

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

**** FILED ****
21 DEC 2020
U.S. EPA - REGION IX

IN THE MATTER OF:)
)
)
BC Systems, Inc.)
1341 Merrill Street)
Salinas, California)
)
BC Systems, Inc.)
6581 and 6490 Cattle Drive,)
Yuma, AZ)
)
Respondent.)
_____)

Docket No.
CAA(112r)- 09-2021-00 12

**CONSENT AGREEMENT
AND FINAL ORDER
40 C.F.R. §§ 22.13 and 22.18**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7413(a)(3)(A) and (d), Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”).
3. Respondent is BC Systems, Inc., (“Respondent”).
4. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA, and EPCRA. Delegation 7-6-A, dated August 4, 1994 (CAA); and Delegation 22-3-A, dated July 20, 2016 (EPCRA). The Regional Administrator, EPA Region IX, in turn, has re-delegated this

authority to the Director of the Enforcement and Compliance Assurance Division. Regional Delegation R9-7-6-A, dated February 11, 2013 (CAA); Regional Delegation R9-1290.16; and Regional Delegation R9-22-3-A, dated February 11, 2013 (EPCRA). On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division for Region IX is therefore delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

5. This Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and Section 312 of EPCRA, 42 U.S.C. § 11022 and its implementing regulations.

6. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CA/FO. Respondent agrees to comply with the terms of this CA/FO.

B. GENERAL ALLEGATIONS

7. Respondent owns and operates two fresh produce refrigeration and storage facility centers in Salinas, California, and Yuma, Arizona. The Salinas Facility is located at 1341 Merrill Street, in Salinas, California (the "Salinas Facility"), and the Yuma Facility is located at 6581 and 6490 Cattle Drive, Yuma Arizona (the "Yuma Facility") (jointly "Facilities"). Fresh produce is stored at the Facilities prior to shipment to distribution, some with the aid of ammonia refrigeration systems.

8. On September 11, 2017, and on March 7, 2018, EPA performed inspections of the Salinas Facility and Yuma Facility, respectively, pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and Sections 304-312 of EPCRA, 42 U.S.C. §§ 11004-12. Based upon the information

gathered during these inspections and subsequent investigations, EPA asserts that Respondent violated certain provisions of the CAA, and EPCRA.

9. EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. *See* 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

10. At all times relevant to this CA/FO, Respondent has been a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

11. At all times relevant to this CA/FO, the Facilities have been “stationary sources” 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). The Facilities are also “facilities” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

12. At all times referred to herein, Respondent was the “owner or operator” of the Facilities, as defined in Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

13. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413, and Section 302 of EPCRA, 42 U.S.C. § 11002.

CAA Section 112(r)

14. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity (“TQ”) must prepare and implement a risk management plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the stationary source in order to protect human health and the environment.

15. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each “regulated substance” at or above which a facility has such substance in one or more processes

shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as “regulated toxic substances,” the TQs are specified at 40 C.F.R. § 68.130, Table 1.

16. Ammonia (anhydrous) is a “regulated toxic substance” listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds. 40 C.F.R. § 68.130, Table 1.

17. At all times relevant to this CA/FO, Respondent has had 10,000 pounds or more of ammonia (anhydrous) in one or more processes at the Facilities.

EPCRA Section 312

18. Section 312 of EPCRA, 42 U.S.C. § 11022, requires the owner or operator of a facility which is required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, to submit an annual emergency and hazardous chemical inventory form (“inventory form”) containing information on hazardous chemicals present at the facility during the preceding calendar year above threshold levels established in 40 C.F.R. § 370.20(b).

19. Ammonia is an “hazardous chemical” as defined in Sections 311(e) and 312(c) of EPCRA, 42 U.S.C. §§ 11021(e) and 11022(c), with a threshold planning quantity of 500 pounds. 40 C.F.R. Part 355, App. A & B. At all times relevant to this CA/FO, Respondent exceeded 500 pounds or more of ammonia (anhydrous) in one or more processes at the Facilities and is required to submit an MSDS for anhydrous ammonia.

