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EPA--REGION 10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	
BORTON & SONS, INC.)	Docket No. CAA-10-2008-0104
)	
)	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 Borton & Sons, 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 \$270,000 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), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes final.

2.2. 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. EPA'S ALLEGATIONS

3.1. Respondent is a company incorporated in the state of Washington.

3.2. Respondent is the owner and operator of a cold storage warehouse in Yakima, Washington ("facility").

3.3. Respondent's facility is a "stationary source" as that term is defined under 40 C.F.R. § 68.3.

3.4. Anhydrous ammonia is a "regulated substance" under Section 112(r)(3) of the CAA, with a threshold quantity of 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.5. At the facility, Respondent operates a process that involves anhydrous ammonia above the 10,000-pound threshold level.

3.6. The process referenced in paragraph 3.5 is categorized as Program 3, as that program level is defined in 40 C.F.R. § 68.10(d).

3.7. 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 program 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.

3.8. Respondent is the owner and/or operator of a stationary source at which anhydrous ammonia is present above the 10,000-pound threshold level in a process categorized as Program 3.

3.9. Based on an EPA inspection of the facility on June 22, 2006, and follow-up information provided by Respondent, EPA alleges that Respondent has committed the following violations from at least June 21, 2004 through June 30, 2006:

MANAGEMENT

- 1) 40 C.F.R. § 68.15(a) – Failure to develop a management system to oversee the implementation of the risk management program elements.
- 2) 40 C.F.R. § 68.15(b) – Failure to assign a qualified person or position that has overall responsibility for the development, implementation, and integration of the risk management program elements.
- 3) 40 C.F.R. § 68.15(c) – Failure to document the names and positions of other persons responsible for implementing individual requirements of the risk

management program and define the lines of authority through an organization chart or similar document.

HAZARD ASSESSMENT

- 4) 40 C.F.R. § 68.28(e)(2) – Failure to consider and document the failure scenarios identified under the process hazard analysis described in 40 C.F.R. § 68.67.
- 5) 40 C.F.R. § 68.36(b) – Failure to complete a revised analysis and submit a revised risk management plan (RMP) within six months of a change in processes due to the installation of the second covered process.
- 6) 40 C.F.R. § 68.39(a) – Failure to maintain the following records on the offsite consequences analyses for worst-case scenarios: a description of the vessel or pipeline and substance selected, assumptions and parameters used, the rationale for selection, and the anticipated effect of the administrative controls and passive mitigation on the release quantity and rate.
- 7) 40 C.F.R. § 68.39(b) – Failure to maintain the following records on the offsite consequences analyses for the alternative release scenarios: a description of the scenarios identified, assumptions and parameters used, the rationale for the selection of the specific scenarios chosen, and the anticipated effect of the administrative controls and mitigation on the release quantity and rate.

PROCESS SAFETY INFORMATION

- 8) 40 C.F.R. § 68.65(c)(1)(i, ii, iv, v) – Failure to include in the compilation of

written safety information required by 40 C.F.R. § 68.65(a), information pertaining to the technology of the process including: (i) a block flow diagram or simplified process flow diagram (block flow diagram is only available for the 2004 addition); (ii) process chemistry; (iv) safe upper and lower limits for such items as temperatures, pressures, flows, or compositions; and (v) an evaluation of the consequences of deviations.

- 9) 40 C.F.R. § 68.65(d)(1)(i, iv-viii) – Failure to include in the compilation of written safety information required by 40 C.F.R. § 68.65(a), information pertaining to the equipment in the process including: (i) materials of construction; (iv) relief system design and design basis; (v) ventilation system design; (vi) design codes and standards employed; (vii) material and energy balances for processes built after June 21, 1999; and (viii) safety systems (e.g., interlocks, detection, or suppression systems).
- 10) 40 C.F.R. § 68.65(d)(2) – Failure to document that the equipment referenced above complies with recognized and generally accepted good engineering practices.
- 11) 40 C.F.R. § 68.65(d)(3) – Failure to determine and document that existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use is designed, maintained, inspected, tested, and operating in a safe manner.

