



**STATUTORY AUTHORITY**

1. This proceeding for the assessment of civil penalties pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended 42 U.S.C. § 9609, and Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III.

**STIPULATIONS**

2. Respondent consents to the issuance of this CAFO, to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO, and the parties consent to the terms and conditions of this CAFO.

3. The parties agree that settling this action without litigation, upon the terms in this CAFO, is in the public interest.

**STATUTORY AND REGULATORY BACKGROUND**

4. CERCLA Section 103(a), 42 U.S.C. §9603(a), requires any person in charge of a facility, as soon as he has knowledge of a release of a hazardous substance from such facility in a quantity equal to or greater than the reportable quantity for that hazardous substance, to immediately notify the National Response Center ("NRC") of the release.

5. EPCRA Section 304(b), 42 U.S.C. 11004(b), requires any person in charge of a facility, as soon as he has knowledge of a release of a hazardous substance from such facility in a quantity equal to or greater than the reportable quantity for that hazardous substance, to immediately notify the State Emergency Planning Commission ("SERC") and Local Emergency

Planning Committee (“LEPC”) of the release. Additionally, EPCRA § 304(c) requires a written follow-up emergency notice to be provided to the SERC and the LEPC as soon as practicable.

6. EPCRA Section 312, 42 U.S.C. § 11022, requires facilities to submit chemical inventory forms annually to the SERC, the LEPC, and the local fire department. Covered facilities include those that produce, use, or store hazardous chemicals in amounts greater than threshold quantities. Hazardous chemicals are defined by the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 et seq., and 29 C.F.R. § 1910.1200. Threshold quantities are: 500 pounds or the applicable threshold planning quantity (“TPQ”) for extremely hazardous substances (“EHS”), and 10,000 pounds or more for other chemicals.

**EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7. EPA makes the following Findings of Fact and Conclusions of Law, which, except for the facts pertaining to the jurisdictional allegations, Respondent neither admits nor denies.

8. Aldi is a Pennsylvania corporation.

9. As a corporation, Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.<sup>1</sup>

10. Upon information and belief, at all times relevant to this CAFO, Respondent was the owner or operator of a facility located at 2700 Saucon Valley Road, Center Valley, Pennsylvania, 18034 (“Facility”), within the meaning of Sections 304 and 312 of EPCRA, 42

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<sup>1</sup> The terms and citations used and referenced in this CAFO are based on those in effect prior to the November 3, 2008 revisions to the EPCRA regulations because the violations alleged herein occurred before the regulatory revisions were in effect.

U.S.C. §§ 11004 and 11022, and was in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

11. The Facility is a “facility,” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.

12. On March 5, 2009, EPA conducted an inspection of the Facility to determine its compliance with the requirements of Sections 302-312 of EPCRA, 42 U.S.C. §§ 11002-11022, and Section 103 of CERCLA, 42 U.S.C. § 9603.

13. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present a substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) (“Reportable Quantity” or “RQ”). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

14. Ammonia is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, with an RQ of one hundred (100) pounds, as listed in 40 C.F.R. Part 302, Table 302.4.

15. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used or stored, as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to,

or greater than, the RQ, to immediately notify the NRC established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), of such release.

16. Section 304(a) and 304(b) of EPCRA, 42 U.S.C. §§ 11004(a) and (b), as implemented by 40 C.F.R. § 355.40(b)(1), requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the SERC when there has been a release of a hazardous substance or an EHS in a quantity equal to, or greater than, the RQ for that hazardous substance or EHS. The relevant SERC is the Pennsylvania Emergency Management Agency, located at 2605 Interstate Drive, Harrisburg, PA, 17110 ("PEMA SERC").

17. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility at which there is present at any one time during a calendar year a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) in a quantity equal to or greater than its applicable minimum threshold level ("MTL") or threshold planning quantity ("TPQ") to prepare or have available a material safety data sheet ("MSDS") for the hazardous chemical in accordance with the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 et seq., and 29 C.F.R. § 1910.1200, and to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form ("Chemical Inventory Form") identifying the hazardous chemical and providing the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1), to the appropriate State Emergency Response Commission (which is the Pennsylvania Department of Labor and Industry, Bureau of PENNSAFE, located at Room 155-E L & I Building, 7th and Forster Streets, Harrisburg, PA, 17120 ("PENNSAFE SERC"), LEPC, and local fire department with jurisdiction over the facility.

18. The LEPC for the Facility is, and has been at all times relevant to this CAFO, the Lehigh County Office of Emergency Management, located at 640 West Hamilton Street, 8th Floor, Allentown, Pennsylvania, 18101.

19. The local fire department for the Facility is, and has been at all times relevant to this CAFO, the Upper Saucon Volunteer Fire Department No. 1, located at 4445 West Hopewell Road, Center Valley, Pennsylvania, 18034.

20. Lead, Chemical Abstracts Service (“CAS”) No. 7439-92-1, is a “hazardous chemical” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), 40 C.F.R. § 370.2, and 29 C.F.R. § 1910.1200(c).

21. Pursuant to 40 C.F.R. § 370.20(b)(4), the MTL for lead is 10,000 pounds.

22. At all times relevant to this CAFO, Respondent was a person engaged in a business where chemicals were used, distributed, or produced for use or distribution.

23. At all times relevant to this CAFO, Respondent was an “employer” as that term is defined at 29 C.F.R. § 1910.1200(c).

24. At all times relevant to this CAFO, Respondent was required to have MSDSs at its Facility for each hazardous chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).

