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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CAA-10-2012-0005
)	
DA YANG SEAFOOD, INC.,)	CONSENT AGREEMENT AND
Astoria, Oregon)	FINAL ORDER
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7413(d).

1.2. 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, who has redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), 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 Da Yang Seafood, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CAA, together with the specific provisions of the CAA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a corporation organized under the laws of Oregon with its principal place of business at 45 Portway, Pier #2, Astoria, Oregon (“facility”). Respondent is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

3.2. Hydrochlorofluorocarbon-22 (R-22) is a listed class II ozone-depleting substance subject to regulation under Title VI of the CAA, 42 U.S.C. §§ 7671 – 7671q, and implementing regulations at 40 C.F.R. Part 82, Subpart F pertaining to recycling and emissions reduction of ozone-depleting substances. R-22 is “refrigerant” as defined at 40 C.F.R. § 82.152.

3.3. Respondent owns and operates a blast freezer at its facility that contains and uses R-22 at a normal operating charge of 7,500 pounds. The blast freezer is an “appliance” as defined at 42 U.S.C. § 7671 and 40 C.F.R. § 82.152.

3.4. 40 C.F.R. § 82.166(k) requires owners and operators of appliances normally containing 50 pounds or more of refrigerant to keep servicing records documenting the date and type of service, the quantity of refrigerant purchased and added to such appliances, and the date(s) when refrigerant is added.

Alleged Violation

3.5. Complainant alleges that, from approximately July 2006 until August 2007, Respondent conducted service on the blast freezer on at least twenty-two separate occasions and

failed to properly document the dates when service was conducted in its service records in violation of 40 C.F.R. § 82.166(k).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations set forth in Part III of this CAFO.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into consideration the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation, as well as other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$26,800.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check Respondent's name and address, the case name, and the docket number of the case.

4.6. Respondent must deliver photocopies of the check described in Paragraph 4.5 via United States mail to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Kathleen Mar
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-127
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), together with interest, fees, costs, and additional penalties described below. In any such collection action, the validity, amount, and appropriateness of the Order or penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order set forth in Part IV, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) the United States' enforcement expenses including, but not limited to, attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations contained in this CAFO and to appeal the Final Order set forth in Part V.

4.12. The provisions of this CAFO shall bind Respondent and its officers, directors, agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

9/26/11

FOR RESPONDENT:

Chong

Signature

Print Name: Chang Lee

Title: Plant Manager

DATED:

10/4/2011

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1037

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with these 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 alleged in Part III. 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 promulgated or permits issued thereunder.

5.3. Respondent shall pay a civil penalty in the amount \$26,800 as provided in Part IV above.

5.4. In accordance with 40 C.F.R. § 22.34(b), issuance of this CAFO pursuant to 40 C.F.R. § 22.13 satisfies the notice requirement of that section and Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).

5.5. This Final Order is effective upon filing.

SO ORDERED this 13th day of October, 2011.



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: DA YANG SEAFOOD, INC., DOCKET NO.: CAA-10-2012-0005** was filed with the Regional Hearing Clerk on October 13, 2011.

On October 14, 2011, the undersigned certifies that a true and correct copy of the document was delivered to:

Alex Fidis, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
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 October 14, 2011 to:

Chih Yuan Wang, Registered Agent
Da Yang Seafood, Inc.
45 Portway, Pier #2
Astoria, OR 97103

Chih Yuan Wang, President
Da Yang Seafood, Inc.
4744 12th Avenue NE, #601
Seattle, WA 98105

Patrick Rowe, Esquire
Sussman Shank, LLP
1000 SW Broadway
Suite 1400
Portland, OR 97205

DATED this 14th day of October 2011.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10