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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. EPCRA-10-2015-0098
Wilcox Farms, Inc.,	)	CONSENT AGREEMENT
Roy, 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 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045.

1.2. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, 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 Wilcox Farms, 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 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, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of EPCRA is 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 together with the specific provisions of EPCRA and the implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. 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 that 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 prepare and submit an Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370) to the Local Emergency Planning Committee ("LEPC"), the State Emergency Response Commission ("SERC"), and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1. The form must contain the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), covering all hazardous chemicals

required by OSHA to have an MSDS that are present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds or, in the case of an Extremely Hazardous Substance, in amounts equal to or exceeding 500 pounds or the Threshold Planning Quantity ("TPQ"), whichever is lower.

3.2. Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), "facility" means all buildings, equipment, structures, and other stationary items that 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, or under common control with, such person).

3.3. Under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), "person" means, *inter alia*, any corporation.

3.4. The OSHA Hazard Communication Standard ("OSHA Standard"), 29 C.F.R. § 1910.1200(b), requires employers to provide information to their employees about hazardous chemicals to which they are exposed by means of, *inter alia*, an MSDS. The section applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

3.5. Ammonia and sulfuric acid are defined as extremely hazardous substances under the OSHA Standard that require an MSDS when present at a facility in amounts equal to or exceeding 500 pounds.

3.6. Propane and diesel fuel are defined as hazardous substances under the OSHA Standard that require an MSDS when present at a facility in amounts equal to or exceeding 10,000 pounds.

3.7. The OSHA Standard requires an MSDS to be prepared, or available, for ammonia, sulfuric acid, propane, and diesel fuel.

3.8. Respondent is a corporation established under the laws of the State of Washington.

3.9. Respondent owns and operates a facility located at 40400 Harts Lake Valley Rd., Roy, Washington ("Facility").

3.10. During calendar year 2013, Respondent stored approximately 8,800 pounds of ammonia at the Facility.

3.11. During calendar year 2013, Respondent stored approximately 2,550 pounds of sulfuric acid at the Facility.

3.12. During calendar year 2013, Respondent stored approximately 67,200 pounds of propane at the Facility.

3.13. During calendar year 2013, Respondent stored approximately 72,375 pounds of diesel fuel at the Facility.

3.14. Respondent submitted the Emergency and Hazardous Chemical Inventory Form for calendar year 2013 for ammonia, sulfuric acid, propane, and diesel fuel stored at the Facility to the LEPC on June 6, 2014.

3.15. Respondent submitted the Emergency and Hazardous Chemical Inventory Form for calendar year 2013 for ammonia, sulfuric acid, propane, and diesel fuel stored at the Facility to the SERC on May 28, 2014.

3.16. Respondent submitted the Emergency and Hazardous Chemical Inventory Form for calendar year 2013 for ammonia, sulfuric acid, propane, and diesel fuel stored at the Facility

to the fire department located in Graham, Washington on June 6, 2014, and to the fire department located in Eatonville, Washington on June 9, 2014.

3.17. Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, by failing to timely submit an Emergency and Hazardous Chemical Inventory Form for ammonia, sulfuric acid, propane, and diesel fuel stored at the Facility to the LEPC, the SERC, and the fire department for calendar year 2013.

3.18. Under Section 325 of 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 per for each such 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. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$15,625.

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, 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 ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
[Smith.candace@epa.gov](mailto:Smith.candace@epa.gov)

Kelly McFadden  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-084  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
[Mcfadden.kelly@epa.gov](mailto:Mcfadden.kelly@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), 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

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. Respondent agrees to implement a Supplemental Environmental Project ("SEP") consisting of converting Respondent's diesel boiler to a propane boiler. Respondent agrees to implement and complete the SEP within 120 days of the effective date of the Final Order, in accordance with all provisions described in this Consent Agreement and Attachment A.

4.10. Respondent further agrees to operate the boiler using propane fuel as opposed to diesel fuel for a minimum of five years following completion of the boiler conversion. During this period, Respondent agrees to operate the boiler using diesel fuel only in response to emergency conditions, and for no more than a maximum of fifteen days in any calendar year.

4.11. Respondent's deadline to perform the SEP shall be excused or extended if such performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of Respondent, including its employees, agents, consultants, and contractors, which could not be

overcome by due diligence and which delays or prevents performance of a SEP within the specified time period. A Force Majeure event does not include, inter alia, increased cost of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.12. Respondent certifies to the truth, accuracy, and completeness of all cost information provided to EPA in connection with EPA's approval of the SEP, and that Respondent in good faith estimates that the cost to implement the SEP is \$96,000.

4.13. Respondent also certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Respondent required to perform or develop the SEP by another agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies: that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP; that the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement; and that Respondent will not receive any reimbursement for any portion of the SEP from any other person or entity. For federal income tax purposes, Respondent agrees that it will neither capitalize in inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.



4.14. Respondent hereby certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 4.9.

4.15. Respondent shall submit a SEP Completion Report to EPA within 150 days after the effective date of the Final Order. The SEP Completion Report shall contain the following information:

- (1) A description of the SEP as implemented;
- (2) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement;
- (3) A description of any problems encountered and the solutions thereto; and
- (4) A description of the environmental and public health benefits resulting from implementation of the SEP.

4.16. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports related to the SEP as required by this Consent Agreement by first class mail, overnight mail, or hand delivery to:

Kelly McFadden  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-084  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

4.17. Respondent agrees that EPA may inspect Respondent's records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.18. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this Consent Agreement until the SEP Completion Report is accepted pursuant to Paragraph 4.19, and Respondent shall provide the

documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this Consent Agreement, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such a document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

4.19. Following receipt of the SEP Completion Report described in Paragraph 4.15, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent, in writing, of deficiencies in the Report, and provide Respondent an additional 30 days in which to correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 4.21.

4.20. If Respondent fails to satisfactorily complete the SEP as contemplated by this Consent Agreement and this failure was not caused solely by events which constitute a Force Majeure as defined by Paragraph 4.11, then stipulated penalties shall be due and payable by Respondent to EPA upon demand in accordance with Paragraph 4.21. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP is reserved to the sole discretion of EPA.

4.21. If Respondent fails to satisfactorily complete the SEP required by this Consent Agreement, Respondent shall pay stipulated penalties, upon written demand from EPA, in the

following amount for each day that the SEP identified in Paragraph 4.9 remains incomplete, and/or for each day that Respondent fails to comply with Paragraph 4.10:

<b>Period of Noncompliance</b>	<b>Penalty Per Violation Per Day</b>
1st through 7th day	\$100
8th through 21st day	\$250
22nd through 30th day	\$500
Greater than 30 days	\$1,000

4.22. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraphs 4.5 and 4.6. Interest and late charges shall be paid as stated in Paragraph 4.8.

4.23. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement.

4.24. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP from the date of the execution of this Consent Agreement shall include the following language:

“This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Emergency Preparedness and Community Right-to-Know Act.”

4.25. 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, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this Consent Agreement.

4.26. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraphs 4.8 and 4.21, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.27. 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.

4.28. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

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

4.30. Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

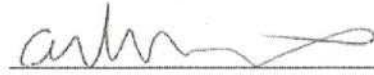
4.31. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

5/28/15

FOR RESPONDENT:



Name: Andrew L. Wilcox  
Position: Director of operations  
Wilcox Farms, Inc.

DATED:

6/1/2015

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-10-2015-0098
	)	
Wilcox Farms, Inc.,	)	<b>FINAL ORDER</b>
	)	
Roy, Washington,	)	
	)	
Respondent.	)	

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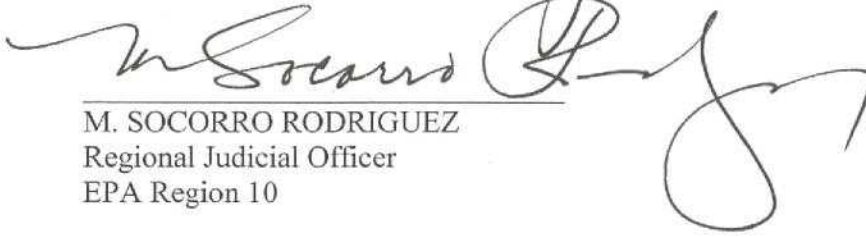
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

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 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 regulations promulgated or permits issued thereunder.

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

SO ORDERED this 8<sup>th</sup> day of June, 2015.



M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10





ATTACHMENT A

IN THE MATTER OF: Wilcox Farms, Inc.  
EPA DOCKET NO. EPCRA-10-2015-0098  
SUPPLEMENTAL ENVIRONMENTAL PROJECT ("SEP")

Respondent will convert the existing diesel-fueled Cleaver Brooks boiler, model number CB100-60 (60HP), serial number L-99745, to a propane-fueled boiler at the Wilcox Farms, Inc. facility, located at 40400 Harts Lake Valley Road, Roy, Washington ("Wilcox Facility"). Respondent certifies that the boiler conversion is designed to decrease overall emissions of pollutants into the air from the Wilcox Facility.

Respondent will purchase materials necessary for conversion of the diesel-fueled boiler to a propane-fueled boiler at the Wilcox Facility including concrete, valves, a propane vaporizer, a monitored regulator train, piping, hydrostatic relief valves, and any other necessary materials.

Respondent will pay for the installation of an emergency shut-down system for the propane boiler, and all materials associated with its installation. Respondent will also apply for any and all necessary permits and conduct any required emissions testing related to the propane boiler.

Respondent will pay for any and all labor, skilled and unskilled, as well as any and all equipment necessary for the conversion of the boiler at the Wilcox Facility.

**Estimated cost:        \$96,000**



Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Wilcox Farms, Inc., Docket No.: EPCRA-10-2015-0098**, 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:

Kris Leefers, Esquire  
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:

Andrew L. Wilcox  
Director of Operations  
Wilcox Farms, Inc.  
40400 Harts Lake Valley Rd.  
Roy, Washington 98580

DATED this 9<sup>th</sup> day of June, 2015.



CANDACE H. SMITH  
Regional Hearing Clerk  
EPA Region 10

