



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 16 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Roberta Lang
Whole Foods Market Group, Inc.
550 Bowie Street
Austin, Texas 78703

Re: Whole Foods Market Group, Inc., Munster, Indiana
Consent Agreement and Final Order
Docket No. **EPCRA-05-2016-0011**

Dear Ms. Lang:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on March 16, 2016.

Please have your client pay the EPCRA civil penalty in the amount of \$36,485 in the manner prescribed in paragraphs 40 and 41, and reference your payment with the docket number **EPCRA-05-2016-0011**

The payment is due on April 15, 2016.

Please feel free to contact Ruth McNamara at mcnamara.ruth@epa.gov or by telephone at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert Guenther, Associate Regional Counsel, at guenther.robert@epa.gov or by telephone at (312) 886-0566. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 5



IN THE MATTER OF:)	Docket No.:
)	EPCRA-05-2016-0011
WHOLE FOODS MARKET)	Proceeding to Assess a Civil Penalty
GROUP, INC.,)	Under Section 325(c)(1) of the Emergency
MUNSTER, INDIANA,)	Planning and Community Right-to-Know
)	Act, 42 U.S.C. § 11045(c)(1)
RESPONDENT.)	
_____)	

CONSENT AGREEMENT AND FINAL ORDER

1. This is an administrative action commenced and concluded under section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), and 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), codified at 40 C.F.R. part 22.
2. Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Whole Foods Market Group, Inc., a Delaware corporation doing business in the State of Indiana.
4. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO and to the civil penalty assessed herein.

JURISDICTION AND WAIVER OF THE RIGHT TO A HEARING

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

STATUTORY AND REGULATORY BACKGROUND

9. 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 to the state emergency response committee (SERC), community coordinator for the local emergency planning commission (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. part 370). The form must contain the information required by section 312(d) of EPCRA, 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 U.S. EPA at 40 C.F.R. part 355, appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and

hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Federal regulations, at 29 C.F.R. § 1910.1200(b)(1), require all employers to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDSs.

12. Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, gives the term “hazardous chemical” the meaning given by 29 C.F.R. § 1910.1200(c).

13. Federal regulations, at 29 C.F.R. § 1910.1200(c), define a hazardous chemical as any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation EPCRA section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. part 19 increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

15. Respondent is a “person” as that term is defined under section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 480 45th Street, Munster, Indiana (facility).

17. At all times relevant to this CAFO, Respondent was an employer at the facility.

18. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

19. Respondent's facility is a "facility" as that term is defined under section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Sulfuric acid (CAS # 7664-93-9) is an "extremely hazardous substance" according to section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

21. Sulfuric acid has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. part 370.

22. Lead (CAS # 7439-92-1) is classified as a health hazard by its MSDS and is a "hazardous chemical" according to section 311(e) of EPCRA, 42 U.S.C. § 11021(e).

23. Lead has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. part 370.

24. Diesel fuel (CAS # 68476-30-2) is classified as a physical and health hazard by its MSDS and is a "hazardous chemical" according to section 311(e) of EPCRA, 42 U.S.C. § 11021(e).

25. Diesel fuel has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. part 370.

26. OSHA requires Respondent to prepare, or have available, an MSDS for each of sulfuric acid, lead and diesel fuel.

27. At all times relevant to this CAFO, the Indiana State Emergency Response Commission was the SERC for the State of Indiana under section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

30. At all times relevant to this CAFO, the Lake County Local Emergency Planning Committee was the LEPC for the local area of Respondent's facility under section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

31. At all times relevant to this CAFO, the Munster Fire Department was the fire department with jurisdiction over the facility.

32. During at least one period of time in each of calendar years 2010, 2011 and 2012, sulfuric acid, lead and diesel fuel were present at the facility in amount equal to or greater than the minimum threshold levels found at 40 C.F.R. part 370.

33. Respondent was required to submit to the SERC, LEPC and local fire department a completed emergency and hazardous chemical inventory form including sulfuric acid, lead and diesel fuel on or before March 1, 2011, for calendar year 2010.

34. Respondent was required to submit to the SERC, LEPC and local fire department a completed emergency and hazardous chemical inventory form including sulfuric acid, lead and diesel fuel on or before March 1, 2012, for calendar year 2011.

35. Respondent was required to submit to the SERC, LEPC and local fire department a completed emergency and hazardous chemical inventory form including sulfuric acid, lead and diesel fuel on or before March 1, 2013, for calendar year 2012.

36. Respondent submitted to the Indiana SERC, Lake County LEPC and Munster Fire Department completed Emergency and Hazardous Chemical Inventory Forms including sulfuric acid, lead and diesel fuel on August 21, 2013, for calendar years 2010, 2011 and 2012.

37. Each day Respondent failed to submit to the SERC, LEPC and local fire department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric

acid, lead and diesel fuel by March 1, of the year following calendar years 2010, 2011 and 2012 constitutes a separate violation of section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

38. In this action, Complainant does not allege, nor does this CAFO resolve, liability for any spill, leaks or releases of any hazardous substance, extremely hazardous substance or hazardous chemical occurring at or from any facility owned or operated by Respondent.

CIVIL PENALTY

39. Complainant has determined that an appropriate civil penalty to settle this action is \$36,485 for the EPCRA violations alleged in this CAFO. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's 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, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$36,485 civil penalty for the EPCRA violations alleged in this CAFO. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the case caption and the docket numbers of this CAFO.

41. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

Ruth McNamara (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert S. Guenther, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

42. This civil penalty is not deductible for federal tax purposes.

43. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

44. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

GENERAL PROVISIONS

45. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

46. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law .

47. Respondent certifies that it is complying with section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

48. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws and regulations.

49. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

50. The terms of this CAFO bind Respondent and its successors and assigns.

51. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

52. Each party agrees to bear its own costs and attorney's fees in this action.

53. This CAFO constitutes the entire agreement between the parties.

Whole Foods Market Group, Inc., Respondent

March 2 2016
Date



Roberta Lang
General Counsel
Whole Foods Market Group, Inc.

U.S. Environmental Protection Agency, Complainant

3/10/16
Date

Lawrence Schmitt
for M. Cecilia Moore, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

3/10/2016
Date


Richard C. Karl
for Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Whole Foods Market, Inc.
Docket No. EPCRA-05-2016-0011

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

March 14, 2016
Date


Robert Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: Whole Foods Market Group, Inc., Munster, Indiana
Docket No. EPCRA-05-2016-0011

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on March 16, 2016 in the following manner to the addressees:

Copy by Certified Mail

Return Receipt Requested: Ms. Robert Lang
Whole Foods Market Group, Inc.
550 Bowie Street
Austin, Texas 78703

Copy by E-mail to

Attorney for Complainant: Robert Guenther
guenther.robert@epa.gov

Copy by E-mail to

Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: March 16, 2016



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 6646