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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. CAA-10-2020-0036
)
PACIFIC SURIMI - NEWPORT, LLC,) CONSENT AGREEMENT
)
Newport, Oregon)
)
Respondent.)
)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement 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”), 42 U.S.C. § 7413(d).

1.2. 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 issues, and Pacific Surimi, LLC (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

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

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

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, 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 action.

2.4. Part III of this Consent Agreement 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 the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a limited liability corporation formed in the State of Oregon.

3.2. Respondent operates a seafood processing facility located at 623 SW Bay Boulevard in Newport, Oregon (the “facility”).

3.3. Section 112(r) of the CAA, 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 (“TQ”) in a process to develop and implement a risk management plan (“RMP”) 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.

3.4. 40 C.F.R. § 68.3 defines “stationary source” as any buildings, structures, equipment, installations, or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

3.5. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, and 40 C.F.R. § 68.130. Anhydrous ammonia is listed as a regulated substance in 40 C.F.R. § 68.130.

3.6. 40 C.F.R. § 68.3 defines “threshold quantity” (“TQ”) as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, in 40 C.F.R. § 68.130. The TQ of anhydrous ammonia is 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.7. Under 40 C.F.R. § 68.115, a TQ of a regulated substance listed in 40 C.F.R. § 68.130 is “present at a stationary source” if the total quantity of the regulated substance contained in a process exceeds the TQ.

3.8. 40 C.F.R. § 68.150 requires that an owner or operator of a stationary source that has more than a TQ of a regulated substance in a process submit an RMP to EPA no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under § 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

3.9. Respondent owns a stationary source where anhydrous ammonia was present in a process above the 10,000 pounds TQ since at least February 18, 2009. Therefore, Respondent was required to submit and have in place an RMP for the facility.

3.10. Under 40 C.F.R. § 68.10(h) a covered process is subject to Program 3 if the process does not meet the Program 1 applicability requirements, and the process is subject to the Occupational Safety and health Act (OSHA) process safety management standard, 29 C.F.R. § 1910.119.

3.11. Respondent has one program 3 process, as defined in 40 C.F.R. § 68.10(h): an ammonia refrigeration process consisting of a brine chiller system, seven plate freezers, one blast freezer and one ice house with three ice machines.

3.12. 40 C.F.R. § 68.12(a) and (d) require that, in addition to submitting a single RMP as provided in §§ 68.150 to 68.185, facilities with a Program 3 covered process shall among other things, develop a management system as provided in § 68.15, conduct a hazard assessment as provided in §§ 68.20 to 68.42, implement the prevention program as required of §§ 68.65 to 68.87, develop the prevention requirements of §§ 68.90 through 68.96 and submit as part of the RMP the data on prevention program elements for Program 3 program processes as provided in 40 C.F.R. § 68.175.

3.13. An RMP was submitted for the Facility on February 14, 2014 and March 27, 2019.

3.14. Respondent did not assume operations at the Facility until April 2017. Before that date, the Facility was operated by its prior owner/operator. For purposes of this Consent Agreement, Respondent is alleged to be responsible for certain violations that allegedly commenced prior to when Respondent assumed operational control of the Facility.

**Violation 1: Failure to keep required information in a compilation of written
process safety information up to date.**

3.15. 40 C.F.R. § 68.65(a) and (d) require the owner or operator to complete a compilation of written process safety information pertaining to equipment in the process and to keep this information up to date.

3.16. Respondent's written process safety information pertaining to the equipment in the processes failed, between April 2017 and April 2018, to include accurate information concerning relief vent line lengths, and thus did not, during that time period, contain complete information concerning the relief system design and design basis, in violation of 40 C.F.R. § 68.65(d)(1)(iv).

Violation 2: Failure to Adequately Address Process Hazard Analysis

Recommendations

3.17. 40 C.F.R. § 68.67 requires an owner or operator to perform an initial process hazard analysis on processes covered by this part at least every five years, and 40 C.F.R. § 68.67(e) requires, among other things, that the owner or operator shall establish a system to promptly address the team's findings and recommendations and to complete actions as soon as possible.

3.18. Respondent failed to assure that one of the recommendations made pursuant to a process hazard analysis conducted in 2013 was promptly addressed and resolved in a timely manner, in violation of 40 C.F.R. § 68.67(e).

