



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

RECEIVED

16 JUN -2 PM 1:06

HEARINGS CLERK  
EPA -- REGION 10

**EXPEDITED SETTLEMENT AGREEMENT**

**DOCKET NO:** CAA-10-2016-0062  
**This ESA is issued to:** Borton Fruit Zillah Plant, LLC  
1151 Cutler Way  
Zillah, Washington

This Expedited Settlement Agreement (ESA) is being entered into by the Complainant, U.S. Environmental Protection Agency Region 10 (EPA), and by Respondent pursuant to Section 113(a) (3) and (d) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). On October 14, 2014, EPA obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d) (1) of the Act, 42 U.S.C. § 7413(d) (1), to pursue this administrative enforcement action.

**ALLEGED VIOLATIONS**

EPA found that Respondent had violated regulations implementing Section 112(r) of the Act at 40 C.F.R. Part 68 by failing to comply with the regulations as noted on the enclosed Risk Management Plan Inspection Findings and Alleged Violations Summary, which is hereby incorporated by reference.

**SETTLEMENT**

In consideration of Respondent's size of business, its full compliance history, its good-faith effort to comply, and other factors as justice may require, and upon consideration of the entire record, the parties enter into the ESA in order to settle the violations described in the enclosed Summary for the total penalty amount of **\$7,560**.

This settlement is subject to the following terms and conditions:

Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained herein and in the Summary, and consents to the assessment of the penalty as stated above.

Respondent waives its rights to a hearing afforded by Section 113(d) (2)(A) of the Act, 42 U.S.C. § 7413(d) (2) (A), and to appeal this ESA. Each party to this action shall bear its own costs and fees, if any.

Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the violations listed in the enclosed Summaries and has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$7,560 in payment of the full penalty amount to the following address:



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

The docket number of the ESA must be included on the check. (The docket number is located at the top of this ESA.)

This original ESA and a copy of the check must be sent by certified mail to:

Javier Morales, 112(r) Enforcement Coordinator  
Office of Compliance and Enforcement  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, Mail Stop: OCE-101  
Seattle, Washington 98101


Upon Respondent's submission of the signed original ESA, the EPA will take no further civil action against Respondent for the alleged violations of the Act referenced in the Summary. The EPA does not waive its right to any other enforcement action for any other violations of the Clean Air Act or any other statute.

If the signed original ESA with an attached copy of the check is not returned to the EPA at the above address by Respondent within 45 days of the date of Respondent's receipt of it (90 days if an extension is granted), the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein and in the Summary.

This ESA is binding on the parties signing below.


This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT:

Signature:   
Name (print): Jeremy Leavitt  
Title (print): Compliance Director  
Cost to correct violation(s): \$ 4,500

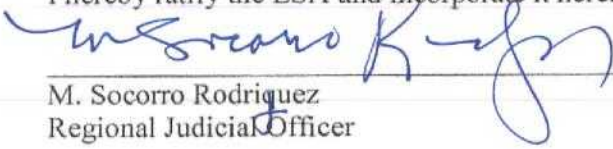
Date: 5/16/14

FOR COMPLAINANT:

  
Edward J. Kowalski  
Director  
Office of Compliance and Enforcement

Date: 5/25/2016

I hereby ratify the ESA and incorporate it herein by reference. It is so ORDERED.

  
M. Socorro Rodriguez  
Regional Judicial Officer

Date: 6/2/14



# U.S. ENVIRONMENTAL PROTECTION AGENCY

## Risk Management Program Inspection Findings and Alleged Violations Summary Region 10

**REASON FOR INSPECTION:** This inspection is for the purpose of determining compliance with Section 112(r)(7) accidental release prevention requirements of the Clean Air Act, as amended 1990. The scope of this inspection may include, but is not limited to: reviewing and obtaining copies of documents and records; interviews and taking of statements; reviewing of chemical storage, handling, processing, and use; taking samples and photographs and any other inspection activities necessary to determine compliance with the Act.

