BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2018-0250
EVANS FRUIT CO., INC, and JEANNETTE EVANS, dba EVANS FRUIT COMPANY PARTNERSHIP, Tieton and Cowiche, Washington,	)	**CONSENT AGREEMENT**
Respondents.	)	

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 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d) and Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045.

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 325 of EPCRA, 42 U.S.C. § 11045, in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Evans Fruit Company, Inc. and Jeannette Evans, doing business as Evans Fruit Company Partnership,

("Respondents") agree 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 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 325 of EPCRA, 42 U.S.C. § 11045, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA or EPCRA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves a penalty in excess of the statutory cap for administrative penalties set forth therein, and although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA and EPCRA together with the specific provisions of the CAA, EPCRA and their implementing regulations that Respondents are alleged to have violated.

III. ALLEGATIONS

3.1. Respondent Evans Fruit Co., Inc. ("Evans Fruit"), is a corporation incorporated and doing business in the State of Washington.

3.2. Respondent Evans Fruit is the owner and/or operator of the following cold storage facilities:

3.2.1 "Tieton Drive Warehouse" located at 5002 Tieton Drive, Yakima, Washington, 98909;

3.2.2 "Tieton-Main Facility" (also referred to as the "Hatton Road facility") located at 61 Hatton Road, Tieton, Washington, 98947;

3.2.3 The "Lust Cold Storage Facility" (also referred to as the "Summitview facility") located at Summitview Road 300 feet NW of Hatton, Tieton, Washington, 98947;

3.2.4 "Naches Facility" located at 409 Naches Avenue, Tieton, Washington, 98947; and

3.2.5 "Cowiche Facility" located at 200 Cowiche City Road, Cowiche, Washington, 98923.

3.3. Jeannette Evans ("Evans Partnership"), a resident of Washington, is an individual and a controlling partner in Evans Fruit Company Partnership, which is the owner of the warehouse facility located at 192 Zimmerman Road, Yakima, Washington, 98908 ("Evans Fruit Company Partnership Facility"), which has also been referred to at times as the "William G Evans ETAL Partners Facility."

CAA SECTION 112(r)(7)
CHEMICAL ACCIDENT PREVENTION VIOLATIONS

3.4. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations at 40 C.F.R. Part 68, require the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity ("TQ") to develop and implement a risk management plan ("RMP") and program to detect and prevent or minimize accidental releases of such substances from the stationary source and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

3.5. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), makes it unlawful for any person to operate a stationary source subject to the regulations promulgated under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in violation of such regulations.

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

3.7. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include, *inter alia*, a corporation.

3.8. 40 C.F.R. § 68.3 defines "stationary source" in relevant part 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.

3.9. 40 C.F.R. § 68.3 defines "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and 40 C.F.R. § 68.130.

3.10. Anhydrous ammonia is a regulated substance with a TQ of 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.11. 40 C.F.R. § 68.3 defines "accidental release" as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

3.12. 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 a combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

3.13. The regulations at 40 C.F.R. Part 68 divide covered processes into three categories, designated as Program 1, Program 2, and Program 3, which contain specific requirements for owners and operators of stationary sources with processes that fall within the respective programs.

3.14. Pursuant to 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 requirements if the process does not meet all of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(b) and if either the process is identified in the referenced North American Industrial Classification System Codes or is subject to the United States Occupational Safety and Health Administration ("OSHA") process safety management standard set forth in 29 C.F.R. § 1910.119.

3.15. Under 40 C.F.R. §§ 68.12(a) and (d) and 68.150, the owner or operator of a subject stationary source must submit to EPA a single RMP that includes the information required by 40 C.F.R. §§ 68.155 through 68.185 for all covered processes in the method and format to the central point specified by EPA as of the date of submission.

3.16. 40 C.F.R. § 68.12(a) and (d) require that, in addition to submitting a single RMP as provided in 40 C.F.R. §§ 68.150 to 68.185, the owner or operator of a stationary source with a

Program 3 covered process shall, among other things, develop and implement a management system as provided in 40 C.F.R. § 68.15; conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42; implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87; develop and implement an emergency response program as provided in 40 C.F.R. §§ 68.90 through 68.95; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in 40 C.F.R. § 68.175.