PROCESS HAZARD ANALYSIS

- 12) 40 C.F.R. § 68.67(a) – Failure to perform an initial process hazard analysis (PHA) that identified, evaluated, and controlled the hazards involved in the process. Failure to identify and document the priority order for conducting the PHA based on an appropriate rationale.
- 13) 40 C.F.R. § 68.67(b)(1-7) – Failure to use one or more of the following technologies to determine and evaluate the hazards of the process being analyzed: (1) What-if; (2) Checklist; (3) What-if/Checklist; (4) Hazard and Operability Study (HAZOP); (5) Failure Mode and Effects Analysis (FMEA); (6) Fault Tree Analysis; or (7) an appropriate equivalent methodology.
- 14) 40 C.F.R. § 68.67(c)(1-7) – Failure to perform a PHA that addresses: (1) the hazards of the process; (2) identification of any previous incident that had a likely potential for catastrophic consequences; (3) engineering and administrative controls applicable to the hazards and their interrelationships; (4) consequences of failure of engineering and administrative controls; (5) stationary source siting; (6) human factors; and (7) a qualitative evaluation of a range of the possible safety and health effects of failure of controls.
- 15) 40 C.F.R. § 68.67(d) – Failure to assure that the PHA was performed by a team with expertise in engineering and process operations and other appropriate personnel.
- 16) 40 C.F.R. § 68.67(e) – Failure to establish a system to promptly address the team's findings and recommendations; assure that the recommendations are

resolved in a timely manner and are 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.

- 17) 40 C.F.R. § 68.67(f) – Failure to document whether the PHA had been updated and revalidated by a team every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process.
- 18) 40 C.F.R. § 68.67(g) – Failure to retain all PHAs and updates or revalidations for the process covered, as well as the resolution of recommendations for the life of the process.

OPERATING PROCEDURES

- 19) 40 C.F.R. § 68.69(a)(1)(i-vii) – Failure to develop and implement written operating procedures that provide clear instructions for safely conducting activities associated with each covered process consistent with the process safety information. Failure to have written operating procedures that address the steps for each operating phase including: (i) initial startup; (ii) normal operations; (iii) temporary operations; (iv) emergency shutdown including the conditions under which emergency shutdown is required and assignment of shutdown responsibilities; (v) emergency operations; (vi) normal shutdown; and (vii) startup following a turnaround, or after an emergency shutdown.
- 20) 40 C.F.R. § 68.69(a)(2)(i-ii) – Failure to have written operating procedures that

address operating limits including: (i) consequences of deviations; and (ii) the steps required to correct or avoid deviation.

- 21) 40 C.F.R. § 68.69(a)(3)(i-v) – Failure to have written operating procedures that address safety and health considerations including: (i) properties of, and hazards presented by, the chemicals used in the process; (ii) precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment; (iii) control measures to be taken if physical contact or airborne exposure occurs; (iv) quality control for raw materials and control of hazardous chemical inventory levels; and (v) any special or unique hazards.
- 22) 40 C.F.R. § 68.69(a)(4) – Failure to document process safety systems and their functions.
- 23) 40 C.F.R. § 68.69(b) – Failure to make operating procedures readily accessible to employees who are involved in the process.
- 24) 40 C.F.R. § 68.69(c) – Failure to document that the owner or operator certified annually that the operating procedures are current and accurate and have been reviewed as often as necessary.
- 25) 40 C.F.R. § 68.69(d) – Failure to document that the owner and operator developed and implemented safe work practices to provide for the control of hazards during specific operations such as lockout/tagout.

OPERATOR TRAINING

- 26) 40 C.F.R. § 68.71(a)(1) – Failure to document that each employee involved in operating a process, and each employee, before being involved in operating a

newly assigned process, has been initially trained in an overview of the process and in the operating procedures and that the initial training included emphasis on the safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

- 27) 40 C.F.R. § 68.71(a)(2) – Failure to certify in lieu of initial training for those employees already involved in operating a process on June 21, 1999, that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.
- 28) 40 C.F.R. § 68.71(b) – Failure to provide refresher training at least every three years, or more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.