FACILITY NAME Borton Fruit Zillah Plant, LLC	<input checked="" type="checkbox"/> PRIVATE <input type="checkbox"/> GOVERNMENTAL/MUNICIPAL # EMPLOYEES <u>40</u> POPULATION SERVED: _____
FACILITY LOCATION 1151 Cutler Way, Zillah, Washington 98953	INSPECTION START DATE AND TIME: July 16, 2015, 08:30 AM INSPECTION END DATE AND TIME: July 16, 2015, 3:30 PM
MAILING ADDRESS 2550 Borton Rd, Yakima, Washington 98903	
RESPONSIBLE OFFICIAL, TITLE, PHONE NUMBER Dave Reed, CFO, (509) 966-3905	EPA FACILITY ID# 1000 0006 2175
FACILITY REPRESENTATIVE(S), TITLE(S), PHONE NUMBER(S) Ted Kronberg, Refrigeration Manager, (509) 949-5752	INSPECTOR NAME(S), TITLE(S), PHONE NUMBER(S) Javier Morales, RMP Inspector/Coordinator, 206-552-1255 Bob Hales, SEE Grantee RMP Inspector, 206-553-4090 Peter Phillips, SEE Grantee RMP Inspector, 206-553-1757 INSPECTOR SIGNATURE: <i>Peter Phillips</i> DATE: <u>2-24-16</u>

### INSPECTION FINDINGS

IS FACILITY SUBJECT TO RMP REGULATION (40 CFR 68)?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
DID FACILITY SUBMIT AN RMP AS PROVIDED IN 68.150 TO 68.185?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
DATE RMP FILED WITH EPA: <u>06/24/1999</u>	DATE OF LATEST RMP UPDATE: <u>06/20/2014</u>
1) PROCESS/NAICS CODE: <u>49312</u>	PROGRAM LEVEL: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/>
REGULATED SUBSTANCE: <u>Ammonia (anhydrous)</u>	MAX. QUANTITY IN PROCESS: <u>32,150</u> (lbs)

### DESCRIPTION OF ALLEGED VIOLATIONS

CAA Section 112(r) and its implementing regulations in 40 C.F.R. Part 68 require an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance (listed in § 68.130) in a process, to develop a Risk Management Plan (RMP) and Risk Management Program.

Three EPA representatives inspected the Borton Fruit Zillah Plant on July 16, 2015. Based upon this inspection the Borton Fruit Zillah Plant is in violation of the following risk management program elements:

- Borton Fruit's ventilation system design did not consider the equipment in the Motor Control Room connected to the engine room in the ammonia refrigeration process as required by 40 CFR 68.65(d)(1)(v). Borton Fruit ventilation system design documentation did not include the cooling units in the engine room and Motor Control Room and the ventilation intakes in the north wall in their ventilation calculations for the engine room.
- Borton Fruit's safety information does not contain the design codes and standards employed for the engine room as required by 40 CFR 68.65(d)(1)(vi). During the inspection, Borton Fruit did not have an emergency shutdown control outside the exterior of the engine room as required by IIAR 2-2008, Section 13.1.13.2. In addition, Borton Fruit did not have visual and audible alarms outside of each entrance to the engine room as required by IIAR 2-2008, Section 13.2.1.2.
- Borton Fruit has not documented that the equipment complies with recognized and generally accepted good engineering practices as required by 40 CFR 68.65(d)(2). During the inspection, Borton Fruit did not have an emergency shutdown control outside the exterior of the engine room as required by IIAR 2-2008, Section 13.1.13.2. In addition, Borton Fruit did not have visual and audible alarms outside of each entrance to the engine room as required by IIAR 2-2008, Section 13.2.1.2.
- Borton Fruit has not established a system to promptly address the team's findings and recommendations; assured that the recommendations are resolved in a timely manner and documented; documented what actions are to be taken; completed actions as soon as possible; developed a written schedule of when these actions are to be completed; and communicated the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations as required by 40 CFR 68.67(e). Borton Fruit did not document the completion date of the action items given in the 2013 PHA.