20. The inventory form must be submitted by March 1 of each year to the State Emergency Response Commission (“SERC”), the Local Emergency Planning Committee (“LEPC”), and the fire department with jurisdiction over the facility. 40 C.F.R. § 370.25.

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C. ALLEGED VIOLATIONS

21. Based on the facts above, EPA alleges that Respondent has violated Section 112(r)(7) of the CAA, Section 312 of EPCRA, and the codified rules of 40 C.F.R. Part 68 (Chemical Accident Prevention Provisions), as follows:

YUMA FACILITY

COUNT I

(Failure to Provide Estimated Maximum Daily Amount of Anhydrous Ammonia)

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

23. 40 C.F.R. 370.42(s)(6) requires owners and operators, to provide an estimate (in ranges) of the maximum amount of the hazardous chemical present at its facility on any single day during the preceding calendar year.

24. Based on information gathered during EPA's investigation, Respondent reported two different estimates as its maximum amount of anhydrous ammonia present at its Yuma Facility for a single calendar year. The quantity of anhydrous ammonia reported in the 2015 RMPs differ from the EPCRA § 312 Tier II inventory forms submitted to the Arizona Emergency Response Commission for 2015.

25. By failing to report the correct maximum amount of the anhydrous ammonia present at the Yuma Facility, Respondent violated EPCRA § 312, Tier II Inventory 40 C.F.R. § 370.42(s)(6), 42 U.S.C. § 11022.

COUNT II

(Failure to Precisely Describe Location of Hazardous Chemicals at Facility)

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

27. 40 C.F.R. § 370.42(s)(11) requires owners and operators to precisely describe the locations of hazardous chemicals at its Yuma Facility on its Tier II inventory forms.

28. EPA's review of the 2016 Tier II report Respondent submitted for the Yuma Facility described a portable refrigeration unit at the Yuma Facility, which was in fact located in San Luis, Mexico.

29. By listing a refrigeration unit containing anhydrous ammonia in its Tier II inventory form for the Yuma Facility when that unit was located at a separate facility in Mexico, Respondent violated EPCRA § 312, Tier II Inventory, 40 C.F.R. § 370.42(s)(11).

COUNT III

(Failure to Document Lines of Authority in Organizational Chart)

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

31. Owners and operators are required to assign qualified persons or positions that have the overall responsibility for the development, implementation, and integration of the elements of a risk management program. When responsibility for implementing individual requirements is not assigned to one of these persons or positions, 40 C.F.R. § 68.15(c) requires the names of positions of these other people to be documented and the lines of authority defined through an organizational chart or similar document.

32. The 2015 RMP submitted to EPA indicated the person and position responsible for implementing the RMP, but did not indicate the lines of authority in an organizational chart or other similar document to show and assign responsibility for implementing individual requirements of the RMP.

33. By failing to show the persons responsible for implementing the elements of its RMP in an organizational chart or similar document, Respondent has violated 40 C.F.R. § 68.15(c).

COUNT IV

(Failure to Comply with Process Safety Information Requirements)

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

35. 40 C.F.R. § 68.65(d)(2) requires owners and operators to document that process equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).

36. For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in use, 40 C.F.R. § 68.65(d)(3) requires owners or operators to determine and document that their equipment is designed, maintained, inspected, tested, and operated in a safe manner.

37. The American National Standards Institute (“ANSI”), the American Society of Mechanical Engineers (“ASME”), the National Fire Protection Association (“NFPA”), and the International Institute of Ammonia Refrigeration (“IIAR”) specify RAGAGEP for the ammonia refrigeration industry and are applicable standards for Respondent’s Facilities.

38. According to the above standards, Respondent has failed in several ways to ensure equipment at its Yuma Facility was maintained in a safe manner consistent with RAGAGEP. For example, in certain locations, the Yuma Facility lacked rust preventative paint on piping where EPA observed corrosion, and Respondent failed to properly label and tag some pressure relief valves, ammonia refrigeration piping, and doors entering hazardous areas, failed to install adequate fencing around the refrigeration system engine area, and failed to adequately protect electrical equipment from accidental contact, as required by respective industry standards described in ANSI/IIAR 2-2014, Section 5.14.5, IIAR Bulletin 109, Section 4.7.6, IIAR Bulletin 114, Sections 4.1.1 through 4.1.8.

