

FILED

2008 JUL 23 PM 1:29

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

NANCY J. MARVEL
Regional Counsel

Letitia Moore
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3928

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

Docket No.

CAA-9-2008- 00 29

Provena Foods, Inc., dba
Swiss American Sausage Co.
251 D'Arcy Parkway,
Lathrop, California 95330
Respondent.

)
)
) CONSENT AGREEMENT
) AND
) FINAL ORDER
) PURSUANT TO 40 C.F.R.
) SECTIONS 22.13 and 22.18
)

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Provena Foods, dba Swiss American Sausage Company, which

is organized under the laws of the state of California and is a wholly-owned subsidiary of Hormel Food Corporation.

2. This CA/FO, pursuant to 40 CFR §§ 22.13(b) and 22.18(b), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations.

B. STATUTORY AND REGULATORY FRAMEWORK

3. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412, and 40 CFR Part 68 require owners or operators of stationary sources at which regulated substances are present in more than a threshold quantity to prepare and implement a risk management plan ("RMP"). RMPs must include a hazard assessment, a program for preventing accidental releases, and a program for responding to accidental releases.
4. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR § 68.150 require the owner or operator of a stationary source to submit a single RMP (for all covered processes) to a central point as specified by EPA (EPA has specified that the Risk Management Plan Reporting Center in Maryland will be the central point), no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under 40 CFR § 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.
5. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR § 68.190 require owners or operators of stationary sources to update and re-submit their RMPs at least every five years, or sooner if applicable.

6. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), makes it unlawful for any person to operate a regulated stationary source in violation of any applicable regulation or requirement imposed under CAA § 112(r).

C. GENERAL ALLEGATIONS

7. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes the assessment of a civil penalty for each day of violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).
8. Under EPA delegation 7-6-A, dated August 4, 1994, the EPA Administrator delegated authority to the Regional Administrators to assess penalties and issue orders or complaints under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and to sign consent agreements memorializing settlements. The Regional Administrator, EPA Region IX, in turn, redelegated that authority to the Director of the Superfund Division with delegation R9 1265.05A, dated August 14, 2003.
9. Respondent operates a food storage and distribution facility located at 251 D'Arcy Parkway, in San Joaquin County, Lathrop, California (the "Facility").
10. The Facility uses anhydrous ammonia in its refrigeration system.
11. In June of 1999, the refrigeration contractor employee by the Facility installed an initial charge of 16,000 pounds of anhydrous ammonia to the refrigeration system at the Facility.
12. In a letter dated December 14, 2007, Respondent voluntarily disclosed to EPA that it had not submitted an RMP by June 21, 1999, as required by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR Part 68.

13. Respondent submitted the RMP for the Facility to the Risk Management Plan Reporting Center in Maryland on November 29, 2007.

D. ALLEGED VIOLATIONS

COUNT I

(Failure to Timely Submit a Risk Management Plan)

14. Paragraphs 1 through 13 above are incorporated herein by this reference as if they were set forth here in their entirety.
15. The Facility is, and at all times referred to herein was, a "stationary source" as defined by Section 112(r)(2)(c) of the CAA, 42 U.S.C. § 7412(r)(2)(c), and 40 CFR § 68.3.
16. At all times relevant to this CA/FO, Respondent has been the "owner or operator" of the Facility as defined by Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).
17. Respondent is, and at all times referred to herein was, a "person" as defined by CAA Section 302(e), 42 U.S.C. § 7602(e).
18. Anhydrous ammonia is a "regulated substance" as defined by 40 CFR §§ 68.3 and 68.130.
19. The Facility's refrigeration system is a "covered process," as defined by 40 CFR § 68.3, because it is an activity that uses a regulated substance in more than a threshold quantity. The Facility's refrigeration system meets the Program 3 eligibility requirements, as set forth in 40 CFR § 68.10.
20. The threshold quantity for anhydrous ammonia is 10,000 pounds. 40 CFR § 130, Table 1.
21. On or before June 21, 1999, the Facility first took delivery of anhydrous ammonia for use in its refrigeration system. Between June 21, 1999, and November 29, 2007, Respondent

used and stored anhydrous ammonia at the Facility in quantities that exceeded the threshold, as determined under 40 CFR § 68.115.

