



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

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DOCKET NO.: EPCRA-08-2008-0005

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|-----------------------------------|---|--------------------|
| IN THE MATTER OF: |) | |
| |) | |
| WESTERN REFINING WHOLESALE |) | FINAL ORDER |
| 399 Highway 84 |) | |
| Pagosa Springs, CO 81447 |) | |
| |) | |
| RESPONDENT |) | |

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 22nd DAY OF July, 2008.



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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| IN THE MATTER OF: |) | |
| |) | |
| Western Refining Wholesale |) | EXPEDITED SETTLEMENT AGREEMENT |
| 399 Highway 84 |) | |
| Pagosa Springs, Colorado 81447 |) | (COMBINED COMPLAINT AND |
| |) | CONSENT AGREEMENT) |
| Respondent |) | |
| |) | DOCKET NO.: EPCRA-08-2008-0005 |

United States Environmental Protection Agency, Region 8 ("EPA" or "Complainant"), and Respondent, Western Refining Wholesale ("Respondent"), by their undersigned representatives, hereby consent and agree as follows:

PRELIMINARY STATEMENT

1. This matter is subject to 40 C.F.R. part 22. This Expedited Settlement Agreement (also known as a "Combined Complaint and Consent Agreement," hereafter "the Agreement,") is entered into by the parties for the purpose of simultaneously commencing and amicably concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA and Respondent agree that EPA has jurisdiction over this matter pursuant to section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045. The supervisors in the Legal Enforcement Program and the Technical Enforcement Program within the Office of Enforcement, Compliance and Environmental Justice, Region 8, EPA, have been delegated the authority, pursuant to applicable statute, to commence and conclude this matter.
3. Respondent agrees that EPA has jurisdiction and venue over the matters contained in this Agreement, however, Respondent neither admits nor denies EPA's specific factual allegations contained herein.

4. EPA and Respondent agree that settlement of this matter is in the public interest, and EPA and Respondent agree that execution of this Agreement and issuance of a Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

5. This Agreement contains all terms of the settlement agreed to by the parties.

GENERAL ALLEGATIONS

6. Western Refining Wholesale ("Respondent") is a "person" as that term is defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

7. Respondent is an owner or operator of a "facility" as that term is defined in section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and which is located at 399 Highway 84, Pagosa Springs, Colorado.

8. On April 11, 2008, EPA Region 8 inspected Respondent's facility in Pagosa Springs, Colorado, with Respondent's consent.

9. At all times relevant to this matter, the facility stored hazardous chemicals as defined by 29 C.F.R. § 1910.1200. Diesel fuel, clear diesel fuel, motor oil, and gasoline are hazardous chemicals as defined by 29 C.F.R. § 1910.1200(c).

10. At all times relevant to this matter, the facility was required to prepare or have available a Material Safety Data Sheet ("MSDS") for each hazardous chemical used and stored at the facility. This requirement is found under the Occupational Safety and Health Act of 1970 and the regulations promulgated under that Act.

11. Respondent, as a facility, is required to file an annual Tier II inventory report for hazardous chemicals stored in excess of established thresholds. Such thresholds are located at 40 C.F.R. § 370.20(b).

ALLEGED VIOLATION

Failure to File the Tier II Forms for hazardous chemicals stored on site during calendar years 2005 - 2007

Paragraphs 1 - 11 of the PRELIMINARY STATEMENT and GENERAL ALLEGATIONS are incorporated by this reference and set out as if fully stated herein.

12. EPA alleges that Respondent, owner and operator of the facility at 399 Highway 84, Pagosa Springs, Colorado, failed to timely file completed emergency and hazardous chemical inventory forms (Tier II form as described in 40 C.F.R. § 370.25 and 40 C.F.R. § 370, subpart D) for

calendar years 2005 - 2007, as required by § 312 of EPCRA, 42 U.S.C. § 11022, and the regulations set forth at 40 C.F.R. § 370.

13. Under section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations at 40 C.F.R. § 370, Respondent was required to submit a Tier II form for calendar years 2005, 2006, and 2007 on or before March 1, 2006, 2007, and 2008, respectively.

