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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. EPCRA-10-2015-0114
PARTNER'S PRODUCE, INC.,)	
)	CONSENT AGREEMENT
)	
Payette, Idaho,)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609.

1.2. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 109 of CERCLA, 42 U.S.C. § 9609, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Partner's Produce, Inc. ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 109 of CERCLA, 42 U.S.C. § 9609, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of EPCRA and CERCLA are proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of EPCRA and CERCLA together with the specific provisions of EPCRA and CERCLA and the implementing regulations that Respondent is alleged to have violated.

2.4. By executing this Consent Agreement, Respondent does not admit any liability, but in the interest of settlement agrees to resolve this matter by executing this Consent Agreement.

III. ALLEGATIONS

Chemical Release Immediate Reporting Violations

3.1 Under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, any person in charge of a facility shall, as soon as he has knowledge of any release of a hazardous substance from such facility in quantities equal to or greater than the reportable quantity (“RQ”) listed in 40 C.F.R. § 302.4, immediately notify the National Response Center

("NRC") of such release. The implementing regulations for CERCLA Section 103's requirements are found at 40 C.F.R. Part 302.

3.2 Ammonia is a hazardous substance listed in 40 C.F.R. § 302.4 with an RQ of 100 pounds.

3.3 Under Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. Part 355, if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility shall immediately provide notice of the release to the State Emergency Response Commission ("SERC") of any state likely to be affected by the release and the community emergency coordinator for the Local Emergency Planning Committee ("LEPC") for any area likely to be affected by the release.

3.4 Pursuant to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2), extremely hazardous substances are listed in 40 C.F.R. Part 355, Appendices A and B.

3.5 Ammonia is an extremely hazardous substance listed in 40 C.F.R. Part 355, Appendices A and B.

3.6 Under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), "person" means, *inter alia*, a corporation.

3.7 Under Section 101(9)(A) of CERCLA, 42 U.S.C. § 9601(9)(A), "facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft.

3.8 Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), “facility” means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).

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

3.10 Respondent is the “owner or operator” and is in charge of the “facility” located at 2150 North East 21st Avenue, Payette, Idaho 83661 (“Facility”).

3.11 The Facility is a “facility” as defined by Section 101(9)(A) of CERCLA, 42 U.S.C. § 9601(9)(A), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

3.12 Respondent uses ammonia in its refrigeration system at the Facility.

3.13 Subject to certain exclusions, Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), defines “release” as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

3.14 Section 329(8) of EPCRA, 42 U.S.C. § 11049(8), defines “release” as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any hazardous chemical, extremely hazardous substance, or toxic chemical.

3.15 During calendar year 2014, the Facility operated an ammonia refrigeration system that had a capacity of 8,000 pounds of ammonia.

3.16 On February 14, 2014, at approximately 10:20 am Mountain Time (“MT”) a piece of ice fell from the outside of the condensing tower of the refrigeration system and broke a pipe used to convey ammonia into or out of the condensing tower causing approximately 378 pounds of ammonia to be discharged from the Facility.

3.17 Respondent had knowledge of the release of ammonia in quantities greater than the RQ on or around the time of release.

COUNT I

3.18 Under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, any person in charge of a facility shall, as soon as he has knowledge of any release of a hazardous substance from such facility in quantities equal to or greater than the RQ listed in 40 C.F.R. § 302.4, immediately notify the NRC of such release.

3.19 On or around 12:57 am MT, February 14, 2014, Respondent notified the NRC of the ammonia release.

3.20 Respondent’s failure to immediately notify the NRC of the release of ammonia is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and 40 C.F.R. § 302.6.

COUNT II

3.21 Under Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.42(a)(2), if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603, the owner or operator of the facility shall immediately provide notice of the release to the SERC of any state likely to be affected by the release.

3.22 Respondent failed to immediately notify the SERC for the State of Idaho of the February 14, 2014, release of ammonia from the Facility.

3.23 Respondent's failure to immediately notify the SERC of the release of ammonia is a violation of Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.42(a)(2).

COUNT III

3.24 Under Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.42(a)(1), if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under Section 103(a) of CERCLA, the owner or operator of the facility shall immediately provide notice of the release to the community emergency coordinator for the LEPC for any area likely to be affected by the release.

3.25 Respondent failed to immediately notify the community emergency coordinator for the LEPC of the February 14, 2014, release of ammonia from the Facility.

3.26 Respondent's failure to immediately notify the community emergency coordinator for the LEPC of the release of ammonia is a violation of Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.42(a)(1).

Chemical Release Written Follow-up Emergency Notification Violations

3.27 Paragraphs 3.1 through 3.26 are incorporated by reference and restated herein.

3.28 Under Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. 355.40(b), if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under Section 103(a)

of CERCLA, 42 U.S.C. § 9603, the owner or operator of the facility shall provide a written follow-up emergency notification as soon as practicable after the release.

COUNT IV

3.29 Under 40 C.F.R. § 355.42(a)(1), the written follow-up emergency notification required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.40(b) shall be provided to the community emergency coordinator for the LEPC for any area likely to be affected by the release.

3.30 Respondent failed to provide the community emergency coordinator for the LEPC with a written follow-up emergency notification of the February 14, 2014, release of ammonia at the Facility.

3.31 Respondent's failure to provide a written follow-up emergency notification to the community emergency coordinator for the LEPC of the release of ammonia is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.42(a)(1).

COUNT V

3.32 Under 40 C.F.R. § 355.42(a)(2), the written follow-up emergency notification required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.40(b) shall be provided to the SERC for any state likely to be affected by the release.

3.33 Respondent failed to provide the SERC with a written follow-up emergency notification of the February 14, 2014, release of ammonia at the Facility.

