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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

US EPA - REGION IX
HEARING CLERK

Docket No.

IN THE MATTER OF:

Phoenix V LLC
dba BEI Hawaii LLC

Respondent.

CAA(112r)-09-2013-0027

CONSENT AGREEMENT
AND
FINAL ORDER PURSUANT TO
40 CFR §§ 22.13 and 22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Sections 113(a)(3)(A) and 113(d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Phoenix V LLC, a Hawaii Corporation, doing business as BEI Hawaii LLC, ("BEI" or "Respondent").

2. Respondent is Hawaii's largest distributor of fertilizers, industrial and agricultural chemicals. BEI owns and operates the Barber's Point facility at 91-150 Kaomi Loop in Kapolei, Hawaii (the "Facility"), where they manufacture sodium hypochlorite (bleach), using chlorine and sodium hydroxide as reagents. The Facility also serves as a storage and distribution center for bulk and bagged industrial chemicals including anhydrous ammonia, sulfur dioxide, and sulfuric acid.

3. This Consent Agreement and Final Order Pursuant to 40 CFR Sections 22.13 and 22.18, ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations adopted pursuant thereto, at 40 CFR Part 68, at the Facility.

B. GENERAL ALLEGATIONS

4. 40 CFR Part 68 sets out Chemical Accident Prevention Provisions. Pursuant to 40 CFR § 68.10, the provisions apply to an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance (listed in 40 CFR § 68.130) in a process.

5. As detailed below, Respondent is an owner and operator of a stationary source that had

more than the threshold quantities of several regulated substances, including chlorine, sulfur dioxide, and anhydrous ammonia.

6. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

7. At all times relevant to this CA/FO, Respondent has been the owner and operator, as defined in Section 112 of the CAA, 42 U.S.C. § 7412, of the Facility.

8. The real property and improvements thereto located at the Facility are a "stationary source" as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3), and 40 CFR § 68.3.

9. Pursuant to Section 112(r) of the CAA, EPA established a threshold quantity ("TQ") for each regulated substance, above which a facility shall be subject to the requirements of Section 112(r) of the CAA. For substances designated as "regulated toxic substances" or "regulated flammable substances," the TQs are specified at 40 CFR § 68.130.

10. Chlorine, Chemical Abstract Service Registry ("CAS") Number 7782-50-5, is a "regulated toxic substance" listed under CAA § 112(r)(3) with a TQ of 2,500 pounds. 40 CFR § 68.130, Table 1.

11. Sulfur dioxide, CAS Number 7446-09-5, is a "regulated toxic substance" listed under CAA § 112(r)(3) with a TQ of 5,000 pounds. 40 CFR § 68.130, Table 1.

12. Anhydrous ammonia, CAS Number 7664-41-7, is a "regulated toxic substance" listed under CAA § 112(r)(3) with a TQ of 10,000 pounds. 40 CFR § 68.130, Table 1.

13. At all times relevant to this CA/FO, the Facility produced, used, or stored more than 2,500 pounds of chlorine, 5,000 pounds of sulfur dioxide, and 10,000 pounds of anhydrous ammonia.

14. Pursuant to 40 CFR § 68.10, BEI's processes are classified as Program Level 3, due to proximity of public receptors as well as the quantities of regulated toxic substances at the Facility.

15. On or about January 26, 2012, EPA conducted an inspection at the Facility. The purpose of the inspection was to determine the Facility's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and the regulations in 40 CFR Part 68.

16. Based on information collected at the time of inspection and as supplied by Respondent, EPA alleges that Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR Part 68.

17. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.

18. Section 113 of the CAA, 42 U.S.C. §7413, authorizes the assessment of a civil penalty for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

19. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority with respect to enforcement of Section 112(r)(1) and (7) of the CAA to the Director of the Superfund Division as well as the Director of the Enforcement Division. Regional Order R9-7-6-A, dated February 11, 2013.

20. In a letter dated July 3, 2012, the Department of Justice granted EPA authority to commence this administrative enforcement action pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

C. ALLEGED VIOLATIONS

COUNT I

Failure to establish a system to address the process hazard team's findings
40 CFR § 68.67(e)

21. Paragraphs 1 through 20 above are incorporated herein by this reference as if there were set forth here in their entirety.

22. Under Section 112(r)(7) of the CAA and 40 CFR § 68.67, the owner or operator of a covered stationary source shall perform an initial process hazard analysis (hazard evaluation) on processes covered by 40 CFR Part 68. The process hazard analysis shall be performed by a team with expertise in engineering and process operations, and 40 CFR § 68.67(e) requires that the owner or operator establish a system to promptly address the team's findings and recommendations.

23. At the time of the inspection, Respondent was not able to document that several deficiencies that had been noted in the Facility's PHA had been addressed. In addition, Respondent could not produce any documentation indicating that it had developed and implemented a system as required by 40 CFR § 68.67(e).