5. Borton Fruit has not certified annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary as required by 40 CFR 68.69(c). Borton Fruit could not produce annual certification documentation for their standard operating procedures.
6. Borton Fruit has not implemented procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process as required by 40 CFR 68.75(a). Borton Fruit could not produce documentation that a management of change (MOC) was issued for the 2013 facility expansion of the ammonia refrigeration process.
7. Borton Fruit's employees, involved in operating a process and maintenance, and contract employees, whose job tasks would be affected by a change in the process, were not informed of, and trained in, the change prior to start-up of the process or affected parts of the process as required by 40 CFR 68.75(c). Borton Fruit could not produce documentation that a MOC was issued for the 2013 facility expansion of the ammonia refrigeration process.
8. Borton Fruit implemented a change which resulted in a change in the process safety information, but the information was not updated accordingly as required by 40 CFR 68.75(d). Borton Fruit could not produce documentation that a MOC was issued for the 2013 facility expansion of the ammonia refrigeration process.
9. Borton Fruit implemented a change which resulted in a change in the operating procedures or practices, but the procedures or practices were not updated accordingly as required by 40 CFR 68.75(e). Borton Fruit could not produce documentation that a MOC was issued for the 2013 facility expansion of the ammonia refrigeration process.
10. Borton Fruit did not perform a pre-startup safety review for a significantly modified stationary source when the modification is significant enough to require a change in the process safety information as required by 40 CFR 68.77(a). Borton Fruit could not produce documentation that a pre-startup safety review (PSSR) was performed for the 2013 facility expansion prior to start up.
11. Borton Fruit did not perform a pre-startup safety review prior to the introduction of a regulated substance to an ammonia refrigeration process as required by 40 CFR 68.77(b)(1) to (4). Borton Fruit could not produce documentation that a pre-startup safety review (PSSR) was performed for the 2013 facility expansion prior to start up.
12. Borton Fruit has not certified that the stationary source has evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed as required by 40 CFR 68.79(a). Borton Fruit's 2014 Compliance Audit was conducted five years from their last compliance audit in 2009.
13. Borton Fruit has not promptly determined and documented an appropriate response to each of the findings of the compliance audit and documented that deficiencies had been corrected as required by 40 CFR 68.79(d). Borton Fruit did not document that deficiencies had been corrected in their 2009 and 2014 compliance audits.
14. Borton Fruit has not consulted 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 chemical accident prevention provisions as required by 40 CFR 68.83(b). Borton Fruit could not produce documentation that it has consulted 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 chemical accident prevention provisions.

Other areas of concern observed by EPA Inspectors:

1. Minor corrosion on the orange pipe coming out of the HPR and damage to the insulation shell at compressor #3 was observed.
2. There is no emergency shower located outside and inside the engine room.
3. The piping associated with the condensers were not labeled to identify the anhydrous ammonia, flow direction and physical state.
4. There were no ammonia sensors in either of the mezzanines.
5. Unprotected ammonia piping (vulnerable to forklift strikes) outside the cold room building when entering and exiting the cold rooms was also observed.

DID FACILITY CORRECTLY ASSIGN PROGRAM LEVELS TO PROCESSES?

YES  NO

ATTACHED CHECKLIST(S):

PROGRAM LEVEL 1 PROCESS CHECKLIST  PROGRAM LEVEL 2 PROCESS CHECKLIST  PROGRAM LEVEL 3 PROCESS CHECKLIST

OTHER ATTACHMENTS: \_\_\_\_\_

# Region 10 - CAA 112(r) EPA Report

CCDS (Case Conclusion Data Sheet)

Conclusion ID: 1744

## A. CASE INFORMATION:

1. Case Name (facility name): Borton Fruit Zillah Plant, LLC  
2. Enforcement DOCKET System # / Regional Hearing Clerk Admin Docket # CAA-10-2016-0062  
3(a). Regional Attorney: Bob Hartman  
3(b). EPA Case Developer: Javier Morales  
4. Statute(s) and Section(s) violated (Not authorizing section or CFR):  
Statute Violation: 42 USC 7412(r)- CAA Section Violation: CAA 112(r)(7) RMP Facilities  
CORE Priority

5. Authorizing section for administrative actions: 40 CFR 22.13(b)

6. Administrative / Judicial Action Date:

Administrative Action Date:

Issued/Filed:

Final Order:

Civil Judicial Action Date:

Settlement Lodged Date:

Settlement Entered Date:

