



1                    **II.     STATUTORY AND REGULATORY BACKGROUND**

2            2.1.     Section 312 of EPCRA, 42 U.S.C. § 11022, and its implementing regulations at  
3 40 C.F.R. Part 370 require the owner or operator of a facility which is required by the  
4 Occupational Safety and Health Administration (OSHA) to prepare or have available a material  
5 safety data sheet (MSDS) for a hazardous chemical, to submit a completed Emergency and  
6 Hazardous Chemical Inventory Form to the state emergency response commission (SERC), the  
7 local emergency planning committee (LEPC), and the fire department with jurisdiction over the  
8 facility by March 1, 1988, and annually thereafter. The form must contain the information  
9 required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), for all hazardous chemicals  
10 present at the facility at any one time during the preceding year in amounts equal to or exceeding  
11 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in  
12 amounts equal to or greater than 500 pounds or the threshold planning quantity designated by  
13 EPA and 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

14            2.2.     Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" to include  
15 "any individual, trust, firm, joint stock company, corporation (including a government  
16 corporation), partnership, association, State, municipality, commission, political subdivision of a  
17 State, or interstate body."

18            2.3.     Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), defines "facility" to include "all  
19 buildings, equipment, structures, and other stationary sites which are located on a single site or  
20 on contiguous or adjacent sites and which are owned or operated by the same person (or by any  
21 person which controls, is controlled by, or under common control with, such person)."

22            2.4.     Under OSHA regulations at 29 C.F.R. § 1910.1200, employers must provide  
23 information about hazardous chemicals, including MSDS, to which their employees may be  
24 exposed.

1 2.5. Ammonia is listed as a "hazardous chemical" in OSHA regulations at  
2 29 C.F.R. § 1910.1000, Table Z-1.

3 2.6. Ammonia is listed as an "extremely hazardous substance," under EPCRA, with a  
4 threshold planning quantity (TPQ) of 500 pounds, in 40 C.F.R. Part 355, Appendix A.

5 2.7. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and 40 C.F.R. Part 19  
6 authorize EPA to assess a civil penalty of up to \$32,500 per violation of EPCRA. Under  
7 Section 325(c)(3), 42 U.S.C. § 11045(c)(3), each day a violation continues is considered a  
8 separate violation for purposes of calculating the penalty.

9 **III. ALLEGATIONS**

10 3.1. Respondent is a corporation incorporated in the State of Washington.

11 3.2. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C.  
12 § 11049(7).

13 3.3. Respondent owned or operated a fruit-processing facility at 4211 NW Fruit  
14 Valley Road that in Vancouver, Washington during calendar years 2001, 2002, 2003, 2004, and  
15 2005.

16 3.4. Respondent's fruit-processing facility is a "facility" as defined by  
17 Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

18 3.5. Respondent's facility is a facility in which employees may be exposed to  
19 Ammonia, and therefore Respondent was required by OSHA to prepare or have available an  
20 MSDS.

21 **Count 1**

22 3.6. During some period of time in 2005, Ammonia was present at Respondent's  
23 facility in an amount equal to or greater than 500 pounds.  
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1 3.7. Respondent did not submit to the SERC a completed Emergency and Hazardous  
2 Chemical Inventory Form including Ammonia for calendar year 2005 by March 1, 2006.

3 3.8. Respondent's failure to submit to the SERC a completed Emergency and  
4 Hazardous Chemical Inventory Form including Ammonia for calendar year 2005 by March 1,  
5 2006 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

6 **Count 2**

7 3.9. During some period of time in 2005, Ammonia was present at Respondent's  
8 facility in an amount equal to or greater than 500 pounds.

9 3.10. Respondent did not submit to the LEPC a completed Emergency and Hazardous  
10 Chemical Inventory Form including Ammonia for calendar year 2005 by March 1, 2006.

11 3.11. Respondent's failure to submit to the LEPC a completed Emergency and  
12 Hazardous Chemical Inventory Form including Ammonia for calendar year 2005 by March 1,  
13 2006 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

14 **Count 3**

15 3.12. During some period of time in 2005, Ammonia was present at Respondent's  
16 facility in an amount equal to or greater than 500 pounds.

17 3.13. Respondent did not submit to the fire department a completed Emergency and  
18 Hazardous Chemical Inventory Form including Ammonia for calendar year 2005 by March 1,  
19 2006.

