

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. EPCRA-10-2021-0123
)	
HOLLINGBERY & SON, INC.,)	CONSENT AGREEMENT
)	
Yakima, 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 Hollingbery & Son, 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

3.1. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations at 40 C.F.R. Part 370 require the owner or operator of a facility that is required to prepare or have available a material safety data sheet (MSDS)¹ for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”), 29 U.S.C. § 651 *et seq.*, and which has a hazardous chemical present at any one time in an amount equal to or greater than a specified threshold quantity, to prepare a Tier II emergency and hazardous chemical inventory form (“Tier II Form”) and submit it to the appropriate local emergency planning committee (LEPC), state emergency response commission (SERC), and the local fire department.

3.2. The Tier II Form for each calendar year must be submitted to the LEPC, SERC, and the local fire department by March 1 of the following year. 40 C.F.R. § 370.45(a).

3.3. The Tier II Form must include estimates of the average and maximum quantities of each hazardous chemical stored at the facility in excess of the threshold quantity. 40 C.F.R. § 370.42.

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.

3.4. The term “facility” means all buildings, equipment, structures, and other stationary items which 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 by, or under common control with, such person). EPCRA Section 329(4), 42 U.S.C. § 11049(4).

3.5. The term “Hazardous chemical,” with certain exceptions, has the meaning given such term by the OSHA and its implementing regulations. EPCRA Sections 311(e) and 329(5), 42 U.S.C. §§ 11021(e) and 42 U.S.C. § 11049(5). Pursuant to those regulations, “hazardous chemical means 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.” 29 C.F.R. § 1910.1200(c).

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 appendices A and B of 40 C.F.R. Part 355.

3.7. 40 C.F.R. § 370.10(a)(1) provides that the threshold quantity that triggers reporting obligations under EPCRA Section 312 for an extremely hazardous substance is 500 pounds or more of the substance present at the facility at any one time.

3.8. OSHA requires an MSDS to be prepared, or available, for ammonia.

3.9. Ammonia is a “hazardous chemical” and “extremely hazardous substance” with a threshold planning quantity of 500 pounds, according to 40 C.F.R. § 370.10(a)(1) and 40 C.F.R. Part 355, Appendices A and B.

3.10. At all times relevant to this complaint, Respondent owned or operated a business located at 212 North 1st Avenue, Yakima, Washington 98902 (“Facility”) that stored hazardous chemicals and extremely hazardous substances and such location is a “facility” within the meaning of EPCRA Section 329(4), 42 U.S.C. § 11049(4).

3.11. At all times relevant to this complaint, Respondent was the “owner or operator” of the Facility within the meaning of EPCRA Section 312, 42 U.S.C. § 11022.

3.12. At all times relevant to this complaint, Respondent was required to have a MSDS available for ammonia at the Facility pursuant to OSHA.

3.13. During calendar year 2019, Respondent stored more than 500 pounds of ammonia at the Facility and, therefore, exceeded the threshold quantity for applicability of EPCRA Section 312, 42 U.S.C. § 11022, reporting requirements pursuant to 40 C.F.R. § 370.10(a)(1).

3.14. Respondent failed to timely submit a Tier II Form to the SERC, LEPC, and local fire department for the Facility for calendar year 2019 by March 1, 2020, constituting three independent violations of EPCRA Section 312, 42 U.S.C. § 11022, and 40 C.F.R. § 370.45(a).

3.15. 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 \$59,017 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 \$21,600 (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 addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10
R10_RHC@epa.gov

Erin Williams
U.S. Environmental Protection Agency
Region 10
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. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. 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.

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

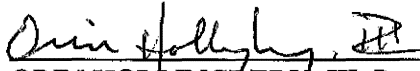
4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

5/13/2021

FOR RESPONDENT:



ORIN HOLLINGBERY, III, President
Hollingbery & Son, Inc.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement & Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. EPCRA-10-2021-0123
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HOLLINGBERY & SON, INC.,)	FINAL ORDER
)	
Yakima, Washington,)	
)	
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 _____, 2021.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Hollingbery & Son, Inc., Docket No.: EPCRA-10-2021-0123**, 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:

Brandon Cobb
U.S. Environmental Protection Agency
Region 10
cobb.brandon@epa.gov

Orin Hollingbery, III
Hollingbery & Son, Inc.
bud@hollingberyandson.com

DATED this _____ day of _____, 2021.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10