

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. EPCRA-10-2020-0133
)
STARBUCKS CORPORATION,) **CONSENT AGREEMENT**
)
Kent, 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 Starbucks Corporation (“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 are 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), and the regulations at 40 C.F.R. Part 370, require the owner or operator of any facility which is required to prepare or have available a material safety data sheet¹ for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, and which has a hazardous chemical present at any one time in an amount equal to or greater than a specified threshold quantity, to prepare and submit a completed emergency and hazard chemical inventory form (“Inventory Form”) to the appropriate State Emergency Response Commission (“SERC”), Local Emergency Planning Committee (“LEPC”), and the fire department with jurisdiction over the facility, annually by March 1, containing data with respect to the preceding calendar year.

3.2 The Occupational Health and Safety Administration regulations at 29 C.F.R. § 1910.1200(g) provide that employers shall have a safety data sheet in the workplace for each hazardous chemical which they use.

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.

3.3 With certain exceptions not relevant here, Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66 provides that the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

3.4 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.

3.5 An “extremely hazardous substance” is a subset of “hazardous chemicals” and is defined at 40 C.F.R. § 370.66 as a substance listed in appendices A and B of 40 C.F.R. part 355.

3.6 40 C.F.R. § 370.10(a)(1) provides that the threshold quantity that triggers reporting obligations under Section 312 of EPCRA for an extremely hazardous substance is the lesser of 500 pounds or the Threshold Planning Quantity of the substance present at the facility at any one time.

3.7 40 C.F.R. § 370.10(a)(2) provides that the threshold quantity that triggers reporting obligations under Section 312 of EPCRA for a hazardous chemical that is not an extremely hazardous substance is 10,000 pounds of the chemical present at the facility at any one time, unless the hazardous chemical is gasoline or diesel fuel at a retail gas station.

B. GENERAL ALLEGATIONS

3.8 Respondent, a corporation incorporated and doing business in the State of Washington, is a “person” as that term is defined in Section 329(7) of EPCRA, 42 U.S.C. §11049(7), and 40 C.F.R. § 370.66.

3.9 At all relevant times, Respondent “owned and operated” the Kent Flexible Plant (“KFP”) at 18411 77th Place South in Kent, Washington (“Facility 1”), within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022.

3.10 Facility 1 is a “Facility” as that term is defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.

3.11 At all relevant times, Respondent “owned and operated” the Tea Distribution Center (“TDC”) at 6838 South 234th Street in Kent, Washington (“Facility 2”), within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022.

3.12 Facility 2 is a “Facility” as that term is defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.

3.13 Sulfuric Acid is a “hazardous chemical” and an “extremely hazardous substance,” with a threshold quantity of 500 pounds.

3.14 Sodium Hydroxide is a “hazardous chemical,” with a threshold quantity of 10,000 pounds.

3.15 Nitrogen is a “hazardous chemical,” with a threshold quantity of 10,000 pounds.

3.16 Lead is a “hazardous chemical,” with a threshold quantity of 10,000 pounds.

C. CLAIMS

3.17 In 2017 and 2018, Respondent stored Sulfuric Acid, Sodium Hydroxide, Nitrogen, and Lead at Facility 1 in quantities exceeding the respective threshold quantity for each chemical.

3.18 Respondent was required to have a material safety data sheet available for the chemicals described in paragraph 3.17, pursuant to the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, at Facility 1.

3.19 Therefore, Respondent was required to submit an Inventory Form for Facility 1 to the SERC, LEPC, and fire department by March 1, 2018 and 2019, respectively, for the chemicals described in paragraph 3.17.

3.20 In 2017 and 2018, Respondent stored Sulfuric Acid and Lead at Facility 2 in quantities exceeding the respective threshold quantity for each chemical.

3.21 Respondent was required to have a material safety data sheet available for the chemicals described in paragraph 3.20 pursuant to the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, at Facility 2.

3.22 Therefore, Respondent was required to submit an Inventory Form for Facility 2 to the SERC, LEPC, and fire department by March 1, 2018 and 2019, respectively, for the chemicals described in paragraph 3.20.

3.23 Respondent submitted its 2017 Tier II form for Facility 1 to the SERC on June 15, 2018, and to the LEPC and fire department on June 22, 2018.

3.24 Respondent submitted its 2017 Tier II form for Facility 2 to the SERC on June 21, 2018, and to the LEPC and fire department on June 22, 2018.

3.25 Respondent submitted its 2018 Tier II form for Facility 1 to the LEPC and fire department on March 11, 2019.

3.26 Respondent submitted its 2018 Tier II form for Facility 2 to the LEPC and fire department on March 11, 2019.

* * * *

3.27 Therefore, Respondent violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations at 40 C.F.R. Part 370.

3.28 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 \$58,328 per violation for violations that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020.

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 that an appropriate penalty to settle this action is \$100,000 (the “Assessed Penalty”).
- 4.4. Respondent consents to the Assessed Penalty and agrees to pay it 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, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

- 4.6. Concurrently with payment, Respondent must electronically 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 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

David Magdangal
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Magdangal.David@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 the 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:

August 19, 2020

FOR RESPONDENT:

Vicky McMillan

VICKY MCMILLAN, Vice President
Manufacturing
Starbucks Corporation

DATED:

FOR COMPLAINANT:

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-10-2020-0133
)	
STARBUCKS CORPORATION,)	FINAL ORDER
)	
Kent, Washington,)	
)	
Respondent.)	
)	

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 _____ day of _____, 2020.

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: STARBUCKS CORPORATION, Docket No.: EPCRA-10-2020-0133**, 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 electronically delivered to:

Andrew Futerman
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Futerman.Andrew@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was electronically delivered to Respondent's counsel at:

Geoffrey Tichenor, Partner
Stoel Rives
760 Southwest 9th Avenue, Suite 3000
Portland, Oregon 97204
Geoffrey.Tichenor@stoel.com

DATED this _____ day of _____, 2020.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10