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EPA -- REGION 10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	Docket No. EPCRA-10-2007-0175
	)	
BCI COCA-COLA BOTTLING COMPANY	)	
OF LOS ANGELES,	)	
	)	CONSENT AGREEMENT AND
	)	FINAL ORDER
Respondent.	)	
_____	)	

I. PRELIMINARY STATEMENT

Complainant, the Director of the Office of Compliance and Enforcement, United States Environmental Protection Agency, Region 10 (EPA), and Respondent, BCI Coca-Cola Bottling Company of Los Angeles, by their undersigned representatives, hereby stipulate and agree as follows:

1.1 This action for civil penalties is brought pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045.

1.2 In accordance with Section 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, issuance of this Consent Agreement and Final Order (CAFO) both commences and concludes this action for assessment of civil penalties.

CONSENT AGREEMENT AND FINAL ORDER  
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES

## II. JURISDICTION

2.1 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).

2.2 Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), requires that if a facility at which hazardous chemicals are produced, used or stored releases an 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.

2.3 Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires the owner or operator of the facility, as soon as practicable after a reportable release occurs, to provide to the SERC and LEPC a written followup notice setting forth and updating the information required under Section 304(b) of EPCRA, 42 U.S.C. § 11044(b).

2.4 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.

2.5 Under Section 101(9) 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.

2.6 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 by, or under common control with, such person).

2.7 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.

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

2.9 Under Section 109 of CERCLA, 42 U.S.C. § 9609, the EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA § 103. Under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), the EPA Administrator 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.

### **III. FACTS**

3.1 Respondent is a corporation incorporated in the state of Delaware.

3.2 Respondent owns a bottling facility in Bellevue, Washington, which is located at 1150 124<sup>th</sup> Ave. NE (Facility).

3.4 On July 22, 2006, the Facility released approximately 200-300 pounds of ammonia to the atmosphere.

3.5 The Facility managers knew of the release at approximately 2:30 a.m. Pacific time on July 22, 2006.

3.6 The facility managers did not notify the NRC of the release until approximately 11:43 a.m. Pacific time on July 24, 2006, approximately fifty-seven hours after the release of the ammonia was discovered.

3.7 The release was likely to affect the state of Washington.

3.8 The facility managers notified the Washington SERC at approximately 2:02 p.m. Pacific time on July 24, 2006, approximately fifty-nine hours after the release of the ammonia was discovered.

#### IV. AGREEMENT

4.1 EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

4.2 Respondent admits that EPA has jurisdiction over this matter.

4.3 Respondent neither admits nor denies the facts alleged by EPA in Section III of this CAFO.

4.4 Based on Respondent's willingness to settle this matter without litigation, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP), and other relevant factors, and in accordance with the *Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act*, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$4,404.75, including \$2,202.37 for the CERCLA penalty and \$2,202.38 for the EPCRA penalty.

4.5 Respondent consents to the issuance of this CAFO, to the payment of the civil penalty cited in the foregoing paragraph, and to performance of the SEP described in Paragraph 4.8.

4.6 Within 30 days of Respondent's receipt of a conformed copy of the fully executed CAFO, Respondent shall pay the total penalty of \$4,404.75 by cashier's or certified check or money order made payable as indicated and mailed to the addresses below:

- a. For the EPCRA violation, \$2,202.38 payable to the "U.S. Treasury" and

sent to:

Mellon Client Services Center  
EPA Region 10  
P.O. Box 371099M  
Pittsburgh, PA 15251

b. For the CERCLA violation, \$2,202.37 payable to the "EPA Hazardous Substance Superfund" and sent to:

Mellon Client Services Center  
EPA Region 10  
P.O. Box 371099M  
Pittsburgh, PA 15251

Each check shall reference Respondent's name and address, the case name and docket number of this CAFO, and be accompanied by a transmittal letter. A photocopy of each check and its accompanying transmittal letter shall be mailed to:

Region 10 Hearing Clerk  
U.S. EPA Region 10  
1200 Sixth Avenue, ORC-158  
Seattle, Washington 98101

and

Suzanne Powers  
U.S. EPA Region 10  
Washington Operations Office  
300 Desmond Drive S.E., Suite 102  
Lacey, Washington 98503

4.7 Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. 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, as well as handling charges and nonpayment penalties.

4.8 The SEP is the purchase and installation of a "remote panel" that provides facility management and first responders a safe approach to the ammonia detection operator interface for the

refrigeration system in the event of a change in wind direction immediately following a release that leaves the primary interface inaccessible. This SEP is part of a broader project to improve Respondent's ammonia detection system which includes installation of a king valve at the discharge of each of the liquid ammonia receivers to provide instant containment in the event of a leak in the refrigeration system; installation of a water dispersion tank to provide containment in the event of a leak in the refrigeration system; installation of additional sensors and strobes for ammonia detection monitoring; installation of emergency stop buttons for emergency ammonia system shut-off; and installation of two 20,000 cfm fans in the ceiling of the ammonia refrigeration room to reduce the possibility of ignition and explosion in the event of a significant release. The total cost of the ammonia detection system improvements is expected to exceed \$400,000.