MECHANICAL INTEGRITY

- 29) 40 C.F.R. § 68.73(b) – Failure to establish and implement written procedures to maintain the on-going integrity of the process equipment listed in 40 C.F.R. § 68.73(a).
- 30) 40 C.F.R. § 68.73(c) – Failure to train each employee involved in maintaining the on-going integrity of the process equipment in the overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

MANAGEMENT OF CHANGE

- 31) 40 C.F.R. § 68.75(a) – Failure to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures,

and changes to stationary sources that affect a covered process.

- 32) 40 C.F.R. § 68.75(b)(1-5) – Failure to establish and implement written procedures regarding management of change that assure that the following considerations are/will be addressed prior to any change: (1) the technical basis for the proposed change; (2) impact of the change on safety and health; (3) modifications to operating procedures; (4) necessary time period for the change; and (5) authorization requirements for the proposed change.
- 33) 40 C.F.R. § 68.75(c) – Failure to assure that employees involved in operating a process, and maintenance and contract employees whose job tasks would be affected by a change in the process, were informed of, and trained in, the change prior to start-up of the process or affected parts of the process.
- 34) 40 C.F.R. § 68.75(d) – Failure to update the process safety information required by 40 C.F.R. § 68.65 after a change to process chemicals, technology, equipment, and procedures, or a change to the stationary source that affects a covered process.
- 35) 40 C.F.R. § 68.75(e) – Failure to update the operating procedures or practices required by 40 C.F.R. § 68.69 after a change to the covered process.

PRE-STARTUP SAFETY REVIEW

- 36) 40 C.F.R. § 68.77(a) – Failure to document that the owner or operator performed a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.
- 37) 40 C.F.R. § 68.77(b)(1)-(4) – Failure to conduct a pre-startup safety review prior

to the introduction of the regulated substance to the process to confirm that: 1) construction and equipment was in accordance with the design specifications; 2) safety, operating, maintenance, and emergency procedures were in place and were adequate; 3) a process hazard analysis was performed and recommendations resolved or implemented prior to startup; and modified stationary sources met the requirements contained in the management of change regulation at 40 C.F.R. § 68.75; and 4) training of each employee involved in operating a process was completed.

COMPLIANCE AUDIT

- 38) 40 C.F.R. § 68.79(a) - Failure to certify that at least every three years, compliance audits were conducted that evaluate compliance with the provisions of the prevention program and verify that the developed procedures and practices are adequate and being followed.
- 39) 40 C.F.R. § 68.79(e) – Failure to retain the two most recent compliance reports.

EMPLOYEE PARTICIPATION

- 40) 40 C.F.R. § 68.83(a) – Failure to develop a written plan of action regarding the implementation of the employee participation requirements.
- 41) 40 C.F.R. § 68.83(b) – Failure to consult 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 the chemical accident prevention rule.

- 42) 40 C.F.R. § 68.83(c) – Failure to provide employees and their representatives access to process hazards analyses and to all other information required to be developed under the chemical accident prevention rule.

HOT WORK PERMIT

- 43) 40 C.F.R. § 68.85(a) – Failure to issue hot work permits for each hot work operation conducted on or near a covered process.
- 44) 40 C.F.R. § 68.85(b) – Failure to document that the fire prevention and protection requirements in 29 C.F.R. § 1910.252(a) have been implemented prior to beginning the hot work operations.

CONTRACTORS

- 45) 40 C.F.R. § 68.87(1) – Failure to obtain and evaluate information regarding the contract owner or operator's safety performance and programs when selecting a contractor.
- 46) 40 C.F.R. § 68.87(2) – Failure to inform a contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.
- 47) 40 C.F.R. § 68.87(3) – Failure to explain to the contract owner or operator the applicable provision of the emergency response or the emergency action plan.
- 48) 40 C.F.R. § 68.87(4) – Failure to develop and implement safe work practices consistent with 40 C.F.R. § 68.69(d), and to control the entrance, presence, and the exit of the contract owner or operator and contract employees, in the covered

process areas.

EMERGENCY RESPONSE

- 49) 40 C.F.R. § 68.90(b)(1) - Failure to document whether the facility is included in the community emergency response plan developed under 42 U.S.C. § 110003.