25. At all times relevant to this CAFO, Respondent was the owner or operator of a facility that is required to prepare or have available MSDSs for hazardous chemicals under the OSHA Hazard Communications Standard, 29 C.F.R. § 1910.1200.

26. During calendar years 2006, 2007, and 2008, Respondent had lead present in lead acid batteries at its Facility in a quantity greater than its applicable MTL.

27. On or about September 2, 2010 EPA issued a Show Cause letter to Respondent indicating that the Agency was considering the assessment of penalties against Respondent for

alleged violations of Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 304 and 312 of EPCRA, 42 U.S.C. §§ 11004 and 11022.

28. EPA now concludes that Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603, by failing to immediately notify the National Response Center of a release which occurred at its facility in Center Valley, Pennsylvania on October 22, 2007 of approximately one hundred sixty-two (162) pounds of ammonia, CAS No. 7664-41-7 and Section 304 of EPCRA, 42 U.S.C. § 11004, by failing to immediately notify the PENNSAFE SERC of the October 22, 2007 release. This release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10). Respondent also violated Section 312 of EPCRA, 42 U.S.C. § 11022, by failing to submit to the PENNSAFE SERC, LEPC, and local fire department a completed Chemical Inventory Form that identified lead as present at the Facility in a quantity greater than its MTL for calendar years 2006, 2007, and 2008 by the March 1 deadline.

#### CIVIL PENALTY

29. For the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the alleged violations of CERCLA Section 103(a), 42 U.S.C. § 9603(a), and EPCRA Sections 304(b) and 312, 42 U.S.C. §§ 11004(b) and 11022, in the total amount of **\$40,963**.

#### PAYMENT TERMS

30. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CAFO, the Respondent must pay the civil penalty no later than thirty (30) days after the effective date of the Final Order (the “final due date”). A payment of **\$2,418** shall be made for the CERCLA portion of the penalty. An additional payment of **\$38,545** shall be made for the EPCRA portion of the penalty.

31. Payment shall be made as follows:

a. If payment is to be made by cashier's check, separate CERCLA and EPCRA payment cashier checks shall be made as follows.

i. The CERCLA portion of the penalty shall be made payable to "EPA-Hazardous Substances Superfund," and sent in care of:

U.S. Environmental Protection Agency  
Attn: Superfund Payments Cincinnati  
Finance Center P.O. Box 979076  
St. Louis, MO 63197-9000  
Contact: Natalie Pearson, (314-418-4087)

If the cashier's check is sent overnight mail, it should be sent to:

U.S. Environmental Protection Agency  
ATTENTION: Superfund Payments U.S. Bank  
1005 Convention Plaza  
Mail Station FL-MO-C2GL  
St. Louis, MO 63101

Contact Natalie Pearson, (314-418-4087)

Respondent shall note on the CERCLA penalty-payment cashier's check the title and docket number of this case.

ii. The EPCRA portion of the penalty shall be made payable to "United States Treasury" and sent in care of:

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

If check is sent via overnight mail, it should be sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station FL-MO-C2GL  
St. Louis, MO 63101

The Respondent shall note on the EPCRA penalty-payment cashier's check the title and docket number of this case.



b. Payment may be made via EFT (wire transfer) to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

c. Payment may be made via Automated Clearinghouse (ACH), also known as Remittance Express (REX), to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

32. Respondent shall submit a copy of the checks, or verification of wire transfer or ACH, to the following persons:

Lydia Guy (3RCOO)  
Regional Hearing Clerk  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Alison Lecker (3RC41)  
Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

33. The CERCLA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and is consistent with 40 C.F.R. Part 19 and 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* (September 30, 1999; "the ERP").

34. The EPCRA civil penalty stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and is consistent with 40 C.F.R. Part 19 and the ERP.

35. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions in this CAFO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

36. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the final due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Interest on any civil penalties assessed pursuant to this CAFO will begin to accrue on the date that a written demand for such penalties is mailed or hand-delivered to Respondent.

37. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

38. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

39. Failure by the Respondent to pay the **\$40,963** penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

#### **GENERAL PROVISIONS**

40. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

41. For the purpose of this proceeding, Respondent agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of the CAFO.

42. Except as set forth in Paragraph 40 above, for the purpose of this proceeding, Respondent neither admits nor denies factual allegations and conclusions of law set forth in this CAFO, but expressly waives its rights to contest said allegations in this proceeding.

43. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

44. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he

or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

45. This CAFO resolves only those civil claims that are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition that Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CAFO shall be construed to limit the United States' authority to pursue criminal sanctions.

46. Each party to this action shall bear its own costs and attorney's fees.

47. By entering into this CAFO, Respondent does not admit any liability for the civil claims alleged herein.

**FOR ALDI, Inc., Center Valley Division**

*Bob Grammer*

SIGNATURE

*Bob Grammer*

Title: *Vice President, Center Valley Division*

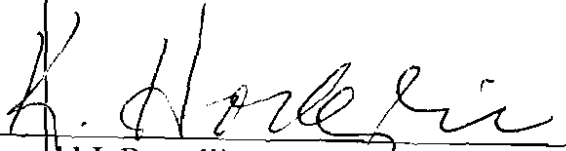
*4/27/11.*

DATE

In the Matter of: Aldi, Inc.

U.S. EPA Docket Nos. CERCLA-03-2011-0101  
EPCRA-03-2011-0101

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY**

  
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Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division

  
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DATE



