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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGISTRATION CLERK  
EPA REGION 10

|                     |   |                               |
|---------------------|---|-------------------------------|
| In the Matter of:   | ) | DOCKET NO. EPCRA-10-2018-0224 |
| Baker Produce Inc., | ) | CONSENT AGREEMENT             |
|                     | ) |                               |
| Zillah, Washington, | ) |                               |
|                     | ) |                               |
| Respondent.         | ) |                               |

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**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 Baker 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.

## III. ALLEGATIONS

3.1 Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires the person in charge of a facility to immediately notify the National Response Center (NRC) as soon as he or she has knowledge of a release of a hazardous substance from such facility in an amount equal to or greater than the reportable quantity (RQ).

3.2 Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), require that if a facility at which hazardous chemicals are produced, used, or stored release a reportable quantity (RQ) of an extremely hazardous substance and the release requires, or occurred in a manner that would require, notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or

operator of the facility must immediately notify the State Emergency Response Commission (SERC) of any state likely to be affected by the release and the Local Emergency Planning Committee (LEPC) for any area likely to be affected by the release.

3.3 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, among other things, any corporation.

3.4 Under Section 101(94) of CERCLA, 42 U.S.C. § 9601(9), “facility” means, among other things, any building, structure, installation, storage container, equipment, or any site or area where a hazardous substance has been deposited, stored, disposed of or placed, or otherwise come to be located.

3.5 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).

3.6 Under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

3.7 Ammonia is a CERCLA “hazardous substance” listed in 40 C.F.R. Part 302, Table 302.4. The RQ for ammonia is 100 pounds. Ammonia is also an “extremely hazardous substance” under Section 302 of EPCRA, 42 U.S.C. § 11002; it is listed as such in 40 Part 355, Appendix A.

3.8 Under Section 109 of CERCLA, 42 U.S.C. § 9609, EPA may assess a civil penalty of up to \$25,000 for each day of violation of Section 103 of CERCLA. Under Section

325(b) of EPCRA, 42 U.S.C. § 11045(b), EPA may assess a civil penalty of up to \$25,000 for each day of violation of Section 304 of EPCRA, 42 U.S.C. § 11004. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 42 C.F.R. Part 19, increased these statutory maximum penalties to \$32,500 per day of violation occurring after March 15, 2004.

3.9 Respondent is incorporated in the State of Washington.

3.10 Respondent owns and/or operates an apple packing facility located 1400 Knight Hill Rd., Zillah, Washington ("the Facility").

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

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

3.13 On January 15, 2017, at approximately 19:49 Pacific Standard Time (PST), there was a release of ammonia from the Facility in quantities greater than the RQ.

3.14 Respondent had knowledge that more than the RQ of ammonia had been released from the Facility on or around the time the release began.

3.15 Respondent immediately notified the LEPC and NRC of the release of ammonia from the Facility.

#### COUNT 1

3.16 Respondent failed to notify the SERC of the release of ammonia from the Facility.

3.17 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) and 355.43(a).

COUNT 2

3.18 Respondent did not submit a written follow-up emergency notice to the LEPC regarding the release of ammonia from the Facility that occurred on January 15, 2017, until April 20, 2017, ninety-four (94) days after the release.

3.19 Respondent's failure to provide a written follow-up emergency notice to the LEPC as soon as practicable after the release is a violation of Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. §§ 355.42(a)(1) and 355.43(b).

COUNT 3

3.20 Respondent did not submit a written follow-up emergency notice to the SERC regarding the release of ammonia from the Facility that occurred on January 15, 2017, until April 20, 2017, ninety-four (94) days after the release.

3.21 Respondent's failure to provide a written follow-up emergency notice to the SERC as soon as practicable after the release is a violation of Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. §§ 355.42(a)(1) and 35543(b).

ENFORCEMENT AUTHORITY

3.22 Under Section 325 of EPCRA, 42 U.S.C. § 11045, Section 109 of CERCLA, 42U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$54,789 for each violation, per day.

#### IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

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

4.3. As required by Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), 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 violations, and with respect to Respondent, ability to pay, effect on Respondent's ability to continue to do business, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the 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 \$48,400 (the "Assessed Penalty").

4.4. Respondent agrees to pay 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, MO 63197-9000

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

4.6. Concurrently with payment, 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, WA 98101  
[Young.teresa@epa.gov](mailto:Young.teresa@epa.gov)

David Magdangal  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
[Magdangal.David@epa.gov](mailto:Magdangal.David@epa.gov)

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed 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.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. 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.

4.8.2. 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.

4.8.3. 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.

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

4.10. 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.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

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

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



BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

|                     |   |                               |
|---------------------|---|-------------------------------|
| In the Matter of:   | ) |                               |
|                     | ) | DOCKET NO. EPCRA-10-2018-0224 |
| Baker Produce Inc., | ) |                               |
|                     | ) | <b>FINAL ORDER</b>            |
|                     | ) |                               |
| Zillah, Washington, | ) |                               |
|                     | ) |                               |
| Respondent.         | ) |                               |
| <hr/>               |   |                               |

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

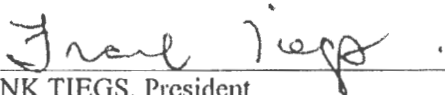
4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

2-26-2018


FOR RESPONDENT:

  
FRANK TIEGS, President  
Baker Produce, Inc.

DATED:


2-28-2018

FOR COMPLAINANT:

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

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

SO ORDERED this 6<sup>th</sup> day of March, 2018.

A handwritten signature in black ink, appearing to read "Richard Mednisk", written over a horizontal line.

Richard Mednisk  
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: Baker Produce Inc., Docket No.: EPCRA-10-2018-0224**, 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:

Robert Hartman  
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:

Steven Schossberger  
General Counsel and Vice President  
Oregon Potato Company  
1205 E. Iron Eagle Drive  
Eagle, Idaho 83616

DATED this 7 day of March, 2018.

  
\_\_\_\_\_  
TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10

