

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

FILED

2012 FEB 20 PM 1:25

DOCKET NO: CAA (112r)-09-2012-0012
This ESA is issued to: Del Monte Fresh Produce (Southwest), Inc.
14550 W. La Estrella
Goodyear, AZ 85338

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

For: Violation of Section 112(r)(7) of the Clean Air Act.
At: Del Monte Fresh Produce (Southwest), Inc. 14550 W. La Estrella, Goodyear, AZ 85338

This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Jane Diamond, Superfund Director, and Del Monte Fresh Produce (Southwest), Inc. ("Respondent") pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). EPA has 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

1) Failure to review and update the RMP and submit it to EPA by the five year anniversary date of **June 02, 2011**, as required by Section 112(r)(7) of the Clean Air Act (the Act), and 40 C.F.R. §68.190(b)(1).

The respondent submitted an updated RMP to EPA on February 15, 2012, which was 8 months and two weeks overdue.

2) Failure to update and revalidate the Process Hazard Analysis (PHA) every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process as required by Section 112(r)(7) of the Act, and 40 C.F.R. and 40 C.F.R. §68.67(f).

The respondent's last PHA was performed in April 2006. An update/revalidation of the PHA should have been performed by April 2011.

3) Failure to establish a system to promptly address the team's PHA findings and recommendations; assure that the recommendations are resolved in a timely manner and documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate 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 Section 112(r)(7) of the Act, and 40 C.F.R. §68.67(e).

Several of the findings identified in the respondent's April 2006 PHA report were still unresolved at the time of EPA's inspection on February 17, 2012. The respondent provided documentation to EPA on March 30, 2012 indicating that most of these findings have since been corrected or are being budgeted for correction/implementation.

4) Failure to develop and implement written operating procedures or steps for conducting activities associated with each covered process consistent with the safety information as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.69(a).

At the time of EPA's inspection on February 17, 2012, the respondent did not have a written operating procedure. The respondent was using Operation and Maintenance (O&M) procedures supplied by the manufacturer of the refrigeration equipment. On March 17, 2012 the respondent submitted a newly created Standard Operating Procedure (SOP) in response to EPA's request for this document.

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5) Failure to address temporary and emergency operations in the SOP as required by Section 112(r)(7) of the Act, 40 C.F.R. §68.69((a)(1)(iii).and 40 C.F.R. §68.69((a)(1)(v).

The respondent submitted a newly created Standard Operating Procedure (SOP) in their March 17, 2012 response to EPA's request for documents. However, this SOP does not address temporary or emergency operations. They are listed in the index but nothing pertaining to emergency or temporary operations is in the body of the SOP.

6) Failure to see that each employee involved in operating a process, and each employee before being involved in a newly assigned process, is initially trained in an overview of the process and in the operating procedures as required by required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.71(a)(1).

The training records for Jose Isaac Aispuro, warehouse manager and operator, were incomplete. There was no documentation indicating that he had received formal ammonia training. The respondent has since notified EPA that Mr. Aispuro has registered for Refrigeration Operation Level 1 training in July 2012 at the Garden City Community Ammonia Program.

7) Failure to certify 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 in Section 112(r)(7) of the Act, and 40 C.F.R. §68.79(a).

At the time of EPA's inspection on February 17, 2012, there was no evidence that a compliance audit was ever done at this facility. The respondent has since submitted documentation of a compliance audit done on March 12, 2012,

8) Failure to properly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies had been corrected as required in Section 112(r)(7) of the Act, and 40 C.F.R. §68.79(d).

The respondent has submitted documentation of a compliance audit done on March 12, 2012. However, there is no tracking set up to identify when the recommendations will be addressed

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, and other factors as justice may require, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of **\$7,440.00**.

This settlement is subject to the following terms and conditions:

The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, 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 attorney's fees and costs, if any. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the violations listed above and have sent an **Online Payment through the Department of Treasury: WWW.PAY.GOV** (Enter SFO 1.1 in search field. Open form and complete required fields) or **alternatively send a cashier's check or certified check** (payable to the Treasurer, United States of America) in the amount of **\$7,440.00** in payment of the full penalty amount to the following address:

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

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The check or online payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment going to the Cincinnati Finance Center.

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

Angie Proboszcz (SFD-9-3)
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

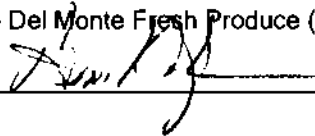
Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 30 days of the date of Respondent's receipt of the proposed ESA, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT – Del Monte Fresh Produce (Southwest), Inc. *AL*

Signature: 

Date: 7/30/2012

Name (print): ~~Scott Tolofson~~ Bruce A. Jordan

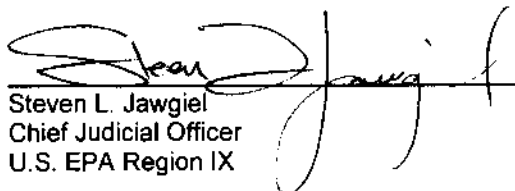
Title (print): ~~Operations Manager~~ SVP, General Counsel & Secretary

FOR COMPLAINANT:

for 
Jane Diamond
Superfund Director
U.S. EPA Region IX

Date: 29 August 2012

It is hereby ORDERED that this ESA be entered and Respondent pays the above penalty.


