



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

DEC 05 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Amir Ghannad
Eastern Region Plant Manager
The Sunny Delight Beverages Company
7000 LaGrange Boulevard
Atlanta, GA 30336

SUBJ: The Sunny Delight Beverages Company
Consent Agreement and Final Order
Docket No. EPCRA-04-2007-2008(b)

Dear Mr. Ghannad:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) matter (Docket No. EPCRA-04-2007-2008(b)) involving The Sunny Delight Beverages Company. 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 Environmental Protection Agency (EPA). 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 Mr. Jyoti Bhushan at (404) 562-9182.

Sincerely,

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

Caron B. Falconer, Chief
EPCRA Enforcement Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2005 DEC -5 PM 1:06

HEARING CLERK

RECEIVED
EPA REGION IV

IN THE MATTER OF:)
)
The Sunny Delight Beverages Company) Docket Number: EPCRA-04-2007-2098(b)
)
Respondent.)
_____)

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 by 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 CFR Part 22.

2. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is The Sunny Delight Beverages Company (Sunny Delight). Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 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 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

3. Respondent waives any right it may have pursuant to 40 CFR § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

II. Preliminary Statements

4. 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 EPA. The Administrator of EPA has delegated this authority under CERCLA and under EPCRA to the Regional Administrators by EPA Delegation 14-31 and 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 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.

5. Respondent, Sunny Delight, is a corporation doing business in the State of Georgia.

6. Respondent is a "person" as 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).

7. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

8. Respondent's facility is located at 7000 LaGrange Boulevard, Atlanta, Georgia.

9. Respondent is an "owner or operator" of the facility as that term is defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

10. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of 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). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list initially published on April 4, 1985 (50 FR 13474) and with later amendments, is codified at 40 CFR Part 302.

11. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 CFR Part 302.6, require a person in charge of a facility or vessel, 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 reportable quantity (RQ), to immediately notify the National Response Center (NRC).

12. Respondent was in charge of the facility during the relevant period described below.

13. Anhydrous 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 CFR § 302.4.

14. EPA alleges that on October 12, 2005, Respondent had a release of anhydrous ammonia above the RQ occur at the facility.

15. EPA alleges that Respondent violated the notification requirements of Section

103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of anhydrous 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.

16. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 CFR Part 19, EPA may assess a penalty not to exceed \$32,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred on or after March 15, 2004. 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.

17. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and the regulations found at 40 CFR Part 355.40, require the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) when there has been a release of a CERCLA hazardous substance or extremely hazardous substance in an amount equal to or greater than the reportable quantity.

18. Respondent was the owner or operator of the facility during the relevant period, described below.

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

20. Anhydrous ammonia is an "extremely hazardous substance" as that term is defined by EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 CFR Part 355, Appendices A and B.

21. EPA alleges that on October 12, 2005, a release of anhydrous ammonia above the RQ occurred at the facility.

22. EPA alleges that Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of anhydrous 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.

23. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 CFR Part 19, EPA may assess a penalty of not more than \$32,500 for each violation of Section 304(a) and 304(c) that occurred on or after March 15, 2004. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

III. Consent Agreement

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

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

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

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

28. Compliance with the CAFO shall resolve the allegations of violations contained herein and contained in Complainant's notice of violation and opportunity to show cause letter to Respondent dated August 17, 2006. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither 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.

29. 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's interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

IV. Final Order

30. Respondent shall pay a civil penalty of TWO THOUSAND SIX HUNDRED TWENTY DOLLARS (\$2,620) for the alleged CERCLA violation. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

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

U.S. Environmental Protection Agency
Attention: Superfund Accounting
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

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

32. Respondent shall pay a civil penalty of TWO THOUSAND SIX HUNDRED NINETEEN DOLLARS (\$2,619) for the alleged EPCRA violations. Payment is to be paid

within thirty (30) days of the effective date of this CAFO.

