



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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In the Matter of)
)
Sunopta Consumer Products Group)
A Division of Sunopta Foods, Inc.)
2100 Delaware Avenue)
Santa Cruz, California 95060,)
)
Respondent.)
)
Sunopta Food Solutions)
7108 Daniels Road)
Allentown, Pennsylvania 18106,)
)
Facility.)
)

U.S. EPA Docket No.: EPCRA-03-2013-0199

Proceedings Pursuant to Sections 304 and 325 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11004 and 11045

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of EPA by Section 325 of the Emergency Planning and Community Right-to-Know Act ("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/Termination 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 and Final Order (referred to collectively herein as "CA/FO") 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 CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(7) and 22.1(a)(8).

2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).

3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Consent Agreement.

4. With the exception of Paragraph 3, above, for the purpose of this proceeding, Respondent neither admits nor denies the factual allegations or conclusions of law set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

FACTUAL ALLEGATIONS

5. Sunopta Consumer Products Group ("Respondent") is a division of Sunopta Foods, Inc. a Delaware corporation, with its principal place of business located at 7108 Daniels Drive in Allentown, Pennsylvania.

6. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and its regulations, 40 C.F.R. § 355.61.

7. At all times relevant to this CAFO, Respondent has been the operator of the Sunopta Food Solutions food processing facility located at 7108 Daniels Drive in Allentown, Pennsylvania ("Facility"), within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004.

8. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and its regulations, 40 C.F.R. § 355.61.

9. On April 8, 2013, EPA representatives conducted an inspection of the Facility to determine Respondent's compliance with Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9603, and Sections 302-312 of EPCRA, 42 U.S.C. § 11002-11012.

10. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the 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 to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

11. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances ("EHSs") and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be

reported under Section 304(a) through (c) of EPCRA, 42 U.S.C. § 11004(a) through (c), (“Reportable Quantity” or “RQ”). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.

12. The State Emergency Response Commission (“SERC”) for the Facility for purposes of emergency release reporting is, and at all times relevant to this CA/FO has been, the Pennsylvania Emergency Management Agency, located at 2605 Interstate Drive in Harrisburg, Pennsylvania.

13. The Local Emergency Planning Committee (“LEPC”) for the Facility is, and at all times relevant to this CA/FO has been, Lehigh County Emergency Services, Office of Emergency Management, located at 640 Hamilton Street, 8th Floor in Allentown, Pennsylvania.

14. At all times relevant to this CA/FO, the Facility was a facility at which a hazardous chemical was produced, used or stored.

15. Beginning on or about September 17, 2012, an estimated 450 pounds of anhydrous ammonia, Chemical Abstracts Service (“CAS”) Registry No. 7664-41-7, was released from the Facility (the “Release”).

16. The release of anhydrous ammonia spread outside Facility boundaries.

**FACTUAL ALLEGATIONS RELATED TO THE VIOLATION
OF SECTION 304(a) AND (b) OF EPCRA – SERC**

17. The factual allegations contained in Paragraphs 5 through 16 of this CA/FO are incorporated by reference herein as though fully set forth at length.

18. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored to notify the SERC immediately following a release of a hazardous substance in a quantity equal to or exceeding the RQ for the hazardous substance.

19. The chemical anhydrous ammonia is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, and an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61, with an RQ of 100 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B, and 40 C.F.R. § 302.4.

20. Respondent first became aware that the Release was occurring at approximately 3:35 a.m. on September 17, 2012. The release was terminated at or before approximately 7:35 a.m.

21. The Release required immediate notification to the SERC pursuant to Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and 40 C.F.R. Part 355, Subpart C.

22. Respondent did not notify the SERC of the Release. However, on September 17, 2012, Respondent notified the Pennsylvania Department of Environmental Protection (“PADEP”), which is not the SERC for the Facility, of the Release.

23. Respondent failed to immediately notify the SERC of the Release of anhydrous ammonia as soon as Respondent knew that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding its RQ, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC**

24. Respondent’s failure to notify the SERC immediately of the Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

**FACTUAL ALLEGATIONS RELATED TO THE VIOLATION
OF SECTION 304(c) OF EPCRA – SERC**

25. The factual allegations contained in Paragraphs 5 through 24 of this CA/FO are incorporated by reference herein as though fully set forth at length.

26. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, that, when there has been a release of a hazardous substance in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility must provide a written follow-up report regarding the release to the SERC as soon as practicable.

