

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

****FILED****
22 JUNE 2021
U.S.EPA - REGION IX

IN THE MATTER OF:

Dole Fresh Vegetables, Inc.
315 Neponset Road
Marina, CA 93933

Respondent.

Docket No.
CAA (112r)-09-2021-0042

**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”), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), 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, 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”). Respondent is Dole Fresh Vegetables, Inc. (“Respondent”).

2. 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) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations.

B. GENERAL ALLEGATIONS

3. Respondent owns and operates a facility located at 315 Neponset Road, Marina, California 93933 (“Facility”). Respondent processes, stores, and distributes produce from the Facility.

4. On June 21, 2018, EPA performed an inspection of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304–12 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11004–12, and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9603(a) (“Inspection”). Based upon the information gathered during the Inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of the CAA.

5. 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, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and its implementing regulations, owners and operators of stationary sources producing, processing, handling or storing a chemical in 40 C.F.R. Part 68, or any other extremely hazardous substance, have a general duty to identify hazards which may result from releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

7. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.

8. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

9. The Administrator of EPA delegated the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA to EPA Regional Administrators with EPA delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, redelegated this authority with respect to enforcement of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), to the Director of the Enforcement Division, Region IX, with delegation R9-7-6-A, dated February 11, 2013.

10. In a letter dated November 3, 2020, the United States Department of Justice granted EPA a waiver from the condition specified in Section 113(d) of the CAA, 42 U.S.C. § 7413(d), that the first alleged date of violation occurred no more than one year before the initiation of the administrative action, to allow EPA to pursue certain administrative actions for violations of 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r). This administrative action falls within the scope of that waiver.

11. 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).

12. At all times relevant to this CA/FO, the Facility has been a “stationary source” 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).

13. At all times relevant to this CA/FO, Respondent has been the “owner or operator” of the Facility as defined by Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9).

14. 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 that 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.

15. Ammonia (anhydrous) (hereinafter “ammonia”) 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 pursuant to 40 C.F.R. § 68.130, Table 1.

16. At all times relevant to this CA/FO, Respondent produced, used or stored more than 10,000 pounds or more of ammonia in one or more processes at the Facility.

C. ALLEGED VIOLATIONS

COUNT I
(Failure to Comply with the General Duty Clause)

17. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

18. CAA Section 112(r)(1), 42 U.S.C. §7412(r)(1), provides that owners and operators of a stationary source that produces, processes, handles, or stores a regulated substance (as defined in 40 C.F.R. § 68.130) have a general duty to design and maintain a safe facility taking such steps as are necessary to prevent releases.

19. An owner or operator breaches its general duty under CAA Section 112(r)(1), 42 U.S.C. §7412(r)(1), if the owner or operator does not implement feasible measures to reduce or eliminate hazards that are recognized within the owner or operator’s industry and likely to cause harm.

20. A recognized hazard within the ammonia industries is when system equipment is subject to excessive movement. One way to address this hazard is to ensure that system equipment is sufficiently supported and secured to prevent excessive movement. Harm is likely to result if system equipment is subject to excessive movement because excessive movement can cause equipment to fail or malfunction.

21. Respondent's portable chiller was not designed and constructed to prevent excessive movement consistent with industry practice and the standard of care for ammonia refrigeration systems.

22. Another recognized hazard within the ammonia industries is when pressure relief valves fail or malfunction. One way to address this hazard is to replace, or inspect, clean, and test, pressure relief valves at least once every five years. Harm is likely to result if pressure relief valves fail or malfunction, as overpressure can cause catastrophic failure of vessels and other equipment.

23. Respondent did not maintain several pressure relief valves on the Facility's portable chiller consistent with industry practice and the standard of care for ammonia refrigeration systems.

24. Another recognized hazard within the ammonia industries is when pressure vessels fail or malfunction due to corrosion. One way to address this hazard is to have a qualified person inspect any pressure vessels showing signs of corrosion beyond mild surface corrosion and to take appropriate remedial action based on the results of the inspection. The failure or malfunction of pressure vessels due to corrosion is likely to cause harm, as it can result in a catastrophic release of ammonia.

25. Respondent did not inspect and maintain several corroded pressure vessels on the Facility's portable chiller consistent with industry practice and the standard of care for ammonia refrigeration systems.

