

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED

9/23/2024

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**U.S. EPA REGION 8
HEARING CLERK**

IN THE MATTER OF:

Asael Farr & Sons Company
2575 South 300 West
Salt Lake City, Utah 84115

Respondent.

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket No.: EPCRA-08-2024-0002

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. Asael Farr & Sons Company, a Utah Corporation, doing business as Farr Better Ice Cream, (Respondent) owns and/or operates a facility located at 2575 South 300 West, Salt Lake City, Utah 84115 (Facility)
3. Having agreed that settlement of this action is in the public interest, the EPA and Respondent consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 325 of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045, also known as the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA or the Act). The undersigned EPA official (Complainant) has been duly delegated the authority to institute this action.
5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The Final Order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

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III. GOVERNING LAW

7. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations at 40 C.F.R. part 370, require the owner or operator of a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., to prepare and submit a Tier II form containing the required data for each hazardous chemical stored in excess of its respective threshold level to the appropriate state emergency response commission (SERC), local emergency planning committee (LEPC), and fire department having jurisdiction over the facility.
8. Hazardous chemical, with certain exceptions, has the meaning given such term by the Occupational Safety and Health Act and its implementing regulations. Pursuant to those regulations, hazardous chemical means any chemical which is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, or hazard not otherwise classified by 29 C.F.R. § 1900.1200(c).
9. An extremely hazardous substance (EHS) is defined at 40 C.F.R. § 370.66 as a substance listed in appendices A and B of 40 C.F.R. part 355.

IV. STIPULATED FACTS

10. Respondent is a corporation and is authorized to do business in the state of Utah.
11. Respondent is a “person” as that term is defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
12. Respondent is the owner or operator of a “facility” as that term is defined by section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022.
13. Respondent is required to have material safety data sheets available pursuant to the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.
14. Anhydrous Ammonia is listed as extremely hazardous chemicals in appendices A and B of 40 C.F.R. part 355, and therefore is a hazardous chemical that need to be reported on a Tier II form.

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V. ALLEGED VIOLATIONS OF LAW

15. At all times relevant to this Agreement, Respondent was subject to EPCRA § 312 and was required pursuant to 40 C.F.R. § 370.45(a) to submit a Tier II form to the LEPC, SERC, and local fire department by March 1, containing data with respect to the preceding calendar year.
16. For calendar year 2019, Respondent allegedly had anhydrous ammonia at the Facility which exceeded all the threshold level for applicability of EPCRA § 312 pursuant to 40 C.F.R. § 370.10(a)(1) and 40 C.F.R. § 370.10(a)(2)(i).
17. The Respondent allegedly never submitted its 2019 Tier II form. By failing to submit a Tier II form to the LEPC, SERC, and local fire department for calendar year 2019 by March 1, 2020, Respondent allegedly violated 40 C.F.R. § 370.45(a).
18. For calendar year 2020, Respondent allegedly had anhydrous ammonia at the Facility which exceeded all the threshold level for applicability of EPCRA § 312 pursuant to 40 C.F.R. § 370.10(a)(1) and 40 C.F.R. § 370.10(a)(2)(i).
19. The Respondent allegedly never submitted its 2020 Tier II form. By failing to submit a Tier II form to the LEPC, SERC, and local fire department for calendar year 2019 by March 1, 2021, Respondent allegedly violated 40 C.F.R. § 370.45(a).
20. The calendar year 2021 Tier II form was submitted by Respondent on June 29, 2022. This Tier II form allegedly did include the anhydrous ammonia. By failing to submit a complete Tier II form to the LEPC, SERC, and local fire department for calendar year 2021 by March 1, 2022, Respondent allegedly violated 40 C.F.R. § 370.45(a).

VI. TERMS OF CONSENT AGREEMENT

21. For the purpose of this proceeding, Respondent:
 - a. admits the jurisdictional allegations in section II of this Agreement;
 - b. Neither admits nor denies the specific factual allegations or violation of law stated in this Agreement;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the conditions specified in this Agreement;

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- e. waives any right to contest the allegations and waives its right to appeal any proposed or final order approving this Agreement; and
 - f. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
22. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as amended, and 40 C.F.R part 19 authorize EPA to assess a civil penalty of not more than \$69,733 for each violation of section 312 of EPCRA, 42 U.S.C. § 11022.
23. In determining the amount of the penalty to be assessed, the EPA is required to consider, in addition to such other factors as justice may require, to the extent known, the nature, circumstances, extent and gravity of the violations alleged, any of Respondent's history of prior violations of EPCRA, or lack thereof, and degree of culpability, and any voluntary disclosure, or lack thereof.
24. Based on the alleged violations of law, and after consideration of the statutory factors in paragraph 23 above, EPA has determined a civil penalty of \$11,734 is appropriate to settle this matter.
25. Penalty Payment. Respondent agrees to:
- a. pay a civil penalty in the amount of \$11,734 within 30 calendar days of the Effective Date of this Agreement;
 - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment> and <https://www.epa.gov/financial/additional-instructions-making-payments-epa>;
 - c. identify the payment with the docket number that appears on the final order,
 - d. within 24 hours of payment, email proof of payment to Dan Webster at webster.daniel@epa.gov and Marc Weiner at weiner.marc@epa.gov, (proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has

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been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).

26. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; "and a 10% quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5)";
 - b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
27. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
28. Respondent agrees and certifies, by signing the Agreement, that the Facility is in full compliance with section 312 of EPCRA.
29. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
30. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party they represent to this Agreement.

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31. Except as qualified by paragraph 26, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
32. The parties consent to service of the Final Order by email at the following addresses: weiner.marc@epa.gov (for Complainant), and brad.cahoon@dentons.com (for Respondent).

VII. EFFECT OF CONSENT AGREEMENT

33. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violation specifically alleged above.
34. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/Regional Judicial Officer, or other delegatee.
35. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of not more than \$69,733 per violation, as provided in section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and adjusted for inflation pursuant to 40 C.F.R. part 19.
36. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
37. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
38. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

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VIII. EFFECTIVE DATE

39. This Agreement shall become effective on the date the Final Order is filed by the hearing clerk.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8,
Complainant.**

Date: _____

By: _____
David Cobb, Supervisor
Toxics and Pesticides Enforcement Section,
Air and Toxics Enforcement Branch,
Enforcement and Compliance Assurance Division

**Asael Farr & Sons Company dba Farr Better Ice
Cream, a Utah Corporation,
Respondent.**

Date: 9/23/2024

By: _____

Michael D. Farr,
President