



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)
)
)
Leprino Foods Company)
2401 MacArthur Drive)
Tracy, California 95376)
)
)
)
Respondent)
_____)

Docket No.
CAA(112r)-09-2024-0003
CERCLA-09-2024-0004
EPCRA-09-2024-0005

**CONSENT AGREEMENT
AND FINAL ORDER
40 C.F.R. §§ 22.13 and 22.18**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted 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, Sections 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(a)(3)(A), (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

2. Pursuant to CERCLA Section 109, 42 U.S.C. § 9609, the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to take enforcement action against persons who violate CERCLA Section 103(a), 42 U.S.C. § 9603(a). The Administrator delegated this authority to the EPA Regional Administrators by Delegation 14-31, dated May 11, 1994. The Regional Administrator of EPA Region IX, redelegated this authority to the Director of the

Enforcement and Compliance Assurance Division ("ECAD") by Delegation R9-14-31, dated May 1, 2019.

3. Pursuant to EPCRA Section 325, 42 U.S.C. § 11045, the Administrator of EPA is authorized to take enforcement action against persons who violate EPCRA Section 304, 42 U.S.C. § 11004. The Administrator delegated this authority to the EPA Regional Administrators by Delegation 22-3A, dated May 11, 1994 (last revised July 20, 2016). The Regional Administrator of EPA Region IX, redelegated this authority to the Director of the Enforcement Division (now ECAD) by Delegation R9-22-3-B, dated February 11, 2013.

4. Pursuant to CAA Section 113(d), 42 U.S.C. § 7413(d), the Administrator of EPA is authorized to sign consent agreements memorializing settlements of enforcement actions against persons who violate CAA Section 112(r), 42 U.S.C. § 7412(r). The Administrator delegated this authority to the EPA Regional Administrators by Delegation 7-6-A, dated August 4, 1994. The Regional Administrator of EPA Region IX redelegated this authority to the Director of the Enforcement Division (now ECAD) by Delegation R9-7-6-A, dated February 11, 2013.

5. The United States Department of Justice granted EPA a waiver from the conditions on administrative actions specified in CAA Section 113(d), 42 U.S.C. § 7413(d), to allow EPA to pursue this administrative action.

6. Complainant is the Director of ECAD.

7. Respondent is Leprino Foods Company ("Respondent").

8. This Consent Agreement and Final Order (“CA/FO”), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a)(1)-(3), (8), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) - (3).

9. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

B. GENERAL ALLEGATIONS

10. Respondent owns and operates a cheese manufacturing facility located at 2401 MacArthur Drive in Tracy, California (the “Facility”).

11. On March 22, 2022, EPA performed an inspection of the Facility to evaluate compliance with CERCLA Section 103, 42 U.S.C. § 9603, EPCRA Sections 304-312, 42 U.S.C. §§ 11004-12, and CAA Section 112(r), 42 U.S.C. § 7412(r) (the “Inspection”). Based upon the information gathered during the Inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of CERCLA, EPCRA, and the CAA.

12. At all times relevant to this CA/FO, Respondent has been and continues to be a “person” as defined in CERCLA Section 101(21), 42 U.S.C. § 9601(21), EPCRA Section 329(7), 42 U.S.C. § 11049(7), and CAA Section 302(e), 42 U.S.C. § 7602(e).

i. CERCLA Section 103

13. CERCLA Section 103, 42 U.S.C. § 9603, and its implementing regulations require any person in charge of an onshore facility to immediately notify the National Response Center

("NRC") as soon as the person in charge has knowledge of a release of a hazardous substance from such facility in an amount equal to or greater than the Reportable Quantity ("RQ").

14. Ammonia is designated as a "hazardous substance" in CERCLA Sections 101(14) and 102(a), 42 U.S.C. §§ 9601(14), 9602(a), and 40 C.F.R. § 302.4. The RQ for ammonia is one hundred (100) pounds, as specified at 40 C.F.R. § 302.4.