3.17. Under 40 C.F.R. §§ 68.10(a) and 68.150(b), after June 21, 1999, the requirements of 40 C.F.R. Part 68, including the requirement to submit an RMP, apply to a covered process that uses, stores, manufactures, or handles anhydrous ammonia no later than the date on which the covered process first exceeded the 10,000 TQ for anhydrous ammonia.

3.18. Respondent Evans Fruit is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.19. The Tieton-Main Facility and Lust Cold Storage Facility are both in the same industrial group, are located across a road from each other and are therefore located on one or more contiguous properties, are both under the control of Respondent Evans Fruit, and are each buildings containing equipment that uses, stores, manufactures, or handles anhydrous ammonia and from which an accidental release of anhydrous ammonia may occur.

3.20. The Tieton-Main Facility and Lust Cold Storage Facility (collectively, "Tieton-Main/Lust Cold Storage Facility") thus collectively constitute a single "stationary source" as defined in 40 C.F.R. § 68.3.

3.21. The Tieton-Main Facility has one machine room with interconnected ammonia refrigeration equipment that has at all relevant times contained more than 10,000 pounds of anhydrous ammonia, and constitutes a single "covered process" under 40 C.F.R. § 68.3 ("Tieton-Main Covered Process").

3.22. The Tieton-Main Covered Process exceeded the 10,000 pound TQ for anhydrous ammonia on or about August 26, 2010, became a "covered process" within the meaning of 40 C.F.R. § 68.3 at that time, and became subject to the requirements of 40 C.F.R. Part 68 at that time.

3.23. The Lust Cold Storage Facility has three machine rooms: Machine Room 1, constructed prior to 2012, that has at all relevant times contained approximately 8,507 pounds of anhydrous ammonia; Machine Room 2, constructed in approximately July 2015, that has at all relevant times contained approximately 13,045 pounds of anhydrous ammonia; and Machine Room 3, constructed prior to or in 2016, that has at all relevant times contained approximately 13,335 pounds of anhydrous ammonia.

3.24. The ammonia refrigeration equipment in Machine Rooms 1, 2, and 3 in the Lust Cold Storage Facility are either interconnected by piping or located such that a regulated substance could be involved in a potential release, and thus constitutes a single "process" as defined in 40 C.F.R. § 68.3 ("Lust Cold Storage Covered Process").

3.25. The Lust Cold Storage Covered Process exceeded the 10,000 pound TQ for anhydrous ammonia no later than July 31, 2015 with the construction and startup of Machine Room 2, became a "covered process" within the meaning of 40 C.F.R. § 68.3 at that time, and became subject to the requirements of 40 C.F.R. Part 68 at that time.

3.26. The Tieton-Main Covered Process and the Lust Cold Storage Covered Process are each a "Program 3" covered process because each such process is subject to the OSHA Process Safety Management requirements in 29 C.F.R. § 1910.119 and does not meet all of the Program 1 eligibility requirements in 40 C.F.R. § 68.10(b).

3.27. On January 19, 2018, EPA issued an Administrative Compliance Order on Consent ("COC") under which Respondent Evans Fruit is required to address two remaining

areas of noncompliance with 40 C.F.R. Part 68 for the Tieton-Main Covered Process and the Lust Cold Storage Covered Process no later than September 1, 2018.

Failure to Submit and Update its RMP

3.28. Under 40 C.F.R. §§ 68.12(a) and (d) and 68.150, the owner or operator of a subject stationary source must submit to EPA a single RMP that includes the information required by 40 C.F.R. §§ 68.155 through 68.185 for all covered processes in the method and format to the central point specified by EPA as of the date of submission.

3.29. Respondent Evans Fruit did not prepare and submit an RMP for the Tieton-Main Covered Process on or before August 26, 2010.

3.30. Although Respondent Evans Fruit prepared an RMP for the Tieton-Main Covered Process and completed the first step for submitting the RMP to the EPA RMP Reporting Center on or about June 25, 2013, Respondent Evans Fruit did not complete the process of uploading to the EPA RMP Reporting Center an RMP for the Tieton-Main Covered Process until May 10, 2017.

