



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

FILED

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

DOCKET NO: [REDACTED] CAA(112r)-09-2011-0014
This ESA is issued to: Fresh & Easy Neighborhood Market Inc.
2120 Park Place, Suite 200, El Segundo, CA
For: Violation of Section 112(r)(7) of the Clean Air Act.
At: Fresh & Easy Campus Produce, 1730 Eastridge Ave., Riverside, CA 92507

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 by Hasa, 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). On June 21, 2011, 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

- I. Respondent was required to annually certify that operating procedures for its ammonia refrigeration system for the stationary source located at 1730 Eastridge Ave., Riverside, CA 92507 (the "Facility") are current and accurate, as required by Section 112(r)(7) of the Act and 40 C.F.R. § 68.69(c). The applicable operating procedures at the Facility were initially adopted in 2007 but had not been certified as required until April 2011, in violation of Section 112(r)(7) of the Act and 40 C.F.R. § 68.69(c).
- II. Respondent was required to establish and implement written procedures to maintain the on-going integrity of process equipment at the Facility, as required by Section 112(r)(7) of the Act and 40 C.F.R. § 68.73(b). Respondent did not develop written mechanical integrity procedures until March 2011, in violation of Section 112(r)(7) of the Act and 40 C.F.R. § 68.73(b).
- III. Respondent was required to ensure that the frequency of inspections and tests of process equipment at the Facility are consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience, as required by Section 112(r)(7) of the Act and 40 C.F.R. § 68.73(d)(3). Respondent did not maintain written documentation that test/inspection frequencies were consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience until March 2011, in violation of Section 112(r)(7) of the Act and 40 C.F.R. § 68.73(d)(3).
- IV. Respondent was required to document each inspection and test that has been performed on process equipment at the Facility, as required by Section 112(r)(7) of the Act and 40 C.F.R. § 68.73(d)(4). Such documentation is required to identify 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. At the time of a February 4, 2011 inspection of the Facility, Respondent had no records indicating which ammonia sensor electrochemical cells had been replaced during the Facility's December 2010 maintenance on same, in violation of Section 112(r)(7) of the Act and 40 C.F.R. § 68.73(d)(4). EPA notes that this documentation has subsequently been provided by Respondent.
- V. Respondent was required to certify that it has evaluated its compliance with the applicable regulatory requirements at least every three years to verify that its procedures and practices at the Facility are adequate and are being followed, as required by Section 112(r)(7) of the Act and 40 C.F.R. § 68.79(a). The facility conducted such a compliance audit in August 2007, thus the subsequent audit was to have

been performed by August 2010. However, Respondent did not conduct the required compliance audit at the Facility until March 23, 2011, in violation of Section 112(r)(7) of the Act and 40 C.F.R. §§68.79(a).

- VI. Respondent was required to submit a correction to its risk management plan (RMP) for the Facility within thirty days of a change to the Facility's emergency contact information, as required by Section 112(r)(7) of the Act and 40 C.F.R. § 68.195(b). The Facility's previously listed emergency contact point of contact left the Facility with its sale to Respondent in July 2010. The emergency contact information was thus required to have been corrected by August 2010 but was not, in violation of Section 112(r)(7) of the Act and 40 C.F.R. § 68.195(b). EPA notes that Respondent submitted a revised RMP on April 12, 2011 to, among other things, include accurate emergency contact information.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history and previous penalties assessed, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, economic benefit, and other factors as justice may require, and upon consideration of the entire record, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of **\$6,700.00**.

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 has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of **\$6,700.00** 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

Or, Respondent has the option to do an Online Payment through the Department of Treasury: WWW.PAY.GOV. (Enter SFO 1.1 in search field. Open form and complete required fields).

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:

Jeremy Johnstone (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 - Fresh & Easy Neighborhood Market Inc.

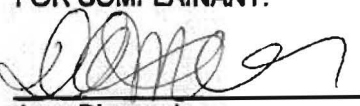
Signature: 

Date: 8/5/11

Name (print): PAUL DEVINS

Title (print): OPERATIONS MANAGER

FOR COMPLAINANT:

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

Date: 8-10-11

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


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

Date: 08/11/11

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Expedited Settlement Agreement (**Docket #: CAA(112r)-09-2011-0010**) against **Fresh & Easy Neighborhood Markets**, 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. Tim Mason, CEO
Fresh & Easy Neighborhood Market Inc
2120 Park Place, Ste 200
El Segundo, CA 90245

CERTIFIED MAIL NUMBER: 7008-1830-0002-6279-3994

An 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 8/16/11



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

CERTIFIED MAIL NO.: 7008 1830 0002 6279 3994
RETURN RECEIPT REQUESTED

In Reply Refer to:
Fresh & Easy Campus Produce, Riverside, CA

AUG 16 2011

Mr. Tim Mason, CEO
Fresh & Easy Neighborhood Market Inc.
2120 Park Pl., Ste 200
El Segundo, CA 90245

Re: Fresh & Easy Campus Produce, Riverside, CA
RMP Facility ID#: 1000 0019 9965

Dear Mr. Mason:

This letter transmits copies of the fully executed Expedited Settlement Agreements that resolve the alleged violations of Clean Air Act Section 112(r)(7) by Fresh & Easy Neighborhood Market Inc. at the Campus Produce facility located at 1730 Eastridge Ave. in Riverside, CA. The violations involve Fresh & Easy's failures to fully implement the facility's Risk Management Plan as required by 40 CFR Part 68.

Thank you for your prompt attention to this matter. If you have any questions or need additional information about the Clean Air Act Section 112(r)(7) requirements, please feel free to contact Jeremy Johnstone of my staff at (415) 972-3499.

Sincerely,


For Jane Diamond
Director, Superfund Division

Enclosures

cc (w/ enclosures):

J. Johnstone, EPA Region IX
T. Cox, EPA Region IX