15. The Facility is an "onshore facility" as defined by CERCLA Sections 101(18) and 101(9), 42 U.S.C. § 9601(18), (9).

16. At all times relevant to this CA/FO, Respondent has been the "owner or operator" of the Facility as defined by CERCLA Section 101(20), 42 U.S.C. § 9601(20).

ii. **EPCRA Section 304**

17. EPCRA Section 304, 42 U.S.C. § 11004, and 40 C.F.R. § 355.40 require the owner or operator of a facility at which a hazardous chemical is produced, used, or stored to immediately notify the appropriate governmental entities of any release that requires notification under CERCLA Section 103, 42 U.S.C. § 9603, and of any release in an amount that meets or exceeds the RQ of an "extremely hazardous substance" ("EHS") listed under EPCRA Section 302, 42 U.S.C. § 11002.

18. Ammonia is an EHS as defined in EPCRA Section 302(a), 42 U.S.C. § 11002(a). The RQ for ammonia is one hundred (100) pounds. 40 C.F.R. Part 355, Appendices A and B.

19. The notification must be immediately given to the state emergency response commission ("SERC") for each state likely to be affected by the release.

20. The Facility is a "facility" as defined by EPCRA Section 329(4), 42 U.S.C. § 11049(4).

21. At all times relevant to this CA/FO, the California Office of Emergency Services (“Cal OES”) was the SERC for the purpose of receiving chemical release notifications.

iii. CAA Section 112(r)

22. Pursuant to the General Duty Clause in CAA Section 112(r)(1), 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), or any other EHS, have a general duty, in the same manner and to the same extent as under Occupational Safety and Health Act (“OSHA”) Section 654, 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

23. Pursuant to CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity (“TQ”) must prepare and implement a risk management plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

24. At all times relevant to this CA/FO, the Facility has been a “stationary source” as defined at CAA Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

25. At all times relevant to this CA/FO, Respondent has been the owner or operator of the Facility.

26. Pursuant to CAA Section 112(r), 42 U.S.C. § 7412(r), EPA established a TQ for each “regulated substance” at or above which a facility that has such substance in one or more processes shall be subject to the requirements of CAA Section 112(r), 42 U.S.C. § 7412(r). For substances designated as “regulated substances,” the TQs are specified at 40 C.F.R. § 68.130, Tables 1-4.

27. Anhydrous ammonia is a “regulated toxic substance” listed under CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), with a TQ of ten thousand (10,000) pounds. 40 C.F.R. § 68.130, Tables 1 and 2.

28. At all times relevant to this CA/FO, Respondent has and had 10,000 pounds or more of anhydrous ammonia in one or more processes at the Facility.

C. ALLEGED VIOLATIONS OF LAW

Count I

Failure to Immediately Report the March 31, 2021 Ammonia Release to the National Reporting Center

29. Paragraphs 1 through 28 above are incorporated herein by reference.

30. Pursuant to CERCLA Section 103, 42 U.S.C. § 9603, any person in charge of an onshore facility is required, as soon as they have knowledge of a release of a hazardous substance from a facility in a quantity equal to or greater than the RQ, to immediately notify the NRC of the release.

31. Based upon information obtained during EPA’s investigation, EPA determined that Respondent notified the NRC 59 minutes after the start of a release of 109 pounds of ammonia from the Facility on March 31, 2021.

32. By failing to notify the NRC immediately upon having knowledge that a RQ of a hazardous substance had been released at its Facility, Respondent violated CERCLA Section 103, 42 U.S.C. § 9603.

Count II

Failure to Immediately Report the March 31, 2021 Ammonia Release to the California Office of Emergency Services

33. Paragraphs 1 through 28 above are incorporated herein by reference.

34. Pursuant to EPCRA Section 304, 42 U.S.C. § 11004, if a release of an EHS occurs from a facility at which a hazardous chemical is produced, used, or stored which requires notification of the NRC under CERCLA Section 103, 42 U.S.C. § 9603, the owner or operator of the facility shall immediately provide notice to the SERC of any State likely to be affected by the release.

35. Based upon the information obtained during EPA's investigation, EPA determined that Respondent notified Cal OES, the SERC in California, 50 minutes after the start of a release of 109 pounds of ammonia from the Facility on March 31, 2021.

36. By failing to immediately notify the SERC of the release of a RQ of an EHS from the Facility, Respondent violated EPCRA Section 304, 42 U.S.C. § 11004.

Count III

Failure to Document the Alternative Release Scenario

37. Paragraphs 1 through 28 above are incorporated herein by reference.

38. 40 C.F.R. § 68.39(b) requires owners or operators to maintain records describing the alternative release scenarios identified and used in offsite consequence analyses, including the assumptions and parameters used and the rationale for the selection of specific scenarios.

