

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. EPCRA-10-2021-0127
)
NORTHWEST GAS PROCESSING,) **CONSENT AGREEMENT**
HIGHWAY 30 TREATING FACILITY)
)
New Plymouth, Idaho,)
)
Respondent.)

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 Northwest Gas Processing (“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 Enforcement and Compliance Assurance Division, 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

A. STATUTORY AND REGULATORY BACKGROUND

3.1. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), provides that the owner or operator of any facility which is required to prepare or have available a material safety data sheet (MSDS)¹ for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”), 29 U.S.C. § 651 *et seq.*, and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemical inventory form (“Inventory Form”) to each of the following: (A) the appropriate Local Emergency Planning Committee (“LEPC”); (B) the State Emergency Response Commission (“SERC”); and (C) the Fire Department with jurisdiction over the facility.

3.2. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a), provide that the Inventory Form must be submitted annually by March 1.

3.3. 40 C.F.R. § 370.10 provides that the owner or operator of a facility must comply with the reporting requirements if the facility is required to have a MSDS and a hazardous chemical that is not an Extremely Hazardous Substance is present at the facility at any one time

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.

during the preceding calendar year in an amount equal to or greater than the threshold quantity for that hazardous chemical.

3.4. 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).

3.5. Under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), “person” means, *inter alia*, any corporation.

3.6. The OSHA regulations at 29 C.F.R. § 1910.1200(g) provides that employers shall have a MSDS in the workplace for each hazardous chemical which they use.

3.7. Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), provides that the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

3.8. 29 C.F.R. § 1910.1200(c) defines “hazardous chemical” as 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.

3.9. Natural Gas is a hazardous chemical as defined in 29 C.F.R. § 1910.1200(c).

3.10. The threshold quantity for Natural Gas is 10,000 pounds. 40 C.F.R. § 370.10(a)(2)(i).

3.11. Hydrocarbons is a hazardous chemical as defined in 29 C.F.R. § 1910.1200(c).

3.12. The threshold quantity for Hydrocarbons is 10,000 Pounds. 40 C.F.R. § 370.10(a)(2)(i).

3.13. Produced Water is a hazardous chemical as defined in 29 C.F.R. § 1910.1200(c).

3.14. The threshold quantity for Produced Water is 10,000 Pounds. 40 C.F.R. § 370.10(a)(2)(i).

B. FACTUAL BACKGROUND

3.15. At all times relevant to this Consent Agreement, Respondent was a person as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

3.16. At all times relevant to this Consent Agreement, Respondent was the owner and operator of the Highway 30 Treating Facility (“Facility”) located at 4341 Highway 30 South, New Plymouth, Idaho 83655. At all times relevant to this Consent Agreement, the Facility met the definition of the term facility in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

3.17. During calendar years 2018 and 2019, the Respondent stored the following hazardous chemicals at the Facility:

- a. Natural Gas;
- b. Hydrocarbons; and
- c. Produced Water.

3.18. During calendar years 2018 and 2019, the Respondent stored each of the hazardous chemicals listed in Paragraph 3.17, above, in quantities exceeding 10,000 pounds at the Facility.

3.19. During calendar years 2018 and 2019, Respondent was required to have a MSDS for each of the hazardous chemicals listed in Paragraph 3.17, above.

3.20. The Respondent was therefore required to submit Inventory Forms to the SERC, LEPC, and the Fire Department with jurisdiction over the Facility for calendar years 2018 and 2019 by March 1, 2019 and March 1, 2020, respectively.

3.21. The Respondent submitted its 2018 Inventory Form to the SERC on April 15, 2020.

3.22. The Respondent submitted its 2019 Inventory Form to the SERC on or after April 8, 2020.

3.23. The Respondent submitted both its 2018 and 2019 Inventory Forms to the LEPC on or after April 16, 2020.

3.24. The Respondent submitted both its 2018 and 2019 Inventory Form to the Fire Department with jurisdiction over its facility on or after April 8, 2020.

C. CLAIMS

Count 1: Late Submittal of 2018 Inventory Form to the SERC

3.25. Complainant incorporates and realleges the allegations in Paragraphs 3.1 to 3.24, above, as though fully set forth herein.