3.31. Under 40 C.F.R. § 68.190(b)(4), the owner or operator of a subject stationary source must revise and update the RMP submitted under 40 C.F.R. §§ 68.12(a) and (d) and 68.150 no later than the date on which a regulated substance is first present above a threshold quantity in a new process.

3.32. Respondent Evans Fruit did not submit an RMP addressing the Lust Cold Storage Covered Process (which became subject to Part 68 with the construction of Machine Room 2 at the Lust Cold Storage Facility) until May 10, 2017.

3.33. Respondent Evans Fruit updated its RMP filings on August 23, 2017 to combine the plans into a single filing for the Tieton-Main Covered Process and the Lust Cold Storage Covered Process, as required by 40 C.F.R. §§ 68.150(a) and 68.190(b)(4).

3.34. Respondent Evans Fruit therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. §§ 68.12(a) and (d), 68.150, and 68.190(b)(4).

Violation of Management System Requirements

3.35. Under 40 C.F.R. § 68.15, the owner or operator of a subject stationary source with processes subject to Program 2 or 3 must develop a management system to oversee the implementation of the risk management program elements as provided in 40 C.F.R. § 68.15.

3.36. Respondent Evans Fruit did not develop a management system for the Tieton-Main Covered Process meeting the requirements of 40 C.F.R. § 68.15 until August 22, 2013.

3.37. Respondent Evans Fruit did not develop a management system for the Lust Cold Storage Covered Process meeting the requirements of 40 C.F.R. § 68.15 until July 14, 2016.

3.38. Respondent Evans Fruit therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.15.

Violation of Hazard Assessment Requirements

3.39. Under 40 C.F.R. § 68.20, the owner or operator of a subject stationary source is required to conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.39.

3.40. Respondent Evans Fruit did not prepare a hazard assessment meeting the requirements of 40 C.F.R. §§ 68.20 through 68.39 for the Tieton-Main Covered Process until May 30, 2013.

3.41. Respondent Evans Fruit therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. §§ 68.20 through 68.39.

Violation of Process Safety Information Requirements

3.42. Under 40 C.F.R. § 68.65, the owner or operator of a subject stationary source is required to complete a compilation of specified written process safety information before conducting any process hazard analysis required by 40 C.F.R. Part 68. The purpose of this requirement is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances.

3.43. Respondent Evans Fruit did not timely complete a compilation of all specified written process safety information required by 40 C.F.R. § 68.65 for the Tieton-Main Covered Process or the Lust Cold Storage Covered Process prior to completing the process hazard analysis for each such covered process.

3.44. Respondent Evans Fruit therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.65.

Violation of Process Hazard Analysis Requirements

3.45. Under 40 C.F.R. § 68.67(a) to (d), the owner or operator of a subject stationary source is required to perform an initial process hazard analysis on all covered processes meeting the requirements of 40 C.F.R. § 68.67.

3.46. Respondent Evans Fruit did not perform an initial process hazard analysis, as required by 40 C.F.R. § 68.67(a) to (d), for the Tieton-Main Covered Process until April 2, 2013.

3.47. Respondent Evans Fruit therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.67.

Violation of Operating Procedure Requirements

3.48. Under 40 C.F.R. § 68.67, the owner or operator of a subject stationary source is required to develop and implement written operating procedures that provide clear instructions or steps for safely conducting activities involved with each covered process consistent with the process safety information and that address at least the elements identified in 40 C.F.R. § 68.67(a).

3.49. Respondent Evans Fruit had some of the required operating procedures in place for the Lust Cold Storage Covered Process in August 2014, and revised these procedures to cover the Tieton-Main Covered Process in May and July 2016.

3.50. Respondent Evans Fruit did not develop and implement written operating procedures for the Tieton-Main Covered Process and the Lust Cold Storage Covered Process that address quality control of hazardous chemical inventory levels and any special or unique hazards in the process, as required by 40 C.F.R. § 68.69(a)(3)(iv) and (v), until approximately October 30, 2017.

3.51. Respondent Evans Fruit therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.69.

Violation of Training Requirements

3.52. Under 40 C.F.R. § 68.71, the owner or operator of a subject stationary source is required to provide initial and refresher training to each employee involved in operating a process in an overview of the process and the applicable operating procedures.

