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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

New Docket #: EPCRA-10-2014-0019

IN THE MATTER OF:)
)
Darigold, Inc.)
)
Portland, Oregon)
)
)
Respondent.)
_____)

Old Docket #: EPCRA-10-2013-0157

CONSENT AGREEMENT AND FINAL
ORDER

I. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 109 of CERCLA and Section 325 of EPCRA, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment

of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues and Darigold, Inc. (“Respondent”) hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18, issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 has been delegated the authority to sign consent agreements between EPA and the party against whom an administrative penalty for violations of Section 103 of CERCLA and Section 304 of EPCRA is proposed to be assessed pursuant to Section 109 of the CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

2.3. Respondent owns and operates a facility in Portland, Oregon, located at 2720 SE 6th Ave (the “Facility”).

2.4. The Facility produces ultra-pasteurized milk products in containers that are one-half gallon and smaller.

2.5. A concise statement of the factual basis for alleging violations of CERCLA and EPCRA, together with specific references to the provisions of the statutes and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Respondent is a corporation incorporated in the State of Washington.

3.2. Under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), “person” means, among other things, any firm or commercial entity.

3.3. Under Section 101(94) of CERCLA, 42 U.S.C. § 9601(9), “facility” means, among other things, any building, structure, installation, storage container, equipment, or any site or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located.

3.4. Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), “facility” means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled, or under common control with, such person).

3.5. Under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

3.6. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires the person in charge of a facility 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 in an amount equal to or greater than the reportable quantity (“RQ”).

3.7. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), requires that if a facility at which hazardous chemicals are produced, used, or stored releases a reportable quantity

(RQ) of an extremely hazardous substance and the release requires, or occurred in a manner that would require, notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility must immediately notify the State Emergency Response Commission (“SERC”) of any state likely to be affected by the release.

3.8. Chlorine is a CERCLA “hazardous substance” listed in 40 C.F.R. Part 302, Table 302.4. The RQ for Chlorine is 10 pounds. Chlorine is also an “extremely hazardous substance” under Section 302 of EPCRA, 42 U.S.C. § 11002; it is listed as such in 40 C.F.R. Part 355, Appendix A.

3.9. On May 30, 2012, a truck driver employed by an outside vendor arrived at the Facility to off-load a nitric acid and phosphoric acid-based solution. The driver improperly connected the hose from the truck to a tank containing sodium hydroxide and sodium hypochlorite, resulting in a violent chemical reaction and the release of approximately 166 pounds of Chlorine gas into the environment. Respondent notified the local fire Department at 10:31 a.m.

3.10. Respondent failed to immediately notify the NRC of the release of Chlorine from the Facility, and did not contact the NRC until 11:29 a.m.

3.11. Respondent also failed to immediately notify the SERC of the release of Chlorine from the Facility, and did not contact the SERC until 11:19 a.m.

3.12. Under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045, EPA may assess a civil penalty for each day of alleged violation of Section 103 of CERCLA and Section 304 of EPCRA, 42 U.S.C § 11004.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.9., below, each party shall bear its own costs in bringing or defending this action.

4.6. Based on Respondent's willingness to settle this matter without litigation, the nature of the violations, and other relevant factors, and in accordance 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*, EPA has determined that an appropriate penalty to settle this action is \$42,496, \$21,248 for the alleged CERCLA violation and \$21,248 for the alleged EPCRA violation.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.6. above within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check payable as indicated and mailed to the addressee below:

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

Respondent shall note on the check the title and docket number of this case. Respondent also may make the penalty payment by wire transfer or credit card in accordance with instructions provided by EPA. Respondent shall submit a photocopy of the checks, or documentation of the wire transfer described above to the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Suite 900
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Suzanne Powers
U.S. Environmental Protection Agency
Region 10
Washington Operations Office
300 Desmond Drive S.E., Suite 102
Lacey, Washington 98503

4.9. If Respondent fail to pay the penalty assessed by this CAFO by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action under CERCLA Section 109(a)(4), 42 U.S.C. § 9609(a)(4), and EPCRA Section 325(f), 42 U.S.C. § 11045(f), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.10. The penalty described in Paragraph 4.6., including any additional costs incurred under Paragraph 4.9., represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.12. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

4.13. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

FOR DARIGOLD, INC.


Signature

Dated: 9/30/2013

Print Name: Steven P. Rowe

Title: SVP and General Counsel

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10


Edward J. Kowalski, Director
Office of Compliance and Enforcement

Dated: 10/31/2013

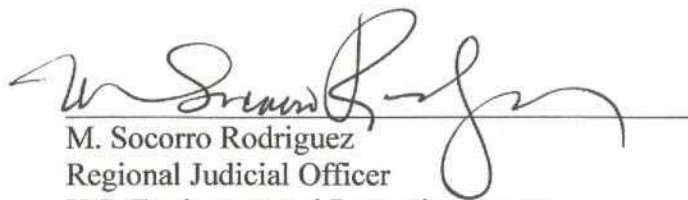
V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to CERCLA and EPCRA for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall 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 CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations and permits issued thereunder.

This Final Order shall become effective upon filing.

SO ORDERED this 8th day of November, 2013.



M. Socorro Rodriguez
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: Darigold, Inc., Docket No. EPCRA-10-2013-0157**, was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Robert Hartman
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Robert Chadwell
MCKAY CHADWELL, PLLC
1601 One Union Square
600 University Street
Seattle, WA 98101

8th day of Nov. 2013 Candace H. Smith
Dated

Candace H. Smith
Regional Hearing Clerk
EPA Region 10