39. By failing to ensure that process equipment complies with RAGAGEP, and by failing to maintain its Yuma Facility in a safe manner, Respondent violated 40 C.F.R. §§ 68.65(d)(2)-(3).

COUNT V

(Failure to Comply with Process Hazard Analysis Requirements)

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

41. 40 C.F.R. § 68.67 requires owners and operators to perform an initial process hazard analysis (“PHA”) for covered processes such as anhydrous ammonia. The PHA must include among other subjects, the hazards of the process, as well as engineering and administrative controls applicable to the hazards of the process.

42. The 2015 PHA submitted by Respondent failed to include anhydrous ammonia stored in mobile nurse tanks at the Yuma Facility during summer months. Nurse tanks store anhydrous ammonia in the summer months and are connected to the fixed ammonia process during facility operation such that they become part of the covered process. Therefore, the PHA fails to address hazards of the process of the nurse tanks, or engineering or administrative controls to protect against a release of ammonia from these tanks.

43. Further, the Respondent’s 2015 PHA shows inadequate and generic safeguards to protect against an ammonia release. As described in the PHA, such generic safeguards would not address specific hazards identified. The PHA therefore does not adequately address the hazards of the process, or engineering and administrative controls applicable to the hazards.

44. By failing to properly identify sufficient engineering and administrative controls in its PHA, and by failing to consider hazards of anhydrous ammonia in its process hazard analysis, Respondent has violated 40 C.F.R. §§ 68.67(c)(1) and (3).

COUNT VI

(Failure to Address Process Hazard Analysis findings)

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

46. 40 C.F.R. § 68.67(e) requires owners and operators to establish a system to promptly address findings and recommendations in their PHA, assure that the recommendations are resolved in a timely manner, and that any resolution is documented.

47. The Respondent's most recent PHA showed several corrective actions associated with recommendations at the Yuma Facility beyond their due dates. For example, on the date of EPA's inspection, Respondent had failed to develop standard operating procedures, a piping and instrument diagram and associated valve tagging.

48. By failing to ensure the recommendations as shown in its PHA were corrected in a timely manner, Respondent has violated 40 C.F.R. § 68.67(e).

COUNT VII

(Failure to Address Consequences of Deviation in Written Operating Procedures)

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

50. 40 C.F.R. § 68.69 requires owners and operators to develop and implement written operating procedures that provide clear instruction for safely conducting activities involved in each covered process at the facility. These procedures must address among other subjects, operating limits, including consequences of deviation, and steps required to correct or avoid deviations.

51. Respondent did not provide operating limits or consequences of deviation, and steps required to correct or avoid deviations in its written operating procedures for the Yuma Facility during EPA's inspection.

52. 40 C.F.R. § 68.69 also requires that the written operating procedures discussed above are reviewed as often as necessary to assure that they reflect current operating practice and requires owners and operators to certify annually that the operating procedures are current.

53. The Respondent's operating procedures at the Yuma Facility were not annually certified from 2013 through 2017.

54. By failing to address operating limits and consequences of deviation in its written operating procedures, and by failing to annually certify that its operating procedures were current, Respondent has violated 40 C.F.R §§ 69.69(a)(2) and (c).

COUNT VIII

(Failure to Comply with Mechanical Integrity Requirements)

55. 40 C.F.R. § 68.73 requires that written procedures are established to maintain the ongoing integrity of the process equipment; and that inspections and tests be performed on process equipment, that the inspection and testing procedures follow recognized and generally accepted good engineering practices, and that the frequency of inspections and tests of process equipment be consistent with applicable manufacturer's recommendations and good engineering practices. This section also requires owners and operators to document each inspection and test that has been performed on any process equipment.

56. The Yuma Facility had not developed written procedures for maintaining the ongoing integrity of the process equipment.

57. The Yuma Facility ammonia detectors had not been calibrated for more than two years prior to EPA's inspection. According to IIAR-2 (2014), Section 17.4.3, "where manufacturers' recommendations are not provided, ammonia detectors and alarms shall be tested at least annually."

58. By failing to establish procedures for maintaining the ongoing integrity of the process equipment, and to ensure that the frequency of inspections and tests completed on process equipment be consistent with applicable manufacturer's recommendations and good engineering practices, Respondent has violated 40 C.F.R. § 68.73(b) and (d)(3).

COUNT IX

(Failure to Comply with Compliance Audit Requirements)

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

60. 40 C.F.R. § 68.79(a) requires owners and operators to certify that they have evaluated their facility's compliance with the "Program 3 Prevention Program" at least every three years to verify that procedures and practices developed under the regulations are adequate and are being followed.

61. Respondent's November 2, 2017 Compliance Audit for the Yuma Facility was completed four years after the prior compliance audit conducted in October 2013, and therefore, the Respondent did not evaluate compliance on a three-year basis.

62. By failing to evaluate compliance every three years, Respondent has violated 40 C.F.R. § 68.79(a).

COUNT X

(Failure to Comply with Emergency Response Program Requirements)

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

64. 40 C.F.R. § 68.95(a) requires owners and operators to develop and implement an emergency response program for the purpose of protecting public health and the environment. The program must include an emergency response plan, which among other items, must include procedures for informing the public and local emergency response agencies about accidental releases.

65. EPA's review of the Yuma Facility's emergency response plan identified incorrect names and phone numbers for agencies, such as the Arizona State Emergency Response Commission, the Yuma County LEPC, and EPA Region 9 personnel.

66. 40 C.F.R. § 68.95(a) also requires that the emergency response plan be coordinated with the community emergency plan developed under 42 U.S.C. § 11003.

67. Respondent did not provide documents to EPA during its inspection of the Yuma Facility to verify planning and coordination with the local fire department, the local Hazardous Materials Action Team, or the LEPC, in violation of 40 C.F.R. § 68.95(c).

68. By failing to maintain proper contact information for local response agencies and failing to coordinate the emergency response plan with the community emergency response plan developed under 42 U.S.C. § 11003, Respondent has violated 40 C.F.R. §§ 68.95(a) and (c).

SALINAS FACILITY

COUNT XI

(Failure to Comply with Tier II Information Submission Requirements)

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

70. 40 C.F.R. § 370.42 requires owners and operators to ensure that submission of Tier II information, which provides the SERC, the LEPC and the public with specific information on the amounts and locations of hazardous chemicals present at covered facilities during the previous calendar year, is true, accurate, and complete. Further, for each hazardous chemical, such as anhydrous ammonia, owners or operators must provide an estimate of the maximum amount of the hazardous chemical present at the facility on any single day during the preceding year.

71. Respondent's submission of its hazardous materials inventory form for the Salinas Facility showed incorrect Tier II information. The Salinas Facility did not include four nurse tanks on site,

which are empty in the summer months and contain a combined total of approximately 12,000 pounds of ammonia during the winter months.

72. By failing to ensure its Tier II information was accurate and by failing to accurately provide an estimate of the maximum amount of anhydrous ammonia at the Salinas Facility, Respondent has violated EPCRA § 312(d)(2) and 40 C.F.R. §§ 370.42(a) and (s).

COUNT XII

(Failure to Comply with Worst-Case Release Scenario Analysis Requirements)

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

74. Under 40 C.F.R. § 68.25(a)(2)(i), owners and operators of stationary sources, where a regulated substance is present above a threshold quantity, must prepare a hazard assessment that assesses the potential effects of an accidental release of the regulated substance.

75. The hazard assessment above must include an evaluation of a “worst case accidental release.” Worst-case accidental release scenarios must estimate the greatest distance in any direction of an accidental release to a public receptor.

