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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: )  
 )  
QUALITY CARRIERS, INC., ) Docket No. EPCRA-10-2011-0125  
KENT, WA )  
 ) 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 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 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 Quality Carriers, Inc. (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 (“Complainant”) has been delegated the authority to sign consent agreements between EPA and the party against whom an administrative penalty for violations of Section 312 of EPCRA is proposed to be assessed pursuant to EPCRA Section 325, 42 U.S.C. § 11045.

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

## III. ALLEGATIONS

3.1. Respondent owns the property located at 19929 77<sup>th</sup> Avenue S., Kent, Washington (Facility), and formerly operated a facility there.

3.2. The Facility is a transloading facility that transfers chemicals from rail cars to on-road tankers.

3.3. Respondent is a corporation incorporated in the State of Illinois.

3.4. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

3.5. The Facility is a “facility” as that term is defined under EPCRA Section 329(4), 42 U.S.C. § 11049(4).

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(e), 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.

3.7. Hydrogen peroxide is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. § 1910.1000, Table Z-1.

3.8. Under 29 C.F.R. § 1910.1200(g), OSHA requires Respondent to prepare, or have available, an MSDS for hydrogen peroxide.

3.9. Hydrogen peroxide (concentration greater than 52%) is listed as an “extremely hazardous substance” under EPCRA Section 302, 42 U.S.C. § 11002. Hydrogen peroxide (concentration greater than 52%) has a TPQ of 500 pounds, as provided at 40 C.F.R. Part 355, Appendix A.

3.10. During at least one period of time in calendar year 2009, hydrogen peroxide (concentration greater than 52%) was stored at the Facility in an amount equal to or greater than the TPQ.

3.11. Respondent did not submit to the SERC, the LEPC, and the fire department with jurisdiction over the facility an Emergency and Hazardous Chemical Inventory Form including hydrogen peroxide (concentration greater than 52%) for calendar year 2009 by March 1, 2010.

3.12. Under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 74 Fed. Reg. 626, 628 (Jan. 7, 2009) (correction to Civil Monetary Penalty Inflation Adjustment Rule), EPA may assess a civil penalty of up to \$37,500 per day, per violation of EPCRA Section 312, 42 U.S.C. § 11004, that occurred after January 12, 2009.

#### 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, Respondent's cooperation with EPA 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 that an appropriate penalty to settle this action is \$46,612.00.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty described 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, or money order made payable to the order of "Treasurer, United States of America" and mailed 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 shall note on the check the title and docket number of this case. Respondents 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 check 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 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 in Part V of this CAFO, 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 aforementioned Final Order.

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.

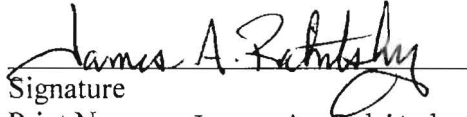
c) Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

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. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

**FOR QUALITY CARRIERS, INC.**

  
Signature  
Print Name: James A. Rakitsky  
Title: V.P., Environmental Services

Dated: 9-20-2011

**FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 10**

  
Edward J. Kowalski, Director  
Office of Compliance and Enforcement

Dated: 9/21/2011

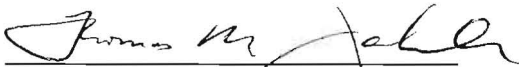
## V. FINAL ORDER

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 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 other 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.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 22d day of September, 2011.



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: Quality Carriers, Inc., DOCKET NO.: EPCRA-10-2011-0125** was filed with the Regional Hearing Clerk on September 22, 2011.

On September 22, 2011 the undersigned certifies that a true and correct copy of the document was delivered to:

Bob Hartman, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
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 September 22, 2011 to:

Quality Carriers, Inc.  
19929 77<sup>th</sup> Ave. S  
Kent, WA 98032

DATED this 22<sup>nd</sup> day of September 2011.



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Carol Kennedy  
Regional Hearings Clerk  
EPA Region 10