26. Respondent breached its general duty under CAA Section 112(r)(1), 42 U.S.C. §7412(r)(1), by not implementing feasible measures to reduce or eliminate hazards that were recognized within Respondent's industry and likely to cause harm.

27. Accordingly, EPA alleges that Respondent violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

COUNT II
(Failure to Comply with Risk Management Plan Requirements)

28. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

29. 40 C.F.R. § 68.12(a) requires owners or operators of a stationary source to submit an RMP that includes specific information for, and a registration reflecting, “all covered processes.”

30. During the Inspection, EPA identified ten nurse tanks located adjacent to the Facility’s maintenance shop containing ammonia (“Nurse Tanks”).

31. The Nurse Tanks constituted a single, “covered process” within the meaning of 40 C.F.R. § 68.12(a) and were therefore required to be included in the Facility’s RMP registration.

32. However, the Nurse Tanks were not included in the Facility’s RMP registration.

33. Accordingly, EPA alleges that Respondent violated 40 C.F.R. § 68.12(a).

COUNT III
(Failure to Comply with Process Safety Requirements Related to Generally Accepted Good Engineering Practices)

34. Paragraphs 1 through 16, 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 or operators to document that process equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).

36. Pursuant to 40 C.F.R. § 68.65(d)(3), if any process equipment was designed and constructed in accordance with codes, standards, or practices no longer in general use, then the owner or operator must determine and document that such equipment is designed, maintained, inspected, tested, and operating in a safe manner.

37. EPA determined that entry and exit doors in the Facility's System A Ammonia Machine Room ("AMR") were not designed and constructed consistent with RAGAGEP, that Respondent did not document the equipment as complying with RAGAGEP, and that Respondent did not document the equipment as designed, maintained, inspected, tested, and operating in a safe manner.

38. EPA determined that the ladders used to access the king valves on the Facility's System A and B high pressure receivers were not designed and constructed consistent with RAGAGEP, that Respondent did not document the equipment as complying with RAGAGEP, and that Respondent did not document the equipment as designed, maintained, inspected, tested, and operating in a safe manner.

39. EPA determined that the emergency ventilation systems for the Facility's System A and B AMRs were not designed and constructed consistent with RAGAGEP, that Respondent did not document the equipment as complying with RAGAGEP, and that Respondent did not document the equipment as designed, maintained, inspected, tested, and operating in a safe manner.

40. EPA determined that several nurse tanks located outside in a storage area were not designed and constructed consistent with RAGAGEP, that Respondent did not document the equipment as complying with RAGAGEP, and that Respondent did not document the equipment as designed, maintained, inspected, tested, and operating in a safe manner.

41. Accordingly, EPA alleges that Respondent violated 40 C.F.R. § 68.65.

COUNT IV
(Failure to Comply with Process Hazard Analysis Requirements)

42. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

43. 40 C.F.R. § 68.67 requires that owners or operators perform a Process Hazard Analysis (“PHA”) and sets forth the process by which a PHA must be conducted.

44. 40 C.F.R. § 68.67(e) requires owners and operators to establish a system to promptly address findings and recommendations made in a PHA, to assure that the recommendations are resolved in a timely manner and that the resolution is documented, and to complete actions as soon as possible, among other things.

45. At the time of the Inspection, Respondent had not timely resolved approximately half of the recommendations made in the Facility’s 2014 PHA, including numerous recommendations designated as “High Priority”.

46. Accordingly, EPA alleges that Respondent violated 40 C.F.R. § 68.67(e).

COUNT V
(Failure to Comply with Operating Procedure Requirements)

47. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

48. 40 C.F.R. § 68.69(a) requires that owners or operators develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and that provide information on certain specified subjects, including, as pertinent here, consequences of deviation.

49. At the time of the Inspection, Respondent’s written operating procedures did not address consequences of deviation.

50. Accordingly, EPA alleges that Respondent violated 40 C.F.R. § 68.69(a).

D. CIVIL PENALTY

51. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay **TWO HUNDRED SIX THOUSAND SIX HUNDRED TWENTY-ONE DOLLARS (\$206,621.00)**, as the civil penalty for the violations alleged herein.