3.34 Respondent's failure to provide a written follow-up emergency notification to the SERC of the release of ammonia is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.42(a)(2).

Chemical Inventory Reporting Violations

3.35 Paragraphs 3.1 through 3.34 are incorporated by reference and restated herein.

3.36 Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Administration (“OSHA”) to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical, to prepare and submit an Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370) to the Local Emergency Planning Committee (“LEPC”), the State Emergency Response Commission (“SERC”), and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1. The form must contain the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), covering all hazardous chemicals required by OSHA to have an MSDS that are present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds or, in the case of an Extremely Hazardous Substance (“EHS”), in amounts equal to or exceeding 500 pounds or the Threshold Planning Quantity (“TPQ”), whichever is lower.

3.37 The OSHA Hazard Communication Standard (“OSHA Standard”), 29 C.F.R. § 1910.1200(b), requires employers to provide information to their employees about hazardous chemicals to which they are exposed by means of, *inter alia*, an MSDS. The section applies to any such chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

3.38 OSHA changed the term Material Safety Data Sheet (“MSDS”) to Safety Data Sheet (“SDS”) effective March 25, 2012. Hazard Communication, 77 Fed. Reg. 17574 (issued Mar. 26, 2012). For the purposes of this Consent Agreement and Final Order, the term “Material Safety Data Sheet” shall mean “Safety Data Sheet” and vice versa.

3.39 Ammonia is defined as a hazardous chemical under the OSHA Standard.

3.40 The OSHA Standard requires an MSDS to be prepared, or available, for ammonia.

3.41 Pursuant to 40 C.F.R. § 370.10 and 40 C.F.R. Part 355, Appendices A and B, ammonia has a TPQ of 500 pounds.

3.42 During calendar year 2013, Respondent’s refrigeration system at the Facility contained greater than 500 pounds of ammonia.

COUNT VI

3.43 Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.45 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for ammonia to the SERC for calendar year 2013 by March 1, 2014.

COUNT VII

3.44 Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.45 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for ammonia to the LEPC for calendar year 2013 by March 1, 2014.

COUNT VIII

3.45 Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.45 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for ammonia to the fire department with jurisdiction over the facility for calendar year 2013 by March 1, 2014.

Enforcement Authority

3.46 Under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), Section 109(a)(1) of CERCLA, 42 U.S.C. § 9609(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty for violations of Section 304 of EPCRA, 42 U.S.C. § 11004, and Section 109 of CERCLA, 42 U.S.C. § 9603, of not more than \$37,500 per violation. Under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, of not more than \$37,500 for each such violation. In accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), each day a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, continues constitutes a separate violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement contained in Parts I and II.

4.2. Respondent neither admits nor denies the specific factual and legal allegations contained in this Consent Agreement.

4.3. As required by Section 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C), and Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations, and with respect to Respondent,

ability to pay, any prior history of such alleged violations, the degree of culpability, economic benefit or savings (if any) resulting from the alleged violations, and such other matters as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$67,392. Of the \$67,392 total penalty amount, \$4,664.74 reflects the alleged violation of CERCLA and \$62,727.26 reflects the alleged violations of EPCRA.

4.4. Pursuant to 31 U.S.C. § 3717(a)(1) and 40 C.F.R. § 13.11(a)(1), Respondent must pay an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury on any portion of the penalty agreed to in Paragraph 4.3 not paid within 30 days.

4.5. The rate of the current value of funds to the United States Treasury is 1%. Pursuant to 40 C.F.R. § 13.11(a)(3), the rate of interest, as initially assessed, remains fixed for the duration of the indebtedness.

4.6. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 in two installments. The first installment of \$33,696 shall be paid within 30 days of the effective date of the Final Order. The second installment of \$34,032.96 shall be paid within 365 days of the effective date of the Final Order, and which consists of \$33,696, reflecting the remainder of the outstanding penalty amount, plus \$336.96 in interest.

4.7. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action. Respondent must also include a note with the FIRST payment indicating that \$4,664.74 is for the CERCLA penalty and \$29,031.26 is for the EPCRA penalty. Respondent must also include a note with the SECOND payment that \$34,032.96 is for the EPCRA penalty.

4.8. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.7 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Smith.candace@epa.gov

Suzanne Powers
U.S. Environmental Protection Agency
Region 10, Mail Stop WOO
300 Desmond Drive SE, Suite 102
Lacey, WA 98503
Powers.suzanne@epa.gov

4.9. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1), and/or Section 109 of CERCLA, 42 U.S.C. § 9609, to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.10. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.10.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.10.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.10.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.11. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraphs 4.4 and 4.10, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.12. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.13. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent is in compliance with the EPCRA requirement identified in paragraph 3.36 hereinabove.

4.14. Except as described in Paragraph 4.10, each party shall bear its own costs and attorney's fees in bringing or defending this action.

4.15. Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.16. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.17. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

7-17-2015

FOR RESPONDENT:



GEORGE RODRIGUEZ, President
Partner's Produce, Inc.

DATED:

7/30/2015

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
PARTNER'S PRODUCE, INC.,) DOCKET NO. EPCRA-10-2015-0114
Payette, Idaho,) **FINAL ORDER**
Respondent.)

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under EPCRA and CERCLA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of EPCRA and CERCLA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 4th day of August, 2015.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Partner's Produce, Inc., Docket No.: EPCRA-10-2015-0114**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Brett S. Dugan
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

George Rodriguez
President
Partner's Produce, Inc.
2150 NE 21st Avenue
Payette, Idaho 83661

Dana L. Hofstetter
Hofstetter Law Office
608 West Franklin Street
Boise, Idaho 83702

DATED this 5th day of August, 2015.



CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10