



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)	
)	EPA Docket No.: EPCRA-03-2009-0190
Norfolk Environmental Services,)	
Inc.)	
150 South Main Street)	
Norfolk, Virginia)	
23523,)	
)	
Respondent.)	Proceedings Pursuant to Sections 311, 312, and
)	325 of the Emergency Planning and Community
)	Right-to-Know Act of 1986, 42 U.S.C. §§ 11021,
Norfolk Environmental Services,)	11022, 11045
Inc.)	
150 South Main Street)	
Norfolk, Virginia)	
23523,)	
)	
Facility.)	
)	
)	

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CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement (“CA”) is proposed and entered into 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, and under the authority provided by the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits” (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, (“Part 22”). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III (“Complainant”).

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

FINDINGS OF FACT

1. Respondent is a Delaware corporation with its principal place of business located at 150 South Main Street in Norfolk, Virginia.
2. As a corporation, Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.
3. Beginning in or about 2004, continuing through the date of filing this CA/FO, and at all times relevant to this CA/FO, Respondent has owned and operated the Norfolk Environmental Services, Inc. ("NES") facility located at 150 South Main Street, in Norfolk, Virginia ("NES facility" or "Facility"), within the meaning of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022.
4. The NES facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.
5. On March 26, 2008, EPA conducted an inspection of the NES facility to determine its compliance with the requirements of Sections 302-312 of EPCRA, 42 U.S.C. §§ 11002-11022.
6. For the purpose of submissions pursuant to Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022, the state emergency response commission ("SERC") for the NES facility is, and has been at all times relevant to this CA/FO, the Virginia Emergency Response Counsel, c/o the Virginia Department of Environmental Quality, SARA Title III Program Office, located at 629 East Main Street in Richmond, Virginia.
7. The local emergency planning committee ("LEPC") and local fire department for the NES facility is, and has been at all times relevant to this CA/FO, the City of Norfolk Fire-Rescue, located at 100 Brook Avenue, Suite 400, in Norfolk, Virginia.
8. Section 311 of EPCRA, 42 U.S.C. § 11021, as implemented by 40 C.F.R. Part 370, requires an owner or operator of a facility required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical in accordance with the Occupational Safety and Health Administration ("OSHA") Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility is present at any one time a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous chemical ("EHS")) in a quantity equal to or greater than its applicable minimum threshold for reporting ("MTL") or threshold planning quantity ("TPQ") established by 40 C.F.R. § 370.10, to submit, either MSDSs for, or a list identifying, those hazardous chemicals to the

appropriate SERC, LEPC, and local fire department with jurisdiction over the facility, on or before October 17, 1990, or within 90 days after meeting the MTL or TPQ.

9. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility required to prepare or have available an MSDS for a hazardous chemical in accordance with the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time during a calendar year in a quantity equal to or greater than its applicable MTL or TPQ, to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form (“Chemical Inventory Form”) identifying the hazardous chemical and providing the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

10. No. 2 Fuel Oil is a “hazardous chemical” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), 40 C.F.R. § 370.66, and 29 C.F.R. § 1910.1200(c).

11. Pursuant to 40 C.F.R. § 370.10(a)(2)(i), the MTL for No. 2 Fuel oil is 10,000 pounds.

12. At all times relevant to this CA/FO, Respondent was a person engaged in a business where chemicals were used, distributed, or produced for use or distribution.

13. At all times relevant to this CA/FO, Respondent was an “employer” as that term is defined at 29 U.S.C. § 1910.1200(c).

14. At all times relevant to this CA/FO, Respondent was required to have MSDSs at its NES facility for each hazardous chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).

15. At all times relevant to this CA/FO, Respondent was the owner or operator of a facility that is required to prepare or have available MSDSs for hazardous chemicals under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

**EPA’S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 311 OF EPCRA – SERC**

16. The findings of fact contained in paragraphs 1 through 15 of this CA/FO are incorporated by reference herein as though fully set forth at length.

17. During calendar years 2005 through 2007, Respondent had present at its Facility No. 2 Fuel Oil at an approximate maximum quantity of 47,700 pounds, which exceeds its MTL of 10,000 pounds.