14. EPA therefore alleges violations of the requirements of reporting under section 312 of EPCRA, 42 U.S.C. § 11022 and the assessment of penalties under section 325 of EPCRA, 42 U.S.C. § 11045.

TERMS OF SETTLEMENT

15. Respondent agrees to achieve compliance with the requirements that formed the basis of the alleged violations in this matter within 20 days after the Final Order is issued herein.

16. Pursuant to section 325 of EPCRA, 42 U.S.C. § 11045, and based in part on the nature of the alleged violations and other relevant factors, EPA agrees that an appropriate civil penalty to settle this matter is TWO THOUSAND DOLLARS (\$2,000).

17. Respondent consents, for the purpose of settlement, to the issuance of a Final Order and the payment of the civil penalty cited in the foregoing paragraph.

18. Respondent agrees and acknowledges that any and all payments made as a part of this agreement are ineligible for any kind of favorable tax treatment.

19. Within twenty days (20) of receiving a signed Final Order in this matter, Respondent shall remit a cashier's or certified check for the amount specified in Paragraph 16 above. The payment shall reference the name and docket number of this case and be made by remitting a cashier's or certified check, for this amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Federal Express, Airborne, or other commercial carrier:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Wire Transfers:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727

ACH Transactions:

PNC Bank/Remittance Express
ABA: 051036706
Account Number: 310006
CTX Format, Transaction Code 22, checking

There is now an On Line Payment Option, available through the US Department of Treasury. This payment option can be accessed from the information below:

www.PAY.GOV

A copy of the check, or notification that the payment has been made by one of the other methods listed above, shall be sent simultaneously to:

Tina Artemis, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street [8RC]
Denver, Colorado 80202-1129

and

Cheryl Turcotte
EPCRA/RMP Enforcement Coordinator
US EPA, Region 8
1595 Wynkoop Street [8ENF-AT]
Denver, Colorado 80202-1129

20. In the event Respondent fails to pay or does not pay the full amount of its civil penalty by the due date, Respondent shall pay interest and late charges as specified below. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if the penalty is not paid when due. Interest will be assessed at the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e). Respondent specifically agrees that should it be delinquent with any payment, interest due on the delinquent amount shall be calculated from the date of the first payment date. Such interest calculation is non-discretionary and required by federal government debt collection procedures.

21. Respondent waives its right to a hearing on any issue of law or fact set forth in this Agreement and knowingly agrees to waive its right to a hearing on this matter under section 325(b)(B) of EPCRA, 42 U.S.C. § 11045(b)(B), and to appeal this matter under EPCRA § 325(f), 42 U.S.C. § 11045(f).

22. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

23. This Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

24. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

25. Nothing in this Agreement shall be construed as a waiver by the U.S. EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

26. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Agreement and to execute and legally bind that party to this Agreement.

27. The parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

28. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the alleged violations set forth in this Agreement.

29. This Agreement resolves Respondent's liability for Federal civil penalties under section 325 of EPCRA, 42 U.S.C. § 11045, for the alleged violations and facts contained in this Agreement. This Agreement shall not in any case affect EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

30. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Agreement.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Date: July 22, 2008

By: Cynthia J. Reynolds, Acting
Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: July 20 2008

By: Matt Cohn
Matt Cohn, Supervisor (Acting)
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: July 17, 2008

By: Dana J. Stolsky
Dana J. Stolsky, Senior Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

WESTERN REFINING WHOLESALE

Date: 7-6-08

By: J. C.
Operations Manager
Western Refining Wholesale

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT/FINAL ORDER** in the matter **WESTERN REFINING WHOLESALE; DOCKET NO.: EPCRA-08-2008-0005**; these documents were filed with the Regional Hearing Clerk on July 22, 2008.


Further, the undersigned certifies that a true and correct copies of the documents were delivered to Dana Stotsky, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on July 22, 2008, to:

Mark Milburn, Manager
Western Refining Wholesale
300 Highway 84
Pagosa Springs, Colorado 81447

E-mailed to:

Michelle Angei
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

July 22, 2008


Tina Arsenis
Paralegal/Regional Hearing Clerk

