UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY 21 2014

REPLY TO THE ATTENTION OF:
SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Andrew H. Perellis
Seyfarth Shaw LLP
131 S. Dearborn St., Suite 2400
Chicago, Illinois 60603

Re: **Leprino Foods Company, Inc., Remus, Michigan**
Consent Agreement and Final Order
Docket No. **CAA-05-2014-0028**

Dear Mr. Perellis,

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on May 21, 2014. Please inform your client of their obligation to pay a civil penalty in the amount of $54,600 in the manner prescribed in paragraphs 32-38 and please note that your client must reference their check with the docket number.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert Guenther, Regional Counsel, at (312) 886-0566. Thank you for your assistance in resolving this matter.

Sincerely yours,

Michael E. Hans, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

cc. Robert Guenther, ORC

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	**DOCKET NO.:** **CAA-05-2014-0028**
LEPRINO FOODS COMPANY, INC., DENVER, COLORADO,	)	
	)	**PROCEEDING TO ASSESS A CIVIL PENALTY UNDER SECTION 113(d) OF THE CLEAN AIR ACT, 42 U.S.C. § 7413(d)**
EPA ID: 100000145791	)	
	)	
RESPONDENT.	)	
	)	

REGIONAL HEARING CLERK
RECEIVED
MAY 21 2014
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the Consolidated Rules) as codified at 40 C.F.R. part 22, for alleged violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r).

2. According to 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

3. Complainant is, by lawful delegation, the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA) Region 5.

4. Respondent is Leprino Foods Company, Inc., a corporation organized under the laws of the State of Colorado, and is thus a "person" according to section 302(e) of the CAA, 42 U.S.C. § 7602(e).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations or conclusions of law contained herein.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

STATUTORY AND REGULATORY BACKGROUND

9. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator of EPA to promulgate regulations regarding the prevention and detection of accidental releases of designated chemicals. These regulations require the owners or operators of stationary sources, where a regulated substance is present above a threshold quantity, to prepare a risk management plan to prevent or minimize risks of accidental releases of those designated substances.

10. Pursuant to section 112(r)(7)(A) and (B) of the CAA, 42 U.S.C. § 112(r)(7)(A) and (B), the Administrator promulgated the Chemical Accident Pollution

Prevention rule on January 31, 1994. This rule is codified at 40 C.F.R. part 68 and has been modified from time to time since.

11. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.12(d), requires the owner and operator of a stationary source with a process subject to Program 3, as defined at 40 C.F.R. § 68.10(d), to develop and implement a management system as required by 40 C.F.R. § 68.10(d), conduct a hazard assessment pursuant to 40 C.F.R. §§ 68.20 to 68.42, implement the prevention requirements of 40 C.F.R. §§ 68.65 to 68.87, and develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 and 68.95. These requirements are collectively known as the "Risk Management Program."

12. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.10(d), defines a Program 3 process as one which does not meet the requirements of a Program 1 process found at 40 C.F.R. § 68.10(b) and is subject to the process safety management standard at 29 U.S.C. § 1910.119.

13. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines "stationary source" as: "any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur."

14. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines "process" as " … any activity involving a regulated substance including any use,

storage, manufacturing, handling, or on-site movement of such substances, or combination of those activities. … "

15. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines "regulated substance" as " … any substance listed pursuant to section 112(r)(3) of the Clean Air Act … in [40 C.F.R.] § 68.130."

16. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines "owner or operator" as " … any person who owns, leases, operates, controls or supervises a stationary source."

17. The Chemical Accident Pollution Prevention rule, at 40 C.F.R. § 68.3, defines "threshold quantity" as " … the quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act … , listed in [40 C.F.R.] § 68.130 and determined to be present at a stationary source as specified in [40 C.F.R.] § 68.115. … "

18. The Chemical Accident Pollution Prevention rule, in Tables 3 and 4 referenced in 40 C.F.R. § 68.130, lists anhydrous ammonia (CAS # 7664-41-7) as a regulated substance with a threshold quantity of 10,000 pounds.

19. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement imposed under section 112(r)(7) of the CAA, it is unlawful for any person to operate any stationary source in violation of such requirement.

20. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), provides that the Administrator may issue an administrative order against any person assessing civil administrative penalties of up to $25,000 per day of violation whenever the

Administrator finds that person has violated a requirement of subchapter I of the CAA, including a requirement of any rule promulgated under that subchapter.

21. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. part 19, increased the statutory maximum penalty under section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), to $32,500 per day of violation to a maximum of $270,000 for violations occurring after March 15, 2004, through January 12, 2009, and to $37,500 per day of violation to a maximum of $295,000 for violations occurring after January 12, 2009.

22. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), further limits the Administrator's authority to pursue administrative penalties to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving an older period of violation is appropriate for administrative penalty action.

EPA'S FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

23. At all times relevant to this CAFO, Respondent owned, operated, controlled and supervised a facility located at 311 North Sheridan, Remus, Michigan (the Remus facility), which includes buildings, structures, equipment, and installations belonging to the same industrial group, located on one or more contiguous properties and under the control of Respondent. The Remus facility is a cheese manufacturing facility. Respondent's Remus facility stores and uses anhydrous ammonia in its production process.

