

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

FILED

2011 SEP 23 PM 2:15

U.S. EPA REGION IX
REGIONAL HEARING CLERK

IN THE MATTER OF:

Vita-Pakt Citrus Products, Inc.

Respondent.

U.S. EPA Docket No.
CERCLA-09-2011- 0008
EPCRA-09-2011- 0013

CONSENT AGREEMENT AND
FINAL ORDER PURSUANT TO
40 CFR SECTIONS 22.13 and 22.18

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Vita-Pakt Citrus Products, Inc. ("Respondent"), a corporation organized under the laws of the state of California.
2. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 CFR §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603, Section 304 of EPCRA, 42 U.S.C. § 11004, and their respective implementing regulations.

B. STATUTORY AND REGULATORY FRAMEWORK

3. Any person in charge of a facility is required under CERCLA Section 103(a), 42 U.S.C. § 9603(a), to immediately notify the National Response Center ("NRC") as soon as the person in charge has knowledge of a release of a Hazardous Substance ("HS") from such facility in an amount equal to or greater than the Reportable Quantity ("RQ").
4. Section 304 of EPCRA, 42 U.S.C. § 11004, requires the owner or operator of a facility at which a hazardous chemical is produced, used, or stored to notify immediately the appropriate governmental entities of any release that requires notification under Section 103 of CERCLA and of any release in an amount that meets or exceeds its RQ of an Extremely Hazardous Substance ("EHS") listed under Section 302 of EPCRA, 42 U.S.C. § 11002. The notification must be given to the local emergency planning committee ("LEPC") and to the state emergency planning commission ("SERC") for each area and state likely to be affected by the release.

C. GENERAL ALLEGATIONS

5. Section 109 of CERCLA, 42 U.S.C. § 9609, authorizes the President to issue orders assessing civil penalties for any violations of Section 103 of CERCLA, 42 U.S.C. § 9603.
6. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), authorizes the Administrator of EPA to assess civil penalties for any violation of Section 304 of EPCRA, 42 U.S.C. § 11004.
7. The Administrator of EPA has delegated these authorities under CERCLA and EPCRA to the Regional Administrators by EPA delegations 14-31 and 22-3-A, respectively.
8. The Regional Administrator, EPA Region IX, has delegated these authorities to the Director of the Superfund Division with delegations R9 1290.16 and R9 1290.18, respectively.
9. Respondent is, and at all times referred to herein was, 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).
10. Respondent owns and operates a facility located at 707 N. Barranca Ave., Covina, California ("Facility"), which 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). At the time of the events that gave rise to this CA/FO (May 2009), Respondent manufactured fruit juice at the Facility. Currently, however, the Facility is used only for distribution of fruit juice.
11. The SERC for the state likely to be affected by a release from the Facility is the California Emergency Management Agency ("CalEMA").
12. The LEPC for the area likely to be affected by a release from the Facility is the Los Angeles County Certified Unified Program Agency ("CUPA"), which is the Los Angeles County Fire Department.
13. At all times relevant to this CA/FO, Respondent has been the owner and/or operator, and the person in charge, of the Facility.
14. At all times relevant to this CA/FO, the Facility used or stored ammonia, Chemical Abstract Service No. 7664-41-7, which is a hazardous chemical under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e).
15. The Administrator of the EPA, as required under Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), has published 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 has promulgated regulations establishing the RQ of certain Hazardous Substances, the releases of which are required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). This list, including the corresponding RQs for each Hazardous Substance, is codified at 40 CFR Part 302, Table 302.4.
16. The Administrator of the EPA, as required under Section 302 of EPCRA, 42 U.S.C. § 11002, has published a list of substances designated as "Extremely Hazardous Substances," which, when released into the environment, may present substantial danger to public health or welfare or the environment, and has promulgated regulations establishing the RQ of an Extremely Hazardous Substance, the release of which is

required to be reported under Section 304 of EPCRA, 42 U.S.C. § 11004. This list, including the corresponding RQs for the Extremely Hazardous Substances, is codified at 40 CFR Part 355, Appendices A and B.

17. Ammonia is a "Hazardous Substance" as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and it is also an "Extremely Hazardous Substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3). Under both statutes, ammonia has an RQ of one hundred (100) pounds, as designated in 40 C.F.R. Part 302, Table 302.4 and 40 C.F.R. Part 355, Appendices A and B.

D. ALLEGED VIOLATIONS

COUNT I

(Violation of Section 103 of CERCLA)

18. Paragraphs 1 through 17 above are incorporated herein by this reference as if they were set forth here in their entirety.
19. On May 15, 2009, more than 100 pounds (the RQ) of anhydrous ammonia was released from the Facility.
20. Respondent had actual or constructive knowledge of the release of anhydrous ammonia which occurred on May 15, 2009, shortly after the time that it occurred.
21. Respondent notified the LEPC/CUPA (i.e., the Los Angeles County Fire Department) immediately, and the Los Angeles County Fire Department notified the NRC within 2.5 hours thereafter; however, Respondent itself did not contact the NRC until May 18, 2009, approximately 3 days after the release occurred.
22. By failing to immediately notify the NRC as soon as it had knowledge of this release of an RQ of anhydrous ammonia, Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
23. Respondent is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

COUNT II

(Violation of Section 304 of EPCRA)