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

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

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

34. 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, GA 30303

Jyoti Bhushan
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

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

35. 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 date of entry of the 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 of up to six percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

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

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

38. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
US EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303
(404) 562-8451

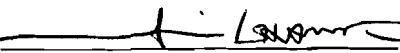
39. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

V. Effective Date

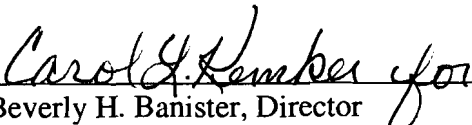
40. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

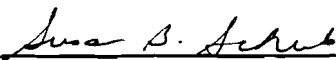
The Sunny Delight Beverages Company

By:  Date: 11/14/06
Amir Ghannad
Eastern Regional Plant Manager

U.S. Environmental Protection Agency

By:  Date: 11/8/06
Beverly H. Banister, Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 5th day of Dec., 2006.


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 Sunny Delight Beverage Company, Docket Number EPCRA 04-2007-2008(b), on the parties listed below in the manner indicated:

Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, GA 30303

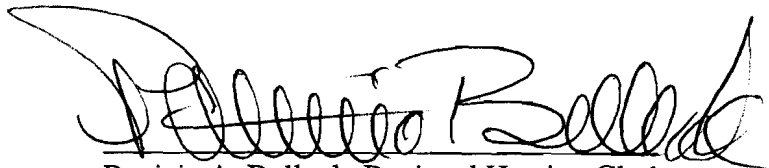
Vera Kornylak (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Amir Ghannad (Certified Mail - Return Receipt Requested)
Eastern Region Plant Manager
The Sunny Delight Beverages Company
7000 LaGrange Boulevard
Atlanta, GA 30336

David J. Scriven-Young (Via U.S. Mail)
McDermott Will & Emery LLP
227 West Monroe Street
Chicago, IL 60606-5096

Date:

12-5-06



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

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 11/28/06
(Name) (Date)

in the OEA/OATGL at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: The Sunny Delight Beverages Company
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 2619 -
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: EPCRA 04 2007 - 2008(b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: Peggy Whitney of the Financial Management Section at: (404) 562-8238.

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |



December 18, 2006

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

**Re: The Sunny Delights Beverages Co.
Docket No. EPCRA-04-2007-2008(b)**

To Whom It May Concern:

Enclosed is a copy of a check in the amount of \$2,619, paid to the U.S. Environmental Protection Agency according to the Consent Agreement and Final Order for the alleged EPCRA violations on behalf of The Sunny Delight Beverages Co.

Should you have any questions or concerns, please contact me at (404) 267-4645.

Yours truly,

A handwritten signature in black ink, appearing to read "Amir Ghannad", written over a horizontal line.

Amir Ghannad
Eastern Region Plant Manager

RECEIVED
EPA REGION IV
2006 DEC 29 AM 7:57
HEARING CLERK

CASHIER'S CHECK



No. 6243159

DATE December 19, 2006

PAY TO THE ORDER OF Treasurer, United States of America

\$ 2,619.00

PNC BANK 2619 DOLS 00 CTS

DOLLARS



ITS# 2006-12-18-57199872

REMITTER

PNC Bank, National Association

Sunny Delight Beverages Co. Docket # EPCRA-04-2007-2004(b)

Holly Keller

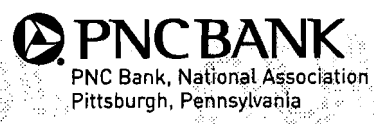
OFFICIAL SIGNATURE

⑈ 6 2 4 3 1 5 9 ⑈ ⑆ 0 4 3 0 0 0 0 9 6 ⑆ 0 0 0 9 0 2 0 2 0 0 ⑈

FORM107347-0706

8-9/430

CASHIER'S CHECK



No. 6243160

DATE December 19, 2006

PAY TO THE ORDER OF EPA Hazardous Substance Fund \$ 2,620.00

PNC BANK 2620 DOLS 00 CTS

DOLLARS

ITS# 2006-12-18-57199872

REMITTER

PNC Bank, National Association

OFFICIAL SIGNATURE

www.DelightBeverages Co. Docket #EPCRA-04-2007-2008(b)

⑈ 6 2 4 3 1 6 0 ⑈ ⑆ 0 4 3 0 0 0 0 9 6 ⑆ 0 0 0 9 0 2 0 2 0 0 ⑈