



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

FEB 06 2018

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Kate Donnelly
Senior Counsel – Environmental & Safety
Unilever North America
800 Sylvan Avenue
Englewood Cliffs, New Jersey 07632

Re: Talenti Gelato, LLC – Marietta, GA
Consent Agreement and Final Order
Docket No. EPCRA-04-2018-2015(b)

Dear Ms. Donnelly:

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.

Also, enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Unilever North America on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document, "SEC" refers to the Securities and Exchange Commission.

Should you have any questions concerning this matter, please contact Michiko Kono, EPA Associate Regional Counsel at (404) 562-9558.

Sincerely,

for Anthony G. Toney
Chief

Chemical Safety and Enforcement Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
 Talenti Gelato, LLC)
)
 Respondent.)
 _____)

Docket Number: EPCRA-04-2018-2015(b)

HEARING CLERK
2018 FEB - 6 AM 7:43
US EPA REGION 4
OFFICE OF REGIONAL
COUNSEL

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and 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 EPA. Respondent is Talenti Gelato, LLC.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and 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 CERCLA and under EPCRA to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004, and the authority under EPCRA by 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, Talenti Gelato, LLC, is a limited liability company that did business in the State of Georgia.

5. Respondent is a “person” and was the “owner or operator” of a “facility” as those terms are defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), respectively.

6. Respondent’s facility was located at 1058 King Industrial Drive in Marietta, Georgia.

III. EPA’s Allegations of Violations

Violation of Section 103(a) of CERCLA

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of the EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment, and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). The EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ.

9. Respondent was in charge of the facility during the relevant periods described below.

10. Ammonia is a “hazardous substance” as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 100 pounds, as specified in 40 C.F.R. § 302.4.

11. On December 18, 2015, there was a release of ammonia above the RQ into the environment from Respondent’s facility.

12. The EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the applicable CERCLA regulations, 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than its RQ at Respondent’s facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

13. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, the EPA may assess a civil penalty for each violation of Section 103(a) of CERCLA, 42 U.S.C.

§ 9603(a). Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

Violations of Section 304(a) EPCRA

14. 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 CERCLA hazardous substance in an amount equal to or greater than the 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.

15. Respondent was the owner or operator of the facility during the relevant periods described herein.

16. 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).

17. 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.

18. On December 18, 2015, there was a release of ammonia above the RQ into the environment from Respondent's facility. The EPA alleges that the releases resulted in the potential for exposure to persons beyond the site or sites on which the facility is located.

19. 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 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.

20. 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

21. 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.

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

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

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

25. In accordance with 40 C.F.R. § 22.18(c), Respondent's compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the violations alleged in this CAFO. This CAFO does not affect the right of the EPA or U.S. 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, CERCLA or other applicable laws and regulations.

26. 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 CERCLA and EPCRA.

V. Final Order

27. Respondent shall pay a civil penalty of **SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$7,500)** for the CERCLA violation which shall be paid within thirty (30) days of the effective date of this CAFO.

28. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency
Cincinnati Finance Center Box 979076
St. Louis, Missouri 63197-9000

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979076
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 check shall reference on its face the name and the Docket Number of the CAFO.

29. Respondent shall pay a civil penalty of **SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$7,500)** for the EPCRA violations which shall be paid within thirty (30) days of the effective date of this CAFO.

30. Respondent shall pay the EPCRA 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
Cincinnati Finance Center 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 check shall reference on its face the name and the Docket Number of the CAFO.

31. 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

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

32. 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. Other Provisions

33. 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.

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

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

36. 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.

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VII. Effective Date

37. 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:

Talenti Gelato, LLC

By: Kate Donnelly (Signed) Date: 1/23/2018

Name: Kate Donnelly (Typed or Printed)

Title: Sr. Counsel to Talenti (Typed or Printed)
my and on the behalf of Talenti Gelato LLC

U.S. Environmental Protection Agency

By: Carol H. Remke Date: 1/31/18
Beverly H. Banister

Director

Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 5th day of January, 2018

Tanya Floyd

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 Talenti Gelato, LLC, Docket Number:
EPCRA-04-2018-2015(b), on the parties listed below in the manner indicated:

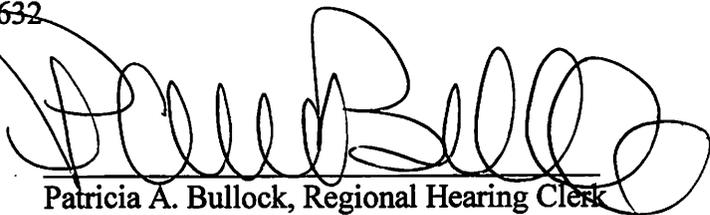
Robert W. Bookman (Via EPA's internal mail)
Chief
U.S. EPA, Region 4
Chemical Management and
Emergency Planning Section

Michiko Kono (Via EPA's internal mail)
Associate Regional Counsel
U.S. EPA Region 4
Office of Regional Counsel

Robert Caplan (Via EPA's internal mail)
Senior Attorney
U.S. EPA Region 4
Office of Regional Counsel

Ms. Kate Donnelly (Via Certified Mail - Return Receipt Requested)
Senior Counsel – Environmental
& Safety
Unilever North America
800 Sylvan Avenue
Englewood Cliffs, New Jersey 07632

Date: 2-6-18



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