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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	
Olympic Fruit Company, LLC	)	Docket No. CAA-10-2013-0014
	)	
Moxee, Washington	)	CONSENT AGREEMENT
	)	AND FINAL ORDER
Respondent.	)	
	)	
	)	
	)	

**I. AUTHORITY**

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(d). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.2. Respondent is Olympic Fruit Company, LLC (“Respondent”).

1.3. Pursuant to Section 113(d) of the CAA and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil

Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and Respondent hereby agrees to the issuance of, the Final Order contained in Part V of this CAFO.

1.4. The EPA Administrator and the Attorney General for the United States Department of Justice have jointly determined that this action, which includes the allegation that a CAA violation commenced more than 12 months ago, but does not seek more than \$295,000 in CAA penalties, is an appropriate administrative penalty action under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18, issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 has been delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

2.3. Respondent is a corporation formed in the State of Washington.

2.4. Respondent owns and operates a cold fruit storage facility (the “facility”) located at 2450 Beaudry Road, Moxee, Washington.

2.5. A concise statement of the factual basis for alleging violations of the CAA, together with specific references to the provisions of the CAA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

### **III. ALLEGATIONS**

3.1. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations at 40 C.F.R. Part 68 require the owner and operator of a stationary source at which a regulated substance is present in more than a threshold quantity to develop and implement a risk management plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the stationary source and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

3.2. 40 C.F.R. § 68.150 requires that an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process submit an RMP to EPA no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under § 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

3.3. 40 C.F.R. § 68.3 defines “stationary source” as any buildings, structures, equipment, installations, or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

3.4. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, and 40 C.F.R. § 68.130. Anhydrous ammonia is listed as a regulated substance in 40 C.F.R. § 68.130.

3.5. 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, and 40 C.F.R. § 68.130. The threshold quantity of anhydrous ammonia is 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.6. 40 C.F.R. § 68.3 defines “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substance, or combination of these activities.

3.7. Under 40 C.F.R. § 68.115, a threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is “present at a stationary source” if the total quantity of the regulated substance contained in a process exceeds the threshold quantity.

3.8. Respondent owns a stationery source where anhydrous ammonia has been present in a process above the 10,000-pound threshold quantity since at least September 1, 2004. Therefore, Respondent was required to submit and have in place an RMP for the facility.

3.9. Respondent submitted an RMP to EPA on August 27, 2009.

3.10. Respondent’s failure to submit and have in place an RMP for the facility between September 1, 2004 and August 27, 2009, is a violation of Section 112(r) of the CAA and 40 C.F.R. § 68.150.

#### **IV. CONSENT AGREEMENT**

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.9., below, each party shall bear its own costs in bringing or defending this action.

4.6. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), taking into consideration the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, Respondent's cooperation with EPA, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violation (in addition to such other factors as justice may require), and Respondent's willingness to implement the Supplemental Environment Projects (SEPs) described below, EPA and Respondent agree that an appropriate penalty to settle this action is \$33,964.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in Paragraph 4.6 above within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America " and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case. Respondent may also pay the penalty by wire transfer or credit card in accordance with instructions provided by EPA. Respondent shall serve a photocopy of the check or documentation of wire transfer on the Regional Hearing Clerk and EPA at the following two addressees:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

Javier Morales  
Office of Environmental Cleanup  
U.S. Environmental Protection Agency, Region 10  
Mail Stop ECL-116  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

4.9. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.7., the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), together with interest, fees, costs, and additional penalties described below. In any such collection action, the validity, amount, and appropriateness of the Order or penalty shall not be subject to review.

a. Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. 7413(d)(5), any unpaid portion of the assessed penalty shall bear interest at a rate

established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.6., Respondent shall pay (in addition to any assessed penalty and interest) the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

4.10. Respondent agrees to implement Supplemental Environmental Projects ("SEPs") consisting of the purchase and installation of ammonia detection sensors on seven (7) roof-mounted dog house structures on one of the fruit storage buildings, five (5) ammonia detection sensors in main relief exit headers, two (2) "king solenoid" valves in the existing main refrigeration machine room, and an "Emergency Pressure Control System" (EPCS) to connect the high pressure discharge of all compressors to the low pressure side of the system. Respondent also will purchase at least one hand-held ammonia detector (0 to 2000 ppm) for the East Valley Fire Department. Respondent agrees to implement and complete the SEPs, in accordance with all provisions described in this Consent Agreement and Attachment A to this CAFO. The parties agree that these

