

RECEIVED
17 JUL 13 AM 10:41
HEARINGS CLERK
EPA - REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. EPCRA-10-2017-0124
AMERISTAR MEATS, INC.,)	CONSENT AGREEMENT
Spokane, 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 Ameristar Meats, Incorporated ("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 of EPCRA 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 for a hazardous chemical, under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., to prepare and submit a Tier II emergency and hazardous chemical inventory form ("Tier II Form") to the appropriate local emergency planning committee ("LEPC"), state emergency response commission ("SERC"), and local fire department by March 1, containing data with respect to the preceding calendar year. The required data includes estimates of the average and maximum quantities of each hazardous chemical stored in excess of the threshold quantity. 40 C.F.R. §§ 370.41(i)-(j), 370.42(i)(5)-(6).

3.2. "Hazardous chemical," with certain exceptions, has the meaning given such term by the Occupational Safety and Health Act ("OSHA") and its implementing regulations.

EPCRA §§ 311(e) and 329(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. § 1900.1200(c).

3.3. An "extremely hazardous substance" 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.

3.4. Ammonia is a "hazardous chemical" and an "extremely hazardous substance."

3.5. Sulfuric Acid is a "hazardous chemical" and an "extremely hazardous substance."

3.6. 40 C.F.R. § 370.10(a)(1) provides that the threshold that triggers reporting obligations under EPCRA Section 312 is having 500 pounds or more of an extremely hazardous substance present at the facility at any one time.

3.7. Respondent owns or operates a business located at 210 South McKinnon Road in Spokane, Washington, that stores ammonia and sulfuric acid and is a "Facility" within the meaning of EPCRA § 329(4).

3.8. Respondent is the "owner or operator" of the Facility within the meaning of EPCRA § 312.

3.9. Respondent is required to have a material safety data sheet available pursuant to the OSHA, 29 U.S.C. § 651 et seq.

3.10. At all times relevant to this Consent Agreement, Respondent stored more than 500 pounds of ammonia at the Facility.

3.11. At all times relevant to this Consent Agreement, Respondent stored more than 500 pounds of sulfuric acid at the Facility.

3.12. At all times relevant to this Consent Agreement, Respondent was subject to EPCRA Section 312 and was required pursuant to 40 C.F.R. § 370.45(a) to submit a Tier II Form to the LEPC, SERC, and local fire department by March 1, containing data with respect to the preceding calendar year.

3.13. Respondent failed to submit a Tier II Form to the LEPC, SERC, and local fire department for calendar year 2014 by March 2, 2015, in violation of EPCRA § 312 and 40 C.F.R. § 370.45(a).

3.14. Respondent failed to submit a Tier II Form to the LEPC, SERC, or local fire department for calendar year 2015 by March 1, 2016, in violation of EPCRA § 312 and 40 C.F.R. § 370.45(a).

3.15. Respondent failed to submit a Tier II Form to the LEPC, SERC, or local fire department for calendar year 2016 by March 1, 2017, in violation of EPCRA § 312 and 40 C.F.R. § 370.45(a).

3.16. 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 \$53,907 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 \$38,000 (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, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Young.Teresa@epa.gov

Erin Williams, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
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:

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 the purchase and donation of a mass casualty decontamination trailer to the Spokane Valley Fire Department. Respondent agrees to complete the SEP within 60 days after the effective date of the Final Order, in accordance with all provisions described in this Consent Agreement and Attachment A.

4.10. 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 \$87,770.

4.11. 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 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.

4.12. Respondent certifies that (1) 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; and (2) it has inquired of the Spokane Valley Fire Department whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Spokane Valley Fire Department that it is not a party to such a transaction.

4.13. Respondent shall submit a SEP Completion Report to EPA within 90 days after the effective date of this Consent Agreement. The SEP Completion Report shall contain the following information:

- a. A description of the SEP as implemented and the environmental and public health benefits resulting from implementation of the SEP;
- b. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and documentation providing evidence of the project's completion (including but not limited to vendor invoices or receipts, correspondence) and documentation of all SEP expenditures; and
- c. A description of any problems encountered and the solutions thereto.

4.14. 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:

Erin Williams
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.15. 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.

4.16. 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 4.17, 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."

4.17. Following receipt of the SEP Completion Report described in Paragraph 4.13, 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 4.19.

4.18. If Respondent fails to satisfactorily complete the SEP as contemplated by this Consent Agreement, then stipulated penalties shall be due and payable by Respondent to EPA upon demand in accordance with Paragraph 4.20. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement. 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.

4.19. 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:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 7th day	\$100

8th through 21st day	\$250
22nd through 30th day	\$500
Greater than 30 days	\$1,000

4.20. 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.

4.21. 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 Planning and Community Right-to-Know Act.”

4.22. 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.

4.23. 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.

4.24. 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.

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

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

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

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

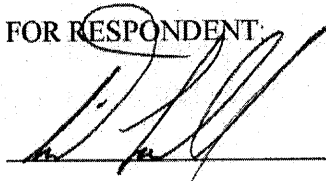
4.29. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

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

DATED:

6-20-17

FOR RESPONDENT:

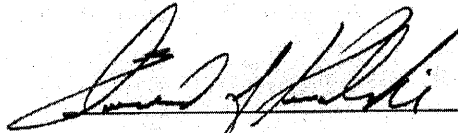


TIM LOVEALL, President
Ameristar Meats, Inc.

DATED:

7/6/2017

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-10-2017-0124
)	
AMERISTAR MEATS, INC.,)	FINAL ORDER
)	
Spokane, Washington)	
)	
Respondent.)	

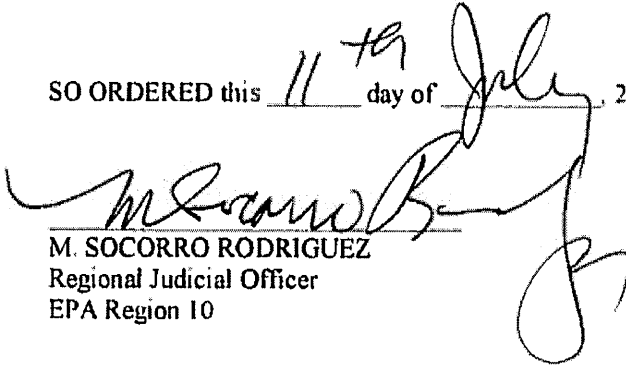
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

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 11th day of July, 2017.



M. SOCORRO RODRIGUEZ
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: Ameristar Meats, Inc., Docket No.: EPCRA-10-2017-0124** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

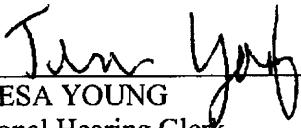
The undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Gallagher, Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
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:

Tim Loveall, President
Ameristar Meats, Inc.
210 South McKinnon
Spokane, Washington 99212

DATED this 13 day of July, 2017.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10