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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. EPCRA-10-2015-0043
APPLE KING, LLC,	)	
	)	CONSENT AGREEMENT
	)	
Yakima, Washington,	)	
	)	
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 Apple King, LLC (“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(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Administration (“OSHA”) to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical, to prepare and submit an Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370) to the Local Emergency Planning Committee (“LEPC”), the State Emergency Response Commission (“SERC”), and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1. The form must contain the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), covering all hazardous chemicals required by OSHA to have an MSDS that are present at the facility at any one time during the

preceding year in amounts equal to or exceeding 10,000 pounds or, in the case of an Extremely Hazardous Substance (“EHS”), in amounts equal to or exceeding 500 pounds or the Threshold Planning Quantity (“TPQ”), whichever is lower.

3.2. 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).

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

3.4. The OSHA Hazard Communication Standard (“OSHA Standard”), 29 C.F.R. § 1910.1200(b), requires employers to provide information to their employees about hazardous chemicals to which they are exposed by means of, *inter alia*, an MSDS. The section applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

3.5. Ammonia is defined as a hazardous chemical under the OSHA Standard.

3.6. The OSHA Standard requires an MSDS to be prepared, or available, for ammonia.

3.7. Ammonia is listed in Appendices A and B of 40 C.F.R. Part 355 and is therefore an Extremely Hazardous Substance under 40 C.F.R. § 370.66.

3.8. Respondent is a corporation established under the laws of the State of Washington and is therefore a person under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

3.9. Respondent owns and operates a facility located at 3581 Mapleway Road, Yakima, Washington ("Facility").

3.10. During calendar years 2010, 2011, 2012, and 2013, Respondent stored greater than 500 pounds of ammonia at the Facility.

3.11. Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.45 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for ammonia to the SERC, LEPC, and the fire department for calendar year 2010 by March 1, 2011.

3.12. Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.45 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for ammonia to the SERC, LEPC, and the fire department for calendar year 2011 by March 1, 2012.

3.13. Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.45 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for ammonia to the SERC, LEPC, and the fire department for calendar year 2012 by March 1, 2013.

3.14. Respondent violated 42 U.S.C. § 11022 and 40 C.F.R. § 370.45 by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for ammonia to the SERC, LEPC, and the fire department for calendar year 2013 by March 1, 2014.

3.15. 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 \$37,500 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 \$65,383.00.

4.4. Pursuant to 31 U.S.C. § 3717(a)(1) and 40 C.F.R. § 13.11(a)(1), Respondent must pay an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury on any portion of the penalty agreed to in Paragraph 4.3 not paid within 30 days.

4.5. The rate of the current value of funds to the United States Treasury is 1%. Pursuant to 40 C.F.R. § 13.11(a)(3), the rate of interest, as initially assessed, remains fixed for the duration of the indebtedness.

4.6. Respondent agrees to pay the civil penalty set forth in Paragraph 4.3 in two installments. The first installment of \$32,692.00 shall be paid within 30 days of the effective date of the Final Order. The second installment of \$33,017.91 shall be paid within 365 days of the effective date of the Final Order, and which consists of \$32,691.00 reflecting the remainder of the outstanding penalty amount plus \$326.91 in interest.

4.7. Payment 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.

4.8. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.7 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-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
[Smith.candace@epa.gov](mailto:Smith.candace@epa.gov)

Suzanne E. Powers  
U.S. Environmental Protection Agency  
Region 10, Mail Stop WOO  
300 Desmond Drive, SE, Suite 102  
Lacey, Washington 98503  
[Powers.suzanne@epamail.epa.gov](mailto:Powers.suzanne@epamail.epa.gov)

4.9. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of 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.

4.10. If Respondent fails to pay any portion of the penalty assessed by this Consent Agreement and the Final Order in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.10.1. 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 pursuant to 31 U.S.C. § 3717 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.

4.10.2. 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.

4.10.3. 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.

4.11. The penalty described in Paragraphs 4.3 through 4.6, including any additional costs incurred under Paragraph 4.10, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.12. 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.

4.13. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature on this Consent Agreement, Respondent has corrected the violations alleged in Part III.

4.14. Except as described in Paragraph 4.10, each party shall bear its own costs and attorney's fees in bringing or defending this action.

4.15. 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.

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

4.17. Respondent consents to the issuance of any specified compliance or corrective action order, and to any stated permit action.

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

DATED:

January 19, 2015

FOR RESPONDENT:

  
MICHAEL SAUNDERS, MEMBER  
Apple King, LLC

DATED:

1/26/2015

FOR COMPLAINANT:

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

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. EPCRA-10-2015-0043
Apple King, LLC,	)	
	)	<b>FINAL ORDER</b>
	)	
Yakima, 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 27<sup>th</sup> day of January, 2015.

  
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: Apple King, LLC, Docket No.: EPCRA-10-2015-0043**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

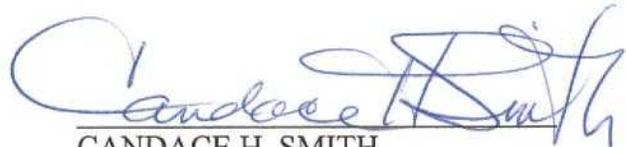
The undersigned certifies that a true and correct copy of the document was delivered to:

Brett S. Dugan  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
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:

Michael Saunders  
Member  
Apple King, LLC  
P.O. Box 4080  
Yakima, Washington 98904

DATED this 28<sup>th</sup> day of January, 2015.



CANDACE H. SMITH  
Regional Hearing Clerk  
EPA Region 10