52. The proposed penalty was calculated in accordance with the “Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68” dated June 2012, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVERS OF RIGHTS

53. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section D of this CA/FO; (iv) waives any right to contest the allegations contained in Section C of the CA/FO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

54. 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 resolving this matter.

F. PARTIES BOUND

55. 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 has been paid and any delays in performance and/or stipulated penalties have been resolved.

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

57. 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 Facility and shall notify EPA within seven (7) days prior to such transfer.

58. 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 to it.

G. PAYMENT OF CIVIL PENALTY

59. Respondent consents to the assessment of and agrees to pay civil penalties of **TWO HUNDRED SIX THOUSAND SIX HUNDRED TWENTY-ONE DOLLARS (\$206,621.00)**, in settlement of the civil penalty claims made in this CA/FO.

60. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO.

61. All payments shall indicate the name of the Facility, EPA Facility identifier 1000 0012 0781, 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
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Environmental Protection Agency
Government Lock Box 979077
1005 Convention Plaza

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Mail Station SL-MO-C2GL
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):

ACH payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22-checking

Physical Location of US Treasury Facility

5700 Rivertech Court

Riverdale, MD 201737

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 via electronic mail 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
R9HearingClerk@epa.gov

and

Cyntia Steiner
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
Steiner.Cyntia@epa.gov.

62. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the 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.

63. 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

64. In the event Respondent fails to meet any requirement set forth in 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.

65. 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.

66. 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.

67. 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.

I. RESERVATION OF RIGHTS

68. 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. 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.

69. 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.

70. 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.

71. 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.

J. MISCELLANEOUS

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

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

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

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

K. NOTICE

76. Except as otherwise provided in Section G, any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence submitted from one party to another under this CA/FO shall be addressed as follows:

To EPA:

Cyntia Steiner

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Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
Steiner.Cyntia@epa.gov

With a copy to:

Nicolas Cardella
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 9
Cardella.Nicolas@epa.gov

To Respondent:

Robbie Misner
Sr. Cooler Operations Maintenance Manager
Dole Fresh Vegetables & Berries
Robbie.Misner@dole.com

With a copy to:

Richard L. Jacobs
Vice President & Division General Counsel
Dole Fresh Vegetables, Inc.
Richard.Jacobs@dole.com

L. EFFECTIVE DATE

77. 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 (“Effective Date”).


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IT IS SO AGREED.


Respondent Dole Fresh Vegetables, Inc.



DATE: 3/24/2021


BY: 
Name: Timothy Escamilla
Title: President

DATE: March 24, 2021

BY: 
Name: Richard Jacobs
Title: V.P. - Division General Counsel

United States Environmental Protection Agency, Region 9

DATE: _____

BY: **AMY MILLER-
BOWEN** 
Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance
Division

Digitally signed by AMY
MILLER-BOWEN
Date: 2021.05.24 08:45:26
-07'00'

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) 09-2021-0042) be entered and that Respondent pay a civil penalty of **TWO HUNDRED SIX THOUSAND SIX HUNDRED TWENTY-ONE DOLLARS (\$206,621.00)**, due within thirty (30) days from the Effective Date of this CA/FO, in accordance with all terms and conditions of this CA/FO.

STEVEN JAWGIEL Digitally signed by STEVEN JAWGIEL
Date: 2021.06.21 12:39:57 -07'00'

Date

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

CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Dole Fresh Vegetables, Inc. (CAA112r-09-2021-0042)*, signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk and was served on Respondent, and Counsel for EPA, as indicated below:

VIA E-MAIL:

For Respondent:

Robbie Misner
Sr. Cooler Operations Maintenance Manager
Dole Fresh Vegetables & Berries
Robbie.Misner@dole.com

Richard L. Jacobs
Vice President & Division General Counsel
Dole Fresh Vegetables, Inc.
Richard.Jacobs@dole.com

For Complainant:

Nicolas R. Cardella
Office of Regional Counsel
Environmental Protection Agency, Region IX
Cardella.Nicolas@epa.gov

Armsey, Digitally signed by
Steven Armsey, Steven
Date: 2021.06.22
18:58:12 -07'00'

Steven Armsey
Regional Hearing Clerk
Environmental Protection Agency, Region IX