RISK MANAGEMENT PLAN

- 50) 40 C.F.R. § 68.190(b)(4) – Failure to revise and update the submitted risk management plan by the date on which a regulated substance is first present above a threshold quantity in a new process.
- 51) 40 C.F.R. § 68.190(b)(5) – Failure to revise and update the submitted risk management plan within six months of a change requiring a revised PHA or hazard review.

IV. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

- 4.1. Respondent admits the jurisdictional allegations contained in Part I, above.
- 4.2. Respondent neither admits nor denies the specific factual allegations in Part III, above.
- 4.3. 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 violations as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violations (in addition to such other factors as justice may require), EPA and Respondent agree that an appropriate penalty to settle this action is \$16,746.

4.4. Respondent consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

4.5. 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
PO 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 in accordance with instructions provided by EPA.

4.6. Respondent shall serve photocopies of the check or documentation of wire transfer on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101-3140

Office of Compliance and Enforcement
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop ECL-116
Seattle, Washington 98101-3140
Attn: Calvin Terada

4.7. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under the CAA. In any collection

action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, then pursuant to Section 113(d)(5), 42 U.S.C. § 7413(d)(5), Respondent shall pay the following amounts:

a. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the date the penalty was due from Respondent; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the date a conformed copy of this CAFO is mailed to Respondent.

b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay (in addition to any assessed penalty and interest) attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to ten percent (10%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. Respondent shall complete a supplemental environmental project (SEP), which the parties agree is intended to secure significant environmental benefits, pursuant to the following conditions:

a. Within 12 months of the effective date of this CAFO, Respondent shall spend at least \$53,544 to remove the Rubatex foam rubber insulation from the steel pipes which transport anhydrous ammonia to its refrigerated storage facilities in Respondent's 1991 building, replace the removed insulation with an insulation system that provides a better fit and more reliable moisture seal and replace any damaged, pitted or rusted pipes. This project will reduce the risk of release of anhydrous ammonia from Respondent's pipes in its 1991 building.

b. Further details concerning the SEP referenced in subparagraph (a) above are contained in Attachment A to this CAFO.

4.10. Respondent shall submit a SEP Completion Report to EPA no later than thirty (30) days following completion of the SEP. Failure by Respondent to timely submit a complete and accurate SEP Completion Report shall be deemed a violation of this CAFO and shall subject Respondent to stipulated penalties pursuant to paragraph 4.12 of this CAFO. The SEP Completion Report shall contain the following information:

a. A detailed description of the SEP as implemented.

b. An itemization of costs incurred by Respondent in implementing the SEP (documented by purchase orders, receipts, canceled checks, etc.);
and

c. Certification in the form of a signed declaration by Respondent that the SEP has been fully implemented pursuant to this CAFO.

4.11. Following receipt of the SEP Completion Report described in the preceding paragraph, EPA will do one of the following:

a. Approve the SEP Completion Report;

b. Reject the SEP Completion Report, notify Respondent in writing of the deficiencies in the Report with reasonable specificity, and grant Respondent thirty (30) days in which to correct any deficiencies.

If EPA elects to exercise option (b) above, EPA shall allow Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 4.12 of this CAFO.

4.12. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP, Respondent shall be liable for stipulated penalties according to the following provisions:

a. If the SEP has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$42,835.

b. If the SEP is satisfactorily completed, but Respondent spent less than \$48,190, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between \$48,190 and the amount spent to complete the SEP up to a maximum of \$42,835.

c. If the SEP is satisfactorily completed, and Respondent spent at least \$48,190, Respondent shall not be liable for any stipulated penalty.

d. If the SEP Completion Report required by paragraph 4.10 of this CAFO is not timely submitted, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report is due until it is submitted. Such

stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue until the report is submitted, provided that the total stipulated penalties for failure to submit the report shall not exceed \$42,835.

4.13. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be made by EPA.

4.14. Respondent shall pay stipulated penalties due pursuant to the terms of this CAFO within fifteen (15) days of receipt of a written demand by EPA for payment of such penalties. Stipulated penalties shall be paid in accordance with the provisions of paragraphs 4.5 and 4.6 of this CAFO. Interest and late charges shall accrue as described in paragraph 4.8 of this CAFO.

4.15. Respondent will grant access, as allowed by law and regulation, for EPA to inspect its site in order to confirm that the SEP has been implemented in conformity with the representations herein.