24. Therefore, EPA alleges that Respondent violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR § 68.67(e).

COUNT II

Failure to document, develop, and implement written operating procedures
40 CFR § 68.69(a)(2)

25. Paragraphs 1 through 24 above are incorporated herein by this reference as if they were set forth here in their entirety.

26. Under Section 112(r)(7) of the CAA and 40 CFR 68.69(a)(2), the owner or operator of a

covered stationary source must document, develop, and implement written operating procedures that address, among other things, at least the following elements: steps for each operating phase; operating limits, including consequences of deviation and steps required to correct or avoid deviation; safety and health considerations; and safety systems and their functions.

27. At the time of inspection, the Facility's bleach plant operating procedures did not include information pertaining to the consequences of deviation, steps required to correct or avoid deviation, or safety systems and their functions.

28. Therefore, EPA alleges that Respondent violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR § 68.69(a)(2).

COUNT III

Failure to implement operator's own written procedures and document inspections and tests on process equipment 40 CFR § 68.73

29. Paragraphs 1 through 28 above are incorporated herein by this reference as if they were set forth in their entirety.

30. 40 CFR § 68.73 sets forth requirements to assure the mechanical integrity of certain process equipment, including monitoring devices and sensors, alarms, and interlocks.

31. 40 CFR § 68.73(b) requires the owner or operator of a covered stationary source to establish and implement written procedures to maintain the ongoing integrity of process equipment.

32. 40 CFR § 68.73(d) requires that the owner or operator of a covered stationary source must inspect and test process equipment; the frequency of inspection and tests be consistent with applicable manufacturers' recommendations and good engineering practices; and the owner or operator document each of those inspections and tests.

33. Respondent failed meet the requirements of 40 CFR § 68.73(d) in that it failed to inspect its chlorine gas detector on its established six-month inspection schedule in 2012. Other mandatory inspections between 2010 and 2011 were either not performed or not properly documented.

34. Several of the elements of inspection documentation by 40 CFR § 68.73(d)(4) were not included in any logs of inspections. For example, the service and repair log for the chlorine gas detector did not include a description of the tests performed and the outcomes of the test.

35. Therefore, EPA alleges that Respondent violated 40 CFR §§ 68.73(b) and (d)(4).

COUNT IV

Failure to include all covered processes in the RMP registration
40 CFR § 68.160(b)(7)

36. Paragraphs 1 through 35 above are incorporated herein by this reference as if they were set forth in their entirety.
37. Under Section 112(r)(7) of the CAA and 40 CFR § 68.160(b)(7), the owner or operator of a covered stationary source must include each covered process and the maximum quantity of each regulated substance in the Risk Management Plan ("RMP") registration.
38. At the time of inspection, Respondent's RMP registration failed to identify its bleach manufacturing process as a covered process and failed to indicate how many pounds of chlorine were involved in the bleach manufacturing process.
39. Therefore, EPA alleges that Respondent failed to include all covered processes in the RMP registration in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR § 68.160(b)(7).

D. CIVIL PENALTY

40. Section 113(d) of the CAA, as adjusted by the Debt Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up to THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500) for violations that occur after January 12, 2009, 69 Fed. Reg. 75,340, 75,346 (Dec. 11, 2008).

41. Based on the facts alleged herein and upon all the factors which the Complainant considers pursuant to the Combined Enforcement Policy for Section 112(r) of the Clean Air Act ("CEP"), dated July 2012, including the size of Respondent's business, the economic impact of the penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require, the Complainant proposes that the Respondent be assessed, and Respondent agrees to pay EIGHTY-SIX THOUSAND, FIVE HUNDRED DOLLARS (\$86,500) as the civil penalty for the violations alleged herein. The proposed penalty was calculated in accordance with the CEP.

E. ADMISSIONS AND WAIVERS OF RIGHTS

42. Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, and 40 CFR Part 22. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

43. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to a hearing or an appeal on any issue relating to the factual allegations or legal conclusions set forth in the CA/FO, including without limitation a hearing pursuant to Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), or judicial review pursuant to Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(4). Respondent hereby consents to the terms of this CA/FO and the issuance of this CA/FO without adjudication.

44. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

F. PARTIES BOUND

45. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons acting under or for Respondent, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full and complete settlement of the Respondent's civil penalty liability for the violations alleged herein.

46. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

47. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

48. The undersigned representative of Respondent hereby certifies that he is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. CERTIFICATION OF COMPLIANCE

49. Upon signing this CA/FO, Respondent certifies to EPA that it has fully complied with the requirements of Section 112(r) of the CAA that formed the basis for the violations alleged in the CA/FO, and the Facility is now in compliance with Section 112(r) of the CAA.

50. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

H. PAYMENT OF CIVIL PENALTY

51. Respondent consents to the assessment of and agrees to pay a civil penalty of **EIGHTY-**

SIX THOUSAND AND FIVE HUNDRED DOLLARS (\$86,500) in settlement of the civil penalty claims made in this CA/FO. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. The payment shall indicate the name of the Facility, the Respondent's name and address, and the EPA docket number of this action. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and sent as follows:

If Regular Mail:

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

If Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White (301-887-6548)
ABA = 051036706

Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sf01.1" in the search field

Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

Bryan K. Goodwin
Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Jeremy Johnstone (SFD-9-3)
Superfund Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

52. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current interest rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. A late penalty charge will be imposed if payment is not received by the due date, with an additional charge for each subsequent 30-day period the payment is not received. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of the due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

53. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

I. DELAY IN PERFORMANCE / STIPULATED PENALTIES

54. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below.

55. For a failure to submit a payment to EPA by the time required in this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.

56. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section H of this CA/FO.

57. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 CFR § 13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

58. Complainant may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due to it under this CA/FO.

59. The Payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

J. RESERVATION OF RIGHTS

60. EPA expressly reserves all rights and defenses that it may have.

61. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA or any other statutory, regulatory or common law enforcement authority of the United States.

62. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA or any other applicable local, state or federal laws and regulations.

63. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO.

64. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.

K. MISCELLANEOUS

65. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

66. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

67. Each party to this action shall bear its own costs and attorneys' fees.


68. Complainant and Respondent consent to entry of this CA/FO without further notice.

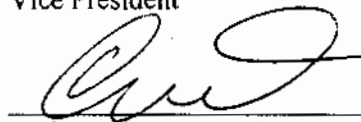
69. The Effective Date of this CA/FO is the date the Final Order is signed by EPA.

IT IS SO AGREED

8-15-13
Date

9-28-13
Date


Carolyn Ambrose
Vice President

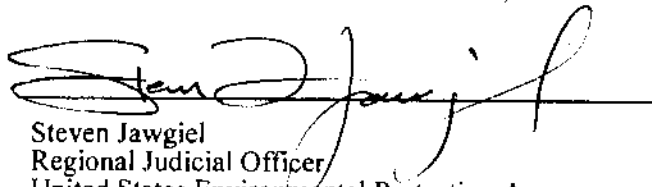

Enrique Manzanilla, Director
Superfund Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order ("CA/FO") (Docket No. CAA(112r)-9-2013-0007 be entered and that Respondent pay a civil penalty of **EIGHTY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$86,500)** payable to "Treasurer, United States of America," in the manner and form specified in Section H of this CA/FO within thirty (30) days after the Effective Date, and complete any and all tasks required by this CA/FO.

THIS FINAL ORDER SHALL BE EFFECTIVE IMMEDIATELY.

09/27/13
Date


Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

Docket No. CAA(112r)-09-2013-00 07

I hereby certify that the original copy of the foregoing CAFO with the Docket number referenced above, has been filed with the Region 9 Hearing Clerk and that a copy was sent by certified mail, return receipt requested, to:

Carolyn Ambrose, Vice President
Phoenix V LLC dba BEI Hawaii LLC
91-150 Kaomi Loop
Kapolei, HI 96707

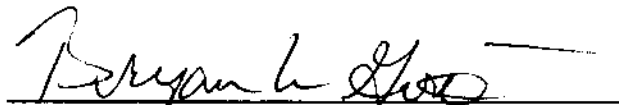
CERTIFIED MAIL NUMBER: 7012 1640 0001 2190 6864

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Rebecca Sugerman, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne St.
San Francisco, CA 94105

Date

9/27/13



Bryan K. Goodwin
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

SEP 30 2013

Certified Mail No.: 7012 1640 0001 2190 6864
Refer to: BEI Hawaii, LLC

Carolyn Ambrose, Vice President
Phoenix V LLC *dba* BEI Hawaii LLC
91-150 Kaomi Loop
Kapolei, HI 96707

Re: Consent Agreement and Final Order, Settlement of CAA §112(r)(7) Violations at
Phoenix V LLC *dba* BEI Hawaii LLC

Dear Ms. Ambrose:

Please find enclosed a copy of the fully executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX, and Phoenix V LLC *dba* BEI Hawaii LLC.

The CA/FO simultaneously commences and concludes this proceeding resolving civil penalty liability for violations of 40 CFR Part 68, as alleged in the CA/FO.

If you have any questions regarding the Clean Air Act requirements governing operations at your facility, or which concern the proceedings terminated by the enclosed document, please contact Rebecca Sugerman at (415) 972-3893.

Sincerely,

A handwritten signature in black ink, appearing to read "Enrique Manzanilla".

Enrique Manzanilla
Director
Superfund Division

Enclosure