76. The Salinas Facility’s hazard assessment assumed the wrong physical state of ammonia in its distance-to-endpoint calculations for a worst-case release scenario, and the wrong coordinates for the facility. Using the wrong physical state of ammonia resulted in an endpoint distance that is shorter than would have been predicted if the correct physical state had been used.

77. Therefore, the Salinas Facility did not analyze the worst-case release scenario to create the greatest distance in any direction to an endpoint, in violation of 40 C.F.R. § 68.25(a)(2)(i).

COUNT XIII

(Failure to Comply with Process Safety Information Requirements)

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

79. Under 40 C.F.R. § 68.65(d)(1), owners and operators must complete a compilation of written process safety information before conducting any process hazard analysis. This information must include information pertaining to the equipment in the process, specifically the materials of construction.

80. In the Salinas Facility's written process safety information, the Respondent failed to document the materials of construction for process piping and pressure vessels in the refrigeration system.

81. By failing to describe materials of construction in its process safety information, Respondent has violated 40 C.F.R. § 68.65(d)(1)(i).

COUNT XIV

(Failure to Comply with Process Safety Information Requirements)

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

83. 40 C.F.R. § 68.65(d)(2) requires owners and operators to document that process equipment complies with RAGAGEP.

84. The Respondent failed to document that the process equipment at the Salinas Facility complied with RAGAGEP.

85. For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in use, 40 C.F.R. § 68.65(d)(3) requires owners or operators to determine and document that their equipment is designed, maintained, inspected, tested, and operated in a safe manner.

86. According to the ANSI, ASME, NFPA, and the IIAR, Respondent has failed in several ways to ensure equipment at its Salinas Facility was maintained in a safe manner. For instance, at the Salinas Facility, Respondent failed to properly label and tag some refrigeration piping, areas

indicating hazardous ammonia, isolation valves, engine room doors, high-pressure receivers, and ammonia nurse tanks. It also failed to properly place the emergency stop button, to maintain panic hardware on the gates to the refrigeration system engine area, and to support and protect some piping. The pressure relief valves on the nurse tanks were not connected to a header while indoors, and Respondent failed to ensure adequate barrier protection in hazardous areas.

87. By failing to ensure that process equipment complies with RAGAGEP, and by failing to maintain its Salinas Facility in a safe manner consistent with industry standards, Respondent violated 40 C.F.R. §§ 68.65(d)(2)-(3).

COUNT XV

(Failure to Comply with Operating Procedure Requirements)

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

89. Owners and operators under 40 C.F.R. § 68.69 must develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in its storage of anhydrous ammonia.

90. Examination of ammonia transfer hoses during EPA's inspection indicates Respondent is not implementing portions of the written operating procedures that provide information for safely conducting activities. Operating procedures at the Salinas Facility require operators to inspect ammonia hoses prior to use to avoid hose failure; however, EPA discovered ammonia hoses that had expired in 2014.

91. 40 C.F.R. § 68.69 also requires owners and operators to annually certify that all operating procedures are current and accurate.

92. The Salinas Facility had not annually certified that all operating procedures are current and accurate since April 2016.

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93. By failing to implement written operating procedures, and by failing to annually certify that the operating procedures are current and accurate, Respondent has violated 40 C.F.R. §§ 68.69(a) and (c).

COUNT XVI
(Failure to Comply with Training Requirements)

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

95. 40 C.F.R. § 68.71(c) requires owners and operators to ascertain whether each employee involved in operating a covered process such as anhydrous ammonia has received and understands the required training. The training must emphasize the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

96. Further, 40 C.F.R. § 68.73(c) requires owners and operators to train each employee involved in maintaining the ongoing integrity of process equipment in an overview of that process and its hazards, as well as in the procedures applicable to the employee's job tasks to assure that the employee can perform his or her tasks in a safe manner.

97. The Respondent failed to document that employees responsible for operating covered processes at the Salinas Facility had been trained in their operating procedures, including those that emphasize emergency operations including shutdown and safe work practices applicable to the employees' job tasks. Respondent also did not train or maintain documentation regarding employees involved in maintaining ongoing integrity of the refrigeration system at the Salinas Facility.