4.16. All reports and submissions required by this CAFO shall be made to:

U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, Mail Stop ECL-116
Seattle, Washington 98101-3140
Attn: Calvin Terada

4.17. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures in performing this SEP.

4.18. 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 settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act."

4.19. The following provisions address excusable delay:

a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify EPA in writing not more than 10 days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this CAFO based on such incident.

b. If the parties agree that the delay or anticipated delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance may be extended for a period equal to the delay resulting from such circumstances, or other such reasonable time as the parties may agree. In such event, the parties shall stipulate to such extension of time.

c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

d. The burden of proving that any delay is caused by circumstances entirely beyond the reasonable control of Respondent shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

4.20. Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant, or injunctive relief in this or 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 SEP.

4.21. The penalty described in paragraph 4.3 of this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purpose of federal taxes.

4.22. Except as described in paragraph 4.8 of this CAFO, each party shall bear its own costs in bringing or defending this action.

4.23. Respondent expressly waives any right to contest the allegations and to appeal the Final Order contained herein and, without admitting or denying the factual allegations contained in the Final Order, consents to the terms of this CAFO and the Final Order.

4.24. 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.

4.25. Pursuant to 40 C.F.R. § 22.18(c), full payment of the penalty assessed in this CAFO resolves Respondent's liability for federal civil penalties for the violations and facts alleged in Part III of this CAFO.

STIPULATED AND AGREED:

BORTON & SONS, INC.

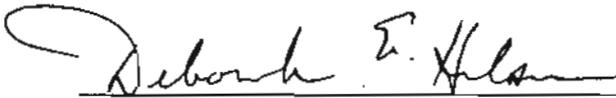


MARK E. FICKES
Attorney at Law

Dated:

8/18/08

U.S. ENVIRONMENTAL PROTECTION AGENCY



DEBORAH E. HILSMAN
Assistant Regional Counsel

Dated:

8/25/08

V. FINAL ORDER

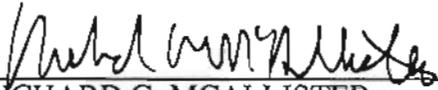
5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations and facts 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 29th day of August, 2008



RICHARD G. MCALLISTER
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

ATTACHMENT A

SEP DESCRIPTION

Rubatex Insulation Replacement Project

Borton & Sons, Inc. (Borton) will remove the Rubatex foam rubber insulation from steel pipes in its 1991 Building that transport anhydrous ammonia to its refrigerated storage facilities.

Following the insulation removal and inspection of piping, Borton will replace the removed insulation with an insulation system that provides a better fit and more reliable moisture seal than the Rubatex foam rubber insulation.

Borton will replace any damaged, pitted or rusted pipes caused by the use of the Rubatex insulation prior to installing the new insulation.

Borton will complete this Project within 12 months of the entry of the Consent Agreement and Final Order.

The estimated cost of insulation removal, pipe inspection, and insulation replacement in the 1991 Building is about \$53,673 without considering the cost of any steel pipe replacement that may be required.

A more detailed description of the scope of project and estimated project cost is attached.

**Proposed Supplemental Environmental Project (SEP)
Rubatex Insulation Replacement - 1991 Complex
Scope of Project and Estimated Project Cost**

Location	Activity	Piping/Vessels	Responsibility	Estimated Cost
1991 Building Hall Mains	Remove Old Insulation, Treat and Paint Pipes	Suction Main Only	Borton & Sons	415.80
1991 Building Hall Mains	Install New Insulation	Suction Main Only	McCown Crafted Inc.	3,620.00
				4,035.80
1991 Building Room 24	Remove Old Insulation, Treat and Paint Pipes	Suction & Liquid Line to & Including Surge Drums	Borton & Sons	277.20
1991 Building Room 24	Install New Insulation	Suction & Liquid Line to & Including Surge Drums	McCown Crafted Inc.	2,976.00
				3,253.20
1991 Building Room 25	Remove Old Insulation, Treat and Paint Pipes	Suction & Liquid Line to & Including Surge Drums	Borton & Sons	450.45
1991 Building Room 25	Install New Insulation	Suction & Liquid Line to & Including Surge Drums	McCown Crafted Inc.	4,522.00
				4,972.45
1991 Building Rooms 26, 27, and 28	Remove Old Insulation, Treat and Paint Pipes	Suction & Liquid Line to & Including Surge Drums	Borton & Sons	1,541.93
1991 Building Rooms 26, 27, and 28	Install New Insulation	Suction & Liquid Line to & Including Surge Drums	McCown Crafted Inc.	15,417.00
				16,958.93
1991 Building Rooms 29, 30, and 31	Remove Old Insulation, Treat and Paint Pipes	Suction & Liquid Line to & Including Surge Drums	Borton & Sons	1,524.60
1991 Building Rooms 29, 30, and 31	Install New Insulation	Suction & Liquid Line to & Including Surge Drums	McCown Crafted Inc.	18,807.00
				20,331.60
Supervisory Labor			Borton & Sons	1,530.90
Materials			Borton & Sons	2,590.50
Total Borton Costs			Borton & Sons	8,331.38
Total McCown Costs			McCown Crafted Inc.	45,342.00
Total Estimated Project Costs (Before Pipe Repair/Replacement)				53,673.38
Minimum Cost of SEP				(53,544.00)
Project Cost in Excess of Required Outlay (Before Pipe Repair/Replacement)				129.38

Proposed Supplemental Environmental Project (SEP)
 Rubatex Insulation Replacement - 1991 Complex
 Borton Costs Incurred

Location	Activity	Units	Number of Units	\$ Per Unit	Estimated Cost
1991 Building Hall Mains	Strip Insulation Inside Room	hours	7.0	\$ 9.90	\$ 69.30
1991 Building Hall Mains	Change Orientation of Defrost Piping	hours	14.0	\$ 9.90	\$ 138.60
1991 Building Hall Mains	Clean, Prep, Paint Pipe	hours	21.0	\$ 9.90	\$ 207.90
1991 Building Room 24	Strip Insulation Inside Room	hours		\$ 9.90	\$
1991 Building Room 24	Strip Insulation Attic	hours	3.5	\$ 9.90	\$ 34.65
1991 Building Room 24	Create Ceiling Access	hours	10.5	\$ 9.90	\$ 103.95
1991 Building Room 24	Clean, Prep, Paint Pipe	hours	14.0	\$ 9.90	\$ 138.60
1991 Building Room 25	Strip Insulation Inside Room	hours	3.5	\$ 9.90	\$ 34.65
1991 Building Room 25	Strip Insulation Attic	hours	3.5	\$ 9.90	\$ 34.65
1991 Building Room 25	Create Ceiling Access	hours	10.5	\$ 9.90	\$ 103.95
1991 Building Room 25	Clean, Prep, Paint Pipe	hours	28.0	\$ 9.90	\$ 277.20
1991 Building Rooms 26, 27, and 28	Strip Insulation Inside Room	hours	10.5	\$ 9.90	\$ 103.95
1991 Building Rooms 26, 27, and 28	Strip Insulation Attic	hours	10.5	\$ 9.90	\$ 103.95
1991 Building Rooms 26, 27, and 28	Create Ceiling Access	hours	31.5	\$ 9.90	\$ 311.85
1991 Building Rooms 26, 27, and 28	Clean, Prep, Paint Pipe	hours	103.3	\$ 9.90	\$ 1,022.18
1991 Building Rooms 29, 30, and 31	Strip Insulation Inside Room	hours	19.3	\$ 9.90	\$ 190.58
1991 Building Rooms 29, 30, and 31	Strip Insulation Attic	hours	15.8	\$ 9.90	\$ 155.93
1991 Building Rooms 29, 30, and 31	Create Ceiling Access	hours	31.5	\$ 9.90	\$ 311.85
1991 Building Rooms 29, 30, and 31	Clean, Prep, Paint Pipe	hours	87.5	\$ 9.90	\$ 866.25
Supervisory Labor			85.05	\$ 18.00	\$ 1,530.90
Materials - Rust Converter		gallons	15.0	\$ 83.60	\$ 1,254.00
Materials - Emulsifier/Neutralizer		gallons	15.0	\$ 40.70	\$ 610.50
Materials - Paint		gallons	15.0	\$ 48.40	\$ 726.00

