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2000 SEP 25 PM 1:54

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the matter of:	)	
	)	
DOLE PACKAGED FOODS, L.L.C.	)	Docket No. EPCRA- <sup>09</sup> 2008- <u>0015</u>
	)	
	)	CONSENT AGREEMENT AND FINAL
	)	ORDER PURSUANT TO 40 C.F.R.
	)	§§ 22.13 AND 22.18
Respondent	)	
_____	)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA Region IX"), and Dole Packaged Foods, L.L.C. ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This administrative proceeding is for the assessment of a civil administrative penalty pursuant to Section 325(c) of the Emergency Planning and Community Right-to-Know Act, as amended ("EPCRA" or the "Act"), 42 U.S.C. § 11045(c), against Respondent for violating the Act.
2. Complainant is the Director of the Communities and Ecosystems Division in EPA, Region IX (the "Complainant"). Pursuant to EPA Delegation Order Number 22-3-A, dated May 11,

1994, the Administrator of EPA has delegated the authority to file this action under EPCRA to the Regional Administrator of EPA, Region IX, and pursuant to EPA Regional Order Number R1260.14, dated May 19, 2005, the Regional Administrator re-delegated that authority to Complainant.

#### B. STATUTORY AND REGULATORY BASIS

3. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for the submission of information relating to the release of toxic chemicals under EPCRA Section 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.
4. Section 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. §§ 372.22 and 372.30, provide that the owner or operator of a facility that (i) has ten or more full-time employees, (ii) is in Standard Industrial Classification Codes 20 through 39, and (iii) manufactured, processed, or otherwise used one or more toxic chemicals listed under Section 313(f) of EPCRA and 40 C.F.R. § 372.65, must submit to EPA and the State in which the facility is located a chemical release form published under Section 313(g) of EPCRA for each such toxic chemical.
5. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a "Form R") for facilities that are subject to the reporting requirements of Section 313. Section 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for activities involving a toxic chemical that occurred during a calendar year

must be submitted on or before July 1 of the next year.

C. ALLEGED VIOLATIONS

6. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
7. At all times relevant to this matter, Respondent was an owner and operator of a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3, which is located at 7916 West Bellevue Road, Atwater, California (the "Facility").
8. At all times relevant to this matter, the Facility had 10 or more "full-time employees," as that term is defined by 40 C.F.R. § 372.3.
9. At all times relevant to this matter, the Facility was classified in Standard Industrial Classification Code 2037, frozen fruits, fruit juices, and vegetables.
10. During calendar year 2004, approximately 136,040 pounds of ammonia, CAS No. 7664-41-7, a "toxic chemical" listed under 40 C.F.R. § 372.65, were "otherwise used," as that term is defined in 40 C.F.R. § 372.3, at the Facility. This quantity exceeded the threshold for reporting established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.
11. Respondent was required to submit to the EPA Administrator and the State of California a complete Form R on or before July 1, 2005 for ammonia otherwise used at the Facility in 2004. 40 C.F.R. § 372.30(d).
12. Respondent's failure to submit a timely Form R on or before July 1, 2005 for ammonia otherwise used at the Facility in 2004, was in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.



13. During calendar year 2005, approximately 131,037 pounds of ammonia, CAS No. 7664-41-7, a "toxic chemical" listed under 40 C.F.R. § 372.65, were "otherwise used," as that term is defined in 40 C.F.R. § 372.3, at the Facility. This quantity exceeded the threshold for reporting established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.
14. Respondent was required to submit to the EPA Administrator and the State of California a complete Form R on or before July 1, 2006 for ammonia otherwise used at the Facility in 2005. 40 C.F.R. § 372.30(d).
15. Respondent's failure to submit a timely Form R on or before July 1, 2006 for ammonia otherwise used at the Facility in 2005, was in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
16. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and the Civil Monetary Penalty Inflation Adjustment Rule (61 Fed. Reg. 69359 (Dec. 31, 1996); 62 Fed. Reg. 13513 (March 20, 1997); 69 Fed. Reg. 7121 (Feb. 13, 2004)) provide that any person who violates any requirement of Section 313 shall be liable to the United States for a civil penalty in an amount not to exceed \$32,500 per day for each such violation that occurs after March 15, 2004.

#### D. RESPONDENT'S ADMISSIONS

17. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this

CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

18. Upon discovering and voluntarily disclosing the alleged violations set forth in Section I.C of this CAFO, Respondent cooperated fully with EPA in resolving the matters covered by this CAFO, and took all steps reasonably expected to address the alleged violations.
19. EPA has determined that Respondent has satisfied all of the conditions for penalty reduction for voluntary disclosure under the Enforcement and Response Policy for Section 313 of EPCRA (August 10, 1992) and thus qualifies for a 50% penalty reduction from the preliminary base penalty of \$65,000. Hence, the gravity based penalty is reduced to \$32,500.
20. Respondent shall pay a civil administrative penalty of \$32,500 within 30 days of the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

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

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Nancy Levin  
Communities and Ecosystems Division (CED-4)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

21. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
22. If Respondent fails to pay the civil administrative penalty by the deadline specified in paragraph 20, then Respondent shall pay to EPA the stipulated penalty of \$40,000 instead of the agreed upon penalty sum specified in paragraph 20 immediately. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 20 may lead to any or all of the following actions:
  - a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
  - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40



C.F.R. Part 13, Subparts C and H.

- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in paragraph 20. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### F. RETENTION OF RIGHTS

- 23. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of

this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

24. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

#### G. ATTORNEYS' FEES AND COSTS

25. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

#### H. EFFECTIVE DATE

26. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

#### I. BINDING EFFECT

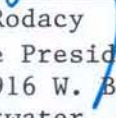
27. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
28. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers,



directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT DOLE PACKAGED FOODS, L.L.C.:

16 SEPT 08  
DATE

  
By: Jon Rodacy  
Title: Vice President & General Manager, Atwater Operations  
Address: 7916 W. Bellevue Rd.  
Atwater, CA 95301

FOR COMPLAINANT EPA REGION IX:

23 SEPT 2008  
DATE

  
ENRIQUE MANZANILLA  
Director  
Communities and Ecosystems Division  
United States Environmental  
Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

II. FINAL ORDER

Complainant EPA Region IX and Respondent Dole Packaged Foods, L.L.C., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this Consent Agreement (Docket No. EPCRA-9-2008-<sup>09</sup><sub>00015</sub>) be entered, and Respondent shall pay a civil administrative penalty in the amount of \$32,500 in accordance with the terms set forth in the Consent Agreement.

09/25/08

DATE



STEVEN JAWGIEL  
Regional Judicial Officer  
United States Environmental  
Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Sections 22.13 and 22.18 (Docket No. EPCRA-9-2008- <sup>09</sup> 0015) against Dole Packaged Frozen Foods was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent at the following address:

Mr. Jon Rodacy  
Vice President and General Manager  
Dole Packaged Frozen Foods  
7916 West Bellevue Road  
Atwater, California 95301

Certified Mail No. 7007-3020-0000-9806-7920



Danielle Carr  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region IX

Date SEP 26 2008