

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 MAR 25 AM 7:50  
REGIONAL HEARING  
CLERK

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In the Matter of: )  
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Welch Foods, Inc. )  
100 North Portage Street )  
Westfield, New York 14787, )  
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)  
Respondent. )  
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Docket No. CERCLA-02-2009-2030

CONSENT AGREEMENT AND  
FINAL ORDER

Under Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11045.

**I. PRELIMINARY STATEMENT**

Complainant, the United States Environmental Protection Agency ("EPA"), Region 2, and Respondent, Welch Foods, Inc., by their undersigned representatives, hereby consent and agree as follows:

1. EPA initiated this proceeding for the assessment of civil penalties pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11045, by issuing an Administrative Complaint, Docket No. CERCLA-02-2009-2030 (hereinafter, "Complaint"), against Respondent on September 25, 2009.
2. Respondent is the owner and/or operator of a facility located at 100 North Portage Street Westfield, New York 14787 (hereinafter, the "Facility").
3. The Complaint charged Respondent with the following counts:
  - a. One count, Count I, for violation of CERCLA § 103 for Respondent's failure to immediately notify the National Response Center of the November 10, 2008 release of ammonia (anhydrous) from the Facility;
  - b. Two counts, Counts II and III, for violations of EPCRA § 304(b) for Respondent's failure to immediately notify the state emergency response commission ("SERC") and to notify the local emergency planning commission ("LEPC") of the November 10, 2008 release of ammonia (anhydrous) from the Facility; and

- c. One count, Count IV, for violation of EPCRA § 304(c) for Respondent's failure to provide follow-up written notices to the SERC and LEPC after the release of ammonia (anhydrous) from the Facility.
4. Respondent hereby certifies that it has fulfilled all reporting obligations for the violations cited in the Complaint. Respondent also hereby certifies that it will undertake the following safety measures to protect against future ammonia releases at its Facility:
  - a. Respondent shall determine the amount of ammonia currently present at the Facility and submit this information on or before thirty (30) calendar days after the date of signature of the Final Order at the end of this document (hereafter referred to as the "due date") to  

Ellen Banner  
Environmental Scientist  
Response and Prevention Branch  
U.S. Environmental Protection Agency  
2890 Woodbridge Avenue, Bldg 205 (MS-211)  
Edison, New Jersey 08837-3679;
  - b. Regardless of whether current inventories are below the Risk Management Plan threshold of 10,000 pounds, triggering requirements under Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and its implementing regulations at 40 C.F.R. Part 68, the Respondent has a duty to operate a safe Facility, pursuant to Section 112(r)(1), 42 U.S.C. § 7412(r)(1). Respondent shall provide training to its employees, which will cover the safe operation of its ammonia equipment and what to do in the event of an accident, release, or fire;
  - c. Respondent agrees to make notifications of ammonia releases in accordance with Section 103 of CERCLA and Section 304 of EPCRA in the future; and
  - d. Respondent shall submit an ammonia release identification and notification plan for the Facility signed by a Professional Engineer to Ms. Banner on or before the due date. The plan shall describe the systems, procedures and/or practices that are used to identify a release as well as the procedures to be used to satisfy the notification requirements of Section 103 of CERCLA and Section 304 of EPCRA. Respondent further agrees to implement any portions of the plan not already completed at the Facility and provide Ms. Banner with a schedule for implementation of any non-completed action items of the plan on or before the due date.
5. Respondent admits the jurisdictional allegations set forth in the Complaint.
6. Pursuant to Section 109 of CERCLA and Section 325 of EPCRA, and taking into consideration the nature of the violations, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is seventy three thousand nine hundred and ninety dollars (\$73,990).

7. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the assessment of the civil penalty cited in the foregoing paragraph.
8. Respondent agrees to pay a total of seventy three thousand nine hundred and ninety dollars (\$73,990) as a civil penalty for the counts alleged in the Complaint and set forth above, as described below.