TOTAL BORTON & SONS DIRECT COSTS INCURRED

\$ 8,331.38

Borton Fruit

LF and SF by Area

Piping and Vessels

	★ 91 Building	82 Building
Pipe Size	LF	LF
3/4"	66	
1"	237	42
1 1/4"		6
2"	90	
2 1/2"		
3"	385	298
4"	54	175
5"	3	72
6"	228	87
8"		
10"		
12"		
20" Surge Drums (LF)	90	
	1153	
Vessels (SF)		

82 Building Suction Main:

This is the suction main running along the catwalk. The price for the work is \$4,080.

82 Building Common 19 East and West Zones:

This is the price for each zone, from the main to the surge drum, including the float column, drop leg, and vapor and liquid lines to the coil connections. The surge drums in this building were covered with spray on foam insulation and are not included in our pricing. The price for the work is \$3,712 each zone.

82 Building Rooms 7, 9, and 10:

This is the price for each zone, from the main to the surge drum, including the float column, drop leg, and vapor and liquid lines to the coil connections inside the rooms. The surge drums in this building were covered with spray on foam insulation and are not included in our pricing. The price for the work is \$2,993 for each room.

82 Building Room 8:

The scope of work is the same as the previous item, except the piping inside the room to the coil connections was previously insulated with new insulation and jacketing. The price for this zone is \$2,337.



91 Building Hall Mains:

This is the suction main running in the hallway. The price for the work is \$3,620.



91 Building Rooms 29, 30, 31:

The work includes the suction and liquid lines in the hallway, running up into the attic space, following along the trusses all the way to the surge drums for these three rooms. It includes insulation of the surge drums, the float columns, the drop legs into the rooms, and the vapor and liquid lines to the coil connections. Access is required through the ceiling to access insulation of the vessel. The piping running through the trusses is to be accessed through the current ceiling hatches. The price for each zone is \$6,269.



91 Building Rooms 26, 27, 28:

The work is similar to the previous rooms, except access is closer. The ceiling plywood needs to be removed to access the surge drums. The price for each of these three zones is \$5,139.



91 Building Room 25:

The work is similar to the previous rooms. The price for Room 25 is \$4,522.



91 Building Room 24:

The work in the room at the coil connection is new and does not need to be replaced. The price for the remaining portion of this zone is \$2,976.

Rooms 5, 6, 6A:

The work includes the piping and vessels outdoors, plus the piping inside the rooms to the coil connections. The price for each room is \$3,356.

We have excluded lift rental in our pricing.

Please note the existing hangers supporting the piping were sized to support 3/4" rubber insulation. We recommend your replacing all possible hangers to be able to be positioned outside the new insulation, which is 1 1/2" thickness. Where this is not possible, we will make cut-outs around the existing hangers.

All of these budget prices are very realistic values for the scope of work. They are, however, priced on a Not to Exceed basis. We are very experienced in this type of work. On each of the items, the price will be less than the quoted amount. In addition, each work item is priced as an individual job, with the cost of shipping, start-up, and clean-up included. If you perform several items as one project, the prices will drop accordingly.

You may have many questions after reviewing this proposal. Please feel free to call and discuss any details.

We look forward to serving Borton Fruit as you upgrade the insulation in your facility and extend the life of the piping and vessels.

Thank you.

Craig McCown

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT** in **In the Matter of: Borton & Sons, Inc., DOCKET NO.: CAA-10-2008-0104** was filed with the Regional Hearing Clerk on August 29, 2008.

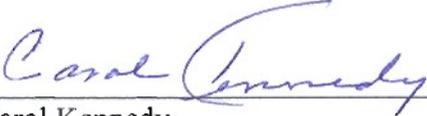
On August 29, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Deborah Hilsman, Esquire
US Environmental Protection Agency
Suite 900
1200 Sixth Avenue, ORC-158
Seattle, WA 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 on August 29, 2008, to:

Mark E. Ficker
Velikanje Halverson, PC
405 East Lincoln
PO Box 22550
Yakima, EA 98907

DATED this 29th day of August 2008.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10