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U.S. EPA - REGION IX

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

In the Matter of:)	
)	Docket No. CAA (112R)-09-2021-0072
Taylor Fresh Foods, Inc.)	
)	CONSENT AGREEMENT AND FINAL
)	ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 AND 22.18
Respondent.)	
_____)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and Taylor Fresh Foods, Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3)(A) and (d), for the assessment of a civil administrative penalty against Respondent for violations of Section 112(r) of the CAA.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a company incorporated in Delaware whose principal offices are located at 150 Main Street, Suite 500 in Salinas, California.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Pursuant to Section 112(r) of the CAA, EPA established a “threshold quantity” (“TQ”) for each “regulated substance,” above which a facility shall be subject to the requirements of Section 112(r) of the CAA. For substances designated as “regulated toxic substances” or “regulated flammable substances,” the TQs are specified at 40 C.F.R. § 68.130.
5. Ammonia (anhydrous) is a “regulated toxic substance” listed under CAA § 112(r)(3) with a TQ of 10,000 pounds. *See* 40 C.F.R. § 68.130, Table 3.
6. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.12(a), the owner or operator of a covered stationary source must submit a Risk Management Plan, as provided in 40 C.F.R. §§ 68.150 - 68.185.
7. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.10(i), the owner or operator of a covered stationary source with a process in an NAICS code listed in 40 C.F.R. § 68.10(i)(1) or subject to the Occupational Safety and Health Act (“OSHA”) process safety management standard set forth in 29 C.F.R. § 1910.119 is subject to the “Program 3” requirements set forth in 40 C.F.R. § 68.12(d).
8. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.12(d), facilities subject to the Program 3 requirements are required to implement the prevention requirements set forth in 40 C.F.R. §§ 68.65 through 68.87 and the emergency response program requirements

set forth in 40 C.F.R. §§ 68.90 through 68.96.

9. Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3), define “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant.”
10. Section 302(g) of the CAA, 42 U.S.C. § 7602(g), defines “air pollutant” as “any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air.”
11. The Administrator of EPA may assess against any person who violates any provision of CAA § 112(r) a civil penalty of up to \$48,762 per day for each offense that occurred after November 2, 2015. *See* Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 85 Fed. Reg. 83818 (December 23, 2020).
12. EPA and the United States Department of Justice jointly determined 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 assessment. *See* 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

C. GENERAL ALLEGATIONS

13. At all times relevant to this CAFO, Respondent was a corporation and therefore a "person" as defined in Section 302(e) of CAA, 42 U.S.C. § 7602(e).
14. At all times relevant to this CAFO, Respondent operated a facility (the “Facility”) located at 1085 Abbott Street in Salinas, California, to process, store, and distribute prepackaged salads, fresh-cut fruits and vegetables, and other food products.

15. The real property and improvements thereto located at the Facility are 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).
16. At all times relevant to this CAFO, Respondent produced, used or stored more than 10,000 pounds of ammonia (anhydrous) at the Facility and was subject to the requirements of CAA § 112(r)(7).
17. At all times relevant to this CAFO, Respondent was subject to Program 3 requirements because it was subject to the OSHA process safety management standard set forth in 29 C.F.R. § 1910.119.
18. On June 20, 2018, EPA performed an inspection of the Facility pursuant to Section 112(r) of CAA, 42 U.S.C. § 7412(r) (the “Inspection”). Based upon the information gathered during the Inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of the CAA.

D. ALLEGED VIOLATIONS

Count 1

(Failure to Comply with Hazards Assessment Requirements)

19. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were set forth here in their entirety.
20. Under 40 C.F.R. § 68.20, the owner or operator of a stationary source subject to the risk management plan requirements of CAA 112(r) and 40 C.F.R. Part 68 must prepare a worst case release scenario analysis. Under 40 C.F.R. § 68.22(c), the worst case release analysis must use the highest daily maximum temperature in the previous three years.

Under 40 C.F.R. § 68.22(d), the worst case release analysis must assume a ground level (0 feet) release of the regulated toxic substance.

21. EPA determined that Respondent failed to use the highest daily maximum temperature in the previous three years and assume a ground level release of ammonia in its worst case release analysis for the Facility in 2015.
22. EPA determined that Respondent updated its worst case release analysis for the Facility in 2019 to use the highest daily maximum temperature in the previous three years and assume a ground level release of ammonia.
23. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.22(c) and (d) by failing to use the highest daily maximum temperature in the previous three years and assume a ground level release of ammonia in its worst case release analysis for the Facility during 2015-2019.

Count 2

(Failure to Comply with Process Hazard Analysis Requirements)

24. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were set forth here in their entirety.
25. Under 40 C.F.R. § 68.65(d)(2), the owner or operator of a stationary source subject to the risk management plan requirements of CAA 112(r) and 40 C.F.R. Part 68 must document that process equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).
26. Under 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.

27. During EPA's inspection of the Facility in 2018, EPA determined that Respondent failed to document the design, maintenance, inspection, testing and operation of extension cords for electricity in a manner consistent with RAGAGEP.
28. During EPA's inspection of the Facility in 2018, EPA determined that Respondent failed to document the design, maintenance, inspection, testing and operation of an electrical conduit in the ammonia machinery room in a manner consistent with RAGAGEP.
29. During EPA's inspection of the Facility in 2018, EPA determined that Respondent failed to document the design, maintenance, inspection, testing and operation of an ammonia nurse tank in a manner consistent with RAGAGEP.
30. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.65(d)(2) and (3) by failing to document the design, maintenance, inspection, testing and operation of process equipment in a manner consistent with RAGAGEP in 2018.

