



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 11 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Clay Larkin
Attorney
Bingham Greenebaum Doll LLP
300 West Vine Street
Suite 1100
Lexington, Kentucky 40507

Re: Custom Food Products, LLC
Consent Agreement and Final Order
CAA-04-2015-1507(b)

Dear Mr. Larkin:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2015-1507(b)) involving Custom Food Products, LLC. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the U.S. Environmental Protection Agency. If you have any questions with regard to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Ms. Deanne Grant at (404) 562-9291.

Sincerely,

A handwritten signature in black ink that reads "Erika White".

Erika White
Acting Chief
EPCRA Enforcement Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
 Custom Food Products, LLC)
)
 Respondent)
 _____)

Docket Number: CAA-04-2015-1507(b)

RECEIVED
EPA REGION IV
2015 MAR 11 PM 2:47
HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (Consolidated Rules), published in 40 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency. Respondent is Custom Food Products, LLC (hereinafter, "Respondent").

2. The authority to take action under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under the CAA to the Regional Administrators by the EPA Delegation 7-6-A, last updated on August 4, 1994. The Regional Administrator, Region 4, has re-delegated this authority to the Director, Air, Pesticides and Toxics Management Division. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18, and agree to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. Respondent does business in the Commonwealth of Kentucky.

4. Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is therefore subject to the provisions of the CAA and regulations promulgated thereunder.

5. Respondent operates a "stationary source" as that term is defined by Section 302(z) of the CAA, 42 U.S.C. § 7602(z). The Respondent's stationary source is located at 59 Custom Food Drive, Owingsville, Kentucky 40360.

6. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

7. Pursuant to Section 112(r)(3) and 112(r)(7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 CFR Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the CAA, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 CFR § 68.130.

8. The Respondent, at its stationary source identified in Paragraph 5 of this CAFO, has an RMProgram covered process, ammonia refrigeration, which stores or otherwise uses anhydrous ammonia, in an amount exceeding its applicable threshold of 10,000 pounds.

9. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 CFR §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 CFR § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

10. Respondent has submitted and registered an RMPlan to the EPA for the stationary source identified in Paragraph 5 of this CAFO. Respondent has developed an RMProgram accidental release prevention program for the stationary source identified in Paragraph 5 of this CAFO.

11. Based on an RMProgram compliance monitoring investigation initiated on March 30, 2013, the EPA alleges that the Respondent violated the codified rules governing the CAA Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 CFR Part 68 when it:

Failed to use the most recent Census data, or other updated information, to estimate the population potentially affected in defining offsite impacts as required by 40 CFR § 68.30(c);

Failed to document a block flow diagram or simplified process flow diagram as required by 40 CFR § 68.65(c)(1)(i);

Failed to document safe upper and lower limits for such items as temperatures, pressures, flows or compositions as required by 40 CFR § 68.65(c)(1)(iv);

Failed to document an evaluation of the consequences of deviations as required by 40 CFR § 68.65(c)(1)(v);

Failed to document materials of construction information pertaining to equipment in the process as required by 40 CFR § 68.65(d)(1)(i);

Failed to document electrical classification information as required by 40 CFR § 68.65(d)(1)(iii);

Failed to document relief system design and design basis information as required by 40 CFR § 68.65(d)(1)(iv);

Failed to document ventilation system design information as required by 40 CFR § 68.65(d)(1)(v);

Failed to document that equipment complies with recognized and generally accepted good engineering practices as required by 40 CFR § 68.65(d)(2);

Failed to establish a system to promptly address the process hazard analysis team's findings and recommendations as required by 40 CFR § 68.67(e);

Failed to develop written operating procedures for safely conducting activities involved in each covered process as required by 40 CFR § 68.69(a);

Failed to certify annually that operating procedures are current and accurate as required by 40 CFR § 68.69(c);

Failed to provide initial training in the overview of the process and in the operating procedures as required by 40 CFR § 68.71(a);

Failed to provide refresher training to assure that the employee understands and adheres to the current operating procedures of the process as required by 40 CFR § 68.71(c);

Failed to train each employee involved in maintaining the on-going integrity of process equipment as required by 40 CFR § 68.73(c);

Failed to ensure the frequency of inspections and tests of process equipment be consistent with good engineering practices as required by 40 CFR § 68.73(d)(3);

Failed to certify evaluation of compliance with the risk management program provisions at least every three years as required by 40 CFR § 68.79(a);

Failed to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected as required by 40 CFR § 68.79(d);

Failed to obtain and evaluate information regarding the contract owner or operator's safety performance and programs as required by 40 CFR § 68.87(b)(1);

Failed to inform the contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process as required by 40 CFR § 68.87(b)(2);

Failed to explain to the contractor the applicable provisions of the facility's emergency response actions as required by 40 CFR § 68.87(b)(3);

Failed to periodically evaluate the performance of the contract owner or operator of fulfilling their obligations as required by 40 CFR § 68.87(b)(5);

Failed to coordinate the emergency response plan with the community emergency response plan as required by 40 CFR § 68.95(c);

Failed to submit a corrected RMP within one month of any change in the emergency contact information as required by 40 CFR § 68.195(b).

