

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, and Section 109 of CERCLA, 42 U.S.C. § 9609, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of EPCRA and CERCLA 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 and CERCLA together with the specific provisions of EPCRA and CERCLA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1 Under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, any person in charge of facility shall, as soon as he has knowledge of any release of a hazardous substance from such facility in quantities equal to or greater than the reportable quantity (“RQ”) listed in 40 C.F.R. § 302.4, immediately notify the National Response Center (“NRC”) of such release. The implementing regulations for CERCLA Section 103’s requirements are found at 40 C.F.R. Part 302.

3.2 Ammonia is a hazardous substance listed in 40 C.F.R. § 302.4 with an RQ of 100 pounds.

3.3 Under Section 304 of EPCRA, 42 U.S.C. § 11004 and 40 C.F.R. Part 355, if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under Section 103(a) of CERCLA, the owner or operator of the facility shall immediately provide notice of the release to the State Emergency Response Commission (“SERC”) of any state likely to be affected by the release and the community emergency coordinator for the Local Emergency Planning Committee (“LEPC”).

3.4 Pursuant to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2), extremely hazardous substances are listed in 40 C.F.R. Part 355, Appendices A and B.

3.5 Ammonia is an extremely hazardous substance listed in 40 C.F.R. Part 355, Appendices A and B.

3.6 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, *inter alia*, a corporation.

3.7 Under Section 101(9)(A) of CERCLA, 42 U.S.C. § 9601(9)(A), “facility” means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft.

3.8 Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), “facility” means all buildings, equipment, structures, and other stationary items which 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).

3.9 Respondent is a “person” as defined in CERCLA Section 101(21), 42 U.S.C. § 9601(21), and EPCRA Section 329(7), 42 U.S.C. § 11049(7).

3.10 Respondent is the “owner or operator” and is in charge of the “facility” located at 903 East 3000 North, Sugar City, Idaho 83448 (“Facility”).

3.11 The Facility is a “facility” as defined by Section 101(9)(A) of CERCLA, 42 U.S.C. § 9601(9)(A), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

3.12 Respondent uses ammonia at the Facility.

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

3.14 Section 329(8) of EPCRA, 42 U.S.C. § 11049(8), defines “release” as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any hazardous chemical, extremely hazardous substance, or toxic chemical.

3.15 On February 15, 2014, at approximately 9:03 am Mountain Time (“MT”), there was a release of ammonia by means of emission into the air in quantities greater than the RQ from the Facility.

3.16 Respondent had knowledge of the release of ammonia in quantities greater than the reportable quantity on or around the time of release.

COUNT 1

3.17 Under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, any person in charge of a facility shall, as soon as he has knowledge of any release of a hazardous substance from such facility in quantities equal to or greater than the RQ listed in 40 C.F.R. § 302.4, immediately notify the NRC of such release.

3.18 Respondent notified the NRC of the release of ammonia from the Facility at approximately 10:00 am MT on February 15, 2014, approximately one hour after Respondent had knowledge of the release.

3.19 Respondent's failure to immediately notify the NRC of the release of ammonia is a violation of 40 C.F.R. § 302.6 and Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

COUNT 2

3.20 Under Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. 355.42(a)(2), if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603, the owner or operator of the facility shall immediately provide notice of the release to the SERC of any state likely to be affected by the release.

3.21 Respondent failed to notify the SERC for the State of Idaho of the release of ammonia from the Facility.

3.22 Respondent's failure to immediately notify the SERC of the release of ammonia is a violation of Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.42(a)(2).

COUNT 3

3.23 Under Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.42(a)(1), if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under Section 103(a) of CERCLA, the owner or operator of the facility shall immediately provide notice of the release to the community emergency coordinator for the LEPC.

3.24 Respondent notified the community emergency coordinator for the LEPC of the release of ammonia from the Facility at approximately 10:05 am MT on February 15, 2014, over one hour after Respondent had knowledge of the release.

3.25 Respondent's failure to immediately notify the LEPC of the release of ammonia is a violation of Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.42(a)(1).

ENFORCEMENT AUTHORITY

3.26 Under Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act ("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 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. As required by Section 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C), and Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), EPA has taken into account the nature,

circumstances, extent and gravity of the violation, and with respect to Respondent, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$20,150.00, \$2,881.45 of which reflects the violation of CERCLA and \$17,268.55 of which reflects violations of EPCRA.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order.

4.5. 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, MO 63197-9000

Respondent must note on the check the title and docket number of this action. Respondent must also include a note with the payment indicating that \$2,881.45 is for the CERCLA penalty and \$17,268.55 is for the EPCRA penalty.

4.6. Concurrently with payment, Respondent must 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 ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
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

4.7. 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), and/or Section 109 of CERCLA, 42 U.S.C. § 9609, 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 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:

4.8.1. 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(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.

4.8.2. 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.

4.8.3. 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.

4.9. The penalty described in Paragraph 4.3, 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. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorney's fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

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

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

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

DATED:

11-14-14

FOR RESPONDENT:

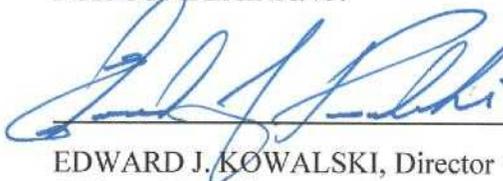


GREG HUFF, Chief Financial Officer
Dickinson Frozen Foods, Inc.

DATED:

11/24/2014

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-10-2015-0031
DICKINSON FROZEN FOODS, INC.,)	FINAL ORDER
)	
Sugar City, Idaho,)	
)	
Respondent.)	

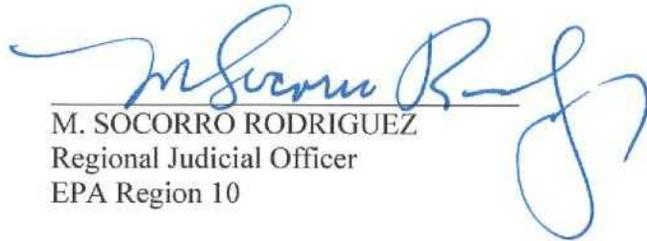
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

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 and CERCLA 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 CERCLA 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 3rd day of December, 2014.


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: Dickinson Frozen Foods, Inc., Docket No.: EPCRA-10-2015-0031**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

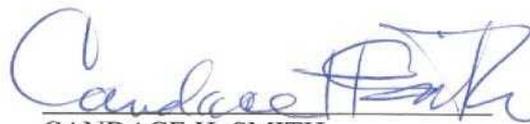
The undersigned certifies that a true and correct copy of the document was delivered to:

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:

Greg Huff
Chief Financial Officer
Dickinson Frozen Foods, Inc.
903 East 3000 North
Sugar City, Idaho 83448

DATED this 5th day of Dec., 2014.


CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10