LLP
100 Peachtree Street
Atlanta, GA 30309

Date: 7-15-08



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi J Wilson on 7/9/08
(Name) (Date)

in the OEH at (404) 562-9524
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Sunset Farms Foods Tex.
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ CERCLA - \$1,007 EPCKA \$2,015
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: EPCKA 01 2008 2038(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

- A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:
- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |
- B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:
- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |