

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

REGIONAL HEARING
CLERK
2018 JUL 24 PM 3:01
U.S. Environmental
Protection Agency-Region 2

In the Matter of

Crescent Marketing, Inc.
dba Crescent Manufacturing,

Respondent.

Proceeding under the Emergency Planning
and Community Right-to-Know Act

**CONSENT AGREEMENT AND
FINAL ORDER**

**DOCKET NUMBER
EPCRA-02-2018-4206**

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CA/FO”) is issued pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045. The Complainant in this action is the Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 (“EPA”), who has been delegated the authority to institute this action. Respondent is Crescent Marketing, Inc. doing business as Crescent Manufacturing (“Respondent”).

2. Pursuant to Section 22.13(b) of the revised Consolidated Rules of Practice, 40 C.F.R. § 22.13(b), where parties agree to a settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CA/FO pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3). This administrative proceeding constitutes one that is simultaneously being commenced and concluded pursuant to said provisions of 40 C.F.R. § 22.18(b).

3. It has been agreed by the parties that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without litigation.

STATUTORY BACKGROUND

4. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility which is required to prepare or have available a Material Safety Data Sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, *et seq.* (“OSHA”) shall submit a completed emergency and hazardous chemical inventory form (Tier I or Tier II form) to the Local Emergency Planning Committee (“LEPC”), the State Emergency Response Commission (“SERC”), and the local fire department with jurisdiction over the facility, by March 1, 1988

(and annually thereafter). This inventory form must contain the information required by Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370 for all hazardous chemicals which have been present at the facility at any one time during the preceding year in amounts equal to or greater than the threshold levels set forth in 40 C.F.R. § 370.10.

5. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and the regulations found at 40 C.F.R. Part 372, provide that the owner or operator of a facility subject to the requirements of Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 are required to submit annually, no later than July 1st of each year, reports for each toxic chemical (defined under 40 C.F.R. § 372.3 to include a chemical listed in 40 C.F.R. § 372.65) that was “manufactured,” “processed,” or “otherwise used” (as each such term is defined in 40 C.F.R. § 372.3) during the preceding calendar year in quantities exceeding the established toxic chemical threshold levels as listed in 40 C.F.R. § 372.25, 372.27, or 372.28. The information, to be reported on the prescribed EPA form (40 C.F.R. § 372.30(a); hereinafter “Form R”) and compiled in the Toxics Release Inventory (“TRI”), must be submitted to the Administrator of EPA and the state in which the toxic chemicals were manufactured, processed, or otherwise used.

6. Section 325 of EPCRA, 42 U.S.C. § 11045, provides for the assessment of penalties for violations of Sections 312 and 313 of EPCRA, 42 U.S.C. §§ 11022 and 11023.

FINDINGS OF FACT

7. Respondent is a corporation organized pursuant to the laws of the State of New York.

8. Respondent has owned and continues to own a facility located at 10285 Eagle Drive, North Collins, New York 14111 (“Facility” or “Respondent’s Facility”) whose TRI Facility ID No. is 14111CRSCN1285E.

9. On or about April 12, 2016, EPA conducted an inspection of Respondent’s Facility to determine whether Respondent was in compliance with Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, and the implementing regulations at 40 C.F.R. Part 370 (the “Inspection”). Subsequent to the Inspection, EPA requested additional information and documentation regarding Respondent’s compliance with both Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, and the implementing regulations at 40 C.F.R. Part 370, as well as Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing regulations at 40 C.F.R. Part 372.

CONCLUSIONS OF LAW

10. Respondent is, and at all times relevant to this Consent Agreement, was, a “person” as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

11. At the time of the Inspection and during relevant periods thereafter, Respondent was and continues to be the owner and operator of the Facility, which is a “facility” as that term is defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

12. Respondent is subject to the reporting requirements set forth in Sections 312 and 313 of EPCRA, 42 U.S.C. §§ 11022 and 11023, and 40 C.F.R. §§ 370.25 and 372.30.

13. Sulfuric acid (CAS# 7664-93-9) is a “hazardous chemical” as defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), and an “extremely hazardous substance” as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with a minimum threshold level for reporting of 500 pounds, as designated by 40 C.F.R. § 370.10.