3.26. According to Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a), the Respondent was required to submit its 2018 Inventory Form to the SERC by March 1, 2019.

3.27. The Respondent failed to submit the 2018 Inventory Form to the SERC by March 1, 2019, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a).

Count 2: Late Submittal of 2018 Inventory Form to the LEPC

3.28. Complainant incorporates and realleges the allegations in Paragraphs 3.1 to 3.24, above, as though fully set forth herein.

3.29. According to Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a), the Respondent was required to submit its 2018 Inventory Form to the LEPC by March 1, 2019.

3.30. The Respondent failed to submit the 2018 Inventory Form to the LEPC by March 1, 2019, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a).

Count 3: Late Submittal of 2018 Inventory Form to the Fire Department

3.31. Complainant incorporates and realleges the allegations in Paragraphs 3.1 to 3.24, above, as though fully set forth herein.

3.32. According to Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a), the Respondent was required to submit its 2018 Inventory Form to the Fire Department with jurisdiction over its facility by March 1, 2019.

3.33. The Respondent failed to submit the 2018 Inventory Form to the Fire Department with jurisdiction over its facility by March 1, 2019, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a).

Count 4: Late Submittal of 2019 Inventory Form to the SERC

3.34. Complainant incorporates and realleges the allegations in Paragraphs 3.1 to 3.24, above, as though fully set forth herein.

3.35. According to Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a), the Respondent was required to submit its 2019 Inventory Form to the SERC by March 1, 2020.

3.36. The Respondent failed to submit the 2019 Inventory Form to the SERC by March 1, 2020, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a).

Count 5: Late Submittal of 2019 Inventory Form to the LEPC

3.37. Complainant incorporates and realleges the allegations in Paragraphs 3.1 to 3.24, above, as though fully set forth herein.

3.38. According to Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a), the Respondent was required to submit its 2019 Inventory Form to the LEPC by March 1, 2020.

3.39. The Respondent failed to submit the 2019 Inventory Form to the LEPC by March 1, 2020, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a).

Count 6: Late Submittal of 2019 Inventory Form to the Fire Department

3.40. Complainant incorporates and realleges the allegations in Paragraphs 3.1 to 3.24, above, as though fully set forth herein.

3.41. According to Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a), the Respondent was required to submit its 2019 Inventory Form to the Fire Department with jurisdiction over its facility by March 1, 2020.

3.42. The Respondent failed to submit the 2019 Inventory Form to the Fire Department with jurisdiction over its facility by March 1, 2020, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.40(a).

D. ENFORCEMENT AUTHORITY

3.43. Under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$59,017 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 \$12,500 (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	Erin Williams
U.S. Environmental Protection Agency	U.S. Environmental Protection Agency
Region 10	Region 10
R10_RHC@epa.gov	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:

a. 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.

b. 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.

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

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

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

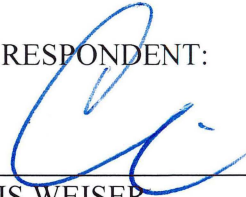
4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

6/9/2021

FOR RESPONDENT:



CHRIS WEISER,
Manager of Idaho Midstream, LLC
Managing Member of Northwest Gas Processing

DATED:

FOR COMPLAINANT:

EDWARD
KOWALSKI

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EDWARD KOWALSKI
Date: 2021.06.21
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EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. EPCRA-10-2021-0127
)	
NORTHWEST GAS PROCESSING,)	FINAL ORDER
HIGHWAY 30 TREATING FACILITY,)	
)	
New Plymouth, Idaho,)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegate 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 _____ day of _____, 2021.

**RICHARD
MEDNICK**

Digitally signed by
RICHARD MEDNICK
Date: 2021.06.22
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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: Northwest Gas Processing, Docket No.: EPCRA-10-2021-0127**, 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:

Rachel Aramburu
U.S. Environmental Protection Agency
Region 10
Aramburu.Rachel@epa.gov

Michael R. Christian
Attorney for Northwest Gas Processing
mike@smithmalek.com

DATED this _____ day of _____, 2021.

TERESA
YOUNG

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TERESA YOUNG
Date: 2021.06.22
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TERESA YOUNG
Regional Hearing Clerk
EPA Region 10