3.53. Respondent Evans Fruit did not have a training procedures for the Tieton-Main Covered Process until July 24, 2017.

3.54. Respondent Evans Fruit did not timely meet the training requirements of 40 C.F.R. § 68.71 for each employee involved in operating the Tieton-Main Covered Process and the Lust Cold Storage Covered Process.

3.55. Respondent Evans Fruit therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.71.

Violation of Mechanical Integrity Requirements

3.56. Under 40 C.F.R. § 68.73(b), the owner or operator of a subject stationary source is required to establish and implement written procedures to maintain the ongoing integrity of process equipment identified in 40 C.F.R. § 68.73(a).

3.57. Respondent Evans Fruit did not timely establish and implement written procedures to maintain the ongoing integrity of all pumps that are part of the Tieton-Main Covered Process and the Lust Cold Storage Covered Process, as required by 40 C.F.R. § 68.73(a)(2) and (b).

3.58. Respondent Evans Fruit did not timely establish and implement written procedures to maintain the ongoing integrity of process equipment identified in 40 C.F.R.

§ 68.73(a) (other than pumps) in the Tieton-Main Covered Process, as required by 40 C.F.R. § 68.73(a) and (b).

3.59. Respondent Evans Fruit did not timely train each employee involved in maintaining the on-going integrity of process equipment in an overview of the process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner, as required by 40 C.F.R. § 68.73(c).

3.60. Respondent Evans Fruit therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.73.

Violation of Management of Change Requirements

3.61. Under 40 C.F.R. § 68.75, the owner or operator of a subject stationary source is required to establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect covered processes.

3.62. Under 40 C.F.R. § 68.77, the owner or operator of a subject stationary source is required to perform a pre-startup safety review for new stationary sources and for modifications to stationary sources where the modification is significant enough to require a change in the process safety information.

3.63. Respondent Evans Fruit did not establish and implement until May 9, 2016, written procedures to manage changes for process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect the Tieton-Main Covered Process, as required by 40 C.F.R. § 68.75(a) and (b).

3.64. Construction and operation of Machine Room 3 was significant enough to require a change in the process safety information for the Lust Cold Storage Covered Process, but Respondent Evans Fruit did not perform a pre-startup safety review meeting the requirements of 40 C.F.R. § 68.77(b) prior to the startup of Machine Room 3 as part of the Lust Cold Storage Covered Process, as required by 40 C.F.R. § 68.77.

3.65. Respondent Evans Fruit therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. §§ 68.75 and 68.77.

Violation of Employee Participation Requirements

3.66. Under 40 C.F.R. § 68.83, the owner or operator of a subject stationary source is required to develop a written plan of action regarding the implementation of the employee participation requirements of 40 C.F.R. § 68.83 and to consult with employees and their representatives on the conduct and development of process hazard analyses and other elements of process safety management in 40 C.F.R. Part 68.

3.67. Respondent Evans Fruit did not develop until at least May 9, 2016 a written plan of action for the Tieton-Main Covered Process regarding the implementation of the employee participation requirements of 40 C.F.R. § 68.83, as required by 40 C.F.R. § 68.83(a).

3.68. Respondent Evans Fruit did not complete consultation with its employees and their representatives on the conduct and development of process hazard analyses and other elements of process safety management in 40 C.F.R. Part 68 as required by 40 C.F.R. § 68.83(b) at the Tieton-Main Covered Process and the Lust Cold Storage Covered Process until August 5, 2017.

3.69. Respondent Evans Fruit therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.83.

Violation of Emergency Action Plan Requirements

3.70. Under 40 C.F.R. §§ 68.90 and 68.95, the owner or operator of a subject stationary source with Program 2 and Program 3 processes is required to develop and implement an emergency response program that meets the requirements of 40 C.F.R. § 68.95 or, in the case of an owner or operator whose employees will not respond to accidental releases of regulated substances, meet the requirements of 40 C.F.R. § 68.90(b).

3.71. Under 40 C.F.R. § 68.90(b)(1), to qualify for the exception provided in 40 C.F.R. § 68.90(b), a stationary source with any regulated toxic substance held in a process above the TQ must be included in the community emergency response plan developed under 42 U.S.C. § 11003.