24. Respondent's facility in Remus is a "stationary source" as that term is defined in 40 C.F.R. § 68.3.

25. Respondent is an "owner or operator" as that term is used in 40 C.F.R. § 68.3.

26. Respondent's Remus facility had present at the facility anhydrous ammonia in quantities exceeding 10,000 pounds during calendar years 1999 through 2011. Respondent thus maintained a regulated substance at its Remus facility in a quantity exceeding the threshold under the Chemical Accident Pollution Prevention rule.

27. Respondent's processes at its Remus facility subject it to Program 3 requirements because the distance to public receptors, as defined at 40 C.F.R. § 68.30, is less than the distance to the flammable or toxic endpoint for a worst-case release assessment under 40 C.F.R. § 68.25, and because the processes are subject to the process safety management standard at 29 U.S.C. § 1910.119.

28. The Administrator of EPA and the Attorney General of the United States, each through their respective delegates, have determined that administrative penalty action is appropriate for the period of violations alleged in this CAFO.

29. On September 14, 2010, Respondent's Risk Management Program for the Remus facility, prepared pursuant to 40 C.F.R. § 68.12(d), failed to implement mandatory elements required by those provisions. A table listing the deficiencies in Respondent's Risk Management Program at its Remus facility is attached as Table A.

30. Respondent's failure to develop and implement a complete Risk Management Program at the Remus facility violates the requirements of 40 C.F.R. § 68.12(d).

31. Respondent's violation of 40 C.F.R. § 68.12(d) at its Remus facility constitutes unlawful operation of a stationary source subject to a regulation or requirement promulgated under section 112(r) of the CAA, 42 U.S.C. § 7412(r), and authorizes the Administrator to seek penalties pursuant to section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B).

CIVIL PENALTY

32. Based on an analysis of the factors as specified in section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 and Respondent's cooperation in quickly resolving this matter, Complainant has determined that an appropriate civil penalty to settle this action is $54,600.

33. Within 30 days after the effective date of this CAFO, Respondent must pay the $54,600 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

34. The check must note the case caption and the docket number of this CAFO.

35. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Monika Chrzaszcz (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

36. This civil penalty is not deductible for federal tax purposes.

37. If Respondent does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

38. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. According to section 113(d) of the CAA, 42 U.S.C. § 7413(d)(5), this nonpayment penalty will be 10 percent of the aggregate

amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

GENERAL PROVISIONS

39. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

40. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

41. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 39 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

42. Respondent certifies to the best of its knowledge that it is complying fully with the Chemical Accident Pollution Prevention rule.

43. This CAFO is a "final order" for purposes of EPA's enforcement response policy for section 112(r) of the CAA.

44. The terms of this CAFO bind Respondent, its successors and assigns.

45. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

45. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

46. This CAFO constitutes the entire agreement between the parties.

Leprino Foods Company, Inc., Respondent

April 30, 2014
Date

Tom Hegarty
(NAME)
(TITLE) Senior Vice President
Leprino Foods Company, Inc.

U.S. Environmental Protection Agency, Complainant

5-15-14
Date

Richard C. Karl, Director
Superfund Division

In the Matter of:
Leprino Foods Company, Inc.,
Denver, Colorado
Docket No: **CAA-05-2014-0028**

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. **IT IS SO ORDERED.**

Date: 5/19/2014

By: _____
Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Leprino Foods
Table A

Citation	Description
	Hazard Assessment
68.39(e)	Failure to maintain data used to estimate population potentially affected.
	Process Safety Information
68.65(c)(1)(iv)	Failure to document information pertaining to technology of the process that includes safe upper and lower temperatures, and pressures.
	Operating Procedures
68.69(a)(1)(iv)	Failure to develop operating procedures that address emergency shutdown including conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operator to ensure that emergency shutdown is executed in a safe and timely manner for each individual process unit.
68.69(a)(1)(vi)	Failure to develop operating procedures that address normal shutdown for each individual process unit.
68.69(a)(1)(viii)	Failure to develop operating procedures that address startup following a turnaround, or after emergency shutdown for each individual process unit.
68.69(c)	Failure to certify annually that operating procedures were current and accurate.
	Training
68.71(b)	Failure to maintain complete records of refresher training, that includes operating procedures specific to the facility, at least every three years, or more often if necessary.
68.71(c)	Failure to maintain complete records that each employee involved in operating a process has received and understood the training required and that the record contains the identity of the employee, the date of the training, and the means used to certify that the employee understood the training.
	Mechanical Integrity
68.73(d)(3)	Failure to ensure the frequency of inspection and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience by not conducting a regular five-year independent inspection.

In the Matter of: Leprino Foods Company, Inc., Remus, Michigan
Docket No. CAA-05-2014-0028

Certificate of Service

I hereby certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Andrew H. Perellis
Seyfarth Shaw LLP
131 S. Dearborn Street, Suite 2400
Chicago, Illinois 60603

Electronic copy sent to:

Monika Chrzaszcz
U.S. EPA, Region 5

Robert Guenther,
U.S. EPA, Region 5

on the 20th day of May, 2014

Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5