



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

JUL 16 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Brunini
Brunini, Grantham, Grower & Hewes, PLLC
190 East Capitol Street, Suite 100
The Pinnacle Building
Jackson, Mississippi 39201

Re: Peco Foods, Inc., Tuscaloosa, AL.
Consent Agreement and Final Order
Docket Number EPCRA-04-2013-2030(b)

Dear Mr. Brunini:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 matter (Docket No. EPCRA-04-2013-2030(b)) involving Peco Foods, Inc., Tuscaloosa, Alabama. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. 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 your client on notice of its potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the U.S. Environmental Protection Agency. If you or your client have any questions with regards to the SEC's environmental disclosure requirements, please refer to the contact phone number at the bottom of the SEC Notice

If you have any questions, please call Mr. Karl Wilson at (404) 562-9295.

Sincerely,

A handwritten signature in black ink, appearing to read "Caron B. Falconer".

Caron B. Falconer
Chief
EPCRA Enforcement Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV
2013 JUL 16 PM 3:23
HEARING CLERK

IN THE MATTER OF:)
)
Peco Foods, Inc.) Docket Number: EPCRA-04-2013-2038(b)
)
Respondent.)
_____)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045 and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Peco Foods, Inc.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA and under EPCRA to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004 and July 8, 2010; and the authority under EPCRA by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire 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 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent, Peco Foods, Inc., is a corporation doing business in the State of Alabama.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 3701 Kauloosa Avenue, Tuscaloosa, Alabama 35401.

8. Respondent is an "owner or operator" of the facility as that term is defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

III. EPA's Allegations of Violations

Violation of Section 103(a) of CERCLA

9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to or greater than the reportable quantity (RQ).

11. Respondent was in charge of the facility on July 29, 2011.

12. Ammonia is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 100 pounds, as specified in 40 C.F.R. § 302.4.

13. On July 29, 2011, Respondent had a release of ammonia above the RQ at the facility.

14. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than its RQ at Respondent's facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

15. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after January 12, 2009. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

Violations of Section 304(a) of EPCRA

16. Section 304(a) of EPCRA, 42 U.S.C. §11004(a) and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which a hazardous chemical is produced, used or stored, to immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) when there has been a release of a CERCLA hazardous substance or an EPCRA extremely hazardous substance in an amount equal to or greater than the RQ. Section 304(a) does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

17. Respondent was the owner or operator of the facility on July 29, 2011.

18. At all times relevant to this matter, the facility produced, used, or stored a "hazardous chemical" as described in Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1).

19. Ammonia is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 C.F.R. Part 355, Appendices A & B.

20. On July 29, 2011, Respondent had a release of ammonia above the RQ at the facility.

21. Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than the RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. §11045.

Violations of Section 304(c) of EPCRA

22. Section 304(c) of EPCRA, 42 U.S.C. §11004(c), and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to provide a written follow-up emergency notice to the SERC when there has been a release of a CERCLA hazardous substance or an EPCRA extremely hazardous substance in an amount equal to or greater than the RQ.

23. Respondent was the owner or operator of the facility on July 29, 2011.

24. At all times relevant to this matter, the facility produced, used, or stored "hazardous chemicals" as defined under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and under 29 C.F.R. § 1910.1200(c).

25. Ammonia is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 C.F.R. Part 355, Appendices A & B.

26. On July 29, 2011, Respondent had a release of ammonia above the RQ at the facility.

27. Respondent violated the notification requirements of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), by failing to provide a written follow-up emergency notice to the SERC and LEPC when there had been a release of ammonia in an amount equal to or greater than the RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

28. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$37,500 for each violation of Section 304(a) and (c) of EPCRA, 42 U.S.C. § 11004(a)(c), that occurred after January 12, 2009. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

IV. Consent Agreement

29. 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.

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

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

32. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

33. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA and EPCRA.

34. 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. Complainant does not waive 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.

35. 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 CERCLA and EPCRA.