22. As an owner or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process, Respondent was required, under 40 C.F.R. §§ 68.12(a) and 68.150, to submit an RMP to EPA no later than June 21, 1999.
23. Respondent, in a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR §§ 68.12(a) and 68.150, failed to submit an RMP for anhydrous ammonia present at the Facility on or before June 21, 1999.

E. CIVIL PENALTY

24. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as adjusted by the Debt Collection Improvement Act of 1996 and 40 CFR Part 19, authorizes a civil administrative penalty of up to \$27,500 per day for violations that occur after January 30, 1997 and before March 15, 2004. For violations that occur on or after March 15, 2004, a civil administrative penalty of \$32,500 per day is authorized.
25. Under EPA's Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations, 65 FR 19618, ("Audit Policy"), effective May 11, 2000, EPA has the discretion to eliminate or substantially reduce the gravity component of a penalty if it determines that a respondent has satisfied the nine conditions set forth in the Audit Policy.
26. The nine conditions a respondent must satisfy under the Audit Policy are: (1) systematic discovery of the violation through an environmental audit or a compliance management system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure

independent of government or third party plaintiff; (5) correction and remediation; (6) prevention of recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.

27. Regulated entities deemed by EPA to have satisfied the nine conditions in the Audit Policy will not face any gravity-based civil penalties. If the regulated entity meets all but the first condition (Systematic Discovery), EPA will reduce the gravity-based penalties by 75%. EPA reserves the right to collect any economic benefit realized as a result of the violation disclosed.
28. EPA has concluded that Respondent has, as described herein, satisfied the nine conditions outlined in the Audit Policy and therefore will not face gravity-based civil penalties.
29. Systematic Discovery of the Violation through an Environmental Audit or a Compliance Management System. Respondent discovered the violations as the result of an environmental compliance management system. Periodic updates of regulations that affect the Facility operations are a part of the compliance management system in place at the Facility. Respondent discovered the violation on November 29, 2007. While evaluating the data element updates required by the California Accidental Release Prevention (CalARP) program, Respondent discovered that the previous management had failed to submit the RMP to US EPA in order to meet the reporting requirements of the CAA 112(r)(7).
30. Voluntary Discovery. Respondent's discovery of the violations was voluntary and did not result from any legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement.

31. Prompt Disclosure. Respondent fully disclosed the violations to EPA within 21 days after it discovered the violations had, or may have, occurred. The violations were discovered on November 29, 2007, and were reported to EPA in a letter dated December 14, 2007.
32. Discovery and Disclosure Independent of Government or Third Party Plaintiff. Respondent discovered and disclosed the violations to EPA prior to any federal, state, or local agency inspection or investigation, notice of citizen suit, the filing of a third-party complaint, the reporting of the violations by a "whistle-blower," or imminent discovery by a regulatory agency.
33. Correction and Remediation. Respondent submitted to the EPA Risk Management Plan Reporting Center on November 29, 2007. The disclosed violation did not cause any environmental or human harm.
34. Prevent Recurrence. Respondent has told EPA that it plans to take the following steps to prevent a recurrence of any violation of Section 112(r)(7) of CAA, 42 U.S.C.
§ 7412(r)(7): Respondent has revised its compliance management system procedures to include reporting requirements and updates for EPA's RMP regulations. Respondent will review all areas of environmental compliance at this and all other facilities it owns or operates.
35. No Repeat Violations. Respondent has not had any other occurrence of these specific violations at the Facility within the past three years or at any other facility owned or operated by Respondent within the past five years.