3.72. Under 40 C.F.R. § 68.90(b)(3), to qualify for the exception provided in 40 C.F.R. § 68.90(b), a stationary source must also ensure there are appropriate mechanisms in place to notify emergency responders when there is a need for an emergency response for the stationary source.

3.73. Respondent Evans Fruit did not timely develop and implement an emergency response program that meets the requirements of 40 C.F.R. § 68.95.

3.74. Respondent Evans Fruit does not have trained emergency response personnel that have training sufficient to respond to a large, uncontrolled ammonia release.

3.75. The Tieton-Main/Lust Cold Storage Facility was not included in the community emergency response plan developed under 42 U.S.C. § 11003 until September 20, 2017, as required by 40 C.F.R. § 68.90(b)(1).

3.76. Respondent Evans Fruit did not have appropriate mechanisms in place to notify emergency responders when there is a need for an emergency response for the Tieton-Main/Lust Cold Storage Facility, as required by 40 C.F.R. § 68.90(b)(3), until April 14, 2016.

3.77. Respondent Evans Fruit therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. §§ 68.90 and 68.95.

Violation of Compliance Audit Requirements

3.78. Under 40 C.F.R. § 68.79(a), the owner or operator of a subject stationary source is required to certify that it has evaluated compliance with the requirements of 40 C.F.R. Part 68, Subpart D, at least every three years to verify that procedures and practices developed under Subpart D are adequate and being followed.

3.79. Under 40 C.F.R. § 68.79(d), the owner or operator of a subject stationary source is required to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

3.80. Respondent Evans Fruit, as the owner and operator of the Tieton-Main Covered Process, did not timely certify the most recent Compliance Audit conducted for the Tieton-Main Covered Process, as required by 40 C.F.R. § 68.79(a).

3.81. Respondent Evans Fruit did not promptly determine and document an appropriate response to each of the findings of the most recent compliance audit for the Tieton-Main

Covered Process, or document that deficiencies had been corrected, as required by 40 C.F.R. § 68.79(d).

3.82. Respondent Evans Fruit therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.79.

Penalty Authority

3.83. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $46,192 per day of violation.

EPCRA SECTION 312
CHEMICAL INVENTORY REPORTING REQUIREMENTS

3.84. 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")[1] 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 State Emergency Response Commission ("SEPC"), the Local Emergency Response Commission ("LEPC"), and the fire department with jurisdiction over the facility ("Fire Department") 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

[1] Effective May 25, 2012, OSHA changed the term "material safety data sheet" to "safety data sheet." 77 Fed. Reg. 17574 (March 26, 2012). For purposes of this Consent Agreement, the term "material safety data sheet" shall mean "safety data sheet," and vice versa.

the case of an Extremely Hazardous Substance, in amounts equal to or exceeding 500 pounds or the Threshold Planning Quantity designated by EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

3.85. 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 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.

3.86. Ammonia is listed in Appendices A and B of 40 C.F.R. Part 355 and is therefore an Extremely Hazardous Substance under 40 C.F.R. § 370.66.

3.87. Ammonia has a Threshold Planning Quantity of 500 pounds as specified in 40 C.F.R. Part 355, Appendices A and B.

3.88. Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), "facility" means all buildings, equipment, structures, and other stationary items that 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, or under common control with, such person).

3.89. Under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), "person" means, *inter alia*, any individual, partnership, or corporation.

3.90. Respondents Evans Fruit and Evans Partnership are each a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

3.91. The Tieton-Main Facility and Lust Cold Storage Facility are located on a single site or on contiguous or adjacent sites owned or operated by the same person (or by any person which controls, is controlled, or under common control with, such person).

3.92. The Tieton-Main Facility and Lust Cold Storage Facility (collectively, "Tieton-Main/Lust Cold Storage Facility") thus collectively constitute a single "facility" as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

Evans Fruit Violations of Chemical Inventory Reporting Requirements

3.93. During calendar year 2014, more than 500 pounds of ammonia was present at each of the following facilities: Tieton Drive Warehouse, Tieton-Main/Lust Cold Storage Facility, Naches Facility, and Cowiche Facility.

3.94. Respondent Evans Fruit did not file an Emergency and Hazardous Chemical Inventory Form for the extremely hazardous chemical ammonia for the Tieton Drive Warehouse, Tieton-Main/Lust Cold Storage Facility, Naches Facility, or Cowiche Facility with the SERC, the LEPC, or the Fire Department for calendar year 2014 until October 2015.

3.95. Respondent Evans Fruit therefore violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.45 with respect to the Tieton Drive Warehouse, Tieton-Main/Lust Cold Storage Facility, Naches Facility, and Cowiche Facility for calendar year 2014.

Evans Partnership Violations of Chemical Inventory Reporting Requirements

3.96. During calendar year 2014, more than 500 pounds of ammonia was present at the Evans Fruit Company Partnership Facility.

3.97. Respondent Evans Partnership did not file an Emergency and Hazardous Chemical Inventory Form for the extremely hazardous chemical ammonia for the Evans Fruit Company Partnership Facility for calendar year 2014 until October 2015.

3.98. Respondent Evans Partnership therefore violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.45 with respect to the Evans Fruit Company Partnership Facility for calendar year 2014.

Penalty Authority

3.99. Under Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than $55,907 for each violation and each day a violation continues constitutes a separate violation.

IV. TERMS OF SETTLEMENT

4.1. Respondents admit the jurisdictional allegations of this Consent Agreement.

4.2. Respondents neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. After considering the penalty assessment factors in the applicable statutes, EPA has determined and Respondents agree that an appropriate penalty to settle this action is $420,826 (the "Assessed Penalty"). Of this amount, $329,828 is for CAA violations at the Tieton-Main/Lust Cold Storage Facility and is assessed against Evans Fruit; $84,959 is for EPCRA violations at the Tieton Drive Warehouse, Tieton-Main/Lust Cold Storage Facility, Naches Facility, and Cowiche Facility, and is assessed against Evans Fruit; and $6,039 is for EPCRA violations at the Evans Fruit Company Partnership Facility and is assessed against Evans Partnership.

4.4. Each Respondent agrees to pay its portion of the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments 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, Missouri 63197-9000

Each Respondent must note on its check the title and docket number of this action.

4.6. Concurrently with payment, each Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 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, Washington 98101
young.teresa@epa.gov

Javier Morales
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
morales.javier@epa.gov

4.7. If Respondent Evans Fruit to pay any portion of the Assessed Penalty for the CAA violations 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 Evans Fruit may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C.

§ 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent Evans Fruit fails to pay any portion of the Assessed Penalty for the CAA violations in full by its due date:

4.8.1. The entire unpaid balance of CAA penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent Evans Fruit may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty for the CAA violations under the CAA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8.2. Respondent Evans Fruit shall be responsible for payment of the following amounts:

i. Interest. Any unpaid portion of the Assessed Penalty for the CAA violations shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty for the CAA violations that is paid within 30 days of the effective date of the Final Order contained herein.

ii. Attorney's Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent Evans Fruit fail to pay the Assessed Penalty for the CAA violations and interest on a timely basis, Respondent Evans Fruit shall also be required to pay the United States'

enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent Evans Fruit's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. If either Respondent fails to pay its portion of the Assessed Penalty for the EPCRA or CERCLA violations in full by its due date:

4.9.1. The entire unpaid balance of its portion of the Assessed Penalty and accrued interest shall beeome immediately due and owing. If such a failure to pay occurs, such Respondent may be subject to a civil action under Section 325(f)(1) of EPCRA, 42 U.S.C. § 11045(f)(1) 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.

4.9.2. Such Respondent shall also be responsible for payment of the following amounts:

i. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty for the EPCRA or CERCLA violations shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion

of such Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

ii. 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 for the EPCRA or CERCLA violations is more than 30 days past due.

iii. 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 for the EPCRA or CERCLA violations that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.10. The Assessed Penalty, including any additional costs incurred under Paragraphs 4.8 and 4.9, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. The undersigned representatives of Respondents certify that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind the Respondent on whose behalf her or she signs to this document.

