

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 \$270,000 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), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes final.

2.2. 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. EPA'S ALLEGATIONS

3.1. Respondent is a non-profit company incorporated in the state of Washington.

3.2. Respondent is the owner and operator of a warehouse in Cowiche, Washington ("facility").

3.3. Respondent's facility is a "stationary source" as that term is defined under 40 C.F.R. § 68.3.

3.4. Anhydrous ammonia is a "regulated substance" under Section 112(r)(3) of the CAA, with a threshold quantity of 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.5. At the facility, Respondent operates a process that involves anhydrous ammonia above the 10,000-pound threshold level.

3.6. The process referenced in paragraph 3.5 is categorized as Program 3, as that program level is defined in 40 C.F.R. § 68.10(d).

3.7. 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 program 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.

3.8. Respondent is the owner and/or operator of a stationary source at which anhydrous ammonia is present above the 10,000-pound threshold level in a process categorized as Program 3.

3.9. Based on an EPA inspection of the facility on June 19, 2006, and follow-up information provided by Respondent, EPA alleges that Respondent has committed the following violations from at least March 17, 2005 through January 1, 2007:

MANAGEMENT

- 1) 40 C.F.R. § 68.15(a) – Failure to develop a management system to oversee the implementation of the risk management program elements.
- 2) 40 C.F.R. § 68.15(b) – Failure to assign a qualified person or position that has overall responsibility for the development, implementation, and integration of the risk management program elements.
- 3) 40 C.F.R. § 68.15(c) – Failure to document the names and positions of other persons responsible for implementing individual requirements of the risk management program and define the lines of authority through an organization chart or similar document.

HAZARD ASSESSMENT

- 4) 40 C.F.R. § 68.28(b)(2)(i, iii-v) – Failure to consider alternative release scenarios including, where applicable: (i) transfer hose releases due to splits or sudden hose uncoupling; (iii) process vessel or pump releases due to cracks, seal failure, or drain, bleed, or plug failure; (iv) vessel overfilling and spill, or overpressurization and venting through relief valves or rupture disks; and (v) shipping container mishandling and breakage or puncturing leading to a spill.
- 5) 40 C.F.R. § 68.28(e)(2) – Failure to consider the failure scenarios identified under the process hazard analyses when conducting the alternative release scenario analysis.
- 6) 40 C.F.R. § 68.39(a) – Failure to maintain records of the offsite consequence analyses which describe the vessel or pipeline that was selected for the worst-case scenario as well as the rationale for the selection.
- 7) 40 C.F.R. § 68.39(b) – Failure to maintain records of the offsite consequence analyses which describe the alternative release scenario that was identified including the assumptions and parameters used, the rationale for the selection of the specific scenario chosen, and the anticipated effect of the active mitigation on the release quantity and rate.

PREVENTION PROGRAM - PROCESS SAFETY INFORMATION

- 8) 40 C.F.R. § 68.65(b)(1-4, 7) – Failure to complete, prior to conducting a process hazard analysis, a compilation of written process safety information pertaining to the hazards of the regulated substances in the process including: (1) toxicity information; (2) permissible exposure limits; (3) physical data; (4) reactivity data; and (7) hazardous effects of inadvertent mixing of different materials that could foreseeably occur.

- 9) 40 C.F.R. § 68.65(c)(1)(i, ii, iv, v) – Failure to include in the compilation of written safety information referenced above, information pertaining to the technology of the process including: (i) a block flow diagram or simplified process flow diagram; (ii) process chemistry; (iv) safe upper and lower limits for such items as temperatures, pressures, flows, or compositions; and (v) an evaluation of the consequences of deviations.

- 10) 40 C.F.R. § 68.65(d)(1)(i, iv-viii) – Failure to include in the compilation of written safety information referenced above, information pertaining to the equipment in the process including: (i) materials of construction; (iv) relief system design and design basis; (v) ventilation system design; (vi) design codes and standards employed; (vii) material and energy balances for processes built after June 21, 1999; and (viii) safety systems (e.g., interlocks, detection, or suppression systems).

