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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CAA-10-2020-0035
OXARC Inc.,)	
)	CONSENT AGREEMENT
)	
Pasco, Washington)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and OXARC Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

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 Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a corporation formed in the State of Washington,

3.2. Respondent owns a chemical supply outlet located at 716 S. Oregon Avenue, Pasco, WA (the “facility”).

3.3. Section 112(r) of the CAA, and its implementing regulations at 40 C.F.R. Part 68, require the owner and operator of a stationary source at which a regulated substance is present in more than a threshold quantity (“TQ”) in a process to develop and implement a risk management plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the

stationary source and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

3.4. 40 C.F.R. § 68.3 defines “stationary source” as any buildings, structures, equipment, installations, or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

3.5. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, and 40 C.F.R. § 68.130. Chlorine and sulfur dioxide are each listed as a regulated substance in 40 C.F.R. § 68.130.

3.6. 40 C.F.R. § 68.3 defines “threshold quantity” (“TQ”) as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, in 40 C.F.R. § 68.130. The TQ of Chlorine is 2,500 pounds and for Sulfur dioxide is 5,000 pounds, as listed in 40 C.F.R. § 68.130.

3.7. Under 40 C.F.R. § 68.115, a TQ of a regulated substance listed in 40 C.F.R. § 68.130 is “present at a stationary source” if the total quantity of the regulated substance contained in a process exceeds the TQ.

3.8. 40 C.F.R. § 68.150 requires that an owner or operator of a stationary source that has more than a TQ of a regulated substance in a process submit an RMP to EPA no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under § 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

3.9. Respondent owns a stationary source where chlorine was present in a process above the 2,500 pounds TQ, and sulfur dioxide was in a present in a process above the 5,000

pounds TQ from at least March 16, 2010. Therefore, Respondent was required to submit and have in place an RMP for the facility.

3.10. Under 40 C.F.R. § 68.10(h) a covered process is subject to Program 3 if the process does not meet the Program 1 applicability requirements, and the process is subject to the Occupational Safety and health Act (OSHA) process safety management standard, 29 C.F.R. § 1910.119.

3.11. Respondent has two program 3 processes, as defined in 40 C.F.R. § 68.10(h): a chlorine cylinder storage process, and a sulfur dioxide cylinder storage process.

3.12. 40 C.F.R. § 68.12(a) and (d) require that, in addition to submitting a single RMP as provided in §§ 68.150 to 68.185, facilities with a Program 3 covered process shall among other things, develop a management system as provided in § 68.15, conduct a hazard assessment as provided in §§ 68.20 to 68.42, implement the prevention program as required of §§ 68.65 to 68.87, develop the prevention requirements of §§ 68.90 through 68.96 and submit as part of the RMP the data on prevention program elements for Program 3 program processes as provided in 40 C.F.R. § 68.175.

3.13. Respondent submitted an RMP on March 16, 2010, February 6, 2015, and March 31, 2017.

Violation 1- Process Safety Information

3.14. For at least the last five years, Respondent's written process safety information pertaining to the equipment in the process failed to address materials of construction such as specifications for the chlorine and sulfur dioxide cylinder storage processes equipment in violation of the requirements of 40 C.F.R. § 68.65(d)(1)(i).

3.15. For at least the last five years, Respondent's written process safety information failed to document whether the equipment in the sulfur dioxide and chlorine cylinder storage

processes complies with recognized and generally accepted good engineering practices in violation of the requirements of 40 C.F.R. § 68.65(d)(2).

Violation 2: Process Hazard Analysis

3.16. Between 2013 and 2017, Respondent failed to document that a process hazard analysis had been performed for the sulfur dioxide and chlorine cylinder storage processes in violation of the requirements of 40 C.F.R. § 68.67(a).

3.17. Between 2013 and 2017, Respondent failed to produce a process hazard analysis that addressed all hazards of the processes, identification of previous incidents, and engineering and administrative controls applicable to the hazards in violation of the requirements of 40 C.F.R. § 68.67(c).

3.18. Between 2013 and 2017, Respondent failed to establish a system to promptly address the process hazard analysis team's findings and recommendations, and assurance that recommendations are resolved in a timely manner in violation of the requirements of 40 C.F.R. § 68.67(e).

