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HEARINGS CLERK  
EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: )  
WESTERN FRUIT EXPRESS CO., ) DOCKET NO. EPCRA-10-2017-0125  
Spokane, Washington ) CONSENT AGREEMENT  
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.

1.2. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, 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 Western Fruit Express Company (“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, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of EPCRA is 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 together with the specific provisions of EPCRA and the implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. Section 312 of EPCRA and the regulations at 40 C.F.R. Part 370, require the owner or operator of a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical, under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, to prepare and submit a Tier II emergency and hazardous chemical inventory form (“Tier II Form”) to the appropriate local emergency planning committee (“LEPC”), state emergency response commission (“SERC”), and local fire department by March 1, containing data with respect to the preceding calendar year. The required data includes estimates of the average and maximum quantities of each hazardous chemical stored in excess of the threshold quantity. 40 C.F.R. §§ 370.41(i)-(j), 370.42(i)(5)-(6).

3.2. “Hazardous chemical,” with certain exceptions, has the meaning given such term

by the Occupational Safety and Health Act (“OSHA”) and its implementing regulations.

EPCRA §§ 311(e) and 329(5). Pursuant to those regulations, “hazardous chemical” means any chemical which is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified. 29 C.F.R. § 1900.1200(c).

3.3. Diesel Fuel is a “hazardous chemical.”

3.4. 40 C.F.R. § 370.10(a)(2)(1) provides that the threshold that triggers reporting obligations under Section 312 of EPCRA is having 10,000 pounds or more of a hazardous chemical present at the facility at any one time, except as described in 40 C.F.R. § 370.10(a)(1) and 370.10(a)(2)(ii)-(iii).

3.5. Respondent owns or operates a business located at 5310 East Trent Avenue, Building 1, in Spokane, Washington that uses diesel fuel and is a “Facility” within the meaning of EPCRA § 329(4).

3.6. Respondent is the “owner or operator” of the Facility within the meaning of EPCRA § 312.

3.7. Respondent is required to have a material safety data sheet available pursuant to the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*

3.8. At all times relevant to this CAFO, Respondent stored more than 10,000 pounds of diesel fuel at the Facility, the threshold quantity for applicability of EPCRA Section 312 pursuant to 40 C.F.R. § 370.10(a)(2)(i).

3.9. At all times relevant to this CAFO, Respondent was subject to EPCRA Section 312 and was required pursuant to 40 C.F.R. § 370.45(a) to submit a Tier II Form to the LEPC, SERC, and local fire department by March 1, containing data with respect to the preceding

calendar year.

3.10. Respondent failed to submit a Tier II Form to the LEPC, SERC, and local fire department for calendar year 2014 by March 2, 2015, in violation of EPCRA Section 312 and 40 C.F.R. § 370.45(a).

3.11. 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 \$53,907 for each such violation.

#### 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. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$36,215 (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, Missouri 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, Washington 98101  
Young.Teresa@epa.gov

Erin Williams, Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
Williams.Erin@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), 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. Respondent shall reduce its capacity to store diesel fuel at the Facility to below the threshold quantity by retiring its 2,000 gallon storage tank from service by no later than six months after the effective date of the Final Order. Until such time as the diesel fuel storage capacity of the Facility is reduced, Respondent shall keep records of the quantity of diesel fuel stored at the Facility to ensure compliance with EPCRA § 312.

4.12. In order to correct the violation(s) alleged in Part III, the undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, (i) Respondent has at Complainant's request provided a copy of its calendar year 2014 filing with the Washington SERC to the LEPC and the local Fire Department, and (ii)

Respondent has submitted an Exemption Notification for calendar years 2015 and 2016 to the Washington SERC, the LEPC and the local Fire Department confirming that it has not stored a threshold quantity of a hazardous substance at the Facility that would require a Tier II form since 2014 and Respondent has provided a copy of the Exemption Notification to the Complainant.

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

4.14. For purposes of this proceeding, Respondent 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 Respondent and its agents, servants, employees, successors, and assigns.

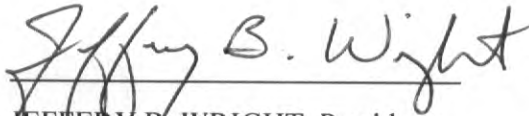
4.16. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

JUNE 28, 2017

FOR RESPONDENT:

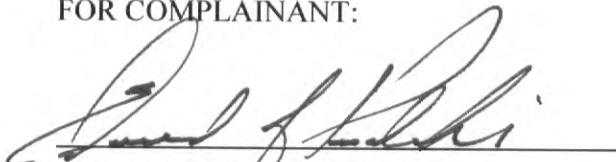


JEFFERY B. WRIGHT, President  
Western Fruit Express Company

DATED:

7/6/2017

FOR COMPLAINANT:



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



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. EPCRA-10-2017-0125
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WESTERN FRUIT EXPRESS CO.,	)	<b>FINAL ORDER</b>
	)	
Spokane, Washington	)	
	)	
Respondent.	)	

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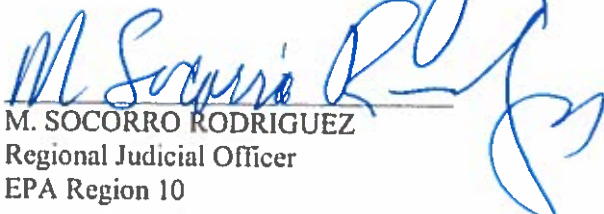
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

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

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under EPCRA 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 regulations promulgated or permits issued thereunder.

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

SO ORDERED this 11<sup>th</sup> day of July, 2017.

  
M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Western Fruit Express Co., Docket No.: EPCRA-10-2017-0125** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

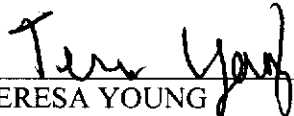
The undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Gallagher, Assistant Regional Counsel  
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:

Jeffrey B. Wright  
President  
Western Fruit Express Company  
2650 Lou Menk Drive  
Fort Worth, Texas 76131

DATED this 13 day of July, 2017.

  
TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10