

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Kathleen Woodward 10/1/12  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number EPCRA-01-2012-0098

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Progressive Gourmet, Inc.  
330 Ballardvale St.  
Wilmington, MA 01887

Total Dollar Amount of Receivable \$ 16,000 Due Date: 10/28/12

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

Phone Number \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

Suite 1100, 1 Congress Street  
Boston, MA 02114-2203

**BY HAND**

September 28, 2012

Ms. Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region I  
5 Post Office Square  
Suite 100 (ORA18-1)  
Boston, MA 02109-3912

Re: In the Matter of: Progressive Gourmet, Inc.  
EPCRA-01-2012-0098

Dear Ms. Santiago:

For the above-referenced matter, please file the enclosed combined Complaint and Consent Agreement and Final Order and the Certificate of Service. I have included the original and one copy of these documents

Thank you for your attention to this matter. Should you have any questions, please contact me at (617) 918-1780.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen E. Woodward / gcr".

Kathleen E. Woodward  
Senior Enforcement Counsel

Enclosure

RECEIVED

SEP 28 2012

EPA ORC  
Office of Regional Hearing Clerk

WS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 – NEW ENGLAND

RECEIVED

SEP 28 2012

EPA ORC  
Office of Regional Hearing Clerk

\_\_\_\_\_  
IN THE MATTER OF )

Progressive Gourmet, Inc. )  
330 Ballardvale St. )  
Wilmington, MA 01887 )

Respondent. )

Proceeding under Section 325(c) of Title III )  
of the Superfund Amendments and )  
Reauthorization Act, 42 U.S.C. § 11045(c) )  
\_\_\_\_\_ )

Docket No: EPCRA-01-2012-0098

**CONSENT AGREEMENT  
AND FINAL ORDER**

Complainant, the United States Environmental Protection Agency (“EPA”), Region 1 (“Region 1”) and Progressive Gourmet, Inc. (“Respondent”) enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. By this CAFO, Respondent agrees to pay a civil penalty for alleged violations of Section 312(a) of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11022(a), and the federal regulations that set out in greater detail these statutory requirements, 40 C.F.R. Part 370.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). Complainant and Respondent (the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

NOW THEREFORE, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law, the Parties agree to comply with the terms of this CAFO.



## **II. Statutory and Regulatory Background**

1. In accordance with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.44 and 370.45, the owner and operator of a facility that is required to prepare or have available material safety data sheets (“MSDSs”) for hazardous chemicals under the Occupational Safety and Health Act (“OSHA”) (“hazardous chemicals” or “hazardous chemicals under OSHA”) must prepare and submit an emergency and hazardous chemical inventory form (“Tier I” or “Tier II” form) to the state emergency response commission (“SERC”), the local emergency planning committee (“LEPC”) and the local fire department for each hazardous chemical present at the facility at a quantity exceeding the applicable minimum threshold level (“MTL”) set forth at 40 C.F.R. § 370.10(a). The Tier I or Tier II form must be submitted annually on or before March 1 and must contain chemical inventory information with respect to the preceding calendar year. Facilities in Massachusetts must submit Tier II forms instead of Tier I forms.

2. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, which was promulgated in accordance with the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, authorizes EPA to assess civil penalties for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and regulations promulgated thereunder, Section 325(c) of EPCRA authorizes EPA to assess civil penalties in amounts of up to \$37,500 per day for each violation that occurs after January 12, 2009.

### **III. General Allegations**

3. Respondent Progressive Gourmet, Inc. is a corporation organized under the laws of the Commonwealth of Massachusetts, with a principal place of business at 330 Ballardvale St., Wilmington, Massachusetts, 01887.

4. As a corporation, Progressive Gourmet, Inc. is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66 against whom a civil penalty may be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

5. Respondent Progressive Gourmet, Inc. is the operator and/or owner of a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. §370.66, located at 330 Ballardvale St., Wilmington, Massachusetts (“Facility”).

### **IV. EPCRA Violations**

6. Anhydrous ammonia, sulfuric acid, and liquid nitrogen are considered “hazardous chemicals” under the OSHA, 29 U.S.C. §§ 651 *et seq.*, and in regulations promulgated thereunder at 29 C.F.R. § 1910.1200(c). Furthermore, anhydrous ammonia and sulfuric acid are considered to be “extremely hazardous substance[s],” (“EHS”) as defined by 40 C.F.R. § 370.66.

7. In accordance with 40 C.F.R. § 370.10(a), the MTL for the purposes of EPCRA Section 312 is 500 pounds for EHS chemicals, while the MTL for other hazardous chemicals is 10,000 pounds. Therefore, the MTL for anhydrous ammonia and sulfuric acid is 500 pounds and the MTL for liquid nitrogen is 10,000 pounds.

8. At all times relevant to the allegations cited herein, Respondent was required, pursuant to the OSHA and regulations promulgated thereunder, to prepare or have available on

site a MSDS for each of anhydrous ammonia, sulfuric acid, and liquid nitrogen that Respondent stored at the Facility.

9. At all times relevant during calendar years 2009, 2010 and 2011, Respondent stored hazardous chemicals at the Facility in quantities exceeding the corresponding MTL set forth in 40 C.F.R. § 370.10. Specifically, Respondent stored approximately 7500 pounds of anhydrous ammonia, 1784 pounds of sulfuric acid; and 28,000 pounds of liquid nitrogen during calendar years 2009, 2010, and 2011.

