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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101**

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**BEFORE THE ADMINISTRATOR**

IN THE MATTER OF )  
RESER'S FINE FOODS, INC. )  
Respondent )  
Proceeding under Section 109 of CERCLA, )  
42 U.S.C. § 9609, and Section 325 of )  
EPCRA, 42 U.S.C. § 11045 )

Docket Nos.  
EPCRA-07-2009-0003,  
CERCLA-07-2009-0013

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Reser's Fine Foods, Inc., Beaverton, Oregon (Respondent) have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted 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.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 103 of CERCLA, 42 U.S.C. § 9603, and the regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and codified at 40 C.F.R. Part 302; and Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 355.

#### Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. The Respondent is Reser's Fine Foods, Inc., located at 3167 SE 10<sup>th</sup> Street, Topeka, Kansas 66607. Respondent is a corporation incorporated in the State of Oregon and registered to do business in the State of Kansas.

#### Statutory and Regulatory Requirements

5. Section 103(a) of CERCLA and the regulation set forth at 40 C.F.R. § 302.6, require any person in charge of a vessel or an onshore or offshore facility, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than the reportable quantity established pursuant to Section 102 of CERCLA, to immediately notify the National Response Center of such release.

6. Section 304(a) of EPCRA and the regulation set forth at 40 C.F.R. § 355.40, require the owner or operator of a facility at which a hazardous chemical is produced, used, or stored and at which there is a release of a reportable quantity of any EPCRA extremely hazardous substance or CERCLA hazardous substance to immediately notify the State Emergency Response Commission of any State likely to be affected by the release and the emergency coordinator for the Local Emergency Planning Committee for any area likely to be affected by the release.

7. Section 109(b)(1) of CERCLA authorizes a civil penalty of not more than \$25,000 per day for each day during which a violation continues for any violation of the requirements of Section 103(a) of CERCLA. Section 109(b)(1) of CERCLA, as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

8. Section 325(b)(2) of EPCRA authorizes a civil penalty for violations of the requirements of Section 304 of EPCRA of not more than \$25,000 per day for each day during which the violation continues. Section 325(b)(2) of EPCRA, as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

Alleged Violations

9. EPA alleges that Respondent has violated CERCLA Section 103 and EPCRA Section 304, as follows:
  10. Respondent is, and at all times referred to herein, was a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21); and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
  11. At all times relevant hereto, Respondent owned and operated Reser's Fine Foods, Inc., located at 3167 SE 10<sup>th</sup> Street, Topeka, Kansas 66607 (Respondent's facility). As part of Respondent's business, Respondent stores anhydrous ammonia.
  12. Respondent's facility is a facility as defined by Section 101(9) of CERCLA and Section 329(4) of EPCRA.
  13. Anhydrous ammonia is a hazardous substance as defined by Section 101(14) of CERCLA, with a reportable quantity of 100 pounds, as designated by 40 C.F.R. § 302.4. Anhydrous ammonia is an extremely hazardous substance, as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3) and as designated pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a) and listed in 40 C.F.R. Part 355, Appendix A.
  14. At all times relevant hereto, hazardous chemicals as defined by Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), were produced, used, or stored by Respondent's facility.
  15. On or about December 19, 2007, there was a release of anhydrous ammonia from Respondent's facility in excess of the reportable quantity designated by 40 C.F.R. § 302.4. Respondent had knowledge of the release on December 19, 2007.

16. Respondent did not immediately notify the National Response Center of the release as soon as it had knowledge of the release.

17. Respondent's failure to notify the National Response Center of the release as soon as it had knowledge of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603, and of the requirements of 40 C.F.R. § 302.6.

18. Respondent did not immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release.

19. Respondent's failure to immediately notify the State Emergency Response Commission and the Local Emergency Planning Committee, of the release is a violation of Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and of the requirements of 40 C.F.R. § 355.40(b).

#### CONSENT AGREEMENT

20. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

21. Respondent neither admits nor denies the factual allegations set forth above.

22. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.

23. This CAFO resolves the violations set forth above, specifically, the violations of Section 103 of CERCLA and Section 304 of EPCRA for Respondent's failure to immediately report the anhydrous ammonia release from Respondent's facility on December 19, 2007.

Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

24. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth below.

25. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

26. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is presently in compliance with all requirements of Section 103 of CERCLA, 42 U.S.C. § 9603; and Section 304 of EPCRA, 42 U.S.C. § 11004, and all regulations promulgated thereunder.

27. The effect of settlement described in paragraph 23 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 26 above, of this CAFO.

28. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental and/or public health benefits. Respondent shall purchase and donate emergency response equipment to the Topeka Fire Department at a cost of not less than Twenty-Two Thousand Six Hundred and Seventy-Nine Dollars (\$22,679), in accordance with the Respondent's SEP Work Plan (attached hereto as Attachment A and incorporated by reference).

29. The total expenditure for the SEP shall be not less than \$22,679 and the SEP shall be completed no later than 90 days from effective date of the Final Order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

30. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts, or canceled checks; and
- (iii) The following certification signed by Respondent / Respondents or, if Respondent is a corporation, an officer of the corporation:

**I certify under penalty of law** that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

All reports shall be directed to the following:

Patricia Reitz  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

31. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report

includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

32. Respondent agrees to the payment of stipulated penalties as follows: In the event the Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP as set forth in paragraph 28 of this CAFO and/or to the extent that the actual expenditures of the SEP does not equal or exceed the cost of the SEP described in paragraphs 28 and 29 of this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraph (ii) and (iii) of this paragraph, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in paragraph 28 of this CAFO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of Twenty-Seven Thousand Two Hundred and Fifteen Dollars (\$27,215), minus any documented expenditures determined by EPA to be acceptable for the SEP, for a total equal to 120% of the projected costs of the SEP.



