

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94106

FILED

2012 AUG 16 AM 9:41

DOCKET NO: CAA (112r)-09-2012-0010  
This ESA is issued to: Johnston Farms Family Limited Partnership  
P.O. Box 65  
Edison, CA 93220

U.S. EPA. REGION IX  
REGIONAL HEARING CLERK

For: Violation of Section 112(r)(7) of the Clean Air Act.  
At: Johnston Farms – 13031 Packing House Rd, Edison, CA 93220

This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Jane Diamond, Superfund Director, and Johnston Farms Family Limited Partnership ("Respondent") pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). EPA has obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

Respondent failed to:

- 1) Establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures that affect a covered process, as required by 40 CFR§68.75(a). The facility developed and adopted Management of Change procedures; however, there was no record of these procedures having been followed with the recent relocation of the packing house chlorination system.
- 2) Submit a correction to the RMP within one month of any change in the emergency contact information, as required by 40 CFR§68.195(b). The facility's RMP, dated April 26, 2010, reported an emergency contact email address that was not functional as of at least September 10, 2010. A correction to the RMP, with the correct emergency contact email address, should have been submitted to EPA by at least October 10, 2010; however, it was not submitted until October 19, 2010.
- 3) Establish to notify emergency responders when there is need for a response as required by 40 CFR §68.90(b)(3). The facility's RMP, dated April 26, 2010, did not include an Emergency Action Plan as required by 40 CFR §68.90. An Emergency Action Plan, dated July 2011 was submitted to EPA after the inspection.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, and other factors as justice may require, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of \$2,040.

This settlement is subject to the following terms and conditions:

The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, and consents to the assessment of the penalty as stated above. Respondent waives its rights to a hearing afforded by Section 113(d)(2)(A) of the Act, 42 U.S.C §7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own attorney's fees and costs, if any. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the violations listed above and have sent an **Online Payment through the Department of Treasury: WWW.PAY.GOV** (Enter SFO 1.1 in search field. Open form and complete required fields) or **alternatively send a cashier's check or certified check** (payable to the Treasurer, United States of America) in the amount of **\$2,040.00** in payment of the full penalty amount to the following address:

### **Opportunity for Expedited Settlement**

Under CAA § 113(b), 42 U.S.C. § 7413(b), and 40 C.F.R. Part 19, violators may be penalized up to \$37,500 per day of violation.<sup>1</sup> EPA Region 9 is extending to you an opportunity to quickly resolve your violations by correcting your violations and paying a substantially reduced penalty under EPA's Expedited Settlement process. If you choose to participate in the Expedited Settlement process, we will settle the violations listed above for a civil penalty of **\$2,040**. We are providing this incentive to resolve outstanding violations as quickly as possible. The civil penalty amount was calculated in accordance with EPA's Combined Enforcement Response Policy for Section 112(r) of the Clean Air Act as illustrated in the attachment to this letter.

We encourage you to immediately review the RMP requirements to determine your compliance status. You have thirty (30) days from the date you receive this letter to take advantage of this opportunity. If you determine that you are not subject to or have not violated the RMP requirements described above, please provide a written explanation, along with any supporting documentation, to Angie Proboszcz, EPCRA/RMP Enforcement, at the EPA address shown below, within thirty (30) days of your receipt of this letter.

Angie Proboszcz (SFD-9-3)  
EPCRA/RMP Enforcement  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

If you confirm that you did not properly comply with the RMP requirements described above, you may take advantage of the Expedited Settlement process and reduced penalty by responding to this notice within thirty (30) days of your receipt of this letter.

### **Procedure for Expedited Settlement**

To take advantage of the Expedited Settlement process, within thirty (30) days of your receipt of this letter you must:

- (1) Complete and return to USEPA, Region 9, the signed **original enclosed Expedited Settlement Agreement ("ESA" or "Agreement")** with a **copy** of the payment instrument (check or online receipt), to the address below:

Angie Proboszcz (SFD-9-3)  
EPCRA/RMP Enforcement  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

**AND,**

- (2) Pay the assessed penalty amount as indicated in the attached Expedited Settlement Agreement by **Online Payment through the Department of Treasury: [WWW.PAY.GOV](http://WWW.PAY.GOV)** (Enter SFO 1.1 in search field. Open form and complete required fields). Or alternatively, send check via certified mail to:

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

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

The check or online payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment going to the Cincinnati Finance Center.

