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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

2006 MAR -9 PM 1:54

ENVIR. APPEALS BOARD



FAX COVERSHEET

TO: Eurika Durr

OFFICE CODE: mc 1103-B

PHONE NUMBER: 202-233-0122

AGENCY / FIRM: U.S. EPA: Environmental Appeals Board

CITY: Washington STATE: DC

FAX NUMBER: 202-233-0121

FROM: Tina Artemis

PHONE NUMBER: 303-312-6765

NUMBER OF PAGES TO FOLLOW: 7

COMMENTS:

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 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 8
 ENVIR. APPEALS BOARD
 999 18th STREET- SUITE 300
 DENVER, CO 80202-2466
 Phone 800-227-8917
 http://www.epa.gov/region08

2006 MAR -9 AM 10:51
 FILED
 EPA REGION VIII
 HEARING CLERK

DOCKET NO.: EPCRA-08-2004-0004

IN THE MATTER OF:)
)
WASATCH PROPANE, INC.) **FINAL ORDER**
 201 West 2700 South)
 South Salt Lake City, UT 84106)
)
 RESPONDENTS)

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

March 9, 2006
DATE

Carol A. LeBoo
Carol A. LeBoo, Acting
Regional Judicial Officer

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2006 MAR -9 PM 1: 55

2006 MAR -9 AM 10: 51

ENVIR. APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

Docket No. EPCRA-08-2004-0004

FILED
EPA REGION VIII
HEARING CLERK

Wasatch Propane, Inc.)
 201 West 2700 South)
 South Salt Lake City, Utah)
 84106)
 Respondent.)

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 ("EPA"), and Wasatch Propane, Inc. ("**Respondent**"), by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY STATEMENT

1. This matter is subject to 40 C.F.R. part 22. This Consent Agreement is entered into by the parties for the purpose of concluding this matter, as provided for in 40 C.F.R. section 22.18(b)(2).
2. The complaint filed in this matter alleges the Respondent violated the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA" or the "Act"), 42 U.S.C. § 11045 *et seq.*, by failing to file a Tier II Report for calendar year 2003, as required of Respondent by the Act.
3. This Consent Agreement (the "**Agreement**") applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in the constitution of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
4. Respondent waives its right to a hearing on any issue of law or fact set forth in the Complaint, as well as any appeal rights available to it under the Administrative Procedures Act or 40 C.F.R. part 22.
5. Respondent admits the jurisdictional allegations of the Complaint and, by failing to

timely respond to the Complaint, admits the specific factual allegations of the Complaint.

II. TERMS OF SETTLEMENT

6. The complaint filed in this matter proposed a higher penalty assessment than the one agreed to herein. For good cause shown, specifically, Respondent's cooperation, Complainant agrees to reduce the penalty proposed in the complaint to \$12,000.00.
7. Respondent agrees to the issuance of a Final Order which incorporates the terms and conditions of this Consent Agreement, and to pay the civil penalty as set forth in Paragraph 8 below.
8. Respondent consents and agrees to pay a penalty in the amount of TWELVE THOUSAND dollars (\$12,000.00) in the manner described below in this paragraph:
 - a. Payment is due within TEN (10) calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, which adopts this Consent Agreement. The date the payment is made is considered to be the date of receipt of the payment at the Mellon Bank described below. Payments must be received by 11:00 a.m. EST to be considered as received that day.
 - b. The payment shall be made by remitting a cashier's or certified check including the name of the docket number of this case, for this amount, payable to "Treasurer, United States of America," via Regular Mail at:

U. S. Environmental Protection Agency, Region 8
Mellon Bank
P.O. Box 360859
Pittsburgh, PA. 15251-6859

Federal Express, Airborne, or other commercial carrier at:

U.S. EPA, 360859
Mellon Client Service Center Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA= 021030004
TREAS NYC/CTR/
BNF= /AC-68011008

A copy of the check shall be sent simultaneously to:

Ms. Cheryl Turcotte
Technical Enforcement Program (8ENF-AT)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and

Ms. Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e. on the 1st late day, 61 days of interest accrues.) Further, in the event payment is not received by the specified due date, Complainant reserves it right to pursue the full penalty amount of THIRTEEN THOUSAND SEVEN HUNDRED FIFTY ONE Dollars (\$13,751) proposed in the Complaint filed herein and ORDERED by the Initial Decision entered herein on or about November 15, 2005.
 - d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 61st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e. the 151st day from the date the final consent order is signed). Payments are first applied to accrued interest, penalty and/or handling charge; the balance is then applied to the outstanding principal amount.
 - e. Respondent agrees that the penalty required to be paid herein shall never be claimed as a federal or other tax deduction or credit.
9. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with EPCRA and its implementing regulations in the future.

10. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
11. Nothing in this Consent Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
12. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.
13. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.
14. Each party shall bear its own costs and attorneys fees in connection with this matter.
15. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint. Upon full satisfaction by Respondent, Complainant hereby releases, covenants not to sue, and agrees not to seek further civil or administrative penalties for the specific violations alleged in the complaint. Nothing in this Consent Agreement shall be construed as a release or a covenant not to sue for any claim or cause of action of any criminal liability.

IN THE MATTER OF:

Wasatch Propane
EPA Docket No.: EPCRA-08-2004-0004

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complaint**

Date: 2/28/06

By: David Ralli for M. Risner
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 3/1/06

By: Martin Hesmark
Martin Hesmark, Director
Technical Enforcement Program

Date: 2/28/2006

By: Dana J. Stotsky
Dana J. Stotsky
Senior Enforcement Attorney
Legal Enforcement Program
Colorado Bar # 14717
Phone: (303)-312-6905
FAX: (303) 312-6953

Wasatch Propane, Inc.

Date: 2/23/06

By: Sue Barlow

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **WASATCH PROPANE, INC., DOCKET NO.: EPCRA-08-2004-0004** was filed with the Regional Hearing Clerk on March 9, 2006.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Dana Stotsky, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested and telefaxed on March 9, 2006, to:

Scott C. Rosevear, Esq.
Bradley R. Cahoon, Esq.
Snell & Wilmer, LLP
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

And pouch mailed:

U. S. Environmental Protection Agency
Eurika Durr, Clerk of the Board
Environmental Appeals Board (MC-1103B)
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

March 9, 2006


Tina Artemis
Regional Hearing Clerk