39. Based upon the Inspection and subsequent investigation, EPA determined that Respondent only documented one alternative release scenario in its offsite consequence analyses and did not describe the scenario identified, assumptions and parameters used, or the rationale for the selection of the specific scenario.

40. By failing to consider multiple alternative release scenarios and describe the assumptions, parameters, and rationale used for selecting the specific alternative release scenario that was considered, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.39(b).

Count IV

Failure to Compile Design Codes and Standards and to Document that Existing Equipment Complies with Recognized and Generally Accepted Good Engineering Practices or Were Designed and Operating in a Safe Manner

41. Paragraphs 1 through 28 above are incorporated herein by reference.

42. 40 C.F.R. § 68.65(a) requires that owners and operators compile written process safety information before conducting any process hazard analysis, including equipment in the process.

43. 40 C.F.R. § 68.65(d)(1)(vi) specifies that information pertaining to the equipment in the process includes the design codes and standards employed.

44. 40 C.F.R. § 68.65(d)(2) requires owners and operators to document that equipment complies with recognized and generally accepted good engineering practices ("RAGAGEP").

45. 40 C.F.R. § 68.65(d)(3) requires owners and operators to determine and document that any existing equipment that deviates from RAGAGEP because it was designed or constructed in

accordance with standards that are no longer in general use, is designed, maintained, inspected, tested, and operating in a safe manner.

46. Based upon the Inspection and subsequent investigation, EPA determined that Respondent failed to maintain a current and complete compilation of the design codes and standards employed for its ammonia refrigeration equipment in its written process safety information.

47. Based upon the Inspection and subsequent investigation, EPA also determined that Respondent failed to document that various equipment complied with RAGAGEP or was otherwise designed, maintained, inspected, tested, and operating in a safe manner, including pressure relief valves, audible and visual alarms, ventilation systems, emergency shutdown controls, exhaust fans, refrigeration piping and vessels, ammonia sensors, and labeling.

48. By failing to maintain a current and complete compilation of the design codes and standards and to document that various equipment complied with RAGAGEP or was otherwise designed, maintained, inspected, tested, and operating in a safe manner, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.65(d)(1)(vi), (d)(2)-(3).

Count V

Failure to Address Hazards and Identify Adequate Engineering and Administrative Controls Related to the Horizontal, Curvilinear, and Recirculatory Door and to Promptly Respond to Process Hazard Analysis Findings and Recommendations

49. Paragraphs 1 through 28 above are incorporated herein by reference.

50. 40 C.F.R. § 68.67(c) requires owners or operators to address specific topics when they perform process hazard analyses (“PHAs”) for RMP processes at their facilities. Pursuant to 40

C.F.R. § 68.67(c)(1), PHAs must address the hazards of the process. Pursuant to 40 C.F.R. § 68.67(c)(3), PHAs must address engineering and administrative controls applicable to hazards and their interrelationships. Pursuant to 40 C.F.R. § 68.67(e), owners or operators shall establish a system to promptly address PHA findings and recommendations.

51. Based upon the inspection and subsequent investigation, EPA determined that the Facility's 2019 Horizontal, Curvilinear, and Recirculatory ("HCR") Door PHA did not address the hazards associated with using an inadequate flange on the HCR doors, identified in a prior investigation. In the same PHA, Respondent failed to address or list any adequate engineering and administrative controls applicable to the hazards and their interrelationships by listing "Ammonia Detection" as both a safeguard and a recommendation. Respondent also had multiple PHA recommendations that remained unresolved up to nine (9) years past documented due dates.

52. By failing to address the hazards, discuss engineering and administrative controls applicable to the hazards and their interrelationships, and establish a system to promptly address findings, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.67(c)(1), (c)(3), (e).

Count VI

Failure to Complete Annual Certification of Operating Procedures and to Develop and Implement Safe Ice and Snow Removal Procedures for Freezer Roofs, Walls, and Racks

53. Paragraphs 1 through 28 above are incorporated herein by reference.

54. 40 C.F.R. § 68.69(c) requires owners or operators to certify annually that operating procedures are current and accurate.