- 11) 40 C.F.R. § 68.65(d)(2) – Failure to document that the equipment referenced above complies with recognized and generally accepted good engineering

practices.

- 12) 40 C.F.R. § 68.65(d)(3) – Failure to determine and document that the existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, is designed, maintained, inspected, tested, and operating in a safe manner.

PREVENTION PROGRAM – PROCESS HAZARD ANALYSIS

- 13) 40 C.F.R. § 68.67(a) – Failure to perform an initial process hazard analysis (PHA) that identified, evaluated, and controlled the hazards involved in the process; failure to identify and document the priority order for conducting the PHA based on an appropriate rationale.
- 14) 40 C.F.R. § 68.67(b)(1-7) – Failure to use one or more of the following technologies to determine and evaluate the hazards of the process being analyzed: (1) What-if; (2) Checklist; (3) What-if/Checklist; (4) Hazard and Operability Study (HAZOP); (5) Failure Mode and Effects Analysis (FMEA); (6) Fault Tree Analysis; or (7) an appropriate equivalent methodology.
- 15) 40 C.F.R. § 68.67(c)(1-7) – Failure to perform a PHA that addresses: (1) the hazards of the process; (2) identification of any previous incident that had a likely potential for catastrophic consequences; (3) engineering and administrative controls applicable to the hazards and their interrelationships; (4) consequences of failure of engineering and administrative controls; (5) stationary source siting; (6) human factors; and (7) a qualitative evaluation of a range of the possible safety

and health effects of failure of controls.

- 16) 40 C.F.R. § 68.67(d) – Failure to assure that the PHA was performed by a team with expertise in engineering and process operations and other appropriate personnel.
- 17) 40 C.F.R. § 68.67(e) – Failure to establish a system to promptly address the team’s PHA findings and recommendations to assure that recommendations are resolved in a timely manner and are documented. Documentation must include what actions are to be taken and must be completed as soon as possible. A written schedule of when these actions are to be completed must be developed and communicated to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations.
- 18) 40 C.F.R. § 68.67(f) – Failure to have the PHA updated and revalidated by a team every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process.
- 19) 40 C.F.R. § 68.67(g) – Failure to retain all PHAs and updates or revalidations of each covered process to assure that they are consistent with the current process.

PREVENTION PROGRAM – OPERATING PROCEDURES

- 20) 40 C.F.R. § 68.69(a)(1)(i-vii) – Failure to develop and implement written operating procedures that provide clear instructions for safely conducting activities associated with each covered process consistent with the process safety information. Failure to have written operating procedures that address the steps

for each operating phase including: (i) initial startup; (ii) normal operations; (iii) temporary operations; (iv) emergency shutdown including the conditions under which emergency shutdown is required and assignment of shutdown responsibilities; (v) emergency operations; (vi) normal shutdown; and (vii) startup following a turnaround, or after an emergency shutdown.

- 21) 40 C.F.R. § 68.69(a)(2)(i-ii) – Failure to have written operating procedures that address operating limits including: (i) consequences of deviations; and (ii) the steps required to correct or avoid deviation.
- 22) 40 C.F.R. § 68.69(a)(3)(i-v) – Failure to have written operating procedures that address safety and health considerations including: (i) properties of, and hazards presented by, the chemicals used in the process; (ii) precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment; (iii) control measures to be taken if physical contact or airborne exposure occurs; (iv) quality control for raw materials and control of hazardous chemical inventory levels; and (v) any special or unique hazards.
- 23) 40 C.F.R. § 68.69(a)(4) – Failure to have written operating procedures that include safety systems and their functions.
- 24) 40 C.F.R. § 68.69(b) – Failure to have written operating procedures that are readily accessible to employees who are involved in the process.
- 25) 40 C.F.R. § 68.69(c) – Failure to have written operating procedures that are current and accurate and are reviewed as often as necessary, but at least annually.
- 26) 40 C.F.R. § 68.69(d) – Failure to have safe work practices to control hazards

during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel.

