



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

FEB 14 2012

Rick Borden, Director
Human Resources and Safety
Double B Foods, Inc.
P. O. Box 615
Meridian, TX 76665

Re: Complaint and Consent Agreement and Final Order
Docket No. CAA-06-2012-3508

Dear Mr. Borden:

Enclosed for your records is a copy of the fully executed Complaint and Consent Agreement and Final Order (Complaint and CAFO) for the Clean Air Act Section 112(r) violations found at the Double B Foods, Inc., facility located in Meridian, Texas. Please note that if you have not yet paid the assessed penalty, payment is due no later than 30 days after the date it was signed by the Regional Judicial Officer.

If you have any questions regarding this matter, please do not hesitate to call. I may be reached by phone at (214) 665-6632 or by email at goodfellow.bob@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Goodfellow".

Bob Goodfellow
Environmental Scientist
Response and Prevention Branch
EPA Region 6

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2012 FEB 14 PM 1:34
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:)
)
Double B Foods, Inc.)
)
Meridian, TX)
)
RESPONDENT)
)

DOCKET NO. CAA 06-2012-3508

CONSENT AGREEMENT AND FINAL ORDER

The Director, Superfund Division, United States Environmental Protection Agency (EPA), Region 6, and Double B Foods, Inc., (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO against the Respondent pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations herein; however, the Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall resolve only those violations which are set forth herein.

5. The Respondent consents to the issuance of this CAFO, and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

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

7. The Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

II. STATUTORY AND REGULATORY BACKGROUND

8. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides in pertinent part:

PURPOSE AND GENERAL DUTY.—It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654, title 29 of the United States Code, 1 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

9. The Respondent is a Texas corporation authorized to do business in the State of Texas. The Respondent's principal place of business is located at 109 E. Morgan Street, Meridian, TX.

10. The Respondent is a "person" as that term is defined in Section 302(c) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

11. The Respondent owns and/or operates a food processing plant (North American Industrial Classification System Code 311412), located at 109 E. Morgan Street, Meridian, TX 76665 (Facility).

12. The Respondent's food processing plant is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

13. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 11.

14. At all times relevant to this CAFO, the Respondent was engaged in, among other things, the manufacture and refrigerated storage of customized hand-crafted foods.

15. At all times relevant to this CAFO, the Respondent's stationary source had at or about 5,890 pounds of anhydrous ammonia present in its refrigeration systems.

16. Anhydrous ammonia is a "listed substance". CAA, 42 U.S.C. § 7412(r)(3)

17. On or about January 28, 2009, an inspection of Respondent's Facility identified in paragraph 11, was conducted by representatives of EPA pursuant to Section 114 of the CAA, 42 U.S.C. § 7414 ("the Inspection")

18. Section 113(d)(1) of the CAA, authorizes EPA to bring an administrative action for penalties that exceed \$295,000¹ and/or the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

19. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

B. VIOLATIONS

Count I - Failure to Maintain Updated Facility Plans

20. In order to meet the goals of designing and maintaining a safe facility, taking such steps as are necessary to prevent releases, and minimizing the consequences of accidental releases which do occur it is critical that the owner or operator of a stationary source producing, processing, handling or storing "listed substances" have accurate and updated plans for its equipment, especially equipment containing any "listed substances."

21. Since purchasing the subject facility, Respondent has upgraded and modified the refrigeration system to address process requirements and to improve efficiency. At no point during the upgrade process were the plans or specifications updated to reflect any of the changes made. Missing or out-dated drawings included the full facility drawings needed to provide information and assistance to emergency responders, piping and instrumentation diagrams (P&IDs), and the compressor/engine plant layout.

¹ The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$220,000 for violations occurring between January 30, 1997 and March 15, 2004, to \$270,000 for violations occurring between March 15, 2004 and January 12, 2009, and to \$295,000 for violations occurring after January 12, 2009.

22. Lack of updated plans could jeopardize any response to an accidental release and place workers and responders in unnecessary peril.

Count II – Failure to Develop Adequate Standard Operating Procedures for the Refrigeration Systems

23. In order to ensure safe and sustainable operation of any system, it is imperative that detailed written operating procedures be developed and that operators are trained in those procedures.

24. Based on the observations of the inspector, Respondent had written operating procedures for system start-up, what to do in the event of a power outage, and a few other individual operations procedures. The procedures were vague and only contain two or three individual items. Respondent was also unable to produce any emergency operations procedures. The inspector also noted that some of the procedures they did have were in a binder with no label or identification to help operators locate them.

25. Lack of well documented and comprehensive operating procedures could result in operational errors on the part of facility staff. Lack of emergency procedures could prolong any accidental release which could occur.

Count III – Failure to Conduct Adequate Preventive Maintenance on Refrigeration Equipment

26. Maintaining the mechanical integrity of any equipment handling any “listed substance” is critical to ensuring that no accidental releases occur. An adequate mechanical integrity program is one that addresses routine maintenance, preventive maintenance, inspection and testing of equipment, and a records system that allows the facility staff to track and plan maintenance work.

27. Based on his observations, the inspector noted that there were virtually no maintenance records for the refrigeration system. While there was a formal work order process at the facility, it was only used for the food processing area to request maintenance on production machinery within the plant. Preventive maintenance on refrigeration equipment was only tracked in system logs maintained by maintenance staff. Information in these logs was sketchy and poorly organized.

28. The system logs were also used to record mechanical failures or other observations; however there was no formal system in place to monitor or record system performance data such as temperatures, pressures, or when oil draining occurred. Such information is critical to ensuring stable and continuous operation of the refrigeration system.