III. Consent Agreement

12. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

13. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

14. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

15. Respondent certifies that as of the date of execution of this CAFO, to the best of the Respondent's knowledge after a good faith inquiry, it is compliant with the applicable requirements of Section 112(r) of the CAA.

16. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

17. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the RMProgram.

IV. Final Order

18. Respondent agrees to pay a civil penalty of TWENTY SIX THOUSAND ONE HUNDRED NINETY SEVEN DOLLARS (\$26,197), to be paid within thirty (30) days of the effective date of this CAFO.

19. Respondent shall pay the penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," to one of the following addresses:

For payment sent via electronic transfer

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, New York 10045

Field Tag 4200 of the Fedwire message should read:

"D 68010727 Environmental Protection Agency";

For payment sent via U.S. Postal Service

U.S. Environmental Protection Agency

Cincinnati Finance Center

PO Box 979077

St. Louis, MO 63197-9000; or

For payment sent via overnight mail service (FedEx, UPS)

U.S. Environmental Protection Agency

Cincinnati Finance Center

1005 Convention Plaza

Mail Station SL-MO-C2GL

St. Louis, MO 63101

Contact: Natalie Pearson @ 314-425-1818.

The check shall reference on its face the name and the Docket Number of the CAFO.

20. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk

U.S. EPA Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

Deanne Grant
EPCRA Enforcement Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

21. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such penalty payment shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

22. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Respondent shall expend no less than EIGHTY FOUR THOUSAND FIVE HUNDRED FOUR DOLLARS (\$84,504) for the purchase of the following equipment for donation to the agencies listed below:

Owingsville Volunteer Fire Department:

<u>Quantity</u>	<u>Description</u>
1	2015 Ford F-350 Chassis Truck
10	B1 Structural Jackets
10	B1 Structural Pants

Bath County Sherriff Department:

<u>Quantity</u>	<u>Description</u>
1	2014 F-150 4x4 Supercrew Truck
1	Light Bar Blue Torrent
6	F204 LED Surface Mount
1	SA100 Speaker
1	Siren and Switchbox
1	Headlight Flasher
1	Pickup PB40 Bumper
4	Brackets INC Rear
4	Four Corner LEDs
1	F413T4-6 TIR Rear Window Light
2	F65 Bumper Lights
1	Setina 10VS Partition with Lower Shield
1	New Console
1	Window Screen
1	Lettering of Truck

In the event that Respondent's actual purchase of equipment deviates from the quantities specified above, Respondent shall provide information to EPA explaining the reason(s) for any such deviation. So long as the amount that Respondent spends equals or exceeds \$84,504, and the explanation for the deviation is acceptable to EPA, this provision shall be deemed to be satisfied. This Consent Agreement and Final Order shall not be construed to constitute EPA endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

23. Respondent certifies that neither it, nor, to the best of its knowledge, the recipients of the Emergency Planning and Preparedness SEP, is a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose financial performance period has not yet expired.

24. Respondent has obtained and presented to EPA separate written Certifications from the recipients of the SEP, the Owingsville Volunteer Fire Department and the Bath County Sherriff Department, that they are not a party to any open federal financial assistance transaction as stated in Paragraph 23.

25. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 22. If Respondent does not fully and timely complete the SEP, it shall be required to pay stipulated penalties pursuant to Paragraph 31.

26. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

27. No later than sixty (60) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Deanne Grant at the address provided above. The Report shall include the following:

(a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(b) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than \$84,504, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 22.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

28. 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.

29. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

30. Any public statement, oral or written, by Respondent making any reference to the SEP 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 violations of Section 112(r)(7) of the Clean Air Act (CAA).”

31. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of EIGHTY FOUR THOUSAND FIVE HUNDRED FOUR DOLLARS (\$84,504), Respondent shall pay to the United States a stipulated penalty of the difference between \$84,504 and the actual SEP expenditure.

32. For purposes of Paragraph 31, whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

33. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

34. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

35. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

36. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

37. This CAFO shall be binding upon the Respondent, its successors and assigns.

38. The following individual is authorized to receive service for EPA in this proceeding:

Robert W. Bookman
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9740

39. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

THIS SECTION INTENTIONALLY LEFT BLANK

V. Effective Date

40. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Custom Food Products, LLC

By: [Signature] Date: 12-20-14
Name: Jon Miquens (Typed or Printed)
Title: VP, OPERATIONS (Typed or Printed)

U.S. Environmental Protection Agency

By: [Signature] Date: 1/15/15
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 11 day of March, 2015.

[Signature]
~~Susan B. Schub~~ Carol F. Baschon, Acting
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of Custom Food Products, LLC, CAA-04-2015-1507(b), on the parties listed below in the manner indicated:

Robert W. Bookman
U. S. EPA, Region 4
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Ellen Rouch
U. S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Clay Larkin
Bingham Greenebaum Doll LLP
300 West Vine Street
Suite 1100
Lexington, Kentucky 40507

(Via Certified Mail -
Return Receipt Requested)

Date:

3-11-15



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511