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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
HEARINGS CLERK
EPA REGION 10

IN THE MATTER OF:)	
)	
Pacific Seafood Group,)	Docket No. EPCRA-10-2010-0149
dba Pacific Seafood of Washington)	
)	
Mukilteo, Washington)	CONSENT AGREEMENT AND FINAL
)	ORDER
)	
Respondent.)	
)	
)	
)	
)	

I. AUTHORITY

1.1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

1.2. Pursuant to Section 109 of CERCLA and Section 325 of EPCRA, and in accordance with § 22.13(b) of the "Consolidated Rules of Practice Governing the Administrative

Assessment of Civil Penalties,” 40 C.F.R. § 22.13(b), EPA hereby issues and Pacific Seafood Group (Respondent) hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. § 22.13(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Respondent operates a facility in Mukilteo, Washington, located at 4520 107th Street SW (Facility).

2.3. The Facility operates as a seafood warehouse and distribution center.

2.4. A concise statement of the factual basis for alleging violations of CERCLA and EPCRA, together with specific references to the provisions of the Acts and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1 Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires that the person in charge of a facility immediately notify the National Response Center (NRC) as soon as he or she has knowledge of a release of a hazardous substance from such facility in an amount equal to or greater than the reportable ~~quantity~~ ^{quantity ~~and~~ RQ} (RQ).

3.2. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), requires that if a facility at which hazardous chemicals are produced, used or stored releases an RQ of an extremely hazardous substance and the release requires, or occurred in a manner that would

require, notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility must immediately notify the State Emergency Response Commission (SERC) of any state likely to be affected by the release and the Local Emergency Planning Committee (LEPC) for any area likely to be affected by the release.

3.3. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require that 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, submit a completed Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370) to the SERC, the LEPC and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter. The form must contain the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity (TPQ) designated by EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

3.4. Ammonia is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. § 1910.1000, Table Z-1; therefore, the owner or operator of a facility with ammonia on-site must prepare or have available an MSDS for ammonia. Ammonia is a CERCLA “hazardous substance,” 40 C.F.R. § 302.4, and an “extremely hazardous” substance under

Section 302 of EPCRA, 42 U.S.C. § 11002, with an RQ of 100 pounds and a TPQ of 500 pounds, as provided in 40 C.F.R. Part 355.

3.5. Under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), “person” means, among other things, any corporation.

3.6. Under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), “facility” means, among other things, any building, structure, installation, storage container, equipment or any site or area where a hazardous substance has been deposited, stored, disposed of or placed or otherwise come to be located.

3.7. 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 who controls, is controlled or under common control with, such person).

3.8. Under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and Section 328 of EPCRA, 42 U.S.C. § 11048, “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

3.9. Respondent is incorporated in the State of Oregon.

3.10. On May 29, 2009, the Facility released approximately 210 pounds of ammonia to the environment.

3.11. Respondent failed to immediately notify the NRC of the release of ammonia from the Facility.

3.12. Respondent also failed to immediately notify the Washington SERC and the Southwest Snohomish County LEPC of the release of ammonia from the Facility.

3.13. During at least one period of time during each of calendar years 2004, 2005, 2006, 2007 and 2008, ammonia was present at the Facility in an amount equal to or greater than the TPQ.

3.14. For each of calendar years 2004, 2005, 2006, 2007 and 2008, Respondent did not submit to the SERC, LEPC or local fire department an Emergency and Hazardous Chemical Inventory Form including ammonia.

3.15. Under Section 109 of CERCLA, 42 U.S.C. § 9609, EPA may assess a civil penalty for each day of violation of Section 103 of CERCLA. Under Section 325(b) of EPCRA, 42 U.S.C. §11045(b), EPA may assess a civil penalty for each day of violation of Sections 304 and 312 of EPCRA, 42 U.S.C §§ 11004 and 11022.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors and assigns.

4.5. Except as provided in Paragraph 4.10, below, each party shall bear its own costs in bringing or defending this action.

4.6. Based on Respondent's willingness to settle this matter without litigation, the nature of the violations, and other relevant factors, and in accordance with the "Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act," EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$35,000, which includes \$6,645 for the alleged CERCLA violation and \$28,355 for the alleged EPCRA violations.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.6.

4.8. Payments under this CAFO shall be made by cashier's check or certified check or money order made payable to the order of the "U.S. Treasury" and shall be delivered to the following addresses:

(a) The CERCLA portion of the penalty (\$6,645) shall be mailed to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

(b) The EPCRA portion of the penalty (\$28,355) shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall note on the checks the title and docket number of this case.

4.9. Respondent shall submit a photocopy of the checks described above to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Suite 900
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Suzanne Powers
U.S. Environmental Protection Agency
Region 10
Washington Operations Office
300 Desmond Drive S.E., Suite 102
Lacey, Washington 98503

4.10. Should Respondent fail to make any payment of the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Should a failure to pay occur, Respondent may be subject to a civil action under CERCLA Section 109(a)(4), 42 U.S.C. § 9609(a)(4), and EPCRA Section 325(f), 42 U.S.C. § 11045(f), to collect any unpaid penalties, together with interest, handling charges and nonpayment penalties, as set forth below.

4.11. Should Respondent fail to make any payment of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

(a) Interest. 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(a)(1) 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 penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.12. Except as provided in Paragraph 4.15 below, nothing in the CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.13. This CAFO 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.

4.14. Respondent represents that it is authorized to execute this CAFO and that the party signing this CAFO on its behalf is authorized to bind Respondent to the terms of this CAFO.

4.15. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

FOR PACIFIC SEAFOOD GROUP



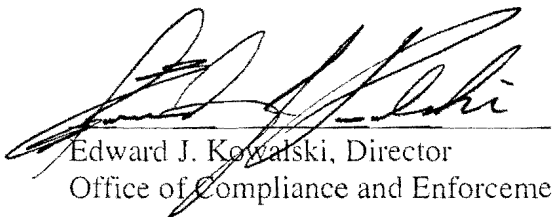
Signature

Dated: 5-28-10

Print Name: ROBERT SIMON

Title: GENERAL MANAGER

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10


Edward J. Kowalski, Director
Office of Compliance and Enforcement

Dated: 6/11/2010

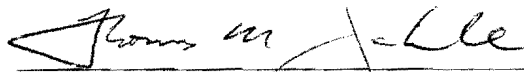
V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a full and final settlement by EPA of all claims for administrative or judicial penalties pursuant to CERCLA and EPCRA for the particular violations alleged in Part III above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of federal, state or local law.

This Final Order shall become effective upon filing.

SO ORDERED this 18th day of June, 2010.



Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: PACIFIC SEAFOOD GROUP, dba PACIFIC SEAFOOD OF WASHINGTON**, DOCKET NO.: EPCRA-10-2010-0149, was filed with the Regional Hearing Clerk on June 18, 2010.


On June 18, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:

Stephanie Mairs, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 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 on June 18, 2010, to:

Pacific Seafood Group,
dba Pacific Seafood of Washington
4520 107th Street
Mukilteo, WA 98275

DATED this 18th day of June 2010.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10