



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

FEB 12 2019

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Alexander G. Shissias, Esq.  
Administrative and Environmental Law  
The Shissias Law Firm, LLC  
1727 Hampton Street  
Columbia, South Carolina 29201

Re: Carolina Pride Foods LLC – Greenwood, South Carolina  
Ratified Consent Agreement and Final Order  
Docket No. EPCRA-04-2019-2002(b)

Dear Mr. Shissias:

Enclosed, is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you or your client have any questions concerning this matter or Carolina Pride Foods LLC's compliance status in the future, please contact Lynda Crum, U.S. Environmental Protection Agency Region 4's Associate Attorney at (404) 562-9524.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney  
Chief  
Chemical Safety and Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**IN THE MATTER OF:** )  
 )  
 Carolina Pride Foods LLC )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**Docket Number:** EPCRA-04-2019-2000(b)

2019 FEB 12 PM 1:46  
HEARING CLERK  
OFFICE OF REGIONAL  
COUNSEL  
REGION 4

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency. Respondent is Carolina Pride Foods LLC.

2. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under EPCRA to the Regional Administrators by the EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under EPCRA by the EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

**II. Preliminary Statements**

4. Respondent is a limited liability company doing business in the State of South Carolina.

5. Respondent is a "person" and is the "owner or operator" of a "facility" as those terms are defined in Sections 329(4) and 329(7) of EPCRA, 42 U.S.C. §§ 11049(4), (7).

6. Respondent's facility is located at 1 Packer Avenue, Greenwood, South Carolina, 29646.

### **III. EPA's Allegations of Violations**

#### **Violation of Section 304(a) EPCRA**

7. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which a hazardous chemical is produced, used or stored, to immediately provide notice to the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), when there has been a release of an EPCRA extremely hazardous substance, or a hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601(14), in an amount equal to or greater than the reportable quantity (RQ) from a facility. Section 304(a) does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

8. Respondent was the owner or operator of the facility during the relevant period described herein.

9. At all times relevant to this matter, the facility produced, used, or stored a "hazardous chemical" as defined under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and under 29 C.F.R. § 1910.1200(c).

10. Ammonia is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 C.F.R. § 355 Appendices A & B.

11. On March 25, 2018, a release of ammonia above the RQ occurred at the facility. The EPA alleges that the release resulted in the potential for exposure to persons beyond the site or sites on which the facility is located.

12. The EPA alleges that Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and the applicable EPCRA regulations of 40 C.F.R. § 355, Subpart C, by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than the RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

13. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19, the EPA may assess a civil penalty for each violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by administrative order.

#### **IV. Consent Agreement**

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

15. Respondent waives any right to contest the allegations and its right to appeal the final order accompanying the Consent Agreement.

16. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

17. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA.

18. Respondent has agreed to undertake and complete a Supplemental Environmental Project (SEP) in accordance with Section VI of this CAFO.

19. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or the United States of America to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA or other applicable laws and regulations.

20. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of EPCRA.

#### **V. Final Order**

21. Respondent shall pay a civil penalty of **TWO THOUSAND, SIX HUNDRED SEVENTY-FOUR DOLLARS (\$2,674)** for the EPCRA violations in Section III, which shall be paid within thirty (30) days of the effective date of this CAFO.

22. Respondent shall pay the EPCRA civil penalty by forwarding a cashier's or certified check payable to "Treasurer, United States of America," to one of the following addresses:

**BY MAIL**

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

**BY OVERNIGHT**

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1819

**BY ELECTRONIC TRANSFER\***

Federal Reserve Bank of New York

ABA: 021030004

Account Number: 68010727

SWIFT address: FRNYUS33

33 Liberty Street

New York, New York 10045

Beneficiary: US Environmental Protection Agency

\*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the U.S. EPA.

The payment shall reference on its face the name and the Docket Number of the CAFO.

23. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Erika White  
U.S.EPA Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

24. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

**VI. Supplemental Environmental Project**

25. Respondent shall complete a SEP in the category of an Emergency Planning and Preparedness project designed to protect the environment and the people that could be harmed by chemical accidents by funding a training course for responsible state or local emergency response or planning entities as follows (hereinafter referred to as the SEP):

- a. Respondent must arrange for, and provide funding for the following training to the Greenwood Fire Department (GFD):

**Training Course Description:**

40 Hour HAZWOPER Training - 16 GFD Employees  
Ammonia Hazmat Incident Command Training – 6 GFD Employees

- b. Respondent's total expenditure for purchase of the above training shall not be less than **FOURTEEN THOUSAND, TWO HUNDRED DOLLARS (\$14,200)**.
- c. Respondent must provide, conduct, and complete the training listed above within 90 days of the effective date of this CAFO.

26. This CAFO shall not be construed to constitute the EPA's endorsement of any product, equipment, technology or service provided by Respondent in connection with the SEP.

27. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$14,200;
- b. That, as of the effective date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation, permit, order or agreement and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project the Respondent was planning or intending to construct, perform or implement other than in settlement of the claim resolved in this CAFO;
- d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action of any kind;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That for federal income tax purposes, Respondent agrees it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and

- h. That Respondent has inquired of GFD whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by GFD that it is not a party to such a transaction.

28. Respondent agrees that any public statement, oral or written, in print film or other media made by Respondent making any reference to the SEP under this CAFO from the effective date of this CAFO shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violation of Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA)”.

29. Respondent shall complete and submit a SEP Completion Report for the SEP under this CAFO as follows:

- a. The SEP Completion Report shall include the following:
  - i. An affidavit from an authorized company official, certifying that the SEP has been completed or explaining in detail any failure to complete, and
  - ii. Copies of appropriate documentation, including invoices and receipts, showing that Respondent’s total expenditure for the SEP was no less than the minimum total expenditure required above.
- b. The SEP Completion Report shall be submitted to the EPA within one hundred and twenty (120) days of the effective date of this CAFO to the following:

Erika White  
U.S. EPA Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303.

30. Upon request, Respondent shall send the EPA any additional documentation requested by the EPA.

31. Respondent agrees that to receive credit for the SEP, Respondent must fully and timely complete the SEP in accordance with and as indicated in this CAFO. In the event that Respondent fails to comply with any of the terms or provisions of the CAFO relating to the performance of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. If Respondent fails to spend the minimum amount of **FOURTEEN THOUSAND, TWO HUNDRED DOLLARS (\$14,200)**, Respondent shall pay to the United States, a stipulated penalty of the difference between the minimum amount noted above and the actual SEP expenditure.
- b. If Respondent fails to timely submit the SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of **\$100** for each calendar day that the report is late.
- c. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

32. The determination as to whether Respondent has fully and timely completed the SEP shall be in the sole discretion of the EPA.

33. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from the EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth in the written demand from the EPA.

#### **VII. Other Provisions**

34. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

35. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

36. This CAFO shall be binding upon the Respondent, its successors, and assigns.

37. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

#### **VIII. Effective Date**

38. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.



AGREED AND CONSENTED TO:

Carolina Pride Foods LLC

By: [Signature] (Signed) Date: \_\_\_\_\_

Name: Brian Anderson (Typed or Printed)

Title: COO (Typed or Printed)

U.S. Environmental Protection Agency

By: [Signature] Date: 12/28/2018

Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 11<sup>th</sup> day of February, 2019

[Signature]  
Tanya Floyd  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order: In the Matter of Carolina Pride Foods LLC, Docket Number: EPCRA-04-2019-2002(b), on the parties listed below in the manner indicated:

Robert W. Bookman (Via EPA's internal mail)  
U.S. EPA Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Lynda Crum (Via EPA's internal mail)  
U.S. EPA Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Robert Caplan (Via EPA's internal mail)  
Senior Attorney  
U.S. EPA Region 4  
Office of Regional Counsel  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Alexander G. Shissias, Esquire (Via Certified Mail - Return Receipt Requested)  
Administrative and Environmental Law  
The Shissias Law Firm, LLC  
1727 Hampton Street  
Columbia, S.C. 29201

Date: 2-12-19



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9511