



1.2. Pursuant to Section 325 of EPCRA and Section 109 of CERCLA, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues and Oregon Potato Company (“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) and 22.18, 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. The Director of the Office of Compliance and Enforcement, EPA Region 10 has been delegated the authority to sign consent agreements between EPA and the party against whom an administrative penalty for violations of Sections 312 and 304 of EPCRA and Section 103 of CERCLA is proposed to be assessed pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045 and Section 109 of CERCLA, 42 U.S.C. § 9609.

2.3. Respondent owns and operates a facility in Warden, Washington, located at 1900 First Avenue West (“the Facility”).

2.4. The Facility produces dried and dehydrofrozen potato products.

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

### III. ALLEGATIONS

3.1. Respondent is a corporation incorporated in the state of Washington.

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

3.3. 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 by, or under common control with, such person).

3.4. Under Section 101(94) 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.

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

3.6. 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 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 state emergency response commission (SERC), the local emergency planning committee (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 designated by EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

3.7. Under OSHA regulations at 29 C.F.R. § 1910.1200, employers must provide information, including MSDSs, about hazardous chemicals to which their employees may be exposed.

3.8. Anhydrous Ammonia is listed as a “hazardous chemical” under OSHA regulations at 29 C.F.R. § 1910.1000, Table Z-1.

3.9. Anhydrous Ammonia is listed as an “extremely hazardous substance” and has a threshold planning quantity (TPQ) of 500 pounds, as provided at 40 C.F.R. Part 355, Appendix A.

3.10. During at least one period of time during calendar years 2005, 2006, 2007, and 2008, Anhydrous Ammonia was present at the Facility in an amount equal to or greater than 500 pounds. Therefore, Respondent was subject to the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

3.11. Respondent did not submit to the Washington SERC, Grant County LEPC, and Grant County District #4 fire department an Emergency and Hazardous Chemical Inventory Form including Anhydrous Ammonia for calendar year 2008 by March 1, 2009.

3.12. Respondent did not submit to the Washington SERC, Grant County LEPC, and Grant County District #4 fire department an Emergency and Hazardous Chemical Inventory Form including Anhydrous Ammonia for calendar year 2007 by March 1, 2008.

3.13. Respondent did not submit to the Washington SERC, Grant County LEPC, and Grant County District #4 fire department an Emergency and Hazardous Chemical Inventory Form including Anhydrous Ammonia for calendar year 2006 by March 1, 2007.

3.14. Respondent did not submit to the Washington SERC, Grant County LEPC, and Grant County District #4 fire department an Emergency and Hazardous Chemical Inventory Form including Anhydrous Ammonia for calendar year 2005 by March 1, 2006.

3.15. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires the person in charge of a facility to 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 (RQ).

3.16. Anhydrous Ammonia is a CERCLA “hazardous substance” listed in 40 C.F.R. Part 302, Table 302.4. The RQ for Anhydrous Ammonia is 100 pounds.

3.17. 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 SERC of any state likely to be affected by the release and the LEPC for any area likely to be affected by the release.

3.18. On July 2, 2009, the Facility released approximately 300 pounds of Anhydrous Ammonia into the environment. Therefore, Respondent was subject to the reporting requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b).

3.19. Respondent failed to immediately notify the NRC of the release of Anhydrous Ammonia from the Facility.

3.20. Respondent failed to immediately notify the Washington SERC of the release of Anhydrous Ammonia from the Facility.

3.21. Under Section 325 of EPCRA, 42 U.S.C. § 11045, 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. 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.

#### 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 \$66,235.00: \$5,759.00 for the CERCLA violation and \$60,476.00 for the 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 above within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check payable as indicated and mailed to the addresses below:

a. For the CERCLA violation, \$5,759.00 payable to "EPA Hazardous

Substance Superfund” and mailed to:

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

b. For the EPCRA violations, \$60,476.00 payable to the “U.S. Treasury” and 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. Respondent also may make the penalty payment by wire transfer or credit card in accordance with instructions provided by EPA. Respondent shall submit a photocopy of the checks or documentation of the wire transfers 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

4.9. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such 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.

4.10. Should Respondent fail to pay 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.

4.11. The penalty described in Paragraph 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.

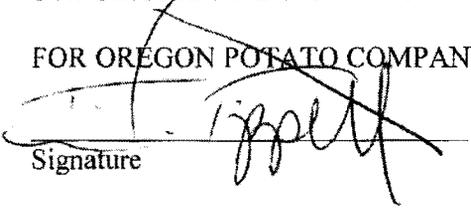
4.12. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

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

4.14. 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 OREGON POTATO COMPANY

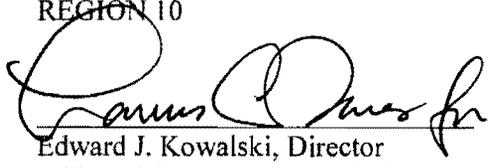
  
Signature

Dated: January 5, 2012

Print Name: Tim M. Tippett

Title: Vice President

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

  
Edward J. Kowalski, Director  
Office of Compliance and Enforcement

Dated: January 13, 2012

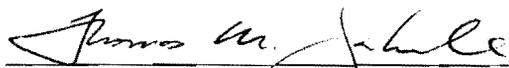
V. FINAL ORDER

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 settlement by EPA of all claims for civil 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 the Act and regulations and permits issued thereunder.

This Final Order shall become effective upon filing.

SO ORDERED this 19<sup>th</sup> day of January, 2012.



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: Oregon Potato**, Docket No.: **EPCRA 10-2012-0033**, was filed with the Regional Hearing Clerk on January 17, 2012.

On January 17, 2012, the undersigned certifies that an original and true and correct copy was hand delivered to:

Robert Hartman  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
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 on January 25, 2012 to:

Michael Nesteroff  
Lane Powell PC  
1420 Fifth Avenue, Suite 4100  
Seattle, WA 98101-2338

DATED this 25<sup>th</sup> day of January 2012

Signature:

Print Name: Candace H. Smith

EPA Region 10