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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	
Sorrento Lactalis, Inc.)	Docket No. CAA-10-2013-0089
)	
Nampa, Idaho)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	
)	
)	
)	

I. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7413(d).

1.2 The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.3 Pursuant to Section 113(d) of the CAA and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and Sorrento Lactalis, Inc.

("Respondent") hereby agree to the issuance of, the Final Order contained in Part V of this CAFO.

1.4. The EPA Administrator and the Attorney General for the United States Department of Justice have jointly determined that this action, which includes the allegation that a CAA violation commenced more than 12 months ago, but does not seek more than \$295,000 in CAA penalties, is an appropriate administrative penalty action under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10, has been delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

2.3. Respondent is a corporation organized under the laws of Delaware .

2.4. Respondent owns and operates a cheese manufacturing facility located at 4912 E. Franklin Road, Nampa, Idaho.

2.5. A concise statement of the factual basis for alleging violations of the CAA, together with specific references to the provisions of the CAA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations at 40 C.F.R. Part 68 require the owner and operator of a stationary source at which a regulated substance is present in more than a threshold quantity (“TQ”) to develop 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.

3.2. Under 40 C.F.R. § 68.150, the owner or operator of a stationary source that uses, stores, manufactures, or handles more than the TQ of anhydrous ammonia in a single process must submit an RMP to EPA no later than the date on which the anhydrous ammonia is first present above the TQ in a single process.

3.3 40 C.F.R. § 68.3 defines “stationary source” as any buildings, structures, equipment, installations, or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

3.4 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA and 40 C.F.R. § 68.130. Anhydrous ammonia is a regulated substance with a TQ of 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.5 Respondent is subject to the RMP requirements as it uses, stores, manufactures, or handles more than the TQ of 10,000 pounds of anhydrous ammonia in a single process.

3.6. 40 C.F.R. § 68.12(a) and (d) require that, in addition to submitting an RMP as provided in §§ 68.150 to 68.185, facilities with a Program 3 covered process shall, among other things, conduct a hazard assessment as provided in §§ 68.20 to 68.42 and implement the prevention requirements of §§ 68.65 to 68.87.

3.7 Respondent has a Program 3 covered process, as defined in 40 C.F.R. § 68.10(d), and therefore is subject to the requirements of 40 C.F.R. § 68.12(a) and (d).

3.8. Respondent submitted an RMP to EPA on October 30, 2000, June 14, 2004, December 24, 2009, and September 10, 2010.

3.9. Based on EPA's September 14, 2010 inspection, and review of the current RMP, EPA alleges that Respondent failed to timely comply with the following RMP requirements of Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68 since at least June 14, 2004. Respondent alleges that all violations alleged herein were corrected before EPA initiated this enforcement action.

3.10. Respondent failed to timely establish a system to promptly address the process hazard analysis (PHA) team's findings and recommendations, as required by 40 C.F.R. § 68.67(c).

3.11. Respondent failed to timely certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary, as required by 40 C.F.R. § 68.69(c).

3.12. Respondent failed to timely ensure that the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience, as required by C.F.R. § 68.73(d)(3).

3.13. Respondent failed to timely certify that it has evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed, as required by 40 C.F.R. § 68.79(a).

3.14. Respondent's failure to timely comply with 40 C.F.R. Part 68 is a violation of CAA § 112(r) making it subject to a penalty pursuant to CAA § 113 and 40 C.F.R. Part 19.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Because this matter is resolved, Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.11, below, each party shall bear its own costs in bringing or defending this action.

4.6. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), taking into consideration the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, Respondent's cooperation with EPA, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, and the

seriousness of the violation (in addition to such other factors as justice may require), EPA and Respondent agree that an appropriate penalty to settle this action is \$91,352.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in Paragraph 4.6 above within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case. Respondent may also pay the penalty by wire transfer in accordance with instructions provided by EPA.

4.9. Respondent shall serve a photocopy of the check or documentation of wire transfer on the Regional Hearing Clerk and EPA at the following two addressees:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Javier Morales
U.S. Environmental Protection Agency, Region 10
Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.10. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the assessed penalty under the CAA. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.11. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

(a) Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

(b) Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the assessed penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of

Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.12. Except as provided in Paragraph 4.15, below, nothing in the CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or subsequent violations of the statute and regulations upon which this agreement is based, or for Respondent's subsequent violation of any applicable provision of law.

4.13. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.14. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

4.15. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all violations and claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

FOR SORRENTO LACTALIS, INC.



Sorrento Lactalis, Inc.

Dated: 7/2/13

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10



Edward J. Kowalski, Director
Office of Compliance and Enforcement

Dated: 7/11/2013

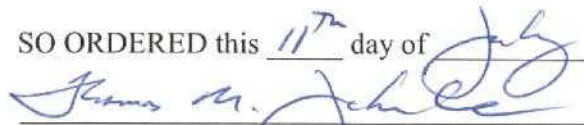
V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 11th day of July, 2013


Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : Sorrento Lactalis, Inc., Docket No.: CAA-10-2013-0089**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Mercer St. Peter, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Elizabeth M. Donick
Givens Pursley LLP
601 W. Bannock Street
Boise, Idaho 83701

DATED this 15th day of July, 2013


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10