18. Respondent was required to submit to the SERC either an MSDS for No. 2 Fuel Oil, or list of hazardous chemicals identifying No. 2 Fuel Oil as being present at the NES facility in a quantity exceeding its MTL, no later than 90 days after Respondent had No. 2 Fuel Oil present at the NES facility in an amount equal to or greater than its MTL.

19. Respondent did not submit to the SERC an MSDS for No. 2 Fuel Oil, or a list of hazardous chemicals identifying No. 2 Fuel Oil as present at the NES facility in a quantity exceeding its MTL.

EPA'S CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 311 OF EPCRA – SERC

20. Respondent's failure to submit to the SERC either an MSDS for No. 2 Fuel Oil or a list of hazardous chemicals identifying No. 2 Fuel Oil as present at the NES facility in a quantity exceeding its MTL, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

EPA'S FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 311 OF EPCRA – LEPC

21. The findings of fact contained in paragraphs 1 through 20 of this CA/FO are incorporated by reference herein as though fully set forth at length.

22. Respondent was required to submit to the LEPC either an MSDS for No. 2 Fuel Oil, or list of hazardous chemicals identifying No. 2 Fuel Oil as being present at the NES facility in a quantity exceeding its MTL, no later than 90 days after Respondent had No. 2 Fuel Oil present at the NES facility in an amount equal to or greater than its MTL.

23. Respondent did not submit to the LEPC an MSDS for No. 2 Fuel Oil, or a list of hazardous chemicals identifying No. 2 Fuel Oil as present at the NES facility in a quantity exceeding its MTL.

EPA'S CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 311 OF EPCRA – LEPC

24. Respondent's failure to submit to the LEPC either an MSDS for No. 2 Fuel Oil or a list of hazardous chemicals identifying No. 2 Fuel Oil as present at the NES facility in a quantity exceeding its MTL, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007 – SERC**

25. The findings of fact contained in paragraphs 1 through 24 of this CA/FO are incorporated by reference herein as though fully set forth at length.

26. During calendar year 2007, Respondent had present at its NES facility No. 2 Fuel Oil, in quantities greater than its MTL.

27. By March 1, 2008, Respondent was required to submit to the SERC, LEPC and local fire department Chemical Inventory Forms identifying No. 2 Fuel Oil as present at the NES facility during calendar year 2007 in quantities greater than its MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

28. Respondent has not submitted a Chemical Inventory Form to the SERC for the No. 2 Fuel Oil stored at the NES facility during calendar year 2007.

29. Respondent failed to submit to the SERC by March 1, 2008, a Chemical Inventory Form for the NES facility for calendar year 2007.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007 – SERC**

30. Respondent's failure to submit a Chemical Inventory Form for the NES facility to the SERC by March 1, 2007, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007 –
LEPC/FIRE DEPARTMENT**

31. The findings of fact contained in paragraphs 1 through 30 of this CA/FO are incorporated by reference herein as though fully set forth at length.

32. Respondent has not submitted a Chemical Inventory Form to the LEPC/Fire Department for the No. 2 Fuel Oil stored at the NES facility during calendar year 2007

33. Respondent failed to submit to the LEPC/Fire Department by March 1, 2008, a Chemical Inventory Form for the NES facility for calendar year 2007.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007 –
LEPC/FIRE DEPARTMENT**

34. Respondent's failure to submit a Chemical Inventory Form for the NES facility to the LEPC by March 1, 2008, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2006**

35. The findings of fact contained in paragraphs 1 through 34 of this CA/FO are incorporated by reference herein as though fully set forth at length.

36. During calendar year 2006, Respondent had present at its NES facility No. 2 Fuel Oil in quantities greater than its MTL.

37. By March 1, 2007, Respondent was required to submit to the SERC, LEPC, and local fire department, Chemical Inventory Forms identifying No. 2 Fuel Oil as present at the NES facility during calendar year 2006 in quantities greater than its MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

38. Respondent has not submitted Chemical Inventory Forms to the SERC, or the LEPC/Fire Department, listing No. 2 Fuel Oil as present at the NES facility in quantities greater than its MTL during calendar year 2006.

