



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JAN 15 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Richard A, Capalby, Esq.
Assistant General Counsel
U.S. Foods, Inc.
9399 West Higgins Road
Rosemont, Illinois 60018

Re: U.S. Foods, Inc.
Consent Agreement and Final Order
CAA-04-2014-1502(b)

Dear Mr. Capalby:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2014-1502(b)) involving U.S. Foods, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the U.S. Environmental Protection Agency. If you have any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Ms. Deanne Grant at (404) 562-9291.

Sincerely,

A handwritten signature in blue ink, appearing to read "Caron B. Falconer".

Caron B. Falconer
Chief
EPCRA Enforcement Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2014 JAN 15 AM 8:02

HEARING CLERK

RECEIVED
EPA REGION IV

IN THE MATTER OF:)

U.S. Foods, Inc.)

Respondent)
_____)

Docket Number: CAA-04-2014-1502(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (Consolidated Rules), published in 40 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency. Respondent is U.S. Foods, Inc. (hereinafter, "Respondent").

2. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under the CAA to the Regional Administrators by the EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has re-delegated this authority to the Director, Air, Pesticides and Toxics Management Division. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18, and agree 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 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. Respondent does business in the State of Alabama.

4. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is therefore subject to the provisions of the CAA and regulations promulgated there under.

5. Respondent operates a "stationary source" as that term is defined by Section 302(z) of the CAA, 42 U.S.C. § 7602(z). The Respondent's stationary source is located at 2850 Highway 80 West, Montgomery, Alabama 36108.

6. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

7. Pursuant to Section 112(r)(3) and 112(r)(7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 CFR Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 CFR § 68.130.

8. The Respondent, at its stationary source identified in Paragraph 5 of this CAFO, has one RMProgram covered process which stores or otherwise uses ammonia in an amount exceeding its applicable threshold of 10,000 pounds.

9. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 CFR §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 CFR § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

10. Respondent has submitted and registered an RMPlan to the EPA for the stationary source identified in Paragraph 5 of this CAFO. Respondent has developed an RMProgram accidental release prevention program for the stationary source identified in Paragraph 5 of this CAFO.

11. Based on an RMProgram compliance monitoring investigation initiated on June 12, 2012, the EPA alleges that the Respondent violated the codified rules governing the CAA Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 CFR Part 68 when it:

Failed to address safety and health considerations in written operating procedures as required by 40 CFR § 68.69(a)(3);

Failed to prepare a record which contains the means used to verify that employees understood training as required by 40 CFR § 68.71(c);

Failed to correct deficiencies in ammonia alarms in a safe and timely matter as required by 40 CFR § 68.73(e);

Failed to implement Management of Change procedures prior to a change as required by 40 CFR § 68.75(b);

Failed to perform a pre-startup review when the modification was significant enough to require a change in the process safety information as required by 40 CFR § 68.77(a);

Failed to certify compliance audits at least every three years as required by 40 CFR § 68.79(a).

III. Consent Agreement

12. 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.

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

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

15. Respondent certifies that as of the date of execution of this CAFO, to the best of the Respondent's knowledge after a good faith inquiry, it is compliant with the applicable requirements of Section 112(r) of the CAA.

16. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

17. 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 the RMPProgram.

IV. Final Order

18. Respondent agrees to pay a civil penalty of ONE HUNDRED NINE THOUSAND TWO HUNDRED DOLLARS (\$109,200), to be paid within thirty (30) days of the effective date of this CAFO.

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

For payment sent via electronic transfer

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, New York 10045

Field Tag 4200 of the Fedwire message should read:

“D 68010727 Environmental Protection Agency”;

For payment sent via U.S. Postal Service

U.S. Environmental Protection Agency

Cincinnati Finance Center

PO Box 979077

St. Louis, MO 63197-9000; or

For payment sent via overnight mail service (FedEx, UPS)

U.S. Environmental Protection Agency

Cincinnati Finance Center

1005 Convention Plaza

Mail Station SL-MO-C2GL

St. Louis, MO 63101

Contact: Natalie Pearson @ 314-425-1818.

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

20. 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

Deanne Grant
EPCRA Enforcement Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

21. For the purposes of state and federal income taxation, 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 penalty payment shall constitute a violation of this CAFO.

22. Pursuant to 31 U.S.C. § 3717, 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.

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

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

25. The following individual is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451

26. 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.

THIS SECTION INTENTIONALLY LEFT BLANK

27. 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:

U.S. Foods, Inc.

By: Gail Sharns Myers Date: 11-27-2013
Name: GAIL SHARNS MYERS (Typed or Printed)
Title: SVP, DEP. GC + ASST. SEC. (Typed or Printed)

U.S. Environmental Protection Agency

By: Bess M. Worley Date: 12-06-2013
for Jeaneanne M. Gettle, Acting Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 14 day of January, 2014.

Susan B. Schub

Susan B. Schub
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 U.S. Foods, Inc., CAA-04-2014-1502(b), on the parties listed below in the manner indicated:

Caron B. Falconer
U. S. EPA, Region 4
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Ellen Rouch
U. S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

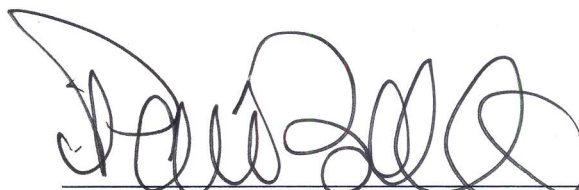
(Via EPA's internal mail)

Richard Capalby
U.S. Foods, Inc.
2850 Highway 80 West
Montgomery, AL 36108

(Via Certified Mail -
Return Receipt Requested)

Date:

1-15-14



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