PREVENTION PROGRAM - OPERATOR TRAINING

- 27) 40 C.F.R. § 68.71(a)(1) – Failure to provide initial operator training in an overview of the specific process and the operating procedures as specified in § 68.69, including an emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.
- 28) 40 C.F.R. § 68.71(a)(2) – In lieu of initial training for each employee already involved in operating a process on or before June 21, 1999, failure to certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.
- 29) 40 C.F.R. § 68.71(b) – Failure to provide written refresher operator training at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.

PREVENTION PROGRAM – MECHANICAL INTEGRITY

- 30) 40 C.F.R. § 68.73(b) – Failure to establish and implement written procedures to maintain the on-going integrity of the process equipment including pressure vessels and storage tanks, piping systems, relief and vent systems and devices, emergency shutdown systems, and controls including monitoring devices and

sensors, alarms, interlocks, and pumps.

- 31) 40 C.F.R. § 68.73(c) – Failure to train each employee involved in maintaining the on-going integrity of the process equipment in the overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.
- 32) 40 C.F.R. § 68.73(d)(1) – Failure to perform inspections and tests on the process equipment.
- 33) 40 C.F.R. § 68.73(d)(2) – Failure to assure that integrity tests follow recognized and generally accepted good engineering practices for inspections and testing procedures.
- 34) 40 C.F.R. § 68.73(d)(3) – Failure to assure that the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience.
- 35) 40 C.F.R. § 68.73(d)(4) – Failure to document each inspection and test performed on process equipment, providing the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.
- 36) 40 C.F.R. § 68.73(e) – Failure to document that any deficiencies in equipment that were outside acceptable limits defined by the process safety information were corrected before further use or corrected in a safe and timely manner to assure safe operation.
- 37) 40 C.F.R. § 68.73(f)(1) – Failure to assure that the equipment as it was fabricated

is suitable for the process application for which it will be used in the construction of new plants and equipment.

- 38) 40 C.F.R. § 68.73(f)(2) – Failure to demonstrate that appropriate checks and inspections were performed that assured that the equipment was installed properly and consistent with design specifications and the manufacturer’s instructions.
- 39) 40 C.F.R. § 68.73(f)(3) – Failure to assure that maintenance materials, spare parts, and equipment are suitable for the process application for which they would be used.

PREVENTION PROGRAM – MANAGEMENT OF CHANGE

- 40) 40 C.F.R. § 68.75(a) – Failure to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process.
- 41) 40 C.F.R. § 68.75(b)(1-5) – Failure to establish and implement written procedures regarding management of change that assure that the following considerations are/will be addressed prior to any change: (1) the technical basis for the proposed change; (2) impact of the change on safety and health; (3) modifications to operating procedures; (4) necessary time period for the change; and (5) authorization requirements for the proposed change.
- 42) 40 C.F.R. § 68.75(c) – Failure to assure that employees involved in operating a process, and maintenance and contract employees whose job tasks would be affected by a change in the process, were informed of, and trained in, the change prior to start-up of the process or affected parts of the process.
- 43) 40 C.F.R. § 68.75(d) – Failure to update the process safety information required

by § 68.65 after a change to process chemicals, technology, equipment, and procedures, or a change to the stationary source that affects a covered process.

- 44) 40 C.F.R. § 68.75(e) – Failure to update the operating procedures or practices required by § 68.69 after a change to the covered process.

PREVENTION PROGRAM – PRE-STARTUP SAFETY REVIEW

- 45) 40 C.F.R. § 68.77(b)(1)-(4) – Failure to conduct a pre-startup safety review prior to the introduction of the regulated substance to the process to confirm that: 1) construction and equipment was in accordance with the design specifications; 2) safety, operating, maintenance, and emergency procedures were in place and were adequate; 3) a process hazard analysis was performed and recommendations resolved or implemented prior to startup; and modified stationary sources met the requirements contained in the management of change regulation at § 68.75; and 4) training of each employee involved in operating a process was completed.

PREVENTION PROGRAM – COMPLIANCE AUDIT

- 46) 40 C.F.R. § 68.79(a)-(e) – Failure to: (a) certify that at least every three years, compliance audits were conducted that evaluate compliance with the provisions of the prevention program and verify that the developed procedures and practices are adequate and being followed; (b) assure that compliance audits were completed by at least one person knowledgeable in the process; (c) develop a written report that included the findings of the audit; (d) promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected; and (e) retain the two most recent

written compliance audit reports.