27. The Release constitutes a release of a hazardous substance in a quantity equal to or exceeding its RQ requiring immediate notification of the SERC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C, and, consequently, requiring submission of a written follow-up report to the SERC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

28. Respondent did not provide a written follow-up report regarding the Release to the SERC, as required by Section 304(c) of EPCRA, as implemented by 40 C.F.R. Part 355, Subpart C. However, Respondent provided a written follow-up report regarding the Release to PADEP, which is not the SERC.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 304(c) OF EPCRA – SERC**

29. Respondent's failure submit a follow-up report to the SERC for the Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

**FACTUAL ALLEGATIONS RELATED TO THE VIOLATION
OF SECTION 304(c) OF EPCRA – LEPC**

30. The factual allegations contained in Paragraphs 5 through 29 of this CA/FO are incorporated by reference herein as though fully set forth at length.

31. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, that, when there has been a release of a hazardous substance or an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility must provide a written follow-up report regarding the release to the LEPC as soon as practicable.

32. The Release constitutes a release of a hazardous substance in a quantity equal to or exceeding its RQ requiring immediate notification of the LEPC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C, and, consequently, requiring submission of a written follow-up report to the LEPC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

33. Respondent did not provide a written follow-up report regarding the Release to the LEPC, as required by Section 304(c) of EPCRA, as implemented by 40 C.F.R. Part 355, Subpart C. However, Respondent provided a written follow-up report regarding the Release to the local fire marshal, who is not the LEPC.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 304(c) OF EPCRA – LEPC**

34. Respondent's failure to submit a follow-up report to the LEPC is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

SETTLEMENT

35. In full and final settlement and resolution of all allegations referenced in the foregoing findings of fact and 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 304(a) and (b) of EPCRA, 42 U.S.C.

§ 11004(a) and (b), and Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), set forth above, in the amount of \$19,049.

36. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

PAYMENT TERMS

37. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the civil penalty of \$19,049 no later than thirty (30) days after the effective date of the Final Order (the "Final Due Date") by either cashier's check, certified check, or electronic wire transfer, as set forth in the following paragraphs.

38. Payment of the civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, EPCRA-03-2013-0199;
- b. All checks shall be made payable to United States Treasury;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell (513-487-2044)

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed 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

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX /Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

45. Respondent shall submit copies of the check, or verification of wire transfer or ACH, to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

46. The 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).

47. 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 CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

48. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this fully executed CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties 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).

49. 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 penalties remain unpaid.

50. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain 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).

51. Failure by the Respondent to pay the CERCLA civil penalty and the EPCRA civil 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 109 of CERCLA, 42 U.S.C. § 9609, and 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

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

53. The provisions of the CA/FO 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.

54. This CA/FO resolves only those civil claims which are alleged herein. 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 CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

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

Sunopta Food Solutions

EPA Docket No. EPCRA-03-2013-0199

FOR SUNOPTA CONSUMER PRODUCTS GROUP
A DIVISION OF SUNOPTA FOODS, INC.



Cyrus Shunk


9-30-13
DATE

Plant Operations Manager

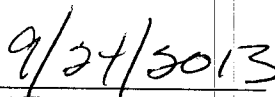
Sunopta Food Solutions

EPA Docket No. EPCRA-03-2013-0199

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Kathryn A. Hodgkiss, Acting Director
Hazardous Site Cleanup Division



DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of)

U.S. EPA Docket No.: EPCRA-03-2013-0199

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A Division of Sunopta Foods, Inc.)
2100 Delaware Avenue)
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Respondent.)

Sunopta Food Solutions)
7108 Daniels Road)
Allentown, Pennsylvania 18106,)

Facility.)

Proceedings Pursuant to Sections 304 and 325 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11004 and 11045

FINAL ORDER

Pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 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 pay \$19,049 and otherwise 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.

Renée Sarajian

Renée Sarajian
Regional Judicial Officer
EPA, Region III

9/25/13
DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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Sunopta Consumer Products Group)	
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2100 Delaware Avenue)	
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Sunopta Food Solutions)	Proceedings Pursuant to Sections
7108 Daniels Road)	304 and 325 of the Emergency
Allentown, Pennsylvania 18106,)	Planning and Community Right-
)	to-Know Act, 42 U.S.C. §§ 11004
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)	

CERTIFICATE OF SERVICE

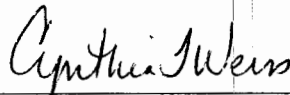
I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via certified mail, return receipt requested

Kevin Johnson, Esquire
Stoel Rives LLP
33 South 6th Street, Suite 4200
Minneapolis, MN 55402

SEP 25 2013

Date


Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel