

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029

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In the Matter of:)
)
Conopco, Inc.) U.S. EPA Docket No: EPCRA-03-2009-
d/b/a Unilever Ice Cream) 0045
700 Sylvan Avenue)
Englewood Cliffs, New Jersey 07632)
)
Respondent)
)
)
)
Unilever Ice Cream)
1100 Frederick Street)
Hagerstown, Maryland 21740) CONSENT AGREEMENT AND
) FINAL ORDER
)
Facility.)
)
)
)

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-to-Know Act, as amended, ("EPCRA"), 42 U.S.C. § 11045, and under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, ("Part 22"). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division. EPA Region III ("Complainant").

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement ("CA") and Final Order (referred to collectively herein as "CAFO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.

FINDINGS OF FACT

1. Conopco, Inc. d/b/a Unilever Ice Cream (“Respondent”) is a New York corporation, with its principal place of business located at 700 Sylvan Avenue, Englewood Cliffs, New Jersey 07632.

2. As a corporation, Respondent is a “person” as defined by Section 320(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.

3. At all times relevant to this CAFO, Respondent has owned, within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022, an ice cream manufacturing facility located at 1100 Frederick Street, Hagerstown, Maryland, (“Facility”), with an SIC Code of 2024 (ice cream and frozen desserts).

4. At all times relevant to this CAFO, Unilever Ice Cream (formerly known as Good Humor-Breyers Ice Cream Company) has operated the facility.

5. The Facility is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.

6. On July 16, 2008, EPA conducted an EPCRA Sections 302-312 Inspection of the Facility.

7. The state emergency response commission (“SERC”) for the Facility is, and has been at all times relevant to this CAFO, the Maryland Department of the Environment, located at 1800 Washington Boulevard, Suite 540, in Baltimore, Maryland.

8. The local emergency planning committee (“LEPC”) for the Facility is, and has been at all times relevant to this CAFO, the Washington County Local Emergency Planning Committee, located at 33 West Washington Street in Hagerstown, Maryland.

9. The local fire department for the Facility is, and has been at all times relevant to this CAFO, the Hagerstown Fire Department, located at 25 West Church Street, in Hagerstown, Maryland.

10. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility required to prepare or have available a Material Safety Data Sheet (“MSDS”) for a hazardous chemical in accordance with the Occupational Safety and Health Administration (“OSHA”) Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous chemical (“EHS”)) is present at any one time during a calendar year in a quantity equal to or greater than

its applicable minimum threshold for reporting (“MTL”) or threshold planning quantity (“TPQ”), established by 40 C.F.R. § 370.10(a), to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form (“Chemical Inventory Form”) identifying the hazardous chemical and providing the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

11. Sulfuric acid (CAS No. 7664-93-9) is a “hazardous chemical” and an EHS as defined by Section 312 of EPCRA, 42 U.S.C. § 11022, 40 C.F.R. § 370.66, and 29 C.F.R. § 1910.1200(c).

12. Pursuant to 40 C.F.R. § 370.10(a)(1), the MTL for sulfuric acid is 500 pounds.

13. At all times relevant to this CAFO, Respondent was a person engaged in a business where chemicals were used, distributed, or produced for use or distribution.

14. At all times relevant to this CAFO, Respondent was an “employer” as that term is defined at 29 U.S.C. § 1910.1200(c).

15. At all times relevant to this CAFO, Respondent was required to have MSDSs at its Facility for each hazardous chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).

16. At all times relevant to this CAFO, Respondent was the owner or operator of a facility that is required to prepare or have available MSDSs for hazardous chemicals under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

**EPA’S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007 – SERC**

17. The findings of fact contained in paragraphs 1 through 16 of this CAFO are incorporated by reference herein as though fully set forth at length.

18. During calendar year 2007, Respondent had present at its Facility 2,400 pounds of sulfuric acid, a quantity greater than its MTL.

19. By March 1, 2008, Respondent was required to submit to the SERC, LEPC, and the local fire department Chemical Inventory Forms identifying sulfuric acid as present at the Facility during calendar year 2007 in quantities greater than its MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the chemical.

20. On or about February 20, 2008, Respondent submitted a Chemical Inventory Form to the SERC that failed to list sulfuric acid as present at the Facility in a quantity greater

than its MTL during calendar year 2007.

21. Respondent failed to submit to the SERC by March 1, 2008, a complete and accurate Chemical Inventory Form for the Facility for calendar year 2007.

EPA'S CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007 – SERC

22. Respondent's failure to submit a complete and accurate Chemical Inventory Form for the Facility to the SERC by March 1, 2008, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

EPA'S FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007 – LEPC

23. The findings of fact contained in paragraphs 1 through 22 of this CAFO are incorporated by reference herein as though fully set forth at length.

24. On or about February 20, 2008, Respondent submitted a Chemical Inventory Form to the LEPC that failed to list sulfuric acid as present at the Facility in a quantity greater than its MTL during calendar year 2007.

25. Respondent failed to submit to the LEPC by March 1, 2008, a complete and accurate Chemical Inventory Form for the Facility for calendar year 2007.

EPA'S CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007 – LEPC

26. Respondent's failure to submit a complete and accurate Chemical Inventory Form for the Facility to the LEPC by March 1, 2008, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

EPA'S FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007 – FIRE DEPARTMENT

27. The findings of fact contained in paragraphs 1 through 26 of this CAFO are incorporated by reference herein as though fully set forth at length.

28. On or about February 27, 2008, Respondent submitted a Chemical Inventory

Form to the local fire department that failed to list sulfuric acid as present at the Facility in a quantity greater than its MTL during calendar year 2007.

29. Respondent failed to submit to the local fire department by March 1, 2008, a complete and accurate Chemical Inventory Form for the Facility for calendar year 2007.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2006**

30. The findings of fact contained in paragraphs 1 through 29 of this CAFO are incorporated by reference herein as though fully set forth at length.

31. During calendar year 2006, Respondent had present at its Facility 2,400 pounds of sulfuric acid, a quantity greater than its MTL.

32. By March 1, 2007, Respondent was required to submit to the SERC, LEPC, and the local fire department, Chemical Inventory Forms identifying sulfuric acid as present at the Facility during calendar year 2006 in a quantity greater than its MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the chemical.

33. On or about February 27, 2007, Respondent submitted Chemical Inventory Forms to the SERC, LEPC, and the local fire department, which failed to list sulfuric acid as present at the Facility in a quantity greater than its MTL during calendar year 2006.

34. Respondent failed to submit to the SERC, LEPC, and the local fire department by March 1, 2007, complete and accurate Chemical Inventory Forms for the Facility for calendar year 2006.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2006**

35. Respondent's failure to submit to the SERC, LEPC, and the local fire department by March 1, 2007, complete and accurate Chemical Inventory Forms for the Facility for calendar year 2006, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2005**

36. The findings of fact contained in paragraphs 1 through 35 of this CAFO are incorporated by reference herein as though fully set forth at length.

37. During calendar year 2005, Respondent had present at its Facility 2,400 pounds of sulfuric acid, a quantity greater than its MTL.

38. By March 1, 2006, Respondent was required to submit to the SERC, LEPC, and local fire departments, Chemical Inventory Forms identifying sulfuric acid as present at the Facility during calendar year 2005 in a quantity greater than its MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the chemical.

39. On or about February 27, 2006, Respondent submitted Chemical Inventory Forms to the SERC, LEPC, and local fire departments, which failed to list sulfuric acid as present at the Facility in a quantity greater than its MTL during calendar year 2005.