EMPLOYEE PARTICIPATION

- 47) 40 C.F.R. § 68.83(b) – Failure to consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in the chemical accident prevention rule.

IV. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

- 4.1. Respondent admits the jurisdictional allegations contained in Part I, above.
- 4.2. Respondent neither admits nor denies the specific factual allegations in Part III, above.
- 4.3. 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, cooperation with EPA, the duration of the violations as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violations (in addition to such other factors as justice may require), EPA and Respondent agree that an appropriate penalty to settle this action is SEVENTEEN THOUSAND FIVE-HUNDRED THIRTY-EIGHT DOLLARS (\$17,538).
- 4.4. Respondent consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

4.5. 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
PO 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 in accordance with instructions provided by EPA.

4.6. Respondent shall serve photocopies of the check or documentation of wire transfer on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101-3140

Office of Compliance and Enforcement
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop ECL-116
Seattle, Washington 98101-3140
Attn: Kelly Huynh

4.7. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, then pursuant to Section 113(d)(5), 42 U.S.C. § 7413(d)(5), Respondent shall pay the following amounts:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the date the penalty was due from Respondent; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the date a conformed copy of this CAFO is mailed to Respondent.

b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay (in addition to any assessed penalty and interest) attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to ten percent (10%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. Respondent shall complete two supplemental environmental projects (SEPs), which the parties agree are intended to secure significant environmental benefits, pursuant to the following conditions:

a. Within six months of the effective date of this CAFO, Respondent shall spend at least \$31,500 to purchase and install a high pressure receiver in Machine Room #1 to be used to pump down inactive surge drums from seven

Controlled Atmosphere Rooms and hold the ammonia in a safer and more secure location. This project will eliminate potential releases due to extended hot weather conditions and/or tampering with the vessels by ammonia thieves.

b. Within 90 days of the effective date of this CAFO, Respondent agrees to donate at least \$12,115 toward the purchase of new communication equipment to Yakima Fire District #1 (Cowieche and Teton) to help to meet new Department of Homeland Security requirements for fire departments to have narrow bandwidth communication devices.

c. Further details concerning the SEPs referenced in subparagraphs a. and b. above are contained in Attachment A to this CAFO.

4.10. Respondent shall submit a SEP Completion Report to EPA no later than thirty (30) days following completion of both SEPs. Failure by Respondent to timely submit a complete and accurate SEP Completion Report shall be deemed a violation of this CAFO and shall subject Respondent to stipulated penalties pursuant to paragraph 4.12 of this CAFO. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEPs as implemented.
- b. An itemization of costs incurred by Respondent in implementing the SEPs (documented by purchase orders, receipts, canceled checks, etc.);
- c. Confirmation from Yakima Fire District #1 that Respondent has donated \$12,115 for the purchase of the communication equipment described in Attachment A, with documentation that this equipment has been purchased; and
- d. Certification in the form of a signed declaration by Respondent that the SEPs have been fully implemented pursuant to this CAFO.

4.11. Following receipt of the SEP Completion Report described in the preceding paragraph, EPA will do one of the following:

- a. Approve the SEP Completion Report;
- b. Reject the SEP Completion Report, notify Respondent in writing of the deficiencies in the Report, and grant Respondent thirty (30) days in which to correct any deficiencies; or
- c. Disapprove the SEP Completion Report and seek stipulated penalties in accordance with paragraph 4.12 of this CAFO.

If EPA elects to exercise option (b) or (c) above, EPA shall allow Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final. In the event the SEPs are not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 4.12 of this CAFO.