36. Other Violations Excluded. The violations did not result in serious actual harm, present an imminent and substantial endangerment to public health or the environment, or violate the specific terms of any judicial or administrative order or consent agreement.
37. Cooperation. Respondent has fully cooperated with EPA in determining the applicability of the Audit Policy.
38. In signing this CA/FO, Respondent certifies under penalty of law that the information submitted to EPA in the letter dated December 14, 2007, disclosing violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the information in paragraphs 29-37 of this CA/FO are based upon true, accurate, and complete information that the signatory can verify personally, or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.
39. EPA has determined that the violations resulted in an insignificant amount of economic benefit.
40. For the reasons set forth above, all penalties based on the gravity of the violations and the savings of economic costs related to the failure to timely submit a risk management plan are waived.

F. ADMISSIONS AND WAIVERS

41. For purposes of this proceeding, Respondent admits the jurisdictional allegations above, and agrees that the EPA Administrator and Region IX Administrator have jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d). Respondent

consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

42. Respondent admits any allegations of fact or law set forth in Section C and D of this CA/FO. Respondent hereby waives any rights it may have to contest the allegations set forth in this CA/FO and waives any rights it may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d). Respondent hereby consents to the issuance of this CA/FO without adjudication and waives any rights it may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

43. This CA/FO shall apply to and be binding upon Respondent and its agents, successors, and assigns and upon all persons acting under or for Respondent. This CA/FO shall constitute full settlement of the violations alleged herein.
44. No change in ownership or corporate, partnership, or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
45. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute it, and to legally bind Respondent to it.

H. PAYMENT OF CIVIL PENALTY

46. Because EPA has concluded that Respondent has, as described herein, satisfied the nine conditions set forth in the Audit Policy, Complainant has not sought gravity-based penalties for the violations alleged.
47. Based on Complainant's determination that any economic benefit derived from the violations was insignificant, Complainant has not sought to collect any economic benefit penalty for the violations alleged.
48. Complainant and Respondent hereby consent to the assessment of a civil penalty in the amount of ZERO DOLLARS (\$0) in settlement of the violations set forth in Section D above. This CA/FO constitutes a settlement of the civil and administrative penalty claims of the United States for the violations of Section 112(r)(7) of CAA specifically alleged in Section D above.
49. The effect of the settlement described above is conditional upon the accuracy of Respondent's representations to EPA as memorialized in paragraphs 29-37 of this CA/FO and Respondent's self-disclosure dated December 14, 2007.

I. RESERVATION OF RIGHTS

50. EPA expressly reserves all rights and defenses that it may have.
51. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, including without limitation, the right to require Respondent to perform tasks in addition to those required by this CA/FO and the right to assess penalties under Section 113 of the CAA, 42 U.S.C. § 7413, or take other

appropriate action, in the event that Respondent fails to comply with any of the requirements of this CA/FO.

52. This CA/FO shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the CAA, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.
53. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted, except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations set forth in Section D of this CA/FO.
54. This CA/FO is not intended to be, nor shall it be construed as, a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits.
55. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA. EPA reserves its right to seek reimbursement from Respondent for any response costs incurred by the United States that may result or arise from the alleged counts set forth in Section D.

J. OTHER CLAIMS

56. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any

hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

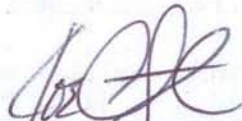
K. MISCELLANEOUS

57. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
58. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
59. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
60. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

IT IS SO AGREED,

6-13-08

Date



Joe Christopherson, Plant Manager
Swiss American Sausage Co.
Lathrop, California

7/22/08

Date



Keith Takata
Director
Superfund Division
United States Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. CAA-9-2008 - **00 2 9**) be entered and that Respondent pay a civil penalty in the amount of ZERO DOLLARS (\$0).

07/23/08

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

Docket No. CAA-09-2008- 00 2 9

I hereby certify that the original copy of the foregoing Consent Agreement and Final Order, with the Docket number referenced above, has been filed with the Region 9 Hearing Clerk and that a copy was sent by certified mail, return receipt requested, to:

Joe Christopherson, Plant Manager
Swiss American Sausage Co.
Lathrop, California 95330

July 23, 2008
Date

Danielle E. Carr
Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105