14. Sulfuric acid was present at the Facility in quantities above the threshold reporting levels set forth in 40 C.F.R. § 370.10 in calendar years 2014 and 2015, and Respondent was required under OSHA to prepare or have available an MSDS for sulfuric acid for the Facility. Therefore, Respondent was required, pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, to submit a completed emergency and hazardous chemical inventory form (Tier I or Tier II form) for the sulfuric acid present at the Facility by March 1, 2015 for calendar year 2014 and by March 1, 2016 for calendar year 2015 to the LEPC, the SERC, and the fire department with jurisdiction over the Facility.

15. Respondent failed to submit, in a timely manner, a completed emergency and hazardous chemical inventory form (Tier I or Tier II form) for the calendar years 2014 and 2015 to the LEPC, the SERC, and/or the local fire department with jurisdiction over Respondent’s Facility, which are violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25.

16. Methanol, naphthalene, 1,2,4-trimethylbenzene, nitrate compounds, xylene, cumene, and certain glycol ethers are “toxic chemicals” as defined in Section 313(c)-(d) of EPCRA, 42 U.S.C. § 11023(c)-(d), and as listed in 40 C.F.R. § 372.65, with a minimum threshold of 25,000 pounds for reporting the processing of such chemicals, as designated by 40 C.F.R. § 372.25.

17. Methanol, naphthalene, 1,2,4-trimethylbenzene, nitrate compounds, and certain glycol ethers were processed at the Facility in quantities above the threshold reporting levels set forth in 40 C.F.R. § 372.25 in calendar years 2011, 2012, 2013, and 2014. Xylene and cumene were processed at the Facility in quantities above the threshold reporting levels set forth in 40 C.F.R. § 372.25 in calendar years 2011 and 2014. Therefore, Respondent was required, pursuant to Section 313 of EPCRA, 42 U.S.C. § 11023, to submit completed Form R reports for these chemicals by July 1 of each applicable reporting year to the Administrator of the EPA and the state in which the toxic chemicals were processed.

18. Respondent failed to submit, in a timely manner, Form R reports for the following chemicals and calendar years: (a) methanol for the calendar years 2011, 2012, 2013, and 2014; (b) naphthalene for the calendar years 2011, 2012, 2013, and 2014; (c) 1,2,4-trimethylbenzene for the calendar years 2011, 2012, 2013, and 2014; (d) nitrate compounds for the calendar years 2011, 2012, 2013, and 2014; (e) xylene for the calendar years 2011 and 2014; and (f) cumene for the calendar years 2011 and 2014. The failures to submit Form R reports for these chemicals by

July 1 of the reporting years are violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

19. Respondent failed to report accurate estimates of air fugitive, air stack, and total waste management releases for certain glycol ethers for the calendar years 2011, 2012, 2013, and 2014, which are violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

CONSENT AGREEMENT

20. Based upon the foregoing, and pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits” (40 C.F.R. Part 22), Complainant and Respondent hereby agree on the following provisions.

21. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent: (a) admits the jurisdictional basis for this matter; (b) admits the Findings of Fact set forth above; (c) consents to the assessment of the civil penalty set forth below; (d) consents to the issuance of the attached Final Order; and (e) waives its right to contest the allegations and its right to appeal the attached Final Order.

22. Respondent neither admits nor denies the Conclusions of Law set forth above.

23. Respondent hereby certifies that it is now in compliance with all applicable requirements of Sections 312 and 313 of EPCRA, 42 U.S.C. §§ 11022 and 11023.

24. Respondent agrees to pay a civil penalty in the amount of Two Hundred and Fifteen Thousand Dollars (\$215,000.00), to be paid in four installments within two years of the date the Regional Administrator of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (hereinafter referred to as the “due date”), as follows:

The first installment of Fifty-Three Thousand Seven Hundred Fifty Dollars (\$53,750.00) is to be received by EPA thirty (30) days from the due date;

The second installment of Fifty-Three Thousand Seven Hundred Fifty Dollars (\$53,750.00) is to be received by EPA one hundred eighty (180) days from the due date;

The third installment of Fifty-Three Thousand Seven Hundred Fifty Dollars (\$53,750.00) is to be received by EPA three hundred sixty (360) days from the due date; and

The fourth installment of Fifty-Three Thousand Seven Hundred Fifty Dollars (\$53,750.00) is to be received by EPA five hundred forty (540) days from the due date.