Violation 3: Operating Procedures

3.19. For at least the last five years, Respondent's written operating procedures failed to include all necessary information for emergency shutdowns and emergency operations in violation of the requirements of 40 C.F.R. § 68.69(a)(1)(iv) and (v).

Violation 4: Mechanical Integrity

3.20. For at least the last five years, Respondent failed to establish inspection and testing procedures on process equipment that follow generally accepted and good engineering practices on the sulfur dioxide and chlorine cylinder storage process equipment in violation of the requirements of 40 C.F.R. § 68.73(d)(2).

Violation 5: Compliance Audit

3.21. For at least the last five years, Respondent failed to certify that it had evaluated compliance with the provisions of 40 C.F.R. Part 68 of all covered processes at least every three years to verify that the procedures and practices it developed are adequate and being followed in violation of the requirements of 40 C.F.R. § 68.79(a).

3.22. For at least the last five years, Respondent failed to ensure that its compliance audits were conducted by at least one person knowledgeable in the process in violation of the requirements of 40 C.F.R. § 68.79(b).

3.23. For at least the last five years, Respondent failed develop a report on the findings of its compliance audit in violation of the requirements of 40 C.F.R. § 68.79(c).

3.24. For at least the last five years, Respondent failed to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that the deficiencies had been corrected in violation of the requirements of 40 C.F.R. § 68.79(d).

3.25. Respondent failed to retain copies of its two most recent compliance audit reports in violation of the requirements of 40 C.F.R. § 68.79(e).

Violation 6: Emergency Response Program

3.26. For at least the last five years, Respondent failed to have appropriate mechanisms in place to notify emergency responders when there is a need for a response, in violation of the requirements of 40 C.F.R. § 68.90(b)(3).

3.27. For at least the last five years, Respondent failed to develop an emergency response plan which included all necessary contact information to facilitate emergency response in violation of the requirements of 40 C.F.R. § 68.95(a)(1)(i).

Violation 7: Risk Management Plan Registration

3.28. From at least 2013 until March 2017, Respondent failed to correctly identify the program levels for its sulfur dioxide and chlorine cylinder storage processes as program level 3 processes in violation of the requirements of 40 C.F.R. § 68.160(b)(7).

3.29. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$46,192 per day of 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 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into account the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$100,000 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments 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, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

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 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

David Magdangal
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
magdangal.david@epa.gov

4.7. If Respondent fails to pay the Assessed Penalty 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 pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

4.8.1. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the

Final Order, 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. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. 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.

4.10. The Assessed Penalty, 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.

4.11. 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.

4.12. 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 paragraphs 3.14 through 3.20 and 3.26 through 3.28.

4.13. Respondent agrees to perform a compliance audit that satisfies the requirements of paragraphs 3.21 through 3.25 by no later than January 30, 2020. Respondent agrees to submit proof of completion of the audit to EPA within 30 days, and to submit proof of completion of all corrective measures identified pursuant to the compliance audit to EPA within 30 days of the completion of each measure identified. Proof of completion shall be submitted to David Magdangal at the address specified in Paragraph 4.6.

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

4.15. 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.

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

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

DATED:

12/18/19

FOR RESPONDENT:

Jana Nelson

JANA NELSON, President
OXARC Inc.

DATED:

1/6/2020

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CAA-10-2020-0035
OXARC Inc.,)	
)	FINAL ORDER
Pasco, Washington)	
)	
Respondent.)	

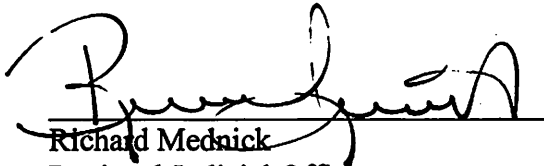
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

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 the CAA 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 the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 9th day of January, 2020.

A handwritten signature in black ink, appearing to read 'Richard Mednick', written over a horizontal line.

Richard Mednick
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: Pacific Surimi-Newport, LLC., Docket No.: CAA-CAA-2020-0036**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

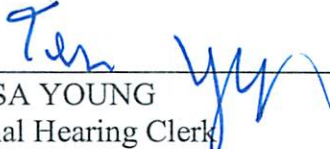
The undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Gallagher
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
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:

Jana Nelson
President
OXARC, Inc.
PO Box 3031
Spokane, WA 99220

DATED this 9 day of January 2020.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10