Count 3

(Failure to Comply with Operating Procedures Requirements)

31. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were set forth here in their entirety.
32. Under 40 C.F.R. § 68.69(a), the owner or operator of a stationary source subject to the risk management plan requirements of CAA 112(r) and 40 C.F.R. Part 68 must 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. Such operating procedures must address safety and health considerations

(e.g., hazards presented by the chemicals used in the process and precautions to prevent exposure) and safety systems and their functions, as required by 40 C.F.R. § 68.69(a)(3) and (4), respectively. Such operating procedures must be reviewed as often as necessary to assure that they reflect current operating practice and must be certified annually by the owner or operator for validity and accuracy, as required by 40 C.F.R. § 68.69(c).

33. During EPA's inspection of the Facility in 2018, EPA determined that Respondent's written operating procedures for the Facility failed to address safety and health considerations and safety systems and their functions and lacked annual certifications for validity and accuracy.
34. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.69(a) and (c), by failing to develop and implement written operating procedures that addressed safety and health considerations and safety systems and their functions and failing to annually certify the operating procedures for validity and accuracy in 2018.

E. RESPONDENT'S ADMISSIONS

35. 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 CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives, for the purpose of this proceeding in Docket Nos. CAA (112r)-09-2021-0072, any right to contest the allegations contained in Section I.D of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

F. CIVIL ADMINISTRATIVE PENALTY

36. Respondent agrees to the assessment of a civil penalty of EIGHTY-NINE THOUSAND AND TWO DOLLARS (\$89,002) for the claims set forth herein as final settlement of the civil claims against Respondent as alleged in Section I.D of the CAFO.

37. Respondent shall pay the assessed penalty according to the terms of this CAFO within thirty (30) days of the Effective Date of the CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. Regular or Certified Mail:

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

b. 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."

c. Overnight Mail:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL

St. Louis, MO 63101
Contact: Craig Steffen (513) 487-2091

d. ACH (also known as REX or remittance express):

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 20737
Remittance Express (REX): 1-866-234-5681

e. Online Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sfo1.1" in the search field
Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send by e-mail a copy of the 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, and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Armsey.steven@epa.gov

Jennifer MacArthur
Enforcement and Compliance Assurance Division (ENF-4-1)
U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street
San Francisco, CA 94105
Macarthur.jennifer@epa.gov

38. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
39. In the event Respondent fails to pay the assessed penalty to EPA by the time required in Paragraph 37 of this CAFO, 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 CAFO in a manner acceptable to EPA and within the specified time schedules in and approved under this CAFO.
40. 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 I.F of this CAFO.
41. 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 CAFO or with the CAA and the implementing regulations.

42. 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 CAFO.

G. CERTIFICATION OF COMPLIANCE

43. In executing this CAFO, Respondent certifies that, to its knowledge, it is currently in compliance with any CAA § 112(r) requirements that may apply to its ongoing operations.

H. RETENTION OF RIGHTS

44. In accordance with 40 C.F.R. § 22.18(c), Respondents' full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.D of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.D of the CAFO.
45. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

I. MISCELLANEOUS

46. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.

47. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.
48. Each party to this action shall bear its own costs and attorneys' fees.
49. Respondent consents to entry of this CAFO without further notice.

J. EFFECTIVE DATE


50. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

K. BINDING EFFECT

51. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
52. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, TAYLOR FRESH FOODS, INC.

9/15/2021
DATE




NAME: John Mazzei
TITLE: General Counsel _____

FOR COMPLAINANT, EPA REGION IX:

DATE

AMY MILLER-
BOWEN



Digitally signed by AMY
MILLER-BOWEN
Date: 2021.09.23 17:26:18
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Amy C. Miller-Bowen
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

Complainant and Respondent, Taylor Fresh Foods, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA (112R)-09-2021-0072) be entered, and that Respondent shall pay a civil administrative penalty in the amount of EIGHTY-NINE THOUSAND AND TWO DOLLARS (\$89,002), and comply with the terms and conditions set forth in the Consent Agreement.

BEATRICE
WONG

Digitally signed by BEATRICE
WONG
Date: 2021.09.28 13:28:01
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DATE

Beatrice Wong
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of Taylor Fresh Foods, CAA(112R)-09-2021-0072, has been filed with the Regional Hearing Clerk and a copy was served on Respondent and on Complainant as indicated below:

FOR RESPONDENT

By Electronic Mail

John Mazzei
General Counsel
Taylor Farms, Inc.
150 Main Street, Suite 300
Salinas, CA 93901
jmazzei@taylorfarms.com

FOR COMPLAINANT

By Electronic Mail

David Kim
Assistant Regional Counsel,
U. S. EPA - Region 9
Kim.David@epa.gov

Date: _____, 2021

Armsey Digitally signed by
, Steven Armsey, Steven
Date: 2021.09.29
17:00:14 -07'00'

Steven Armsey
Regional Hearing Clerk
EPA, Region 9