Payment shall be made by Electronic Fund Transfer (“EFT”). Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, New York 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment:
68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”
- f. Name of Respondent: Crescent Marketing, Inc. dba Crescent Manufacturing
- g. Case docket number: EPCRA-02-2018-4206

Respondent shall promptly furnish reasonable proof that the required payment has been made to:

Andrea L. Leshak
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th floor
New York, New York 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866.

25. The penalties specified in Paragraph 24, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or federal taxes.

26. Respondent certifies that it has requested of EPA that payment of the \$215,000 civil penalty be in installments because of the financial condition of Respondent, in that a one-time payment of said amount would constitute a hardship for Respondent because of its cash flow and the overall financial circumstances of Respondent at the time of execution of the consent agreement.

27. If Respondent fails to make full and complete payments of the civil penalties that it is required to pay by this Consent Agreement, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection.

- a. Interest. If Respondent fails to make payment, or makes partial payment, on any of the installments, any unpaid portion of the installment shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the date the installment payment was due.

- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of a required installment payment is more than thirty (30) days past the date the installment payment was due.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed EPCRA penalty on time, in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and Respondent also agrees to pay a 6% per annum penalty which will also be applied on any installment amount not paid within ninety (90) days of the date the installment payment was due.

General Provisions

28. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full settlement of Respondent's alleged violations of EPCRA set forth above in the Findings of Fact and Conclusions of Law.

29. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, State, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State, or local permit. Except for the alleged violations resolved herein, compliance with this Consent Agreement shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

30. Respondent's full compliance with this Consent Agreement shall resolve Respondent's liability for federal civil penalties for the violations under Sections 312 and 313 of EPCRA, 42 U.S.C. §§ 11022 and 11023, arising from the Inspection and information submitted to EPA subsequent to the Inspection, as described above in the Findings of Fact and Conclusions of Law. This Consent Agreement shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

31. This Consent Agreement, and any provision herein, is not intended to be an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this Consent Agreement or any of its terms and conditions.

32. Respondent explicitly waives any right to request a hearing as to the matters addressed herein and/or contest any allegations in this Consent Agreement and explicitly waives any right to appeal the attached Final Order.

33. Each party hereto shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement.

34. This Consent Agreement shall be binding on Respondent and its successors and assignees.

35. Each of the undersigned representatives to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of the Consent Agreement, and to bind that party to it.

36. Respondent consents to service upon Respondent of a copy of this Consent Agreement by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

In the Matter of Crescent Marketing, Inc. dba Crescent Manufacturing
Docket No. EPCRA-02-2018-4206

RESPONDENT: Crescent Marketing, Inc. dba Crescent Manufacturing


BY: 
(Signature)

NAME: Richard Razer
(Please Print)

TITLE: President

DATE: 6/12/2018

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2

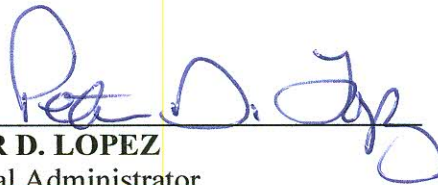
DATE: JUN 25 2018

In the Matter of Crescent Marketing, Inc. dba Crescent Manufacturing
Docket Number EPCRA-02-2018-4206

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.

DATED: 7/17/18



PETER D. LOPEZ
Regional Administrator
United States Environmental Protection Agency – Region 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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CONSENT AGREEMENT AND
FINAL ORDER

DOCKET NUMBER
EPCRA-02-2018-4206

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing Docket Number EPCRA-02-2018-4206, in the following manner to the respective addressees listed below:

Original and One Copy by hand delivery to:

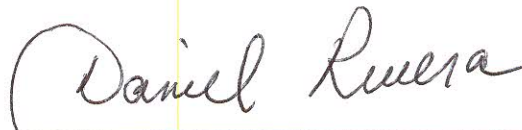
Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by certified mail to:

Charles W. Malcomb, Esq.
Counsel for Respondent
Hodgson Russ LLP
The Guaranty Building
140 Pearl Street
Suite 100
Buffalo, New York 14202

Dated: _____

7/24/18



Daniel Rivera
Administrative Assistant
U.S. Environmental Protection Agency, Region 2