40. Respondent failed to submit to the SERC, LEPC, and the local fire department by March 1, 2006, complete and accurate Chemical Inventory Forms for the Facility for calendar year 2005.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2005**

41. Respondent's failure to submit to the SERC, LEPC, and the local fire department by March 1, 2006, complete and accurate Chemical Inventory Forms for the Facility for calendar year 2005, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

42. In full and final settlement and resolution of all allegations referenced in the foregoing EPA's findings of Fact and EPA's Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of Section 312 of EPCRA, 42 U.S.C. § 11022, set forth above, in the amount of \$19,028.10. Respondent consents to the issuance of this Consent Decree and consents for purposes of settlement to the payment of the civil penalty.

PAYMENT TERMS

43. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CAFO, the Respondent must pay the civil penalty, totaling \$19,028.10, no later than thirty (30) days after the effective date of the Final Order (the "final due date") by one of the following methods:

a. cashier's check for the EPCRA penalty, payable to "United States Treasury", in care of:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

If the check is sent via overnight mail, it should be sent to:

US Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

The Respondent shall note on the penalty-payment check the title and docket number of this case.

b. via EFT (wire transfer) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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", or

c. via Automated Clearinghouse (ACH) to:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006

CTX Format

44. The Respondent shall submit a copy of the check, or verification of wire transfer or ACH to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

45. The EPCRA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the following: the nature, circumstances, extent and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit (if any) resulting from the violation, and such matters as justice may require. The penalty is consistent with 40 C.F.R. Part 19 and the *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, (September 30, 1999)*.

46. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to 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, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions in this CAFO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

47. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. 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).

48. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

49. A penalty charge of six percent per year will be assessed monthly on any portion

of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

50. Failure by the Respondent to pay the penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

51. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

52. Respondent agrees not to contest the Environmental Protection Agency's jurisdiction with respect to the execution or enforcement of the CAFO.

53. For the purpose of this proceeding, Respondent neither admits nor denies factual allegations set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

54. For purposes of this proceeding, Respondent expressly waives its right to a hearing and to appeal this Final Order under Section 325 of EPCRA, 42 U.S.C. § 11045.

55. The provisions of the CAFO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

56. The CAFO does not constitute a waiver, suspension or modification of the requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, or any regulations promulgated thereunder.


57. This CAFO is a complete and final settlement of all civil and administrative claims and causes of action set forth in this CAFO for alleged violations of Section 312 of EPCRA, 42 U.S.C. § 11022. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CAFO shall be construed to limit the United States' authority to pursue criminal sanctions. Nothing in this agreement shall

be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanction available by virtue of Respondent's violation of this agreement, other statutes and regulations, or any other applicable provision of law.

58. Each party to this action shall bear its own costs and attorney's fees.

59. By entering into this CAFO, the Respondent does not admit any liability for the civil claims alleged herein.

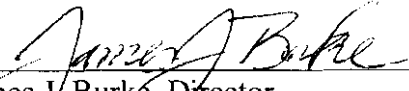
FOR CONOPCO, INC. d/b/a UNILEVER ICE CREAM


Name: Kenneth J. Wells

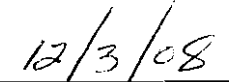
11/24/08
DATE

Title: Supply Leader
Unilever Ice Cream

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



James J. Burke, Director
Hazardous Site Cleanup Division



DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029

In the Matter of:)	
)	
Conopco, Inc.)	U.S. EPA Docket No: EPCRA-03-2009-
d/b/a Unilever Ice Cream)	0045
700 Sylvan Avenue)	
Englewood Cliffs, New Jersey 07632,)	
)	
Respondent)	Proceedings Pursuant to Section 312
)	and 325 of the Emergency Planning and
Unilever Ice Cream)	Community Right-to-Know Act, as 1100
Frederick Street)	amended, 42 U.S.C. §§ 11022 and 11045
Hagerstown, Maryland 21740,)	
)	
Facility)	

FINAL ORDER

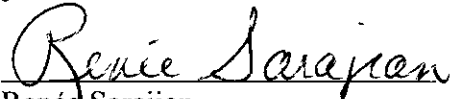
Pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act, as amended, ("EPCRA"), 42 U.S.C. § 11045, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 12/10/08


Renée Sarajian
Regional Judicial Officer
EPA, Region III