24. Paragraphs 1 through 17 above are incorporated herein by this reference as if they were set forth here in their entirety.
25. On May 15, 2009, more than 100 pounds (the RQ) of anhydrous ammonia was released from the Facility.
26. Respondent had actual or constructive knowledge of the release of anhydrous ammonia which occurred on May 15, 2009, shortly after the time that it occurred.
27. Respondent notified the LEPC/CUPA (i.e., the Los Angeles County Fire Department) immediately, and the Los Angeles County Fire Department notified CalEMA within 2.5

any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

34. This CA/FO shall apply to and be binding upon Respondent and its officers, directors, employees, successors and assigns, until such time as the civil penalty required under Section E has been paid in accordance with Section J and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
35. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
36. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.
37. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

H. CERTIFICATION OF COMPLIANCE

38. Upon signing this CA/FO, Respondent certifies to EPA that the Facility has come into compliance with the requirements of Section 103 of CERCLA and Section 304 of EPCRA that formed the basis for the violations alleged in Section D above by notifying the NRC and CalEMA by telephone on May 18, 2009 and by submitting a written follow-up report to CalEMA on June 30, 2011, and that the Facility is now in compliance with the relevant current reporting obligations under Section 103 of CERCLA and 304 of EPCRA.
39. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

I. PAYMENT OF CIVIL PENALTY

40. Respondent hereby consents to the assessment of and agrees to pay a civil penalty of **TWENTY-THREE THOUSAND, SEVEN HUNDRED DOLLARS (\$23,700)** in settlement of the alleged violations set forth in Section D above. This CA/FO constitutes a settlement of all claims for the violations of Section 103 of CERCLA and Section 304 of EPCRA alleged in Section D above.
41. Within thirty (30) days of the effective date of this CA/FO Respondent shall submit a certified or cashier's check in the amount of **TWENTY-THREE THOUSAND, SEVEN HUNDRED DOLLARS (\$23,700)** payable to "U.S. EPA Hazardous Substance Superfund," which shall be mailed as follows:

Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

Jeremy Johnstone
Emergency Prevention & Preparedness Section (SFD-9-3)
Superfund Division
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Bryan K. Goodwin
Regional Hearing Clerk (ORC-1)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

42. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the due date will result in imposition of interest from the effective date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 CFR § 13.111. In addition, a twelve percent (12%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.
43. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

J. DELAY IN PERFORMANCE / STIPULATED PENALTIES

44. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.
45. For failure to submit a payment to EPA by the time required in this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.
46. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO, are within the sole discretion of the

CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

57. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

L. OTHER CLAIMS


58. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

N. MISCELLANEOUS


59. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
60. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
61. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
62. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

IT IS SO AGREED.

9/8/2011
Date


Name: Lloyd Shimizu
Title: Chief Financial Officer
Vita-Pakt Citrus Products, Inc.

15 September 2011
Date



For Jane Diamond
Director
Superfund Division
United States Environmental Protection Agency,
Region IX

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No. CERCLA 09-2011-03 and EPCRA-09-2011-13) be entered and that Respondent pay a civil penalty in the amount **TWENTY-THREE THOUSAND, SEVEN HUNDRED DOLLARS (\$23,700)**.

09/22/11

Date


Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

Docket No. CERCLA-09-2011- 0003
EPLA - 09 - 2011 - 0013

I hereby certify that the original copy of the foregoing CAFO with the Docket number referenced above, has been filed with the Region 9 Hearing Clerk and that a copy was sent by certified mail, return receipt requested, to:

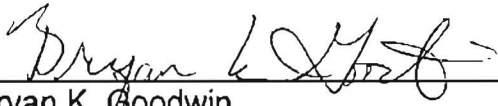
James Boyles, CEO
Vita-Pakt Citrus Products, Inc.
707 N. Barranca Ave.
Covina, CA 91723

CERTIFIED MAIL NUMBER: 7008 1830 0002 6279 4083

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Taly Jolish, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne St.
San Francisco, CA 94105

9/26/11
Date


Bryan K. Goodwin

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

75 Hawthorne Street
San Francisco, CA 94105

CERTIFIED MAIL NO.: 7008 1830 0002 6279 4083
RETURN RECEIPT REQUESTED

In Reply Refer to:
Vita-Pakt Citrus Products, Inc.

SEP 26 2011
James Boyles, CEO
Vita-Pakt Citrus Products, Inc.
707 N. Barranca Ave.
Covina, CA 91723

Re: In the Matter of Vita-Pakt Citrus Products, Inc.

Dear Mr. Boyles:

Please find enclosed the fully executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX (EPA), and Vita-Pakt Citrus Products, Inc.

This CA/FO simultaneously commences and concludes the above-referenced proceeding concerning Vita-Pakt's violations of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA) as alleged by EPA in the CA/FO.

Vita-Pakt's prompt payment of the civil penalty assessed and completion of all tasks required by this CA/FO will close this case. If you have any questions regarding the CERCLA requirements and regulations governing operations at your facility, or which concern the proceedings terminated by the enclosed documents, please contact Jeremy Johnstone of my staff at (415) 972-3499.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Diamond".

Jane Diamond
Director
Superfund Division

Enclosures

cc (w/ enclosures):
J. Johnstone, EPA Region IX
T. Jolish, EPA Region IX
P. O'Toole, Esq.