4.9 Respondent shall purchase and install the remote panel for its ammonia detection system at its facility located at 1150 124<sup>th</sup> Ave. NE in Bellevue, Washington within 90 days of entry of this CAFO, provided that Respondent may make a written request for an additional 60 days for completion of this SEP.

4.10 The total expenditure for the SEP shall be not less than \$17,640. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

4.11 Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and that Respondent is not required to perform or develop the SEP by agreement, grant, or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

4.12 a. Respondent shall submit a SEP Completion Report to EPA within 30 days of completion of the SEP. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;

- (ii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and
- (iii) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO.

b. Respondent agrees that failure to submit the SEP Completion Report required by subsection 4.12.a, above, shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to this CAFO.

c. Respondent shall submit all notices and reports required by this CAFO by first class mail to: Suzanne Powers, EPA Region 10, Washington Operations Office, 300 Desmond Drive SE, Suite 102, Lacey, Washington 98503, unless otherwise instructed in writing by EPA.

4.13 Respondent agrees that EPA may inspect Respondent's records related to the SEP and the Facility at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.14 In all documents or reports including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

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, I believe that 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.

4.15 a. Following receipt of the SEP Completion Report described in Paragraph 4.12 above, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent, in writing, of deficiencies in the Report, and provide Respondent an additional 30 days in which to

correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 4.16 below.

b. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 4.14 below. Schedules herein may be extended based upon mutual written agreement of the parties.

4.16 a. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in the preceding paragraphs, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) For a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$17,640 less the amount actually expended; provided that if the equipment necessary for the SEP is purchased but not installed and operational by the date required in Paragraph 4.7, Respondent shall pay a stipulated penalty in the amount of \$100.00 for each day after that date until the equipment is installed and operational.
- (ii) For failure to submit the SEP Completion Report required by Paragraph 4.10 above, Respondent shall pay a stipulated penalty in the amount of \$100.00 for each day after the report is due until the report is received by EPA.

b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be at the sole discretion of EPA. In raising any objection to EPA's determinations, Respondent has the burden of proving that EPA's determinations are arbitrary or capricious.

c. Stipulated penalties for subparagraph 4.16.a(ii) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of satisfactory completion of the activity.



d. Respondent shall pay stipulated penalties within 15 days of receipt of written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraph 4.6 below. Interest and late charges shall be paid as stated in Paragraph 4.7 above.

e. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement.

4.17 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 U.S. Environmental Protection Agency for violations of Section 304 of EPCRA and Section 103 of CERCLA."

4.18 This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology purchased by Respondent in connection with the SEP under the terms of this Agreement.

4.19 Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

4.20 Respondent explicitly waives its right to request an adjudicatory hearing on any issue addressed in this CAFO.

4.21 The provisions of this CAFO shall be binding on Respondent, its officers, directors, agents, servants, authorized representatives, employees, successors and assigns.

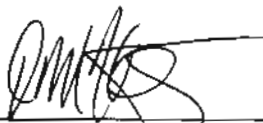
4.22 Except as described in Paragraph 4.7 above, each party shall bear its own costs in bringing or defending this action.

4.23 Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims alleged in Section III above.

Stipulated, Agreed, and  
Approved for Entry,  
Waiving Notice:

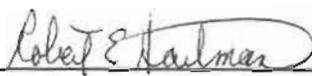
FOR BCI COCA-COLA BOTTLING COMPANY  
OF LOS ANGELES, RESPONDENT

Dated: 8-29-2007

  
\_\_\_\_\_  
Respondent, BCI Coca-Cola Bottling Company of Los Angeles

FOR UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY, REGION 10, COMPLAINANT

Dated: 9/6/2007

 for  
\_\_\_\_\_  
Stephanie L. Mairs  
Attorney for Complainant *Stephanie Mairs*

CONSENT AGREEMENT AND FINAL ORDER  
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES 10

**V. FINAL ORDER**

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

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to CERCLA and EPCRA for the particular violations alleged in Section III above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations and permits issued thereunder.

This Final Order shall become effective upon filing.

IT IS SO ORDERED.

Dated this 6<sup>th</sup> day of September, 2007.



Richard G. McAllister  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** In the Matter of: **BCI Coca-Cola Bottling Company of Los Angeles**, **DOCKET NO.: EPCRA-10-2007-0175** was filed with the Regional Hearing Clerk on September 6, 2007.

On September 6, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

Robert Hartman, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Seattle, WA 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 on September 6, 2007, to:

David M. Bullock, Esquire  
Miller & Martin, PLLC, Attorneys at Law  
1200 One Nashville Place  
150 Fourth Avenue, North  
Nashville, TN 37219-2433

DATED this 6<sup>th</sup> day of September 2007.



Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10