55. 40 C.F.R. § 68.69(d) requires owners or operators to develop and implement safe work practices to provide for the control of hazards during operations. The safe work practices apply to employees and contractor employees.

56. Based upon the Inspection and subsequent investigation, EPA determined that Respondent did not complete its annual certification of all operating procedures for calendar years 2019 and 2021.

57. Based upon the Inspection and subsequent investigation, EPA determined that Respondent had not developed and implemented practices and procedures for safely removing ice and snow from the freezer roof, walls, and racks prior to a 2021 incident that occurred when contractors failed to isolate ammonia lines before removing ice from above the HCR Door. The contractors were not equipped with air-purifying respirators at the time of the incident.

58. By failing to complete annual certification of all operating procedures for 2019 and 2021 and failing to develop and implement safe ice removal practices and procedures prior to the 2021 incident, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.69(c)-(d).

Count VII

Failure to Maintain Records that Ammonia Refrigeration System Operators Understood Trainings on Standard Operating Procedures

59. Paragraphs 1 through 28 above are incorporated herein by reference.

60. 40 C.F.R. § 68.71(c) requires an owner or operator to ascertain that each employee involved in operating a process has received and understood the requisite training, including initial training that provides an overview of the process and operating procedures with an emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks, as well as refresher training at least every three years and more often as necessary. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

61. Based upon the inspection and subsequent investigation, EPA determined that Respondent did not prepare training records between 2017 and 2022 documenting the means used to verify that the employees operating the ammonia refrigeration system understood trainings related to the standard operating procedures of the system.

62. By failing to maintain training records between 2017 and 2022 documenting that employees operating the ammonia refrigeration system understood the requisite trainings, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.71(c).

Count VIII

Failure to Correct Deficiencies in Equipment

63. Paragraphs 1 through 28 above are incorporated herein by reference.

64. 40 C.F.R. § 68.73(e) requires owners or operators to correct deficiencies in equipment that are outside acceptable limits, as defined by the process safety information in 40 C.F.R. § 68.65, before further use or in a safe and timely manner to assure safe operation.

65. Based upon the inspection and subsequent investigation, EPA determined that at the Facility there were mechanical integrity deficiencies outside of acceptable limits for several pieces of equipment – including ammonia piping and equipment, vapor barriers, and electrical wiring – that should have been corrected prior to continued use. EPA also determined that Respondent did not repair or replace sections of severely corroded piping in a timely manner.

66. By failing to comply with the mechanical integrity requirements for correcting deficiencies in equipment, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(e).

Count IX

Failure to Properly Implement and Document the Management of Change Process for the Replacement of Horizontal, Curvilinear, and Recirculatory Door Gaskets

67. Paragraphs 1 through 28 above are incorporated herein by reference.

68. 40 C.F.R. § 68.75(a) requires owners and operators to establish and implement written procedures to manage changes (except for “replacements in kind”) to equipment.

69. Based on EPA’s inspection and information gathered during EPA’s investigation, EPA determined that Respondent improperly documented the replacement of gaskets for the HCR doors as a “replacement in kind” when the replacement gaskets were made of a different material than the previous gaskets, thereby requiring a compatibility analysis pursuant to the corresponding management of change process due to the change in material of construction.

70. By failing to properly implement and document the management of change process for the replacement of gaskets for the HCR doors, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.75(a).

Count X

Failure to Include Contractors on the 2021 Incident Investigation Team, Recommend Documenting Safe Work Procedures, and Promptly Respond to Recommendations in Incident Investigation Reports

71. Paragraphs 1 through 28 above are incorporated herein by reference.

72. 40 C.F.R. § 68.81(c) requires the owner or operator to establish an incident investigation team when an incident occurs which results in or could reasonably have resulted in a catastrophic release. The incident investigation team shall include a contract employee if the incident involved the work of a contractor.

73. 40 C.F.R. § 68.81(d)(5) requires the owner or operator to prepare or have prepared a report at the conclusion of the investigation that includes recommendations resulting from the investigation.

74. 40 C.F.R. § 68.81(e) requires the owner or operator to establish a system to promptly address and resolve the incident report findings and recommendations and document resolutions and corrective actions.

75. Based upon the Inspection and subsequent investigation, EPA determined that Respondent's contractors were not included in the incident investigation team for the 2021 Incident in which two contractors were involved and injured.