4.12. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEPs, Respondent shall be liable for stipulated penalties according to the following provisions:

- a. If the SEPs have not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$36,968.
- b. If the SEPs are satisfactorily completed, but Respondent spent less than \$39,254 (ninety percent (90%) of the amount of money required to be spent for the SEPs), Respondent shall pay a stipulated penalty to the United States in

the amount of the difference between \$39,254 and the amount spent to complete the SEP up to a maximum of \$36,968.

c. If the SEP is satisfactorily completed, and Respondent spent at least \$39,254, Respondent shall not be liable for any stipulated penalty.

d. If the SEP Completion Report required by paragraph 4.10 of this CAFO is not timely submitted, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report is due until it is submitted. Such stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue until the report is submitted, provided that the total stipulated penalties for failure to submit the report shall not exceed \$36,968.

4.13. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be made by EPA.

4.14. Respondent shall pay stipulated penalties due pursuant to the terms of this CAFO within fifteen (15) days of receipt of a written demand by EPA for payment of such penalties. Stipulated penalties shall be paid in accordance with the provisions of paragraphs 4.5 and 4.6 of this CAFO. Interest and late charges shall accrue as described in paragraph 4.8 of this CAFO.

4.15. Respondent will grant access as allowed by law and regulation for EPA to inspect its site in order to confirm that the High Pressure Receiver SEP is being undertaken in conformity with the representations herein.

4.16. All reports and submissions required by this CAFO shall be made to:

Office of Compliance and Enforcement
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop ECL-116
Seattle, Washington 98101-3140
Attn: Kelly Huynh

4.17. 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 settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act."

4.18. Excusable delay.

a. If any event occurs which causes or may cause delays in the completion of the SEPs as required under this Agreement, Respondent shall notify EPA in writing not more than 10 days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this CAFO based on such incident.

b. If the parties agree that the delay or anticipated delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of Respondent, the time for performance may be extended for a period equal to the delay resulting from such circumstances, or other such reasonable time as the parties may agree. In such event, the parties shall stipulate to such extension of time.

c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

4.19. Respondent hereby certifies that, as of the date of this CAFO, 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, grant, or injunctive relief in this or 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.

4.20. The penalty described in paragraph 4.3 of this CAFO shall represent civil penalties assessed by EPA.

4.21. Except as described in paragraph 4.8 of this CAFO, each party shall bear its own costs in bringing or defending this action.

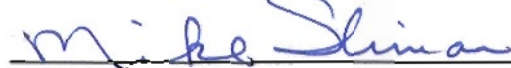
4.22. Respondent expressly waives any right to contest the allegations and to appeal the Final Order contained herein and, without admitting or denying the factual allegations contained in the Final Order, consents to the terms of this CAFO and the Final Order.

4.23. 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.

4.24. Pursuant to 40 C.F.R. § 22.18(c), full payment of the penalty assessed in this CAFO resolves Respondent's liability for federal civil penalties for the violations and facts alleged in Part III of this CAFO.

STIPULATED AND AGREED:


COWICHE GROWERS, INC.



MIKE SLIMAN
President

Dated: 1-29-08

U.S. ENVIRONMENTAL PROTECTION AGENCY



DEBORAH E. HILSMAN
Assistant Regional Counsel

Dated: Jan. 31, 2008

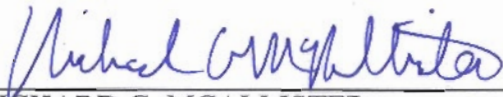
V. FINAL ORDER

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 and facts 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 4th day of February, 2008



RICHARD G. MCALLISTER
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Cowiche Growers, Inc., DOCKET NO.: CAA-10-2008-0042** was filed with the Regional Hearing Clerk on February 4, 2008.

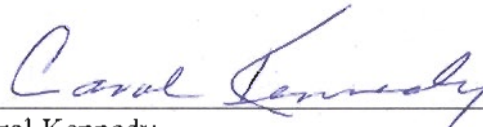
On February 4, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Deborah Hilsman, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
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 on February 4, 2008 to:

Cowiche Growers, Inc.
Mike Sliman, President
251 Cowiche City Road
Cowiche, WA 98923

DATED this 4th day of February 2008.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10

ATTACHMENT A

COWICHE GROWERS INC.
CONSENT AGREEMENT AND FINAL ORDER

COWICHE GROWERS, INC

SUPPLEMENTAL ENVIRONMENTAL PROJECT PROPOSALS

SEP Proposal Number One

Reference paragraph D 2 (Pollution Prevention) of SEP policy Letter May 1998.