98. By failing to document employee training in covered processes and the ongoing integrity of the process equipment, Respondent has violated 40 C.F.R. §§ 68.71(c) and 68.73(c).



COUNT XVII

(Failure to Comply with Mechanical Integrity Requirements)

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

100. 40 C.F.R. § 68.73(e) requires owners and operators to correct deficiencies in equipment that are outside acceptable limits as defined by the process safety information in 40 C.F.R. § 68.65 before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

101. The Respondent did not correct deficiencies prior to use and in a timely manner. For instance, the Salinas Facility conducted a mechanical integrity audit in 2016 and found that pressure relief valves (PRV) on two compressors were not sized for the correct release pressure. However, these PRVs remained in service until September 2017. Also, insulation or vapor barriers on piping leading from the engine area and on an ammonia piping elbow on the roof of the Salinas Facility was damaged, exposing the insulation to water vapor.

102. By failing to correct deficiencies prior to use and in a timely manner, Respondent has violated 40 C.F.R. § 68.73(e).

COUNT XVIII

(Failure to Comply with Pre-Startup Safety Review Requirements)

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

104. 40 C.F.R. § 68.77(b) requires owners and operators to perform a pre-startup safety review which, before the introduction of regulated substances like anhydrous ammonia, must confirm among other items that construction and equipment are in accordance with design specifications, and safety, operating, maintenance, and emergency procedures are in place and are adequate.

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105. The Respondent failed to perform an adequate pre-startup safety review to confirm and document construction of vacuum tube refrigeration equipment assembled on-site annually or that the vacuum tube equipment is in accordance with design specifications and that safety, operating, maintenance and emergency procedures are in place and are adequate. By failing to conduct an adequate pre-startup safety review, Respondent has violated 40 C.F.R. § 68.77(b).

COUNT XIX

(Failure to Comply with Compliance Audit Requirements)

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

107. 40 C.F.R. § 68.79 requires owners and operators to certify every three years that they have evaluated compliance with the “Program 3 Prevention Program” to verify that procedures and practices developed under the program are adequate and are being followed in a “compliance audit.” It further requires that they promptly determine and document an appropriate response to each of the findings of the compliance audit, and document deficiencies have been corrected.

108. Respondent conducted a process compliance audit at the Salinas Facility in October 2013 and next in September 2017. This audit was conducted after the three-year interval. Recommendations from the 2013 compliance audit had either not been addressed or were not implemented at the Salinas Facility by the time of EPA’s inspection.

109. By failing to evaluate compliance every three years, and by failing to promptly address and correct deficiencies found in its compliance audits, Respondent has violated 40 C.F.R. §§ 68.79(a) and (d).

COUNT XX

(Failure to Comply with Risk Management Plan Requirements)

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

111. 40 C.F.R. § 68.165 requires owners and operators to submit in their RMP information on a worst-case scenario release, as well as information on one alternative release scenario, among other items. Data related to these items must include information regarding public and environmental receptors within the distance of the release scenarios.

112. EPA's review of the Salinas Facility's 2016 RMP showed that Respondent did not accurately report the affected residential population and environmental receptors for its worst-case release scenario and for its alternative release scenario.

113. By failing to accurately report affected residential population and environmental receptors, Respondent has violated 40 C.F.R. 40 C.F.R. § 68.165.

D. CIVIL PENALTY

114. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay **ONE HUNDRED EIGHTY-SIX THOUSAND NINE HUNDRED SEVENTY-FIVE DOLLARS (\$186,975)**, as the civil penalty for the violations alleged herein.

115. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), see 40 C.F.R. Part 19, authorizes civil penalties for violation of Section 112(r) of the CAA, and Section 325 of EPCRA, 42 U.S.C. § 11045, authorizes civil penalties for violation of Section 312 of EPCRA, see 42 U.S.C. § 11022 and its implementing regulations, as adjusted by the Debt Collection Improvement Act of 1996.

E. ADMISSIONS AND WAIVERS OF RIGHTS

116. For the purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO. 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.

117. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to contest the allegations or to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

118. 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 completely resolving this matter and all issues arising from the inspections and investigations described in paragraph 8 above.

F. PARTIES BOUND

119. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, 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.

120. No change in ownership or legal status relating to the Facilities will in any way alter Respondent's obligations and responsibilities under this CA/FO.

121. Until all requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facilities and shall notify EPA within seven (7) days prior to such transfer.

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

G. PAYMENT OF CIVIL PENALTY

123. Respondent consents to the assessment of and agrees to pay civil penalties of **ONE HUNDRED EIGHTY-SIX THOUSAND NINE HUNDRED AND SEVENTY-FIVE DOLLARS (\$186,975)** in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and violations of Section 312 of EPCRA, 42 U.S.C. § 11022, alleged in Section C above.

124. Respondent shall pay the civil penalty within ninety (90) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order contained in this CA/FO having been approved and issued by the Regional Judicial Officer is filed with the Regional Hearing Clerk.

125. All payments shall indicate the name of the facility, EPA identification number of the facility, the Respondent's name and address, and the appropriate EPA docket number of this action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

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

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.pav.gov

Enter "sfol.l" 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:

Regional Hearing Clerk (RC-1)

U.S. Environmental Protection Agency - Region 9

75 Hawthorne Street

San Francisco, CA 94105

Armsey.Steven@epa.gov

And

Don Nixon

Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105
Nixon.Donald@epa.gov.

126. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty payment so that it is received by the scheduled due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

127. 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.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

128. In the event Respondent fails to meet the payment requirement set forth in Section G of this CA/FO, Respondent shall pay stipulated penalties as follows: 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. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

129. 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 G of this CA/FO.

130. 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 C.F.R. § 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.

131. 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.

132. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

J. RESERVATION OF RIGHTS

133. Except as addressed in this CA/FO, 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. Except as to matters resolved in this CA/FO, 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.

134. 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, tribal or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state or local permit.

135. 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. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

136. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

K. MISCELLANEOUS

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

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

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

140. Respondent consents to entry of this CA/FO without further notice.

L. EFFECTIVE DATE


141. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

MS

IT IS SO AGREED.


Respondent BC Systems, Inc.

DATE: NOV 6th, 2020

BY: 
Name: DARCIA SANTOS
Title: CFD.

United States Environmental Protection Agency, Region 9

DATE: 12/3/2020

BY: 
Amy C. Miller- Bowen
Director, Enforcement and Compliance Assurance
Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. Sections 22.13 and 22.18 (Docket No. CAA (112r)-09-2021-0012) be entered and that Respondent pay a civil penalty ONE HUNDRED EIGHTY SIX THOUSAND NINE HUNDRED AND SEVENTY FIVE DOLLARS (\$186,975) due within ninety (90) days of the Effective Date of this CA/FO, in accordance with all terms and conditions of this CA/FO.

Steven L. Jawgiel Digitally signed by Steven L. Jawgiel
Date: 2020.12.16 15:41:32 -08'00'

Date

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

MS

1 CERTIFICATION OF SERVICE

2 This is to certify that the original of the CONSENT AGREEMENT AND FINAL ORDER in the
3 matter of **BC Systems Inc. CAA(112r) - 09-2021-0012**, has been filed with the Region 9
4 Hearing Clerk and that copies were served on Respondent and counsel for EPA as follows:
5

6 **Respondent**

7
8 Trinidad Ramirez
9 Compliance Manager
10 BC Systems Inc.
11 tramirez@freshexpress.com

12 **Counsel for Respondent**

13 Kerry Shea
14 Davis Wright Tremaine
15 kerryshea@dwt.com

16 **Counsel for EPA**

17 Emily Griffith
18 Assistant Regional Counsel, EPA, Region 9
19 griffith.emily@epa.gov

20 Date: _____

21 **STEVEN**
22 **ARMSEY**

23 Digitally signed by
24 STEVEN ARMSEY
25 Date: 2020.12.21
26 08:46:14 -08'00'

27 _____
28 Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX