

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. EPCRA-10-2020-0118
)
QUALITY LIQUID FEEDS, INC.) CONSENT AGREEMENT
)
)
Granger, 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 Quality Liquid Feeds, 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 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

A. Statutory and Regulatory Background

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 any facility that is required to prepare or have available a safety data sheet (“SDS”)¹ for a hazardous chemical under the Occupational Safety and Health Administration (“OSHA”) Act of 1970, to prepare and submit a completed emergency and hazardous chemical inventory form (“Inventory Form”) annually by March 1 to the State Emergency Response Commission (“SERC”), the appropriate Local Emergency Planning Committee (“LEPC”), and the fire department with jurisdiction over the facility by March 1 of each year.

3.2. The Inventory Form may either be aggregate information by hazard category (Tier I) or specific information by chemical (Tier II) and must contain the information required by EPCRA § 312(d), 42 U.S.C. § 11022(d), and 40 C.F.R. § 370.40 for all hazardous chemicals

¹ Effective May 25, 2012, OSHA changed the term “material safety data sheet” to “safety data sheet.” 77 Fed. Reg. 17574 (March 26, 2012). For purposes of this Consent Agreement, the term “material safety data sheet” shall mean “safety data sheet,” and vice versa.

required by OSHA to have an SDS that are present at the facility at any time during the previous calendar year in amounts that meet or exceed the threshold level for that chemical.

3.3. 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 SDS. This regulation 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.

3.4. With certain exceptions not relevant here EPCRA § 312(e), 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66 provide that the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

3.5. OSHA regulations at 29 C.F.R. § 1910.1200(c) define “hazardous chemical” as any chemical which is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

3.6. An “extremely hazardous substance” is a subset of “hazardous chemicals” and is defined at 40 C.F.R. § 370.66 as a substance listed in 40 C.F.R. Part 355, Appendix A or B.

3.7. 40 C.F.R. § 370.10(a)(1) provides that the threshold quantity that triggers reporting obligations under EPCRA § 312 for an extremely hazardous substance is 500 pounds, or the threshold planning quantity, as listed in 40 C.F.R. Part 55, Appendix A or B, whichever is lower.

3.8. 40 C.F.R. § 370.10(a)(2) provides that the threshold quantity that triggers reporting obligations under EPCRA § 312 for a hazardous chemical that is not an extremely hazardous substance is 10,000 pounds, unless the hazardous chemical is gasoline or diesel fuel at a retail gas station.

3.9. Sulfuric acid is a “hazardous chemical” and an “extremely hazardous substance,” with a threshold quantity of 500 pounds.

3.10. Phosphoric acid is a “hazardous chemical,” with a threshold quantity of 10,000 pounds.

B. General Allegations

3.11. Respondent Quality Liquid Feeds, Inc., is a corporation incorporated in the State of Wisconsin and does business in Washington.

3.12. Respondent owns and operates a facility at 100 Bailey Avenue in Granger, Washington that blends fertilizer and produces cattle feed (“Facility”).

3.13. Respondent is a “person” as defined in EPCRA § 329(7), 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.

3.14. The Facility is a “facility” as defined in EPCRA § 329(4), 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.

3.15. Respondent has at all relevant times been the “owner or operator” of the Facility, within the meaning of EPCRA § 312, 42 U.S.C. § 11022.

3.16. During calendar years 2016 and 2017, Respondent stored more than 500 pounds of sulfuric acid at the Facility.

3.17. During calendar years 2016 and 2017, Respondent stored more than 10,000 pounds of phosphoric acid at the Facility.

3.18. At all relevant times, the OSHA Standard required Respondent to prepare or have available an SDS for sulfuric acid and phosphoric acid for its employees.

C. Claims

3.19. Respondent failed to timely submit an Inventory Form to the LEPC, SERC, and local fire department that included sulfuric acid and phosphoric acid for calendar year 2016 by March 1, 2017, in violation of EPCRA § 312, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.45(a).

3.20. Respondent failed to timely submit an Inventory Form to the LEPC, SERC, and local fire department that included sulfuric acid and phosphoric acid for calendar year 2017 by March 1, 2018, in violation of EPCRA § 312, 42 U.S.C. § 11022(a), and 40 C.F.R. § 370.45(a).

3.21. 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 \$57,317 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 \$56,359 (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 email addresses:

Regional Hearing Clerk	Erin Williams
U.S. Environmental Protection Agency	U.S. Environmental Protection Agency
R10_RHC@epa.gov	williams.erin@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed 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 Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

a. 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.

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 shall be calculated as of the date the underlying penalty first becomes past due.

4.9. 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.

4.10. 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.

4.11. 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.

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

4.13. For purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

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


4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

7/9/2020

FOR RESPONDENT:


CORY BERG, President & CEO
Quality Liquid Feeds, Inc.

DATED:

FOR COMPLAINANT:

LAURIS C. DAVIES, Acting Director
Enforcement & Compliance Assurance Division
EPA Region 10

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QUALITY LIQUID FEEDS, INC.)	FINAL ORDER
)	
Granger, Washington)	
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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 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 _____ day of _____, 2020.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10