20 3.14. Respondent's failure to submit to the fire department a completed Emergency  
21 and Hazardous Chemical Inventory Form including Ammonia for calendar year 2005 by March  
22 1, 2006 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a)

1 **Count 4**

2 3.15. During some period of time in 2001, Ammonia was present at Respondent's  
3 facility in an amount equal to or greater than 500 pounds.

4 3.16. Respondent did not submit to the SERC a completed Emergency and Hazardous  
5 Chemical Inventory Form including Ammonia for calendar year 2001 by March 1, 2002.

6 3.17. Respondent's failure to submit to the SERC a completed Emergency and  
7 Hazardous Chemical Inventory Form including Ammonia for calendar year 2001 by March 1,  
8 2002 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a)

9 **Count 5**

10 3.18. During some period of time in 2002, Ammonia was present at Respondent's  
11 facility in an amount equal to or greater than 500 pounds.

12 3.19. Respondent did not submit to the SERC a completed Emergency and Hazardous  
13 Chemical Inventory Form including Ammonia for calendar year 2002 by March 1, 2003.

14 3.20. Respondent's failure to submit to the SERC a completed Emergency and  
15 Hazardous Chemical Inventory Form including Ammonia for calendar year 2002 by March 1,  
16 2003 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a)

17 **Count 6**

18 3.21. During some period of time in 2003, Ammonia was present at Respondent's  
19 facility in an amount equal to or greater than 500 pounds.

20 3.22. Respondent did not submit to the SERC a completed Emergency and Hazardous  
21 Chemical Inventory Form including Ammonia for calendar year 2003 by March 1, 2004.

22 3.23. Respondent's failure to submit to the SERC a completed Emergency and  
23 Hazardous Chemical Inventory Form including Ammonia for calendar year 2003 by March 1,  
24 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a)



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**Count 10**

3.33. During some period of time in 2003, Ammonia was present at Respondent's facility in an amount equal to or greater than 500 pounds.

3.34. Respondent did not submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including Ammonia for calendar year 2003 by March 1, 2004.

3.35. Respondent's failure to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including Ammonia for calendar year 2003 by March 1, 2004 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a)

**Count 11**

3.36. During some period of time in 2004, Ammonia was present at Respondent's facility in an amount equal to or greater than 500 pounds.

3.37. Respondent did not submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including Ammonia for calendar year 2004 by March 1, 2005.

3.38. Respondent's failure to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including Ammonia for calendar year 2004 by March 1, 2005 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a)

**Count 12**

3.39. During some period of time in 2001, Ammonia was present at Respondent's facility in an amount equal to or greater than 500 pounds.

3.40. Respondent did not submit to the fire department a completed Emergency and Hazardous Chemical Inventory Form including Ammonia for calendar year 2001 by March 1, 2002.



1 3.49. Respondent did not submit to the fire department a completed Emergency and  
2 Hazardous Chemical Inventory Form including Ammonia for calendar year 2004 by March 1,  
3 2005.

4 3.50. Respondent's failure to submit to the fire department a completed Emergency  
5 and Hazardous Chemical Inventory Form including Ammonia for calendar year 2004 by March  
6 1, 2005 is a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a)

7 **IV. PROPOSED PENALTY**

8 4.1. Based on the foregoing allegations, and pursuant to the authority of Section  
9 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), Complainant proposes that an administrative  
10 penalty not to exceed \$44,190 be assessed against Respondent.

11 4.2. Complainant proposes this penalty amount after considering EPA's "Enforcement  
12 Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community  
13 Right-to-Know Act and Section 103 of the Comprehensive Environmental Response,  
14 Compensation, and Liability Act," dated September 30, 1999, a copy of which is enclosed with  
15 this Complaint.