76. Based upon the Inspection and subsequent investigation, EPA also determined that Respondent did not have safe work procedures in place for snow and ice removal from the freezer at the time of the 2021 Incident. Respondent's incident investigation report for the 2021 Incident listed the lack of documentation of such procedures as a contributing cause of the incident but did not recommend documenting safe work procedures.

77. Based upon the Inspection and subsequent investigation, EPA also determined that Respondent did not promptly address multiple recommendations made in incident investigation reports compiled between 2016 and 2021, including the incident investigation report for the 2021 Incident.

78. By failing to include contractors in the incident investigation team for the 2021 Incident, recommend documenting safe work procedures, and promptly respond to recommendations from incident investigation reports, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.81(c), (d)(5), (e).

Count XI

Failure to Adequately Evaluate Contractor Performance and Implement Safe Contractor Work Practices

79. Paragraphs 1 through 28 above are incorporated herein by reference.

80. 40 C.F.R. § 68.87(b)(1) requires that the owner or operator, when selecting a contractor, shall obtain and evaluate information regarding the contract owner or operator's safety performance and programs.

81. 40 C.F.R. § 68.87(b)(4) requires that the owner or operator develop and implement safe work practices to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas.

82. Based upon the Inspection and subsequent investigation, EPA determined that Respondent did not adequately evaluate information regarding contractor safety performance and programs, nor did Respondent adequately implement safe work practices to control the presence of contract employees in covered process areas during the 2021 Incident.

83. By failing to adequately evaluate contractor safety performance information and implement safe work practices to control the presence of contract employees in covered process areas, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.87(b)(1), (4).

Count XII

Failure to Coordinate with Local Authorities, Document Coordination, and Update the Worst-Case Scenario Distance to Endpoint in Emergency Response Planning

84. Paragraphs 1 through 28 above are incorporated herein by reference.

85. At all times relevant to this CA/FO, the City of Tracy Fire Department was the local emergency planning committee ("LEPC") for the purpose of emergency response coordination.

86. 40 C.F.R. § 68.93(a) requires that the owner or operator of a stationary source coordinate response needs with local emergency planning and response organizations at least annually, and more frequently if necessary, to address changes at the stationary source, in the stationary source's emergency response or action plan, or in the community emergency response plan. 40

C.F.R. § 68.93(c) requires that the owner or operator document coordination with local authorities.

87. 40 C.F.R. § 68.95(a)(4) requires that the owner or operator develop and implement an emergency response program which contains procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes.

88. Based upon the Inspection and subsequent investigation, EPA determined that Respondent did not coordinate with the LEPC between 2020 and 2022, nor did it document any coordination with local emergency planning and response organizations between 2017 and 2022.

89. EPA also determined that Respondent's Emergency Response Plan procedures for informing the public and appropriate emergency response agencies about accidental releases from the Facility reported a different worst-case scenario distance to endpoint than was listed in the RMP, indicating that the Emergency Response Plan had not been updated and employees had not been informed of changes.

90. By failing to coordinate with local emergency planning and response organizations and document any coordination with such organizations, and failing to update its Emergency Response Plan to reflect the correct worst-case scenario distance to endpoint and ensure that employees had been informed of the change, Respondent violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. §§ 68.93(a), (c), 68.95(a)(4).

Count XIII

General Duty Clause – Failure to Design and Maintain a Safe Facility

91. Paragraphs 1 through 28 above are incorporated herein by reference.

92. Pursuant to CAA Section 112(r)(1), 40 U.S.C. § 7412(r)(1), Respondent has a general duty, in the same manner and to the same extent as under OSHA Section 654, 29 U.S.C. § 654, to identify hazards which may result from accidental releases of a regulated substance or other EHS, using appropriate hazard assessment techniques, design and maintain a safe facility taking steps as are necessary to prevent releases, and minimize the consequences of accidental releases which do occur.

93. Based upon the Inspection and subsequent investigation, EPA determined that Respondent's Facility had pipes along a walkway on the roof that created a trip hazard. EPA also determined that the fire alarm in the storage freezer was not bolted to the wall.

94. By allowing pipes to persist in a walkway on the roof, thereby creating a trip hazard, and not bolting a fire alarm to the wall, Respondent failed to design and maintain a safe facility by taking such steps as necessary to prevent releases, in violation of CAA Section 112(r)(1), 40 U.S.C. § 7412(r)(1).

