

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	
	§	
	§	
FRITO-LAY, INC.	§	EPA DOCKET NUMBER
	§	EPCRA-06-2022-0504
	§	
	§	CONSENT AGREEMENT
	§	AND FINAL ORDER
RESPONDENT	§	
	§	
	§	

CONSENT AGREEMENT

The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant), and Frito-Lay, 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 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c), is simultaneously commenced and concluded by the issuance of this CAFO against Respondent pursuant to 40 C.F.R. §§ 22.13(b), and 22.18(b)(2) and (3).

2. For the purposes of this proceeding, Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein and waives all defenses which have been raised or could have been raised to the claims set forth in this CAFO.

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3. Compliance with all the terms and conditions of this CAFO shall resolve federal civil liability for only those violations which are set forth herein.
4. 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.
5. Respondent represents it is duly authorized to execute this CAFO and the party signing this CAFO on behalf of Respondent is duly authorized to bind Respondent to the terms and conditions of this CAFO.
6. Respondent agrees the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.
7. Respondent hereby certifies that as of the date of the execution of this CAFO, Respondent has corrected the violations alleged in this CAFO and is now, to the best of its knowledge, in compliance with all applicable requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

II. STATUTORY AND REGULATORY BACKGROUND

8. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility with: (a) ten or more full-time employees; (b) a Standard Industrial Classification (SIC) major group or industry code listed in 40 C.F.R. § 372.23(a), for which the corresponding North American Industry Classification System (NAICS) subsector or industry codes are listed in 40 C.F.R. §§ 372.23(b) or (c); and (c) that manufactured, processed, or otherwise used a toxic chemical listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65 in excess of an established threshold amount during a calendar year, to complete and submit a toxic chemical release form for that toxic chemical to the Administrator of EPA and to

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the State in which the facility is located.

9. Pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical manufactured or processed, and 10,000 pounds for any toxic chemical otherwise used, for the applicable calendar year. Other reporting thresholds are set forth in 40 C.F.R. §§ 372.27 and 372.28.

10. 40 C.F.R. § 372.30(a) requires that for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold amount at its covered facility described in 40 C.F.R. § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1), or EPA Form A (EPA Form 9350-2), and, for the dioxin and dioxin-like compounds category, EPA Form R Schedule 1 (EPA Form 9350-3) in accordance with the instructions referred to in subpart E of this part.

11. Pursuant to 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30(d), each form under this section for activities involving a toxic chemical that occurred during a calendar year at a covered facility must be submitted on or before July 1 of the next year.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

12. Respondent is a corporation organized under the laws of the State of Delaware and authorized to do business in the State of Texas.

13. Respondent is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

14. Respondent owns and operates a facility at 701 North Wildwood Drive, Irving, TX

15. Respondent's facility identified in Paragraph 14 is a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.
16. During the 2021 calendar year, Respondent's facility had ten (10) or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.
17. Respondent's facility is in primary NAICS code 311919 (Other Snack Food Manufacturing) and is within subsector code 311 (Food Manufacturing), which is listed in 40 C.F.R. § 372.23(b).
18. Nitric acid is a "toxic chemical" within the meaning of 40 C.F.R. §§ 372.3 and 372.65.
19. During the 2021 calendar year, nitric acid was "manufactured, processed, or otherwise used," as those terms are defined by Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.3, at Respondent's facility.
20. In July of 2022, an off-site investigation was initiated to determine compliance of Respondent's Irving, Texas facility with Section 313 of EPCRA.

B. VIOLATIONS

21. Complainant hereby restates and incorporates by reference Paragraphs 1 through 20.
22. During the 2021 calendar year, Respondent otherwise used nitric acid at the Respondent's facility in excess of the applicable threshold quantity for reporting.
23. Respondent did not submit a reporting form for nitric acid by July 1, 2022.
24. Respondent violated 42 U.S.C. § 11023(a) and 40 C.F.R. § 372.30(d) by failing to submit a reporting form for nitric acid for the 2021 calendar year on or before July 1, 2022.

IV. TERMS OF SETTLEMENT

A. CIVIL PENALTY

25. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).¹ 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 nature, circumstances, extent and gravity of the alleged violations, and with respect to Respondent's ability to pay, history of prior EPCRA Section 313 violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and other factors as justice may require, it is **ORDERED** that Respondent be assessed a civil penalty of **Eight Thousand, Four Hundred Eighty-Eight Dollars and no cents (\$8,488.00)**.

26. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal Service mail (including certified mail), overnight mail, or wire transfer.

For U.S. Postal Service mail, the check(s) should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center

¹ The statutory maximum penalty level under Section 325(c) of EPCRA, 42 USC 11045(c) has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701). EPA implements these adjustments through rulemaking which are codified in 40 CFR Part 19. As adjusted by the Civil Monetary Penalty Inflation Adjustment, 87 Fed. Reg. 1676 (January 12, 2022), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$62,689 per violation per day of violation occurring after November 2, 2015, where penalties are assessed on or after January 12, 2022.

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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"

In addition to the above methods of payments:

Payments may also be made electronically. For information on electronic payments, please visit
<https://www.epa.gov/financial/makepayment>

The above web site may be used for making payments via debit or checking account. It may also be used for making payment via credit card for any dollar amount up to \$24,999.99.

PLEASE NOTE: Docket number EPCRA-06-2022-0504 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 Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer,

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the wire transfer instructions shall reference Respondent's name and address, the case name, and docket number of the CAFO. 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:

David Riley
EPCRA 313 Enforcement
U.S. EPA, Region 6
Toxic Enforcement Section (ECDST)
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
riley.david@epa.gov

and

Lorena Vaughn
Regional Hearing Clerk
U.S. EPA, Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
vaughn.lorena@epa.gov

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

27. 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.
28. If Respondent fails to submit the first installment within thirty (30) days of the effective date of this Order, Respondent may be subject to a civil action to collect the penalty in full, in an appropriate district court of the United States pursuant to Section 325(f) of EPCRA, 42 U.S.C. § 11045(f).
29. 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

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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)

30. 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.

31. This Consent Agreement and Order 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.

32. This document is a "Final Order" as that term is defined in the "Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)," dated August 10, 1992 (Amended: 1996, 1997, and 2001; and updated in accordance with the 2016 Civil Monetary Penalty Inflation Adjustment Rule on February 24, 2017) for the purpose of demonstrating a history of "prior such

B. RETENTION OF ENFORCEMENT RIGHTS

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

34. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

35. 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 Respondent’s facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA’s civil and criminal authorities, or that of Federal, State, or local agencies or departments to obtain penalties or injunctive relief under Federal, State, or local laws or regulations.

C. COSTS

36. Each party shall bear its own costs and attorney’s fees. Furthermore, 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. EFFECTIVE DATE

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

38. The EPA and Respondent agree to the use of electronic signatures for this matter. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final

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Order, pursuant to 40 C.F.R. § 22.6, by email to the following addresses:

To EPA: riley.david@epa.gov

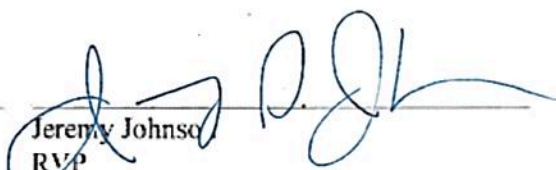
To Respondent: Fred Davis fred.davis@pepsico.com

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT

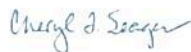
AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 9/12/2022


Jeremy Johnson
RVP
Frito-Lay, Inc.
Irving, TX

FOR THE COMPLAINANT:



Digitally signed by CHERYL
SEAGER
Date: 2022.09.14 13:58:23
-05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6
Dallas, TX 75270-2102

FINAL ORDER

Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), 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. 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.

THOMAS RUCKI

Digitally signed by THOMAS RUCKI
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=THOMAS RUCKI,
0.9.2342.19200300.100.1.1=68001003655804
Date: 2022.09.15 10:20:20 -0400

Thomas Rucki
Regional Judicial Officer

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CERTIFICATE OF SERVICE


I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was delivered electronically to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day of September 16th, 2022 in the following manner to the addressees:

Copy via Email to Complainant:

riley.david@epa.gov,
and
vaughn.lorena@epa.gov

Copy via Certified Mail to Respondent:

Frito-Lay, Inc.
Attn: Fred Davis
701 North Wildwood Drive
Irving, TX 75061-8831
Article # 7007 1490 0004 0562 9118



David Riley
U.S. EPA Region 6
Enforcement and Compliance
Assurance Division
Toxics Section (ECDST)
Dallas, Texas 75270-2102