V. Final Order

36. Respondent shall pay a civil penalty of SEVEN HUNDRED TWENTY ONE DOLLARS (\$721) for the CERCLA violation alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

37. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

U.S. Environmental
Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Bank
U.S. Government Lockbox 979076
EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

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

38. Respondent shall pay a civil penalty of THREE THOUSAND SIX HUNDRED TWO DOLLARS (\$3,602) for the EPCRA violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

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

BY MAIL

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

BY OVERNIGHT

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

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

40. At the time of payment, Respondent shall send a separate copy of each 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

Karl Wilson
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

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

41. For the purposes of state and federal income taxes, 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 payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

42. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Cash donations shall not be used to satisfy the terms and conditions of this CAFO. Peco Foods, Inc., shall expend not less than SIXTEEN THOUSAND TWO HUNDRED NINE DOLLARS (\$16,209) to purchase the following for the Tuscaloosa Fire and Rescue Service:

- 1 2013 new, unregistered, untitled Kawasaki KAF950GDF Mule 4010 Trans4x4 Diesel
- 1 OTS Guardian Full Face Mask Orange or Yellow
- 1 OTS Aquacom for OTS Mask underwater communications
- 2 Henderson Themoprene 5 MM Full WIM Wetsuits
- 1 Hydra Ram Hydraulic Forcible Entry Tool – Rabbit Tool/Bunny Tool
- 1 Pro Strips-Rapid Screening System Multi-Agent BioWarfare Threat Detection Kit (10/bx)

This CAFO shall not be construed to constitute EPA's endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

43. Respondent certifies that neither it, nor, to the best of its knowledge, the recipient 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.

44. Respondent has obtained and presented to EPA a separate written certification from the recipient of the SEP, the Tuscaloosa Fire and Rescue Service, that it is not a party to any open federal financial assistance transaction as stated in Paragraph 43.

45. 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.

46. No later than seventy five (75) 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 Karl Wilson 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 invoices and receipts, showing a total expenditure of SIXTEEN THOUSAND TWO HUNDRED NINE DOLLARS (\$16,209), or greater, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 42.

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

47. 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.

48. 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 304(a) and

(c) of the Emergency Planning and Community Right-to-Know Act of 1986 and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act."

49. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 42. If Respondent fails to timely and fully complete any part of the Emergency Planning and Preparedness SEP in Paragraph 42, including failure to spend the minimum amount of SIXTEEN THOUSAND TWO HUNDRED NINE DOLLARS (\$16,209), Respondent shall be liable for a stipulated penalty in the amount of the difference between \$16,209 and the actual SEP amount spent.

50. For purposes of Paragraph 49, whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

51. 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.

52. 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.

53. 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.

54. 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.

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

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

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

Atlanta, GA 30303
(404) 562-8451

58. 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

VI. Effective Date

59. 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:

Peco Foods, Inc.:

By: Bobby Bishop Date: 6/12/13
Name: Bobby Bishop (Typed or Printed)
Title: COO (Typed or Printed)

Cathryn McQuary
Commissioner
expired
6-27-15

U.S. Environmental Protection Agency:

By: Beverly H. Banister Date: 7-9-13
Beverly H. Banister
Director
Air, Pesticides & Toxics
Management Division

APPROVED AND SO ORDERED this 16 day of July, 2013.

Susan B. Schub
Susan B. Schub
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 Peco Foods, Inc., Docket Number: EPCRA-04-2013-2030(b), on the parties listed below in the manner indicated:

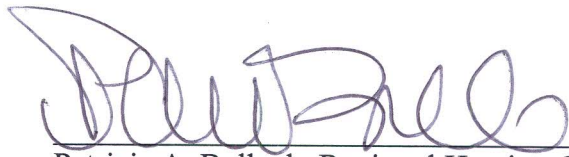
Caron Falconer (Via EPA Internal Mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

Lynda Crum (Via EPA Internal Mail)
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA Internal Mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

John Brunini (Via Certified Mail – Return Receipt Requested)
Brunini, Grantham, Grower & Hewes, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street
Jackson, MS 39201

Date: 7-16-13


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