SEPs are intended to secure significant environmental benefits by reducing the risk of a release of ammonia into the environment and improving emergency management to allow a more immediate and effective response in the event of an accidental/inadvertent sudden release of ammonia, and will be implemented pursuant to the following conditions:

- a. Respondent shall complete the installation of the ammonia detection sensors on seven (7) roof-mounted dog house structures on a fruit storage building and five (5) ammonia detection sensors in the main relief exit headers by June 1, 2013;
- b. Respondent shall complete the installation of the two (2) "king solenoid" valves in the existing main refrigeration machine room and the EPCS by June 1, 2013; and
- c. Respondent shall purchase a hand-held ammonia detector (0 to 2000 ppm) for the East Valley Fire Department by October 31, 2012.

4.11. Respondent's deadlines to perform the SEPs shall be excused or extended if such performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of Respondent, including its employees, agents, consultants, and contractors, which could not be overcome by due diligence and which delays or prevents the performance of a SEP within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of



title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.12. Respondent certifies that the cost estimate for the SEPs included in Attachment A is complete and accurate and represents a fair estimate of the costs necessary to implement these SEPs.

4.13. Respondent also certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEPs by any other 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 SEPs. 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 these SEPs.

4.14. Respondent hereby certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEPs. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEPs, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purpose of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan,

federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

4.15. Respondent shall submit a SEP Completion Report to EPA within 30 days after the completion of each of the SEPs. Each SEP Completion Report shall contain the following information:

- a. A description of the SEP as implemented;
- b. Itemized costs, documented by copies of purchase orders and receipts or cancelled checks;
- c. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;
- d. A description of any problems encountered and the solutions thereto; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP.

4.16. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail, overnight mail, or hand delivery to:

Javier Morales  
Office of Environmental Cleanup  
U.S. Environmental Protection Agency, Region 10  
Mail Stop ECL-116  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

4.17. Respondent agrees that EPA may inspect Respondent's records related to the SEPs at any reasonable time in order to confirm that the SEPs are being undertaken in conformity with the representations made herein.

4.18. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this CAFO until the SEP Completion Reports are accepted pursuant to Paragraph 4.19., 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 Reports submitted to EPA pursuant to this CAFO, 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.

4.19. Following receipt of the SEP Completion Reports described in Paragraph 4.15. above, 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 4.21. and 4.22.

4.20. If Respondent fails to satisfactorily complete the SEPs as contemplated by this CAFO and this failure was not caused solely by events which constitute a Force

Majeure as defined by Paragraph 4.11. above, then stipulated penalties shall be due and payable by Respondent to EPA upon demand in accordance with Paragraphs 4.21. and 4.22., below. Schedules herein may be extended based upon mutual written agreement of the parties.

4.21. If Respondent fails to satisfactorily complete the SEPs required by this CAFO, Respondent shall pay stipulated penalties, upon written demand from EPA, in the following amount for each day that each SEP remains incomplete:

<b>Period of Noncompliance</b>	<b>Penalty Per Violation Per Day</b>
1st through 7 <sup>th</sup> day	\$ 100.00
8 <sup>th</sup> through 21 <sup>st</sup> day	\$ 250.00
22 <sup>nd</sup> through 30 <sup>th</sup> day	\$ 500.00
Greater than 30 days	\$ 1,000.00

4.22. If Respondent fails to satisfactorily complete the SEPs as set forth in Paragraph 4.10. of this CAFO, EPA may elect to terminate the SEPs if it determines that Respondent is not making a good faith effort to satisfactorily complete the SEPs. In addition, if at any time EPA determines that Respondent has abandoned the SEPs, it may terminate the SEPs. EPA shall provide written notice of the SEPs termination to Respondent. If EPA terminates the SEPs, Respondent shall be liable for a lump sum stipulated penalty of \$60,988, less any amount that Respondent has paid under Paragraph 4.21. If Respondent pays a termination penalty under this paragraph, it shall not be liable for stipulated penalties under Paragraph 4.21. Any sum already paid under Paragraph 4.21, shall be credited against the lump sum stipulated penalty due under this paragraph.