Violation 3: Compliance Audit

3.19. 40 C.F.R. § 68.79(a) requires that the owner or operator certify that they have evaluated compliance with the provisions of this subpart for each covered process, at least every three years to verify that the procedures and practices developed under the rule are adequate and

are being followed. 40 C.F.R. § 68.79(d) requires the owner or operator to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

3.20. Respondent conducted a compliance audit in 2014 and created a report of the findings. However, Respondent did not promptly correct and document the correction of three of the audit findings, in violation of 40 C.F.R. § 68.79(d).

Violation 4: Emergency Response

3.21. 40 C.F.R. § 68.95(a)(2) requires the owner or operator to develop and implement an emergency response program for the purpose of protecting public health and the environment that includes, among other things, procedures for the use of emergency response equipment and for its inspection, testing, and maintenance.

3.22. Respondent failed on various occasions between May 2014 and August 2019 to conduct monthly inspections of its first responders' personal protective equipment, in violation of 40 C.F.R. § 68.95(a)(2).

Violation 5: Risk Management Plan Update

3.1. 40 C.F.R. § 68.190(b)(1) requires the owner or operator to revise and update the RMP submitted under §68.150 at least once every five years from the date of its initial submission or most recent update.

3.2. Respondent's five-year update to its RMP was due for submission by no later than February 14, 2019. Respondent did not submit its RMP update until March 27, 2019, in violation of the requirements of 40 C.F.R. § 68.190(b)(1).

3.3. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$46,192 per day of violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations and legal conclusions contained in this Consent Agreement.

4.3. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into account 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, the seriousness of the violation, and such other factors as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$61,955 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be 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, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

David Magdangal
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
magdangal.david@epa.gov

4.7. If Respondent fails to pay the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

4.8.1. 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 effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the

Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.8.2. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay 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 ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

4.10. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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

4.12. Respondent certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III. Respondent further certifies that it is currently in compliance with the "Key Safety Measures" developed by EPA in

coordination with the International Institute of Ammonia Refrigeration, which is included in this Consent Agreement as Appendix A.

4.13. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.14. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

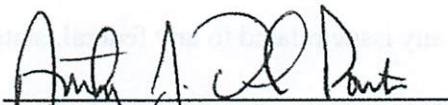
4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

January 9, 2020

FOR RESPONDENT:

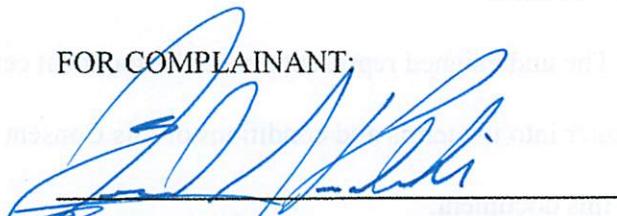


ANTHONY J. DAL PONTE,
General Counsel / Director of Legal & Governmental Affairs
Pacific Surimi - Newport, LLC

DATED:

1/16/2020

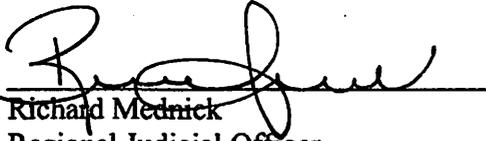
FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 16th day of January, 2020.

A handwritten signature in black ink, appearing to read "Richard Mednick", written over a horizontal line.

Richard Mednick
Regional Judicial Officer
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CAA-10-2020-0036
PACIFIC SURIMI - NEWPORT, LLC.)	
)	FINAL ORDER
Newport, Oregon)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

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

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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 and any applicable implementation plan requirements.

**Key Safety Measures for Ammonia Refrigeration Processes
Pacific Surimi- Newport, LLC
Newport, Oregon**

The following is a list of key safety measures developed by EPA in coordination with the International Institute of Ammonia Refrigeration (IIAR). They are measures that EPA and IIAR agree are required elements for ammonia refrigeration facilities (regardless of an ammonia refrigeration system's age or size) for the system to meet the requirements of 40 C.F.R. Part 68 or the General Duty Clause of 42 U.S.C. § 7412(r)(1). The list is not intended to be a complete list of required and important safety measures that address hazards at ammonia refrigeration facilities, but rather a subset of easily verifiable items that could help facilities prevent ammonia releases and prepare for any releases that do occur.

