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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)
)
Rhodes International) Docket No. EPCRA-10-2012-0102
Caldwell, Idaho)
) CONSENT AGREEMENT AND FINAL
) ORDER
)
Respondent.)
)
)
)
)
_____)

I. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

1.3. Pursuant Section 325 of EPCRA, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22,

EPA hereby issues and Rhodes International (“Respondent”) hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18, issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 has been delegated the authority to sign consent agreements between EPA and the party against who an administrative penalty for violations of Section 312 of EPCRA is proposed to be assessed pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045.

2.3. Respondent owns and operates a facility in Caldwell, Idaho located at 14702 Karcher Rd (the “Facility”).

2.4. The Facility produces frozen bread products such as dinner rolls and cinnamon rolls.

2.5. A concise statement of the factual basis for alleging violations of EPCRA, together with specific references to the provisions of the statutes and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Respondent is a corporation incorporated in the State of Nevada.

3.2. Under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), “person” means, among other things, any corporation.

3.3. Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), “facility” means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled, or under common control with, such person).

3.4. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Administration (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit a completed Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370) to the state emergency response commission (SERC), the local emergency planning committee (LEPC), and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter. The form must contain the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

3.5. Anhydrous Ammonia is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. § 1910.1000, Table Z-1.

3.6. OSHA requires Respondent to prepare, or have available, an MSDS for Anhydrous Ammonia.

3.7. Anhydrous Ammonia is a CERCLA "hazardous substance" listed in 40 C.F.R. Part 302, Table 302.4, and is listed as an "extremely hazardous substance" with a threshold planning quantity (TPQ) of 500 pounds, as provided at 40 C.F.R. Part 355, Appendix A.

3.8. During at least one period of time during each of the four calendar years from 2006 to 2009, Anhydrous Ammonia was present at the Facility in an amount equal to or greater than 500 pounds.

3.9. Respondent did not submit to the Idaho SERC, Canyon County LEPC and the Caldwell fire department an Emergency and Hazardous Chemical Inventory Form including Anhydrous Ammonia for calendar year 2006, 2007, 2008 and 2009.

3.10. Under Section 325 of EPCRA, 42 U.S.C. § 11045, EPA may assess a civil penalty for each day of violation of Section 312 of EPCRA, 42 U.S.C § 11022.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.9., below, each party shall bear its own costs in bringing or defending this action.

4.6. Based on Respondent's willingness to settle this matter without litigation, the nature of the violations, other relevant factors, and in accordance with 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*, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$84,484.00.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.6 above within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check payable as indicated and mailed to the addresses below:

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

Respondent shall note on the check the title and docket number of this case. Respondent also may make the penalty payment by wire transfer or credit card in accordance with instructions provided by EPA. Respondent shall submit a photocopy of the checks, or documentation of the wire transfer described above to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Suite 900
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Suzanne Powers
U.S. Environmental Protection Agency
Region 10
Washington Operations Office
300 Desmond Drive S.E., Suite 102
Lacey, Washington 98503

4.9. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action under EPCRA Section 325(f), 42 U.S.C. § 11045(f), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than

90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.10. The penalty described in Paragraph 4.6., including any additional costs incurred under Paragraph 4.10., represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

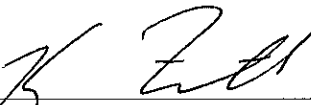
4.11. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.12. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

4.14. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

FOR RHODES INTERNATIONAL



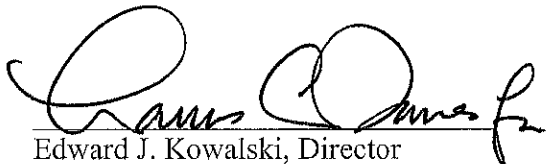
Signature

Dated: 12 April 2012

Print Name: Kenny Farnsworth

Title: President

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10



Edward J. Kowalski, Director
Office of Compliance and Enforcement

Dated: April 19, 2012

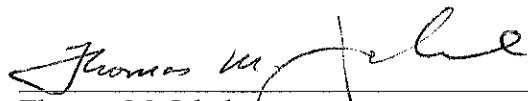
V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to EPCRA for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations and permits issued thereunder.

This Final Order shall become effective upon filing.

SO ORDERED this 20th day of April, 2012.



Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

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EPA--REGION 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER in In The Matter Of: Rhodes International, Docket No. EPCRA-10-2012-0102** was filed with the Regional Hearing Clerk.

The undersigned certifies that a true and correct copy of the document was delivered to:

Robert E. Harman, Esquire
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on to:

Mr. Robert Brown
General Counsel
Rhodes International
14702 Karcher Rd.
Caldwell, ID 83607

DATED this 23rd day of April, 2012.



Candace H. Smith
Regional Hearing Clerk
EPA, Region 10