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AGENCY EPA ORC WS
Office of Regional Hearing Clerk

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Office of Regional Hearing Clerk

Docket Nos. CAA-01-2016-0068,
EPCRA-01-2016-0069

CONSENT AGREEMENT AND FINAL ORDER

Respondent

Complainant, the United States Environmental Protection Agency (“EPA”), having filed a Complaint and Notice of Opportunity for Hearing (“Complaint”) against Respondent, RBF Frozen Desserts LLC (“RBF” or “Respondent”), the Parties herein, on September 30, 2016;

Respondent having filed an Answer and Request for Hearing on January 27, 2017; and

NOW, THEREFORE, before the taking of any testimony, upon the pleading, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

1. This CAFO resolves an administrative action for the assessment of monetary penalties brought pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), Section 325(c) of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42

U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. EPA's Complaint alleged that Respondent failed to comply with Section 112(r)(1) of the CAA (the "General Duty Clause"), 42 U.S.C. § 7412(r)(1), in its handling of anhydrous ammonia at its frozen desserts production facility located at 240 Park Road, Unit 3, in West Hartford, Connecticut (the "Facility"). Specifically, with respect to the General Duty Clause, the Complaint alleged that Respondent failed to (1) identify hazards which may result from accidental releases of extremely hazardous substances; (2) design and maintain a safe facility, taking such steps as are necessary to prevent such releases; and (3) minimize the consequences of accidental releases, should they occur.

3. Additionally, EPA's Complaint also alleged that Respondent violated Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, and implementing regulations at 40 C.F.R. Part 370, by failing to timely submit material safety data sheets or chemical lists and a Tier 2 form to the proper authorities.

TERMS OF SETTLEMENT

4. The provisions of this CAFO shall apply to and be binding on the Parties, their officers, directors, agents, servants, employees, successors and assigns.

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying specific factual allegations contained in the Complaint, consents to the terms of this CAFO.

6. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact alleged in the Complaint and waives its right to appeal the Final Order.

7. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and Section 325 of EPCRA, 42 U.S.C. § 11045, and taking into account the relevant statutory penalty criteria, the facts alleged in the Complaint, Respondent's limited ability to pay, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of five thousand dollars (\$5,000) for the violations alleged in this matter. The penalty shall be apportioned in the following manner: \$4,450 for the alleged CAA violations and \$550 for the alleged EPCRA violations.

8. Respondent consents to the issuance of this CAFO hereinafter recited and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

9. Within thirty (30) days of the effective date of this CAFO, Respondent shall submit a company, bank, cashier's, or certified check in the amount of \$5,000 payable to the order of the "Treasurer, United States of America." The check should be sent as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Include the phrase "Government Lockbox 979077" on the shipping label.

Or, Respondent may make payment by electronic funds transfer via:

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"

Respondent shall include the case name and docket number ("*In re RBF Frozen Desserts LLC*,
Docket Nos. CAA-01-2016-0068, EPCRA-01-2016-0069") on the face of the check or wire
transfer confirmation. In addition, at the time of payment, Respondent shall simultaneously send
notice of the payment and a copy of the check or electronic wire transfer confirmation to:

Wanda I. Santiago
Regional Hearing Clerk (Mail Code ORA 18-1)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

and

Laura J. Berry
Enforcement Counsel (Mail Code OES 04-2)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES 04-2
Boston, MA 02109-3912

10. 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.

11. In the event that any portion of the civil penalty amount relating to the alleged
EPCRA violations (which shall be deemed to be 11 percent of the payment due under paragraph
9 above) is not paid when due, the penalty shall be payable, plus accrued interest, without
demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in

accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

12. In the event that any portion of the civil penalty amount relating to the alleged CAA violations (which shall be deemed to be 89 percent of the payment due under paragraph 9 above) is not paid when due, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid when due. In that event, interest will accrue from the effective date of this CAFO at the “underpayment rate” established pursuant to 26 U.S.C. § 6621(a)(2). In the event that the penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorneys’ fees and collection costs. Moreover, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

13. The civil penalty under this CAFO and any interest, nonpayment penalties, and other charges described herein shall represent penalties assessed by EPA within the meaning of

26 U.S.C. § 162(f), and shall not be tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.62-21 of the Internal Revenue Code, 26 C.F.R. § 162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

14. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal, state, or local law.

15. This CAFO constitutes a settlement and release by EPA of all claims for civil penalties against Respondent pursuant to Sections 113(a) and (d) of the CAA and Section 325(c) of ECPRA for the specific violations alleged in the Complaint. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

16. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provisions of law.

17. Nothing in this CAFO is intended to resolve any criminal liability of Respondent, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

18. Each party shall bear its own costs and fees in this proceeding, including attorneys' fees, and specifically waives any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

19. The terms, conditions, and requirements of this CAFO may not be modified without the written agreement of both parties and approval of the Regional Judicial Officer.

20. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

21. Each undersigned representative of the parties certifies that he is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Susan Studien
Susan Studien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date: 03/02/2017

FOR RESPONDENT RBF FROZEN DESSERTS LLC:

Thomas Marshall
Thomas Marshall, Manager
RBF Frozen Desserts LLC

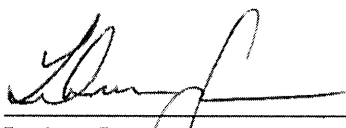
Date: 2/14/17

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) & (c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. The Respondent is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner indicated. The terms of the above Consent Agreement will be effective on the date it is filed with the Regional Hearing Clerk.

Date: _____

3/2/17



LeAnn Jensen
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF)

RBF FROZEN DESSERTS LLC)

240 Park Road, Unit 3)
West Hartford, CT 06119)

Respondent)

Docket Nos. CAA-01-2016-0068,
EPCRA-01-2016-0069

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:


Original and one copy,
hand-delivered:

Ms. Wanda Rivera
Regional Hearing Clerk
U.S. EPA, Region 1 (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested:

Raymond L. Vandenberg, Esq. (Counsel for Respondent)
Michelman & Robinson, LLP
800 Third Avenue
24th Floor
New York, NY 10022

Dated: march 7, 2017



Laura J. Berry
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES 04-2)
Boston, MA 02109-3912
Tel (617) 918-1148
Fax (617) 918-0148