D. CIVIL PENALTY

95. EPA proposes that Respondent be assessed, and Respondent agrees to pay, a civil penalty in the amount of **TWO HUNDRED TWENTY-NINE THOUSAND, SEVEN HUNDRED SEVEN DOLLARS (\$229,707)**, pursuant to 40 C.F.R. § 22.18(c).

- i. The CERCLA portion of the penalty totals **ONE THOUSAND, NINE HUNDRED FIFTY-SEVEN DOLLARS (\$1,957)**.
- ii. The EPCRA and CAA portions of the penalty total **TWO HUNDRED TWENTY-SEVEN THOUSAND, SEVEN HUNDRED FIFTY DOLLARS (\$227,750)**.

96. The proposed penalty was calculated in accordance with the “Combined Enforcement Policy for Clean Air Act Sections 112(r)(l), 112(r)(7), and 40 C.F.R. Part 68” dated June 2012, and the “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, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

97. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. Respondent shall make separate payments of the CERCLA portion of the penalty and the EPCRA and CAA portion of the penalty. All payments shall indicate the Respondent’s name and address, Respondent’s point of contact person and phone number, and the EPA docket numbers for this action. Payment shall be made by one of the payment methods described here: <https://www.epa.gov/financial/makepayment>. The CERCLA penalty shall be paid pursuant to the Superfund Payments instructions and the EPCRA and CAA penalty shall be paid pursuant to the Civil Penalties instructions. If clarification regarding a particular method of payment remittance is needed, contact Craig Steffen in the EPA Cincinnati Finance Center at (513) 487-2091 or steffen.craig@epa.gov.

98. Respondent shall send a copy of each check, or notification that the payments have been made by one of the methods provided on the website listed in Paragraph 97, above, including proof of the date each payment was made, via electronic mail with a transmittal letter indicating Respondent's name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
R9HearingClerk@epa.gov

and

Bridget Johnson
Enforcement Division
U.S. Environmental Protection Agency - Region 9
Johnson.Bridget@epa.gov

99. Failure to send the penalty payments so that they are 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 C.F.R. § 13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date. Respondent further will be liable for stipulated penalties as set forth below for failure to pay the civil penalty by the due date.

100. The penalties specified in this CA/FO shall represent civil administrative penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

101. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including

administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- i. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- ii. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- iii. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at Sherrer.Dana@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

- iv. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding subparagraph, shall further:
- a. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date; and
 - b. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

E. RESPONDENT'S ADMISSIONS AND WAIVERS OF RIGHTS

102. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations (i.e., Paragraphs 1 through 28 above) of this CA/FO; (b) neither admits nor denies specific factual allegations contained in this CA/FO; (c) consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, and to any conditions specified in this CA/FO; and (d) waives any right to contest the allegations and its right to appeal the proposed final order accompanying this consent agreement.

F. SUPPLEMENTAL ENVIRONMENTAL PROJECT

103. In response to the alleged violations of CERCLA, EPCRA, and the CAA, and in settlement of this matter, although not required by CERCLA, EPCRA, the CAA, or any other federal, state, or

local law, Respondent agrees to implement a supplemental environmental project (“SEP”), as described below in Paragraph 104.

104. Respondent shall complete an equipment donation SEP, consisting of purchasing and donating equipment, as described in further detail below, to the South San Joaquin County Fire Authority (“SSJCFA”) in Tracy, California. SSJCFA is an all-risk fire service provider that has eighty (80) uniform personnel staff based out of seven fire stations and serves a population of over 120,000 residents in a 180 square mile service area that encompasses large industrial facilities that utilize hazardous materials, as well as freeways and railways across which hazardous materials are transported. SSJCFA also has one of twelve (12) Type II HAZMAT Response Teams commissioned by Cal OES. Respondent shall purchase, for the SSJCFA’s fire training facility, the following equipment:

- i. One Matrice 300 RTK Public Safety Combo by Drone-Works: One drone with hazardous material sensing capabilities;
- ii. Dual HazSim Pro 2.0 Handhelds by HazSim: Two portable control systems and software that simulate hazardous material incidents; and
- iii. One “Custom Hazmat Instructor Series™” from Sourcewell: The system includes one Portable Control System hand-held tablet, one Bulk Processing Tank, and one Bulk Storage Tank. The Portable Control System allows the instructor to manage all operations of the Bulk Processing Tank and Bulk Storage Tank using emergency stops, pauses, and re-dos. The Bulk Processing Tank is an industrial processing tank used for caustic or acid materials that simulates uncontrolled reactions from

processes causing fume clouds, spillage, and violent boil-overs. The Bulk Storage Tank simulates control system failures resulting in tank overfills and leak situations mitigated by valving, leak containment, and/or control system operation.