16 4.3. Based on an evaluation of the facts alleged in this Complaint, and after  
17 considering the nature, circumstances, extent, and gravity of the violations, and, with respect to  
18 Respondent, ability to pay, any prior history of violations, the degree of culpability, economic  
19 benefit or savings (if any) resulting from the violations, and such other matters as justice may  
20 require, Complainant proposes that an administrative penalty not to exceed \$44,190 be assessed  
21 against Respondent, as follows:

22 Count 1, Failure to Report to the SERC for 2005: \$12,500

23 Count 2, Failure to Report to the LEPC for 2005: \$12,500

24 Count 3, Failure to Report to the fire department for 2005: \$12,500  
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1 Counts 4, 5, 6, and 7, Failure to Report to the SERC, for 2001, 2002, 2003,  
2 and 2004: \$1500

3 Counts 8, 9, 10, and 11, Failure to Report to the LEPC, for 2001, 2002, 2003,  
4 and 2004: \$1500

5 Counts 12, 13, 14, and 15, Failure to Report to the fire department for 2001, 2002, 2003,  
6 and 2004 \$1500

7 Economic Benefit of Noncompliance: \$690

8 4.4. Complainant has reviewed publicly available information on Respondent's  
9 financial condition and has found no information indicating that Respondent is unable to pay the  
10 proposed penalty. Complainant will consider any information submitted by Respondent related  
11 to its ability to pay the proposed penalty.

12 **V. OPPORTUNITY TO REQUEST A HEARING**

13 5.1. Respondent has the right to file an Answer requesting a hearing on any material  
14 fact contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon  
15 request, the Presiding Office may hold a hearing for the assessment of civil penalties conducted  
16 in accordance with the provisions of the Part 22 Rules and the Administrative Procedures Act, 5  
17 U.S.C. § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

18 5.2. Respondent's Answer, including the request for hearing, must be in writing and  
19 must be filed with:

20 Regional Hearing Clerk  
21 U.S. Environmental Protection Agency, Region 10  
22 1200 Sixth Avenue, Mail Stop ORC-158  
Seattle, Washington 98101

23 **VI. INFORMAL SETTLEMENT CONFERENCE**

24 6.1. Whether or not Respondent requests a hearing, Respondent may request an  
25 informal settlement conference to discuss the facts of this case, the proposed penalty, and the

1 possibility of settling this matter. To request such a settlement conference, Respondent should  
2 contact:

3 Robert Hartman  
4 Assistant Regional Counsel  
5 U.S. Environmental Protection Agency, Region 10  
6 1200 Sixth Avenue, Mailstop ORC-158  
7 Seattle, Washington 98101  
8 (206) 553-0029

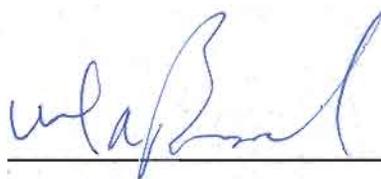
9 6.2. Note that a request for an informal settlement conference does not extend the  
10 thirty (30) day period for filing a written Answer to this Complaint, nor does it waive  
11 Respondent's right to request a hearing.

12 6.3. Respondent is advised that, after the Complaint is issued, the Part 22 Rules  
13 prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related  
14 proceedings with the Environmental Appeals Board or its members, the Regional Judicial  
15 Officer, the Presiding Officer, or any other person who is likely to advise these officials in the  
16 decision on this case.

#### 17 VII. RESERVATIONS

18 7.1. Neither assessment nor payment of an administrative civil penalty pursuant to this  
19 Complaint shall affect Respondent's continuing obligations to comply with the Emergency  
20 Planning and Community Right-to-Know Act.

21 Dated this 5<sup>th</sup> day of September, 2007.



22 Michael A. Bussell, Director  
23 Office of Compliance and Enforcement

1 CERTIFICATE OF SERVICE

2 I certify that the foregoing "Complaint" was sent to the following persons, in the manner  
3 specified, on the date below:

4 Original and one copy, hand-delivered:

5 Carol Kennedy, Regional Hearing Clerk  
6 U.S. Environmental Protection Agency, Region 10  
7 1200 Sixth Avenue, Mail Stop ORC-158  
Seattle, WA 98101

8 A true and correct copy, by certified mail, return receipt requested:

9 Stanley Firestone  
10 Firestone Pacific Foods, Inc.  
11 P.O. Box 61928  
Vancouver, WA 98666

12  
13 Dated: \_\_\_\_\_

SEP 2007



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16 EPA Region 10  
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SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Mr. Stanley Firestone  
Firestone Pacific Foods, Inc.  
P.O. Box 61928  
Vancouver, WA 98666

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A. Signature  Agent  Addressee  
X *[Signature]*  
B. Received by (Printed Name) *Stan Firestone*  
C. Date of Delivery  
D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below:



3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.  
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