Payment of the CERCLA portion of the penalty (Count I, \$24,180) shall be made by cashier's or certified check payable to the "EPA Hazardous Substance Superfund." The check shall be identified with a notation of the name and docket number of this case (set forth in the caption on the first page of this document) and shall be sent to:

US Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
PO Box 979076  
St. Louis, MO 63197-9000

Payment of the EPCRA portion of the penalty assessed (Counts II, III, and IV, \$49,810) shall be made by sending a cashier's or certified check payable to the "Treasurer, United States of America." The check shall be identified with a notation of the name and docket number of this case (set forth in the caption on the first page of this document) and shall be sent to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

A copy of the checks and any transmittal letters shall be sent to the following:

Argie Cirillo  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 17th Floor  
New York, New York 10007

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, New York 10007.

Respondent agrees to make such payments by the due date.

- a. Failure to pay the penalty in full according to the above provisions may result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for appropriate enforcement, including an action seeking collection of the amount set forth above, plus allowable interest and such other penalties as provided for in this Consent Agreement.
  - b. Further, if payment is not received on or before the due date, Respondent agrees to pay interest, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, Respondent agrees to pay a late payment handling charge of \$15 for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
  - c. Respondent also agrees to pay a 6% per annum penalty which will also be applied on any principal amount not paid within ninety (90) days of the due date.
9. The penalties specified in Paragraph 8, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or federal taxes.

## II. GENERAL PROVISIONS

10. Respondent neither admits nor denies the factual allegations contained in the Complaint. Respondent waives any right to contest the allegations contained in the Complaint and/or to appeal the Final Order accompanying this Consent Agreement.
11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions between EPA staff and the Regional Administrator, or Deputy Regional Administrator of EPA Region 2, or their delegate, and further waives the right to be served with and to reply to any memorandum or communication addressed by EPA staff to the Regional Administrator, or Deputy Regional Administrator, or their delegate, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
12. This Consent Agreement and Final 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. Nothing in this Consent Agreement and Final Order is intended nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

13. Each party to this action shall bear its own costs and attorney fees.
14. Full and complete satisfaction of the requirements of this Consent Agreement and Final Order shall resolve Respondent's liability for federal civil penalties only for the violations alleged in the Complaint.
15. The person signing below on behalf of Respondent hereby certifies that he or she is fully authorized by Respondent to execute this Consent Agreement on behalf of Respondent and to legally bind Respondent to this Consent Agreement in accordance with all of the terms and conditions contained herein.
16. The Director of the Emergency and Remedial Response Division of EPA Region 2 has been delegated the authority to sign the Consent Agreement in this action, and the Regional Administrator of EPA Region 2 has been delegated the authority to sign the Final Order in this action.
17. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

Consent Agreement In the Matter of Welch Foods, Inc.  
Docket No. CERCLA-02-2009-2030

For Respondent  
Welch Foods, Inc:

Gary K Reese  
Signature

Date: 3/22/10

GARY K Reese  
Name (Printed or Typed)

Plant Director  
Title (Printed or Typed)

Consent Agreement In the Matter of Welch Foods, Inc.  
Docket No. CERCLA-02-2009-2030

For Complainant  
U.S. Environmental Protection Agency:

  
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Walter E. Mugdan, Director

Emergency and Remedial Response Division, Region 2

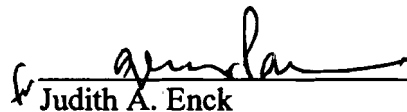
Date: 3/24/10

In the Matter of Welch Foods, Inc., Docket No. CERCLA-02-2008-2030

**FINAL ORDER**

The Consent Agreement In the Matter of Welch Foods, Inc., Docket No. CERCLA-02-2009-2030, signed on behalf of Respondent, Welch Foods Inc., and the Environmental Protection Agency, is hereby approved, incorporated herein, and issued by U.S. EPA as a Final Order. The effective date of this Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

3/24/10  
Date

  
Judith A. Enck  
Regional Administrator  
U.S. EPA, Region 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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) Community Right to Know Act,  
) 42 U.S.C. § 11045.  
Respondent. )  
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**CERTIFICATION OF SERVICE**

This is to certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing Docket Number EPCRA-02-2009-2030, in the following manner to the respective addressees listed below:

Original and One Copy by hand delivery to:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Copy by certified mail to:

Paul F Burroughs, Esq.  
Counsel for Respondent  
Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc.  
Attorneys At Law

2222 W. Grandview Blvd.  
Erie, PA 16506

Date: 3/24/10  
Name: Argie Cini  
Title: State Attorney