10. Respondent was therefore required by Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44 and 370.45 to prepare and submit Tier II forms containing information for the chemicals described in Paragraph 9 to the SERC, LEPC and the local fire department for calendar years 2009, 2010, and 2011, by March 1 of the following year.

11. Based on an EPA inspection of the Facility on January 4, 2012 and other information provided by Respondent, Complainant determined that:

- a. Respondent did not submit Tier II forms on or before the reporting deadline of March 1 of the subsequent year for calendar years 2009, 2010 and 2011 to the SERC, LEPC and local fire department.
- b. Respondent's failure to prepare and submit Tier II forms on or before the reporting deadline of March 1st of the subsequent year for calendar years 2009, 2010, and 2011 constitute three (3) violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44, and 370.45.



- c. Therefore, Respondent is subject to the assessment of civil penalties under Section 325(c) of EPCRA and the 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, in the amount of up to \$37,500 per day for each violation of Section 312(a) of EPCRA.

#### **IV. Terms of Settlement**

12. Respondent certifies that it has corrected the alleged violations cited in this CAFO and that it is now operating the Facility in compliance with Section 312(a) of EPCRA and the regulations promulgated thereunder.

13. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in herein and that the allegations in this CAFO state a claim upon which relief can be granted. Respondent hereby waives any defenses it might have as to jurisdiction and venue.

14. Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein and waives its right to appeal the Final Order accompanying this Consent Agreement.

15. Without admitting or denying the allegations herein, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of a civil penalty for the purpose of settlement of this action.

16. This CAFO shall apply to and be binding upon Respondent and its officers, directors, agents, successors and assigns.

17. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and in light of the nature of the violations and other relevant factors, Complainant has determined that an appropriate civil penalty to settle this action is \$16,000.

18. Within thirty (30) days of the effective date of the Final Order, Respondent shall make payment in the amount of \$16,000 by cashier's or certified check, payable to "Treasurer, United States of America," with the title and docket number of the action ("In the Matter of Progressive Gourmet, Inc., EPCRA-01-2012-0098 noted on the check.

19. The check shall be mailed via regular U.S. Postal Service mail to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

20. Respondent shall simultaneously submit notice of payment of the civil penalty and copies of the check to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)  
Boston, MA 02109-3912

and

Kathleen E. Woodward  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code: OES4-2)  
Boston, MA 02109-3912

21. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based.



22. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that any partial payment of the civil penalty, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. §901.9(b)(2). In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. See 31 C.F.R. § 901.9(d). In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

23. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Respondent further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

24. The terms of this CAFO constitute a full settlement by EPA of all claims for civil penalties for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, and local law. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Nothing in the CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions that may

present an imminent and substantial endangerment to the public health, welfare, or the environment. This CAFO does not operate as a waiver of any defenses in governmental or third party actions against the Respondent for matters not addressed in this CAFO.

25. Respondent shall bear its costs in connection with the action resolved by this CAFO, including attorney's fees. Respondent specifically waives any right to recover such costs from the Complainant pursuant to the Equal Access for Justice Act, 5 U.S.C. § 504, or other applicable laws.

26. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

27. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO shall be the date on which it is filed with the Regional Hearing Clerk.

**For Respondent Progressive Gourmet, Inc.**



Date: 9/18/2012

Print Name: Nelson Ferreira  
Title: VP operations

**For Complainant U.S. EPA, Region 1**

\_\_\_\_\_  
Joanna Jerison, Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

Date: \_\_\_\_\_

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25. Respondent shall bear its costs in connection with the action resolved by this CAFO, including attorney's fees. Respondent specifically waives any right to recover such costs from the Complainant pursuant to the Equal Access for Justice Act, 5 U.S.C. § 504, or other applicable laws.

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27. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO shall be the date on which it is filed with the Regional Hearing Clerk.

**For Respondent Progressive Gourmet, Inc.**

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name:

Title:

**For Complainant U.S. EPA, Region 1**



Joanna Jerison, Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA, Region 1

Date: 9/27/12



**V. FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date: 9/28/12



\_\_\_\_\_  
Sharon Wells  
Acting Regional Judicial Officer  
U.S. EPA, Region 1

**In the Matter of: Progressive Gourmet, Inc.**  
**Docket No. EPCRA 01-2012-00098**

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent to the following persons, in the manner specified on the date below:

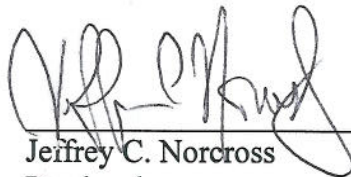
Copy hand-delivered:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
5 Post Office Square, Suite 100  
Mail Code ORA17-1  
Boston, Massachusetts 02109-3912

Copy by certified mail, return  
Receipt requested:

Christian R. Collias, President  
Progressive Gourmet, Inc.  
330 Ballardvale St.  
Wilmington, MA 01887

Dated: September 28, 2012



Jeffrey C. Norcross  
Paralegal  
Office of Environmental Stewardship  
U.S. EPA, Region I  
5 Post Office Square, Suite 100  
Mail Code OES4-4  
Boston, MA 02109-3912  
(617) 918-1839