Steven L. Jawgiel
Chief Judicial Officer
U.S. EPA Region IX

Date: 09/07/12

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of DEL MONTE FRESH PRODUCE (Docket #: CAA(112r)-09-2012-0012) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:


A copy was mailed via CERTIFIED MAIL to:

Mr. Bruce A. Jordan
SVP, General Counsel and Secretary
241 Sevilla Avenue
Coral Garden, FL 33134

CERTIFIED MAIL NUMBER: 7011 0470 0002 9197 7364

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

Thanne Cox, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

Date 9/20/12



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 9
75 Hawthorne Street, San Francisco, CA 94105

CERTIFIED MAIL NO: 7011 0470 0002 9197 7364
Return Receipt Requested

Mr. Bruce A. Jordan
SVP, General Counsel and Secretary
241 Sevilla Avenue
Coral Gables, FL 33134

Del Monte Fresh Produce Company

Re: Del Monte Fresh Produce (Southwest) Inc.
EPA Facility ID # 1000 0004 8281

Dear Mr. Jordan,

This letter transmits a copy of the fully executed Expedited Settlement Agreement that resolves the alleged violations of Clean Air Act (CAA) Section 112(r)(7) at Del Monte Fresh Produce (Southwest), Inc., 14550 W. Estrella, Goodyear, AZ 85338. The violations are for failure to:

1) Review and update the RMP and submit it to EPA by the five year anniversary date of **June 02, 2011**, as required by Section 112(r)(7) of the Clean Air Act (the Act), and 40 C.F.R. §68.190(b)(1).

The facility submitted an updated RMP to EPA on February 15, 2012, which was 8 months and two weeks overdue.

2) Update and revalidate the Process Hazard Analysis (PHA) every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.67(f).

The facility's last PHA was performed in April 2006. An update/revalidation of the PHA should have been performed by April 2011.

3) Establish a system to promptly address the team's PHA findings and recommendations; assure that the recommendations are resolved in a timely manner and documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate 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 Section 112(r)(7) of the Act, and 40 C.F.R. §68.67(e).

Several of the findings identified in the facility's April 2006 PHA report were still unresolved at the time of EPA's inspection on February 17, 2012. The facility provided documentation to EPA on March 30, 2012 indicating that most of these findings have since been corrected or are being budgeted for correction/implementation.

4) Develop and implement written operating procedures or steps for conducting activities

associated with each covered process consistent with the safety information as required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.69(a).

At the time of EPA's inspection on February 17, 2012, the facility did not have a written operating procedure. The facility was using Operation and Maintenance (O&M) procedures supplied by the manufacturer of the refrigeration equipment. On March 17, 2012, the facility submitted a newly created Standard Operating Procedure (SOP) in response to EPA's request for this document.

5) Address temporary and emergency operations in the SOP as required by Section 112(r)(7) of the Act, 40 C.F.R. §68.69((a)(1)(iii), and 40 C.F.R. §68.69((a)(1)(v).

The facility submitted a newly created Standard Operating Procedure (SOP) in their March 17, 2012 response to EPA's request for documents. However, this SOP does not address temporary or emergency operations. They are listed in the index but nothing pertaining to emergency or temporary operations is in the body of the SOP.

6) See that each employee involved in operating a process, and each employee before being involved in a newly assigned process, is initially trained in an overview of the process and in the operating procedures as required by required by Section 112(r)(7) of the Act, and 40 C.F.R. §68.71(a)(1).

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7) Certify 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 in Section 112(r)(7) of the Act, and 40 C.F.R. §68.79(a).

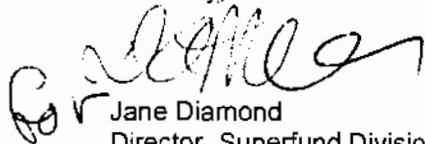
At the time of EPA's inspection on February 17, 2012, there was no evidence that a compliance audit was ever done at this facility. The facility has since submitted documentation of a compliance audit done on March 12, 2012.

8) Properly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies had been corrected as required in Section 112(r)(7) of the Act, and 40 C.F.R. §68.79(d).

The facility has submitted documentation of a compliance audit done on March 12, 2012. However, there is no tracking set up to identify when the recommendations will be addressed.

Thank you for your prompt attention to this matter. If you have any questions or need additional information about the CAA Section 112(r)(7) requirements, please feel free to contact Angie Proboszcz of my staff at (415) 972-3077.

Sincerely,



Jane Diamond
Director, Superfund Division

Enclosures