



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

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EPA -- REGION 10

ENFORCEMENT &
COMPLIANCE ASSURANCE
DIVISION

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA-10-2020-0019
This ESA is issued to: Custom Apple Packers, Inc.
2701 Euclid Avenue
Wenatchee, Washington 98801

This Expedited Settlement Agreement (ESA) is being entered into by the U.S. Environmental Protection Agency Region 10 (EPA), by its duly delegated official, and by Custom Apple Packers, Inc. ("Respondent") pursuant to Section 113(a)(3) and (d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). On February 13, 2019, EPA obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

EPA has determined that Respondent violated the Risk Management Program (RMP) regulations promulgated at 40 C.F.R. Part 68 under Section 112(r) of the Clean Air Act (CAA), as noted on the enclosed Risk Management Plan Inspection Findings and Alleged Violations Summary ("Summary"), which is hereby incorporated by reference.

SETTLEMENT

In consideration of the penalty assessment factors set forth in Section 113(e) of the Act, 42 U.S.C. § 7413(e), and upon consideration of the entire record, the parties enter into the ESA in order to settle the violations described in the enclosed Summary for the total penalty amount of \$10,600.

This settlement is subject to the following terms and conditions:

Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained herein and in the Summary, and consents to the assessment of the penalty as stated above.

Respondent waives its rights to contest the allegations contained herein or in the Summary, to a hearing afforded by Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own costs and fees, if any.

Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the violations listed in the enclosed Summary.

Respondent agrees to submit payment in full of the \$10,600 within 30 days of the filing of a fully executed copy of this ESA with the Regional Hearing Clerk.

Payment instructions are included on the enclosed "Payment Instructions," which is hereby incorporated by reference.

This original ESA must be sent by certified mail to:

Javier Morales, 112(r) Enforcement Coordinator
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, Mail Stop: 20-C04
Seattle, Washington 98101

Upon Respondent's submission of the signed original ESA, signature by EPA, filing with the Regional Hearing Clerk, and timely payment of the penalty, EPA will take no further civil penalty action against Respondent for the alleged violations of the CAA referenced in the Summary. EPA does not waive its right to any other enforcement action for any other violations of the CAA or any other statute.

If the signed original ESA is not returned to the EPA Region 10 at the above address by Respondent within 45 days of the date of Respondent's receipt of it (90 days if an extension is granted), the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein and in the Summary.

This ESA is binding on the parties signing below.

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT:

Signature: [Handwritten Signature]
Name (print): Kari Gelzers
Title (print): General Counsel
Cost to correct violation(s): \$30,000

Date: 2-3-2020

FOR COMPLAINANT:

[Handwritten Signature]
Edward J. Kowalski
Director
Enforcement & Compliance Assurance Division

Date: 2/12/2020

I hereby ratify the ESA and incorporate it herein by reference. It is so ORDERED.

[Handwritten Signature]
Richard Mednick
Regional Judicial Officer

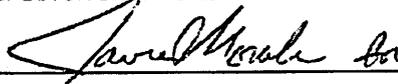
Date: 2/26/20



U.S. ENVIRONMENTAL PROTECTION AGENCY

Risk Management Program Inspection Findings and Alleged Violations Summary Region 10

REASON FOR INSPECTION: This inspection is for the purpose of determining compliance with Section 112(r)(7) accidental release prevention requirements of the Clean Air Act, as amended 1990. The scope of this inspection may include, but is not limited to: reviewing and obtaining copies of documents and records; interviews and taking of statements; reviewing of chemical storage, handling, processing, and use; taking samples and photographs; and any other inspection activities necessary to determine compliance with the Act.

FACILITY NAME: Custom Apple Packers, Inc.		<input checked="" type="checkbox"/> PRIVATE	<input type="checkbox"/> GOVERNMENTAL/MUNICIPAL
		# EMPLOYEES 102	POPULATION SERVED: Click here
FACILITY LOCATION: 2701 Euclid Avenue, Wenatchee, WA		INSPECTION START DATE: 9/17/2019	INSPECTION START TIME: 8:30 A.M.
MAILING ADDRESS: same		INSPECTION END DATE: 9/17/2019	INSPECTION END TIME: 3:00 P.M.
RESPONSIBLE OFFICIAL, TITLE, PHONE NUMBER: Javier Alejandro, Refrigeration Supervisor, 509-423-5906		EPA FACILITY ID# 1000 0020 6494	
FACILITY REPRESENTATIVE(S), TITLE(S), PHONE NUMBER(S):		INSPECTOR NAME(S), TITLE(S), PHONE NUMBER(S) Peter Phillips, Lead SEE RMP Inspector Bob Hales, SEE RMP Inspector Terry Garcia, SEE RMP Inspector Jim Petersen, START Project Manager	
		INSPECTOR SIGNATURE 	DATE 10/31/19

INSPECTION FINDINGS

IS FACILITY SUBJECT TO RMP REGULATION (40 C.F.R. § 68)?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
DID FACILITY SUBMIT AN RMP AS PROVIDED IN 68.150 TO 68.185?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
DATE RMP FILED WITH EPA: 4/7/2009	DATE OF LATEST RMP UPDATE: 2/24/2016	
1) PROCESS/NAICS CODE: 49312	PROGRAM LEVEL: <input type="checkbox"/> 1	<input type="checkbox"/> 2 <input checked="" type="checkbox"/> 3
REGULATED SUBSTANCE: Anhydrous Ammonia	MAX. QUANTITY IN PROCESS (lbs.): 18,000	

DESCRIPTION OF ALLEGED VIOLATIONS

CAA Section 112(r) and its implementing regulations in 40 C.F.R. Part 68 require an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance (listed in § 68.130) in a process, to develop a Risk Management Plan (RMP) and Risk Management Program.