Identifying Hazards

Hazard Addressed:

Releases or safety deficiencies that stem from a failure to identify hazards in design/operation of system

Safety Measure:

- ✓ Facility has completed a process hazard analysis or review.

Operating Activities

Hazard Addressed:

High risk of release from operating or maintenance activity

Safety Measures:

- ✓ System has self-closing/quick closing valves on oil pots.
- ✓ Facility has written procedures for maintenance and operation activities.
- ✓ Only authorized persons have access to machinery room and the ability to alter safety settings on equipment.

Maintenance/Mechanical Integrity

Hazard Addressed:

Leaks/releases from maintenance neglect

Safety Measures:

- ✓ A preventative maintenance program is in place to, among other things, detect and control corrosion, deteriorated vapor barriers, ice buildup, and pipe hammering, and to inspect integrity of equipment/pipe supports.
- ✓ All piping system openings except the relief header are plugged or capped, or valve is locked.
- ✓ Equipment, piping, and emergency shutdown valves are labeled for easy identification, and pressure vessels have legible, accessible nameplates.

In the Matter of: PACIFIC SURIMI- NEWPORT, LLC

Docket Number: CAA-10-2020-0036

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- ✓ All atmospheric pressure relief valves have been replaced in the last five years with visible confirmation of accessible pressure relief valves. [Note: Replacement every five years is the general rule but there are two other options in IIAR Bulletin 110, 6.6.3.]

Machinery Room and System Design

Hazard Addressed:

Inability to isolate and properly vent releases

Safety Measures:

- ✓ The System(s) has/have emergency shut-off and ventilation switches outside each machinery room.
- ✓ The machinery room(s) has/have functional, tested, ventilation. Air inlets are positioned to avoid recirculation of exhaust air and ensure sufficient inlet air to replace exhausted air.
- ✓ Documentation exists to show that pressure relief valves that have a common discharge header have adequately sized piping to prevent excessive backpressure on relief valves, or if built prior to 2000, have adequate diameter based on the sum of the relief valve cross sectional areas.

Emergency Actions

Hazard Addressed:

Inability to regain control and reduce release impact

Safety Measures:

- ✓ Critical shutoff valves are accessible, and a schematic is in place to show responders where to access them.
- ✓ EPCRA Tier II reporting is up to date.

Additional Compliance Items

Identifying Hazards

- ✓ For systems that employ hot gas defrost, the process hazard analysis/review includes an analysis of, and identifies, the engineering and administrative controls for the hazards associated with the potential of vapor propelled liquid slugs and condensation-induced hydraulic shock events.

Operating Activities and Maintenance/Mechanical Integrity

- ✓ Written procedures are in place for proper use and care of personal protective equipment.
- ✓ If respirators are used, facilities know the location of their respirators, and they are inspected and maintained per manufacturer or industry standards.
- ✓ All changes to automation systems (programmable logic controls and/or supervisory

control and data acquisition systems) if present, are subject to management of change procedures.

Machinery Room and System Design

- ✓ The facility has engineering controls in place to protect equipment and piping against overpressure due to hydrostatic expansion of trapped liquid refrigerant. Administrative controls are acceptable where hydrostatic overpressure can occur only during maintenance operations.
- ✓ Eyewash station(s) and safety shower(s) is/are present and functional.

Emergency Actions

- ✓ Emergency response communication has occurred or has been attempted with the Local Emergency Planning Committee and local responders.
- ✓ The facility has an emergency action plan pursuant to 29 C.F.R. § 1910.38(a) or an emergency response plan pursuant to 29 C.F.R. § 1910.120(q) and 40 C.F.R. § 68.95.

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Pacific Surimi-Newport, LLC., Docket No.: CAA-CAA-2020-0036**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Gallagher
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 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 to:

Anthony J. Dal Ponte
General Counsel / Director of Legal & Governmental Affairs
Pacific Surimi- Newport, LLC
16797 SE 130th Ave.
Clackamas, OR 97015

DATED this 17 day of September 2020.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10