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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	
THE CLASEN FAMILY CO.)	Docket No. CAA-10-2012-0023
)	
Union Gap, 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 The Clasen Family Co., formerly Clasen Fruit and Cold Storage Co., Inc. (“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 (“Complainant”), 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 owned and operated a cold fruit storage facility (“facility”) located at 1720 West Ahtanum, Union Gap, Washington. The facility was sold on August 1, 2008.

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

3.9. Respondent’s failure to submit and have in place an RMP for the facility between January 1, 2004 and August 1, 2008, 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, cooperation with EPA, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, 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 \$17,030.

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 an Emergency Pressure Control System, ammonia detection sensors, and a high pressure receiver 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 improving emergency management to allow a more immediate and effective response in the event of an emergency, and to reduce the risk of a release of ammonia into the environment, pursuant to the following condition:

- a. Respondent shall complete the installation of the Emergency Pressure Control System and ammonia detection sensors SEP by March 1, 2013.
- b. Respondent shall complete the installation of the high pressure receiver SEP by November 29, 2013.

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 the 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 activities 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. The SEP Completion Reports 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 a SEP Completion Report 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 Paragraphs 4.21. and 4.22.

4.20. If Respondent fails to satisfactorily complete any project 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 the SEP remains incomplete:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 7 th day	\$ 100.00
8th through 21st day	\$ 250.00
22nd through 30th 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., 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 SEP termination to Respondent. If EPA terminates the SEPs, Respondent shall be liable for a lump sum stipulated penalty of \$88,200, 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.

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 SEP 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 Paragraph 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 THE CLASEN FAMILY CO.


Signature

Dated: 9-21-12

Print Name: Wayne T. CLASEN

Title: PRESIDENT

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10


Edward J. Kowalski, Director
Office of Compliance and Enforcement

Dated: 9/25/2012

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 26th day of Sept, 2012



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

ATTACHMENT A

IN THE MATTER OF: THE CLASEN FAMILY CO.
EPA DOCKET NO. CAA-10-2012-0023
SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs)

Pursuant to the Consent Agreement and Final Order (CAFO), The Clasen Family CO. (Respondent) will implement the following Supplemental Environmental Projects (SEPs). The implementation of these SEPs will secure significant environmental benefits by improving emergency management to allow a more immediate and effective response in the event of an accidental/inadvertent sudden release of ammonia, and reduce the risk of a release of ammonia into the environment. Respondent will purchase install equipment the two different sites. The estimated cost to complete the SEPs is \$63,954.

Union Gap Site: (1001 West Ahtanum Rd, Union Gap, Washington)

ITEM 1. Install the "Emergency Pressure Control System" (EPCS) in the machine room.

This involves installing a 1" diameter pipe with a control valve between the main discharge of the compressors and the suction into line to the Suction Accumulator. The control assembly would include: two (2) hand valves, a solenoid valve, pressure gauge, and a pressure control switch.

There would be wiring involved so that if, the EPCS activated the compressors would shut down and an alarm would be generated. This also involves installing a manual means to activate the EPCS.

Total cost: \$ 7,905

ITEM 2. Install single point dedicated ammonia detectors in areas either not sensed, or that do not have a dedicated ammonia sensor. In areas :

Above the barrel roof in Building A, install three (3) detectors. The Ammonia Leak Detectors are Model LBW-420, manufactured by Cool Air Inc.; each can sense ammonia refrigerant concentrations of 25 to 1000 ppm.

Total cost: \$ 7,095

Install ammonia detection sensors in four (4) relief discharge points located in Buildings B & E. The Ammonia leak Detector(s) are model LBW-RLV, as manufactured by Cool Air Inc.; each can sense ammonia refrigerant concentrations of 25 to 800 ppm.

Total cost: \$14,000

Yakima Site: (8603 Ahtanum Road, Yakima, Washington)

ITEM 1. Install a larger high pressure receiver to help accommodate the system charge.

This high pressure receiver is 36" by 6'6" and has a holding capacity of approximately 1,321 lbs. of ammonia. The existing vessel holds approximately 622 lbs of ammonia, so, together, they will have a total holding capability of 1,943 lbs. The total system charge is approximately 1,864 lbs. This will facilitate the 100% draw back of ammonia and eliminate the need to annually pull ammonia from the working system when it is required for maintenance/emergency shutdowns.

Total cost: \$34,954

Total estimated SEP costs: \$63,954

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of Clasen Family Co., Docket No.:CAA-10-2012-0023**, 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:

ATTENTION: Mr. Wayne T. Clasen/Dave Robins, Agent
P.O. Box 8314
Yakima, Washington 98908

DATED this 26th day of Sept, 2012


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