39. Respondent failed to submit to the SERC and the LEPC/ Fire Department by March 1, 2007, Chemical Inventory Forms for the NES facility for calendar year 2006.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2006**

40. Respondent's failure to submit to the SERC, and LEPC/Fire Department by March 1, 2007, Chemical Inventory Forms for the NES facility for calendar year 2006, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2005**

41. The findings of fact contained in paragraphs 1 through 40 of this CA/FO are incorporated by reference herein as though fully set forth at length.

42. During calendar year 2005, Respondent had present at its NES facility No. 2 Fuel Oil in quantities greater than its MTL.

43. By March 1, 2006, Respondent was required to submit to the SERC, LEPC, and local fire department, Chemical Inventory Forms identifying No. 2 Fuel Oil as present at the NES facility during calendar year 2005 in quantities greater than its MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

44. Respondent has not submitted Chemical Inventory Forms to the SERC, or LEPC/Fire Department, listing No. 2 Fuel Oil as present at the NES facility in quantities greater than its MTL during calendar year 2005.

45. Respondent failed to submit to the SERC and the LEPC/Fire Department by March 1, 2006, Chemical Inventory Forms for the NES facility for calendar year 2005.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2005**

46. Respondent's failure to submit to the SERC and the LEPC/Fire Department by March 1, 2006, complete and accurate Chemical Inventory Forms for the NES facility for calendar year 2005, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

47. In full and final settlement and resolution of all allegations referenced in the foregoing EPA's Findings of Fact and EPA's Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021, 11022 set forth above, in the amount of \$25,548.00.

PAYMENT TERMS

48. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, Respondent must pay the civil penalty no later than thirty (30) days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent by submitting the penalty of \$25,548.00 and by wire transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727
Environmental Protection Agency"

49. The Respondent shall submit proof of the wire transfer, noting the title and docket numbers of this case, to the following persons:

Lydia Guy (3RC00) Regional Hearing Clerk U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029	and	Allison F. Gardner (3RC42) Assistant Regional Counsel U.S. EPA Region III 1650 Arch Street Philadelphia, PA 19103-2029
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50. The EPCRA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, (September 30, 1999)*.

51. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

52. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

53. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for

administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

54. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

55. Failure by the Respondent to pay the \$25,548.00 penalty assessed by the Final Order (“FO”) in full by the final due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

56. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

57. Respondent agrees not to contest the Environmental Protection Agency’s jurisdiction with respect to the execution or enforcement of the CA/FO.

58. For the purpose of this proceeding, Respondent neither admits nor denies factual allegations set forth in this CA, but expressly waives its rights to contest said allegations.

59. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the FO under Section 325 of EPCRA, 42 U.S.C. § 11045.

60. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this CA on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this CA and to legally bind Respondent to the terms and conditions of the CA and accompanying FO.

61. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States’ authority to pursue criminal sanctions.

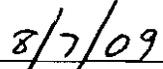
In re: Norfolk Environmental Services, Inc.

EPCRA-03-2009-0190

62. Each party to this action shall bear its own costs and attorney's fees.

FOR NORFOLK ENVIRONMENTAL SERVICES, INC.:


SIGNATURE


DATE

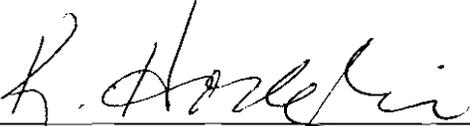
Name: RICHARD P. FALCINELLI

Title: EXEC VP/SECRETARY

In re: Norfolk Environmental Services, Inc.

EPCRA-03-2009-0190

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Kathryn A. Hodgkiss, Acting Director
Hazardous Site Cleanup Division



DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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EPA Docket No.: EPCRA-03-2009-0190

Proceedings Pursuant to Sections 311, 312, and
325 of the Emergency Planning and Community
Right-to-Know Act of 1986, 42 U.S.C. §§ 11021,
11022, 11045

FINAL ORDER

Pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Renée Sarajian
Renée Sarajian
Regional Judicial Officer
EPA, Region III

9/2/09
DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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EPA Docket No.: EPCRA-03-2009-0190

Consent Agreement and Final Order

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent by first class mail to:

Peter J. Yoon
Mattioni, Ltd.
399 Market Street, Suite 200
Philadelphia, PA 19106

9/4/09
DATE


Allison F. Gardner (3RC42)
Senior Assistant Regional Counsel
Counsel for Complainant
(215) 814-2631