This original ESA and a copy of the check or online receipt must also be sent by certified mail to:

Angie Proboszcz (SFD-9-3)  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

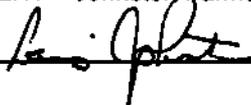
Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 30 days of the date of Respondent's receipt of the proposed ESA, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT – Johnston Farms Family Limited Partnership

Signature: 

Date: 7/27/12

Name (print): Dennis Johnston

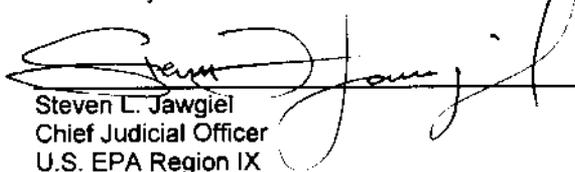
Title (print): Owner/Partner

FOR COMPLAINANT:

  
Jane Diamond  
Superfund Director  
U.S. EPA Region IX

Date: 9 August 2012

It is hereby ORDERED that this ESA be entered and Respondent pays the above penalty.

  
Steven L. Jawgiel  
Chief Judicial Officer  
U.S. EPA Region IX

Date: 08/15/12

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of JOHNSTON FARMS FAMILY LIMITED PARTNERSHIP. (Docket #: CAA(112r)-09-2012-0010) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Mr. Dennis Johnston  
Owner/Partner  
Johnston Farms Family Ltd. Partnership  
PO Box 65  
Edison, CA 93220

**CERTIFIED MAIL NUMBER:** 7000 0520 0025 3715 3967

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Thanne Cox, Esq.  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
\_\_\_\_\_  
Bryan K. Goodwin  
Regional Hearing Clerk  
U.S. EPA, Region IX

8/17/12  
\_\_\_\_\_  
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 9  
75 Hawthorne Street, San Francisco, CA 94105

CERTIFIED MAIL NO: 7000 0520 0025 3715 3967  
Return Receipt Requested

AUG 17 2012

Mr. Dennis Johnston  
Owner/Partner  
Johnston Farms Family Limited Partnership  
PO Box 65.  
Edison, CA 93220

Re: Johnston Farms, 13031 Packing House Rd., Edison, CA, 93220  
EPA Facility ID # 100000014977

Dear Mr. Johnston,

This letter transmits a copy of the fully executed Expedited Settlement Agreement that resolves the alleged violations of Clean Air Act (CAA) Section 112(r)(7) at Johnston Farms, 13031 Packing House Rd., Edison, CA, 93220. The violation is for failure to:

1) Establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures that affect a covered process, as required by 40 CFR§68.75(a).

The facility developed and adopted Management of Change procedures; however, there was no record of these procedures having been followed with the recent relocation of the packing house chlorination system.

2) Submit a correction to the RMP within one month of any change in the emergency contact information, as required by 40 CFR§68.195(b).

The facility's RMP, dated April 26, 2010, reported an emergency contact email address that was not functional as of at least September 10, 2010. This violation was discovered on September 10, 2010, when the EPA Inspector Jeremy Johnstone attempted to contact the facility's emergency contact via the email address provided in the RMP. A correction to the RMP, with the correct emergency contact email address, should have been submitted to EPA by at least October 10, 2010; however, it was not submitted until October 19, 2010.

3) Establish procedures to notify emergency responders when there is need for a response as required by 40 CFR §68.90(b)(3).

The facility's RMP, dated April 26, 2010, did not include an Emergency Action Plan as required by 40 CFR §68.90. An Emergency Action Plan, dated July 2011 was submitted to EPA after the inspection.

Thank you for your prompt attention to this matter. If you have any questions or need additional information about the CAA Section 112(r)(7) requirements, please feel free to contact Angie Proboszcz

of my staff at (415) 972-3077.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Diamond", written in a cursive style. The signature is positioned above the printed name and title.

Jane Diamond  
Director, Superfund Division

Enclosures