29. Respondent's failure to adequately monitor system performance, or to schedule or record maintenance activities had the potential to cause system failures including the potential accidental release of anhydrous ammonia to the workplace or the environment.

Count IV – Failure to Identify Hazards Which May Result from Releases Using Appropriate Hazard Assessment Techniques

30. EPA offers access to a variety of modeling tools designed to determine the extent to which an accidental release may travel in concentrations likely to have an adverse impact on human health. Respondent was unable to provide evidence that it had availed itself of any of these models or any other generally recognized programs designed to identify what hazards may result from accidental releases of ammonia from the refrigeration system.

Count V – Failure to Identify and Correct any Hazards that May Exist in the Process

31. Recognized and generally accepted good engineering practices as well as ammonia refrigeration industry standards and the International Institute of Ammonia Refrigeration

recommend that all operators of ammonia refrigeration systems conduct a comprehensive evaluation of their systems to identify any hazards which may result in an accidental release of ammonia to the environment, and to address those hazards so as to minimize the associated risks. Respondent was unable to demonstrate that it had ever conducted a Hazard Review of its refrigeration systems since taking over ownership of the facility in the mid-1970s.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

32. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 113(d) of the CAA, 42 U.S.C. § 7413(d), which authorizes EPA to assess a civil penalty of up to Twenty-Five Thousand Dollars (\$25,000)² per day for each violation of the CAA. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, it is ORDERED that Respondent be assessed a civil penalty in the amount of **FORTY THOUSAND AND 00/100 DOLLARS (\$40,000.00)**.

33. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the first of two installments of \$20,000.00 as described below by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment

² The maximum \$25,000 per day penalty was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to \$27,500 for violations occurring between January 30, 1997 and March 15, 2004, to \$32,500 for violations occurring between March 15, 2004 and January 12, 2009, and to \$37,500 for violations occurring after January 12, 2009.

shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check(s) should be remitted to:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" with a phone number of (412) 234-4381.

Payments shall be made according to the following schedule:

<u>DUE DATE BEFORE</u>	<u>INSTALLMENT</u>	<u>PAYMENT</u>	<u>TOTAL PAID</u>
Within 30 days of effective date	1 st (initial)	\$20,000.00	\$20,000.00
Within 45 days of 1 st payment	2 nd	\$20,000.00	\$40,017.00

PLEASE NOTE: Docket number CAA-06-2012-3508 shall be clearly typed on the check, or other method of payment, to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket numbers of the CAFO. If payment is made by wire transfer,

the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket numbers of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Bob Goodfellow
Environmental Scientist/RMP Enforcement Officer
Superfund Prevention and Response Branch (6SF-PC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

and

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received by EPA and acknowledged in the Region.

34. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

35. If Respondent fails to submit payment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges and nonpayment penalties as set forth below.

36. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on

the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

37. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

38. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, 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 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

39. This Consent Agreement is considered a “prior violation” for the purpose of demonstrating a “history of noncompliance” under the Clean Air Act Stationary Source Penalty Policy.

B. RETENTION OF ENFORCEMENT RIGHTS

40. The EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of Federal or State laws, regulations, or permitting conditions.

41. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

42. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

C. COSTS

43. Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

D. COMPLIANCE

44. The Respondent hereby certifies that as of the date of the execution of this CAFO, that it has corrected the violations alleged herein, and is now, to the best of its knowledge, in

compliance with all applicable requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.


E. EFFECTIVE DATE

45. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 1-19-2012

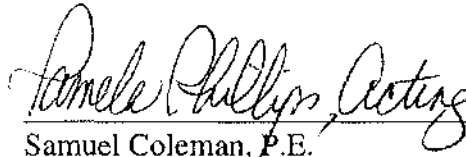


Rick Borden
Director Human Resources & Safety
Double B Foods, Inc.

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SUPERFUND DIV
PREVENTION & RESTORATION
BRANCH 1931-01

FOR THE COMPLAINANT:

Date: Feb 3, 2012

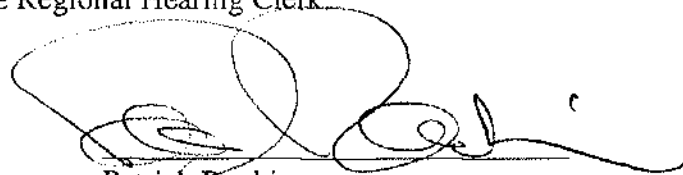


Samuel Coleman, P.E.
Director
Superfund Division
U.S. EPA - Region 6

V. FINAL ORDER

46. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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 Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

2-9-12

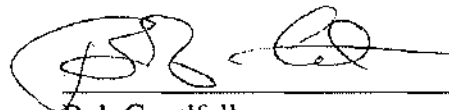
Patrick Rankin
Regional Judicial Officer

CERTIFICATE OF SERVICE

47. I hereby certify that on the 14 day of FEBRUARY, 201¹²~~1~~, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy of the CAFO was delivered to the following by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED _____

Mr. Rick Borden
Director of Human Resources and Safety
Double B Foods, Inc.
109 E. Morgan Street
Meridian, TX 76665



Bob Goodfellow
Environmental Scientist
U.S. EPA – Region 6
Dallas, Texas

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May 2012, the original of the foregoing Final Order of Clean Air Act, Section 112(r) Expedited Settlement Agreement was hand delivered to the Regional Hearing Clerk, U. S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States mail, first class postage prepaid, addressed to the following:

Mr. Rick Borden, Director
Human Resources and Safety
Double B Foods, Inc.
P. O. Box 615
Meridian, TX 76665



Elizabeth R. Rogers
RMP Compliance Officer
Prevention and Response Branch