- b. If Respondent fails to timely and completely submit the SEP Completion Report required by paragraph 30, Respondent shall be liable and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars (\$250).
- c. If The SEP is not completed in accordance with paragraph 28 of this CAFO, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

33. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

34. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 1 of the Final Order portion of this CAFO.

35. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

36. 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.

37. Any public statement, oral or written, in print, film or other media, made by Respondent making 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 United States Environmental Protection Agency."

38. Late Payment Provisions. 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. Respondent understands that its failure to timely pay any portion of the civil penalty described in paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in paragraph 32 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of Fifteen Dollars (\$15) will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

39. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice (DOJ) for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

**FINAL ORDER**

Pursuant to the provisions of CERCLA, 42 U.S.C. § 9601, and EPCRA, 42 U.S.C. 11001, and based upon the information set forth in the Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Thirteen Thousand Four Hundred and Sixty Dollars (\$13,460), within sixty days of entry of this Final Order. Payment shall be by two cashier's or certified checks. The first check in the amount of Six Thousand Seven Hundred and Thirty Dollars (\$6,730) shall be made payable to the "United States Treasury" and shall be remitted to:

United State Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000.

This payment shall reference docket number EPCRA-07-2009-0003.

The second check in the amount of Six Thousand Seven Hundred and Thirty Dollars (\$6,730) shall also be made payable to the "United States Treasury" and shall be remitted to:

United State Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
Post Office Box 979076  
St. Louis, Missouri 63197-9000.

This payment shall reference docket number CERCLA-07-2009-0013.

2. A copy of each of the checks should be sent to:

Kristen Nazar  
Assistant Regional Counsel  
U.S. Environmental Protection Agency -- Region 7  
901 North 5th Street  
Kansas City, Kansas 66101

and

Kathy Robinson  
Regional Hearing Clerk  
EPA-Region 7  
Office of Regional Counsel  
901 North Fifth Street  
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

**COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY**

9/9/09  
Date

Patrick L. Bustos  
Patrick Bustos  
Chief  
Chemical Risk Information Branch  
U.S. Environmental Protection Agency  
Region 7

9/9/09  
Date

Kristen Nazar  
Kristen Nazar  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7

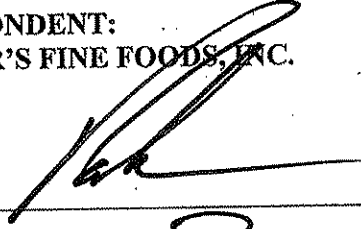
**RESPONDENT:**  
**RESER'S FINE FOODS, INC.**

8/31/09

Date

Name (Print)

Title



Paul Leary

P.F.O. / Treasurer

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick  
Regional Judicial Officer

September 14, 2009  
Date



June 15, 2009

*sent via electronic mail*

U.S. EPA, Region VII  
Attn: Kristen Nazar  
Office of Regional Counsel  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

RE: Proposed Civil Penalty / Supplemental Environmental Project

Dear Ms. Nazar:

Thank you for the opportunity to present you with this proposed Supplemental Environmental Project (SEP) as part of the Notice of Civil Penalty related to a December 19, 2007 anhydrous ammonia release.

The intended recipient for this proposed Supplemental Environmental Project is the Topeka Fire Department. The contact we have been in touch with is Ronald L. Hufford.

Proposed SEP

- Identified Cost, \$12,620 / Additional Cost Estimate \$11,000 / Total \$23,620
- 2 Mobile Data Terminals (per city IT configuration) Approximate price -- \$ 3,900 Per unit
- MDT mounting hardware for Haz-Mat & Tech Rescue Vehicles' Researching Prices
- 1 20' Electric Ventilation Fan (GFI Model) #720 VR2 Retail price -- \$2,825
- 300' Cord reel and rated electrical cord (for use with ventilation fan) Researching Prices
- Communication Gear for high noise and voice activated use with our radio system. Will need time to acquire and field test different systems and manufacturers. ( for entry and backup teams).
- ADASHI First Response 3.0 (complete all-hazards incident information management solution for first responders) ADASHI is certified as "Qualified Anti-Terrorism Technology" by the U.S. Department of Homeland Security. GSA: \$1,995 MSRP: \$2,075

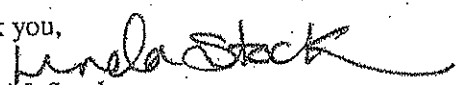
Total Penalty Payment

Cash: \$12,707

SEP: \$23,620 (at 80% \$18,896)

Please review this proposal. If you require additional information, please contact me.

Thank you,

  
Linda M. Stock  
Risk Manager

cc. Michael Harding



Kristen,

I just received the following information regarding the additional monies anticipated to be spent as part of the SEP.

MOTOROLA Comport Systems ---- Part number/ NNTN4186A --- 8 units @  
496.00 = 3968.00

MSA Helmet Communication System with radio interface --- Part numbers/  
MSA-10042902 & MSA-10042903 ---- 10 units @ 609.10 = 6091.00  
Total 10059.00

Please include with original proposal. Please let me know if I need to send you an email with just this information included.

Linda

IN THE MATTER OF Reser's Fine Foods, Inc., Respondent  
Docket Nos. EPCRA-07-2009-0003 and CERCLA-07-2009-0013

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Kristen Nazar  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Reser's Fine Foods, Inc.  
Linda M. Stock, Risk Manager  
P.O. Box 8  
Beaverton, Oregon 97075

Dated: 9/14/09



Kathy Robinson  
Hearing Clerk, Region 7