Three EPA representatives and an EPA contractor inspected the Custom Apple Packers, Inc. facility on September 17, 2019. Based upon this inspection the Custom Apple Packers facility is in violation of the following risk management program elements:

- Process Safety Information:** Custom Apple Packers' process safety information did not have current piping and instrumentation diagrams (P&IDs) as required by 40 C.F.R. § 68.65(d)(1)(ii). Custom Apple Packers did not update their P&IDs to include the additional condenser was added to their anhydrous ammonia refrigeration system in 2015.
- Process Hazard Analysis:** Custom Apple Packers' PHA was not performed by a team with expertise in engineering and process operations and the team did not include appropriate personnel as required by 40 C.F.R. § 68.67(d). During the inspection, Custom Apple Packers was unable to produce documentation to identify the PHA team members for a PHA dated February 24, 2016.

DESCRIPTION OF ALLEGED VIOLATIONS (Cont'd)

3. **Process Hazard Analysis:** The PHA has not 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 as required in 40 C.F.R. § 68.67(f). During the inspection, Custom Apple Packers had one PHA dated February 24, 2016 on file that was a revalidation of a prior PHA. There were no lists of participants, and no documentation of findings. Custom Apple Packers did not have the prior PHA available for review.
4. **Operating Procedures:** Custom Apple Packers' operating procedures do not address startup following a turnaround, or after emergency shutdown as required in 40 C.F.R. § 68.69(a)(1)(vii). During the inspection, Custom Apple Packers was unable to produce operating procedures to address startup following a shutdown for the ammonia refrigeration system.
5. **Operating Procedures:** Custom Apple Packers did not certify annually that the operating procedures are current and accurate and that procedures have been reviewed as often as necessary as required in 40 C.F.R. § 68.69(c). During the inspection, Custom Apple Packers was unable to produce documentation for the annual certification of the operating procedures for the ammonia refrigeration system.
6. **Mechanical Integrity:** Custom Apple Packers has not followed recognized and generally accepted good engineering practices (RAGAGEP) as required in 40 C.F.R. § 68.73(d)(2). During the inspection, Custom Apple Packers was unable to produce inspection and testing documentation for the pressure relief valves (PRVs) located in the engine room. Custom Apple Packers is not following RAGAGEP in their written procedures for the replacement of PRVs every five years (Reference IAR Bulletin 110, Rev 6/07, Section 6.6.3, Pressure Relief Devices).
7. **Mechanical Integrity:** Custom Apple Packers has not ensured the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience as required in 40 C.F.R. § 68.73(d)(3). During the inspection, the pressure relief valves (PRVs) located in the engine room with a replacement date of August 2018 were approximately thirteen months overdue (Reference IAR Bulletin 110, Rev 6/07, Section 6.6.3, Pressure Relief Devices).
8. **Mechanical Integrity:** Custom Apple Packers has not documented each inspection and test that had been performed on process equipment, which identifies the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test as required in 40 C.F.R. § 68.73(d)(4). During the inspection, Custom Apple Packers was unable to produce inspection and testing documentation for the replacement of pressure relief valves (PRVs), calibration of ammonia detectors, annual testing of the compressor safety cutouts for shutdown and the replacement of air intake filters.
9. **Incident Investigation:** Custom Apple Packers has not investigated each incident that resulted in, or could reasonably have resulted in a catastrophic release of a regulated substance as required in 40 C.F.R. § 68.81(a). Custom Apple Packers provided an agency notification form confirming the release of 103 pounds of anhydrous ammonia on August 26, 2015 at approximately 4:25 P.M. which prompted an evacuation of the facility personnel and of an adjacent facility (Stemilt Olds Station). Custom Apple Packers was unable to produce a formal incident investigation report as required by 40 C.F.R. § 68.81(d).
10. **Employment Participation:** Custom Apple Packers has not developed a written plan of action regarding the implementation of the employee participation as required in 40 C.F.R. § 68.83(a). During the inspection, Custom Apple Packers was unable to produce a written employee participation plan.

EPA inspectors observed the following issues that must be addressed:

1. The engine room doors are not equipped with panic-type hardware to meet IAR 2-2008 with Addendum B, Section 13.1.10.
2. Unauthorized personnel can access the restroom in the engine room with the possibility of getting exposed to ammonia during an ammonia release. This hazard was identified in the PHA.
3. The engine room air intake and exhaust opening are collocated on the same side. This ventilation design may allow ammonia to be recirculated back into the engine room during a release.

DID FACILITY CORRECTLY ASSIGN PROGRAM LEVELS TO PROCESSES?

YES

NO

ATTACHED CHECKLIST(S):

PROGRAM LEVEL 1

PROGRAM LEVEL 2

PROGRAM LEVEL 3

OTHER ATTACHMENTS:

Certificate of Service

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: Custom Apple Packers, Inc., Docket No.: CAA-10-2020-0019**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

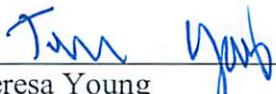
The undersigned certifies that a true and correct copy of the document was delivered to:

Javier Morales, RMP Coordinator
1200 Sixth Avenue, 20-C04
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:

Kari D. Gebers
General Counsel
Custom Apple Packers, Inc.
P.O. Box 4640
Wenatchee, Washington 98807

DATED this 27 day of February, 2020



Teresa Young
Regional Hearing Clerk
EPA Region 10