4.23. The determination of whether the SEPs have been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEPs is reserved to the sole discretion of EPA.

4.24. 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 Paragraph 4.8., above. Interest and late charges shall be paid as stated in Paragraph 4.9. above.

4.25. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEPs 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 Clean Air Act."

4.26. The penalty described in Paraph 4.6., including any additional costs incurred under Paragraph 4.9., above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.27. This CAFO 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.

4.28. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.



4.29. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Part III above.

STIPULATED AND AGREED:

FOR OLYMPIC FRUIT COMPANY, LLC

  
\_\_\_\_\_  
Signature

Dated: 10/15/2012

Print Name: Paul Koch

Title: G. M.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 10

  
\_\_\_\_\_  
Edward J. Kowalski, Director  
Office of Compliance and Enforcement

Dated: 10/17/2012





## V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 22<sup>d</sup> day of October, 2012

  
Thomas M. Jahnke  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10



ATTACHMENT A

IN THE MATTER OF: OLYMPIC FRUIT COMPANY, LLC  
EPA DOCKET NO. CAA-10-2013-0014  
SUPPLEMENTAL ENVIRONMENTAL PROJECTS

Pursuant to the Consent Agreement and Final Order (“CAFO”), Olympic Fruit Company, LLC (“Respondent”) will implement the following Supplemental Environmental Projects (“SEPs”). The implementation of these SEPs will secure significant environmental benefits by reducing the risk of a release of ammonia into the environment and improving emergency management to allow a more immediate and effective response in the event of an accidental/inadvertent sudden release of ammonia. The estimated cost to complete the SEPs is \$50,823.50.

**PROJECT 1:**

Install ammonia detection sensors on seven (7) roof-mounted dog house structures on the fruit storage buildings, and five (5) ammonia detection sensors in main relief exit headers.

These detectors will be connected to the refrigeration system control computer, which will auto-dial the refrigeration operator(s) should a detectable level of ammonia occur. This will permit a much faster response to an ammonia release due to either the release of a relief valve, or an ammonia release occurring inside of one of the roof-mounted dog houses. Currently, the relief exit points are not monitored, so a release is only known when an employee or a member of the public notices an ammonia smell. The dog houses are checked approximately once a day, so, without the detectors, a release could go on for many hours before it is noticed.

Project Cost \$30,044.00

**PROJECT 2:**

Install two (2) “king solenoid” valves in the existing main refrigeration machine room. One will be installed on the main ammonia supply line from the main high pressure receiver feeding all cooling equipment throughout the facility. The second solenoid will be installed in the liquid supply from the main high pressure receiver to the refrigeration screw compressors. Both of these solenoids will be connected to the existing “Emergency Stop Button.” Having these two solenoids will allow the ammonia liquid supplies to be stopped much more quickly by pressing the emergency button, should an ammonia release occur.

Install a “Emergency Pressure Control System” (EPCS), which will connect the high pressure discharge of all compressors to the low pressure side of the system. This system will stop all compressors and de-energize the (above) king solenoid valves, and activate

an alarm (audible and auto-dial). This system will work at a pressure less than the relief valve release set points, and will be totally independent of any other compressor safeties (high pressure discharge cutouts). Should a high pressure condition occur, the activation of the EPCS will equalize the pressures within the system and the release of ammonia to the atmosphere through a relief valve should not occur.

Project Cost \$18,666.50

**PROJECT 3:**

Purchase a hand-held ammonia detector (0 to 2000 ppm) for the East Valley Fire Department.

Project Cost \$2,113.00

**TOTAL ESTIMATED PROJECT COST \$50,823.50**

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of Olympic Fruit Company, LLC, Docket No.:CAA-10-2013-0014**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

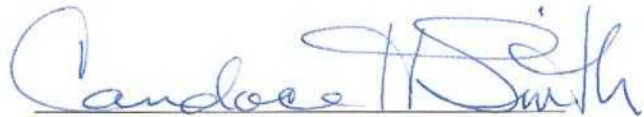
The undersigned certifies that a true and correct copy of the document was delivered to:

Robert Hartman, Esquire  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
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:

Mike Smith, CEO  
Olympic Fruit Company LLC  
2450 Beaudry Road  
Moxee, Washington 98936

DATED this 22<sup>nd</sup> day of Oct, 2012

  
Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10