4.12. The undersigned representatives of Respondents also certify that, as of the date of Respondents' signatures of this Consent Agreement, Respondents have corrected the violations alleged in Part III except for those violations for which Respondent Evans Fruit has agreed to take corrective action as provided in the COC referenced in Paragraph 3.27 above. Respondent Evans Fruit further certifies that its compliance at the Tieton-Main/Lust Cold Storage Facility with the requirements of CAA Section 112(r)(7) and 40 C.F.R. Part 68 includes all the safety

measures listed in the "List of Bare Minimum Safety Measures," appended to this Consent Agreement as Attachment A.

4.13. Except as described in Paragraphs 4.8 and 4.9, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.14. For the purposes of this proceeding, Respondents expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondents and their respective agents, servants, employees, successors, and assigns.

4.16. Respondents consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED: 2/10/18

FOR RESPONDENT EVANS FRUIT CO., INC.:

Evans Fruit Co Inc by Jeannette Evans

Its: Pres

EVANS FRUIT CO., INC.

DATED: 2/15/18

FOR RESPONDENT JEANNETTE EVANS, DBA EVANS FRUIT COMPANY PARTNERSHIP:

Jeannette Evans, Partner

JEANNETTE EVANS

DATED: 2/13/2018

FOR COMPLAINANT:

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

ATTACHMENT A

List of Bare Minimum Safety Measures

Identifying Hazards

- Hazard Addressed: Releases or safety deficiencies that stem from a failure to identify hazards in design/operation of system
    - Facility has completed a process hazard analysis or review.

Operating Activities:

- Hazard Addressed: High risk of release from operating or maintenance activity
    - System has self-closing/quick closing valves on oil pots.
    - Facility has written procedures for maintenance and operation activities.
    - Only authorized persons have access to machinery room and the ability to alter safety settings on equipment.

Maintenance/Mechanical Integrity:

- Hazard Addressed: Leaks/releases from maintenance neglect
    - A preventative maintenance program is in place to, among other things, detect and control corrosion, deteriorated vapor barriers, ice buildup, and pipe hammering, and to inspect integrity of equipment/pipe supports.
    - All piping system openings except the relief header are plugged or capped, or valve is locked.
    - Equipment, piping, and emergency shutdown valves are labeled for easy identification, and pressure vessels have legible, accessible nameplates.
    - All atmospheric pressure relief valves have been replaced in the last five years with visible confirmation of accessible pressure relief valves [note – replacement every five years is the general rule but there are two other options in IIAR Bulletin 110, 6.6.3].

Machinery Room and System Design

- Hazard Addressed: Inability to isolate and properly vent releases
    - The System(s) has/have emergency shut-off and ventilation switches outside each machinery room.
    - The machinery room(s) has/have functional, tested, ventilation. Air inlets are positioned to avoid recirculation of exhaust air and ensure sufficient inlet air to replace exhausted air.
    - Documentation exists to show that pressure relief valves that have a common discharge header have adequately sized piping to prevent excessive backpressure on relief valves, or if built prior to 2000, have

adequate diameter based on the sum of the relief valve cross sectional areas.

Emergency Actions

- Hazard Addressed: Inability to regain control and reduce release impact
    - Critical shutoff valves are accessible, and a schematic is in place to show responders where to access them.
    - EPCRA Tier II reporting is up to date.

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	DOCKET NO. CAA-10-2018-0250
EVANS FRUIT CO., INC., and JEANNETTE EVANS, dba EVANS FRUIT COMPANY PARTNERSHIP, Tieton and Cowiche, Washington, Respondents.	**FINAL ORDER**

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. Respondents are 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 the CAA and for EPCRA 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 Respondents' obligations to comply with all applicable provisions of the CAA, EPCRA, and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

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

SO ORDERED this 21st day of February, 2018.

RICHARD MEDNICK
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: Evans Fruit Co., Inc. and Jeannette Evans, doing business as Evans Fruit Company Partnership, Docket No.: CAA-10-2018-0250**, 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:

Julie Vergeront
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:

Jeannette Evans
Evans Fruit Co. Inc.
Evans Fruit Company Partnership
200 Cowiche City Road
P.O. Box 70
Cowiche, WA 98923

DATED this 21st day of February, 2018.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10