7. Was this a multi-media action? NO

8. Small Business: NO Environmental Justice:

9. Is this action part of a MOA Priority Activity? NO

## B. FACILITY INFORMATION:

10. Facility Name: Borton Fruit Zillah Plant, LLC  
11. Facility Street: 1151 Cutler Way Facility City: Zillah Facility State: WA Facility Zip Code: 98953  
12. NAIC 5/6 digit code: 49312 Refrigerated Warehousing and Storage  
13. EPA Program 12-digit RMP ID # for the Facility: 100000062175

## C. CASE CONCLUSION INFORMATION:

14. Was Alternative Dispute Resolution used in this action? NO

15(a) Action Type: CAA 113(d) Administrative Action (includes administrative order, civil penalty)

ESA/CEP Y using the Expedited Settlement Agreement N using the Combined Enforcement Policy

15(b) Sections Violated: CAA 112(r)(7) RMP Facilities  
CORE Priority

## D. CASE CONCLUSION - COMPLIANCE ACTION:

16(a) What action did violator accomplish prior to receipt of settlement/order or will take to return to compliance or meet additional requirements? This may be due to settlement/order requirements or otherwise required by statute or regulation. Include actions completed prior to the final settlement/order and actions to be taken by violator to return to compliance or meet additional requirements. Where separate penalty and/or compliance orders are issued in connection w/same violations(s), report the following information for only one of those orders. Select response(s) from the following:

Physical Actions:

Non-Physical Actions:

Permit (RMP) Application  
Record Keeping

Other (must describe):

# Region 10 - CAA 112(r) EPA Report

CCDS (Case Conclusion Data Sheet)

Conclusion ID: 1744

16(b). Specific regulations (eg. 68.130) that were corrected based on the enforcement:

68.65(d)(1)(v), 68.65(d)(1)(vi), 68.65(d)(2), 68.67(e), 68.69(c), 68.75(a), 68.75(c), 68.75(d), 68.75(e), 68.77(a), 68.77(b), 68.79(a), 68.79(d), 68.83(b)

17. Cost of actions described in item #17(a). (Actual cost data supplied by violator is preferred figure.)

Physical Actions: \$0.00      Non-Physical Actions: \$4500.00

18. Quantitative environmental impact of actions described in item #18:

Pollutant/Chemical/Waste Stream:	Annual Amount:	Unit:	Media:
anhydrous ammonia	32150	pounds	air

19. Compliance order action and due date:

Compliance Order Action:      Due Date:

## E. CASE CONCLUSION - SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) INFORMATION:

20. Categories of SEP(s):

21. SEP description:

22. Cost of SEP (Cost calculated by the Project Model is required): \$0.00

23. Is Environmental Justice addressed by SEP? NO

24. Quantitative environmental impact of SEP: pollutants and/or chemicals and/or waste-streams, and amount of reductions/eliminations (e.g., emissions/discharges):

Pollutant/Chemical/Waste Stream:	Annual Amount:	Unit:	Media:
----------------------------------	----------------	-------	--------

25. Assessed Penalty: \$7,560.00

26. For multi-media actions, Federal Penalty Assessed by statute:

Statute:	Amount:
	\$0.00
	\$0.00
	\$0.00

**Region 10 Resolves Clean Air Act § 112(r) Violations at Borton Fruit Zillah Plant, LLC Facility (Zillah, WA)**

On May XX, 2016, Region 10 filed an expedited settlement agreement which both initiated and concluded an administrative action against the Borton Fruit Zillah Plant, LLC facility in Zillah, Washington for violations of CAA § 112(r) Risk Management Program requirements. Respondent failed to comply with several risk management program requirements that apply to its use of anhydrous ammonia. The company agreed to pay a penalty of \$7,560. Contact: Javier Morales, 206-553-1255.

DRAFT

Certificate of Service

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: Borton Fruit Zillah Plant, LLC, Docket No.: CAA-10-2016-0062**, 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:

Javier Morales, RMP Coordinator  
1200 Sixth Avenue, OCE-101  
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:

Jeremy Leavitt  
Food Safety & Compliance Director  
Borton & Sons, Inc.  
2550 Borton Road  
Yakima, Washington 98903

DATED this 2 day of June, 2016

  
\_\_\_\_\_  
Teresa Luna  
Regional Hearing Clerk  
EPA Region 10