Cowiche Growers proposes to purchase and install a high Pressure receiver in Machine Room # 1. The vessel will be used to hold a portion of our ammonia system charge. We will "pump down" inactive surge drums and hold the ammonia in a safer and more secure location.

The surge drums for seven Controlled Atmosphere (CA) rooms are located on the roof or in the attic of the storage facility. Pumping down these units, when not in use, to a receiver in a more secure and temperature stable location will eliminate a potential release due to extended hot weather conditions and/or tampering with of vessels by ammonia thieves.

The budgetary cost of this project is \$31,500 and we propose to accomplish this project within the next six (6) months.

SEP Proposal Number Two

Reference paragraph D 7 (Emergency Planning and Preparedness) of SEP policy Letter May 1998.

Cowiche Growers proposes to purchase and donate new communication equipment to Yakima Fire District # 1 (Cowiche and Tieton). The Department of Homeland Security now requires "narrow bandwidth" communication devices all police and fire departments

The projected cost of this equipment is \$12,115 and will be accomplished within 90 days.



Doubl-Kold

Industrial Refrigeration and Control Systems
3505 1/2 Fruitvale Blvd. • Yakima, Washington 98902
Phone (509) 248-9588 Fax (509) 453-6538

Contractor #'s WA - NORTHRC024JA, CA - 806026, TX - TACLA021189R, OR - CCB #139063

Mike Sliman
Cowiche Growers, Inc.
P.O. Box 36
Cowiche, Washington 98923

September 4, 2007
RE: HPR Addition
E-mail: mike@cowichegrowers.com

Mike,

For a possible "Supplemental Environmental Project" you are considering installing an additional high pressure receiver to hold a portion of your system charge, which will reduce the potential for an ammonia release from the system and allow better liquid management. We have put together a budget cost for providing and installing an additional high pressure receiver, which is briefly outline as follows:

Included in Doubl-Kold Scope of Work:

- Provide and install a vertical 42" OD by 9'-0" tall 250 psig high pressure receiver.
- Vessel shall include bulls-eye sight glass column.
- Vessel shall include dual 250-psig-relief valve assembly.
- Vessel shall include liquid inlet and outlet valves, equalizer valve, and oil drain valves.
- Vessel shall be provided with stand for vertical mounting of the vessel.
- Vessel shall be painted.
- Labor to install and pipe the vessel.
- Freight cost of vessel and materials to the project site.
- Pressure testing of piping.

Not Included in Doubl-Kold Scope of Work:

- Any work that may be required to the building to get the vessel in-place.
- Relocation of any existing equipment or piping to accommodate this vessel installation.
- Overtime.
- Any additional ammonia charge.
- Any work other than what is described above as "Included".

Budget cost.....\$31,415.00

Not including any applicable taxes that may apply.

Vessel delivery is usually around 6 weeks. If you have any questions that we can help you with on this project, or some other work please let us know.

Sincerely,



Ken Russell, P.E.
V.P. Engineering

Yakima Valley Communications

807 South 14th Avenue
Yakima, WA 98902

Quote

Date	Quote #
10/17/2007	161

Name / Address
Cowiche Growers Attn: Mike 251 Cowiche City Road Cowiche, WA 98923

Rep
Russ

Item	Description	Rate	Qty	Total
AAAM2SKKP9DU...	CDM1550T.S (VHF 136-174 MHz 160 Channel 25-45 Watt Mobile Radio)	576.00	3	1,728.00
AAH25KDJ9AA...	Motorola HT 1250, 128 Channel, 136-174 MHz VHF Portable W/Limited Keypad.	611.00	17	10,387.00
<p>Note: This is for radio equipment only. Prices for installation and installation material not included. This is for Mobiles only.</p>				

Estimate good for 60 days from date on quote.

Phone #	E-mail
509-452-1055	yvcomm@charter.net

Subtotal	12,115.00
Sales Tax (8.2%)	993.45
Total	13,108.45

Signature _____