105. Respondent shall spend no less than **ONE HUNDRED SEVENTY-NINE THOUSAND, THREE HUNDRED FORTY DOLLARS (\$179,340)** on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. If Respondent's implementation of the SEP as described in Paragraph 104 does not expend the full amount set forth in this paragraph, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response training equipment, Respondent will identify, purchase, and provide additional emergency response training equipment to SSJCFA.

106. Respondent shall complete the SEP by sixty (60) days after the Effective Date of this CA/FO.

107. Respondent has selected the SSJCFA in Tracy, California to receive SEP emergency response training equipment donations. The EPA had no role in the selection of the SEP recipient or specific equipment identified in the SEP. This CA/FO shall not be construed to constitute EPA approval or endorsement of the SSJCFA or specific equipment identified in this CA/FO.

108. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's "2015 Update to the 1998 Supplemental Environmental Projects Policy" (March 10, 2015). The SEP advances at least one of the objectives of CERLCA, EPCRA, and the CAA by enhancing the capabilities of local hazardous waste emergency responders and thereby minimizing the

consequences of accidents that do occur. The SEP is not inconsistent with any provision of CERCLA, EPCRA, or the CAA. The SEP relates to the alleged violations and is designed to reduce the overall risk to public health and the environment potentially affected by the alleged violations (i.e., the risk of releases of hazardous substances) by improving the hazardous material emergency response capabilities of the local all-risk fire service provider.

109. Respondent certifies the truth and accuracy of each of the following:

- i. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is \$179,340;
- ii. That Respondent will not include administrative costs or costs of employee oversight of the implementation of the SEP in its project costs;
- iii. That, as of the date of executing this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- iv. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CA/FO;
- v. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;

- vi. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- vii. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
- viii. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 104; and
- ix. That Respondent has inquired of SSJCFA whether it is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by SSJCFA that it is not a party to such a transaction.

110. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP under this CA/FO from the date of its execution of this CA/FO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws."

111. SEP Reports.

- i. Respondent shall provide email confirmation to the EPA official in subparagraph v below within ten (10) days of completing the purchase of the equipment listed in Paragraph 104.

- ii. Respondent shall submit a SEP Completion Report to EPA by ninety (90) days after the Effective Date of this CA/FO. The SEP Completion Report shall contain the following information, with supporting documentation:
 - a. A detailed description of the SEP as implemented;
 - b. A description of any operating problems encountered and the solutions thereto;
 - c. Itemized costs;
 - d. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and
 - e. A description of the environmental and public health benefits resulting from implementation of the SEP.
- iii. The certification required by subparagraph ii(d) above shall contain the following language: "I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."
- iv. Respondent agrees that failure to submit the SEP Completion Report required by subsections ii and iii above shall be deemed a violation of this CA/FO and

Respondent shall become liable for stipulated penalties pursuant to Paragraph 120 below.

- v. Respondent shall submit via email all notices and reports required by this CA/FO to:

Bridget Johnson
Enforcement Division
U.S. Environmental Protection Agency - Region 9
Johnson.Bridget@epa.gov

- vi. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

112. EPA acceptance of SEP Completion Report.

- i. After receipt of the SEP Completion Report described in Paragraph 111 above, EPA will notify Respondent, in writing, regarding:

- a. Any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
 - b. Indicate that EPA concludes that the SEP has been completed satisfactorily; or
 - c. Determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 120 below.
- ii. If EPA elects to exercise the option in subparagraph (a) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO.

G. PARTIES BOUND

113. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section D has been paid, 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 civil penalty liability for the violations alleged herein.

114. No change in ownership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

115. Until all requirements of this CA/FO are satisfied, 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.

116. The undersigned representative of Respondent hereby certifies that they are fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

117. 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 Complainant.

H. CERTIFICATION OF COMPLIANCE

118. In executing this CA/FO, Respondent certifies under penalty of law to EPA that it has taken all steps necessary to return to full compliance with CERCLA Section 103, 42 U.S.C. § 9603, EPCRA

Sections 304-312, 42 U.S.C. §§ 11004-12, CAA Section 112(r), 42 U.S.C. § 7412(r), and their implementing regulations, that formed the basis for the violations alleged in this CA/FO.

119. 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. DELAY IN PERFORMANCE/STIPULATED PENALTIES

120. In the event Respondent fails to meet any requirement set forth in this CA/FO, including the requirements regarding the SEP specified in Section F, Respondent shall pay stipulated penalties as follows: 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. 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.

121. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in Paragraph 104, Respondent shall pay a stipulated penalty to the United States in the amount of \$197,275. "Satisfactory completion" of the SEP is defined as Respondent spending no less than \$179,340 to purchase and donate emergency response equipment described in Paragraph 104 to SSJCF. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA. The sum of the stipulated

penalties Respondent shall pay under Paragraphs 120 and 121 for failure to meet the SEP requirements of Section F shall not exceed \$197,275.

122. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within thirty (30) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section D of this CA/FO.

123. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the thirty-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with CERCLA, EPCRA, the CAA, and their respective implementing regulations.

124. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

125. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive or reduce any portion of stipulated penalties that have accrued pursuant to this CA/FO.

J. RESERVATION OF RIGHTS

126. In accordance with 40 C.F.R. § 22.18(c), full compliance with this CA/FO shall only resolve Respondent's liability for federal civil penalties for the violations specifically alleged herein and

does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

127. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations. This CA/FO shall in no way relieve or affect Respondent's obligations under any applicable federal, state, or local laws, regulations, or permits.

K. MISCELLANEOUS

128. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

129. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

130. Each party to this action shall bear its own costs and attorneys' fees.

131. This CA/FO can be signed in counterparts.

132. By signing this CA/FO, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.

133. Respondent consents to entry of this CA/FO without further notice.

L. EFFECTIVE DATE


134. In accordance with 40 C.F.R. §§ 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 the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

In the Matter of Leprino Foods Company
Consent Agreement and Final Order

IT IS SO AGREED.

Respondent Leprino Foods Company

DATE: 1/22/2024

BY: 

David Merriam
Plant Manager, Tracy Plant
Leprino Foods Company

In the Matter of Leprino Foods Company
Consent Agreement and Final Order

United States Environmental Protection Agency, Region 9

AMY MILLER-
BOWEN

Digitally signed by AMY
MILLER-BOWEN
Date: 2024.01.29
08:44:03 -08'00'

Amy C. Miller-Bowen
Director
Enforcement and Compliance Assurance Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) in the Matter of Leprino Foods Company (Docket Nos. CAA(112r)-09-2024-0003, CERCLA-09-2024-0004, EPCRA-09-2024-0005) be entered and that Respondent shall pay a civil penalty of TWO HUNDRED TWENTY-NINE THOUSAND, SEVEN HUNDRED SEVEN DOLLARS (\$229,707) and spend at least ONE HUNDRED SEVENTY-NINE THOUSAND, THREE HUNDRED FORTY DOLLARS (\$179,340) to implement a Supplemental Environmental Project in accordance with all terms and conditions of this CA/FO.

Beatrice Wong
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify the original copy of the foregoing Consent Agreement and associated Final Order in the matter of Leprino Foods Company, CAA(112r)-09-2024-003, CERCLA-09-2024-0004, and EPCRA-09-2024-0005 were filed with the Regional Hearing Clerk, Region IX and that a true and correct copy was sent by electronic mail to the following parties:

RESPONDENT:

David Merriam
Plant Manager
Leprino Foods Company
2401 MacArthur Drive
Tracy, CA 95376
Dmerriam@leprinofoods.com

COMPLAINANT:

Stephanie Oehler
Assistant Regional Counsel
Hazardous Waste Section III (ORC-3-3)
U.S. EPA – Region IX
75 Hawthorne Street
San Francisco, CA 94105
Oehler.Stephanie@epa.gov

_____ Date
Ponly J. Tu
Regional Hearing Clerk
U.S. EPA – Region IX