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**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of: )

DOVEX FRUIT COMPANY )

Respondent. )  
-----

) Docket No. CAA-10-2008-0156

) CONSENT AGREEMENT  
) AND FINAL ORDER

**I. AUTHORITY**

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 113(d) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7413(d). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.2. Respondent is Dovex Fruit Company ("Dovex" or "Respondent").

1.3. Pursuant to Section 113(d) of the CAA and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Respondent hereby agrees to the issuance of, the Final Order contained in Part V of this CAFO.

1.4. The EPA Administrator and the Attorney General for the United States Department of Justice have jointly determined that this action, which includes the

DOVEX FRUIT COMPANY  
CONSENT AGREEMENT AND  
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allegation that a CAA violation commenced more than 12 months ago, but does not seek more than \$270,000 in CAA penalties, is an appropriate administrative penalty action under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. § 22.13(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes final.

2.2. A concise statement of the factual basis for alleging violations of the CAA, together with specific references to the provisions of the CAA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

## **III. EPA'S ALLEGATIONS**

3.1. Respondent is a company incorporated in the state of Washington.

3.2. Respondent is the owner and operator of a cold storage warehouse in Wenatchee, Washington ("facility").

3.3. Respondent's facility is a "stationary source" as that term is defined in 40 C.F.R. § 68.3.

3.4. 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.

3.5. 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" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, in 40 C.F.R. § 68.130.

3.7. The threshold quantity of anhydrous ammonia is 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.8. 40 C.F.R. § 68.3 defines "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substance, or combination of these activities.

3.9. Under 40 C.F.R. § 68.115, a threshold quantity 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 threshold quantity.

3.10. 40 C.F.R. § 68.150 requires that an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process submit a Risk Management Plan ("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.

3.11. Respondent owns and operates a stationary source where anhydrous ammonia has been present in a process above the 10,000-pound threshold quantity at all times relevant to this CAFO and Respondent was required to submit an RMP for the facility since at least August 4, 2003.

3.12. Respondent's failure to submit an RMP for the facility since at least August 4, 2003, is a violation of 40 C.F.R. § 68.150.

3.13. It is a continuing violation of CAA § 112(i)(3)(A) to operate a stationary source in violation of 40 C.F.R. § 68.150.

3.14. From at least August 4, 2003 through August 5, 2008 Respondent operated a stationary source without having filed an RMP as required by 40 C.F.R. § 68.150.

#### **IV. CONSENT AGREEMENT**

The parties to this action hereby stipulate as follows:

4.1. Respondent admits the jurisdictional allegations contained in Part I, above.

4.2. Respondent neither admits nor denies the specific factual allegations in Part III, above.

4.3. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), taking into consideration the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, cooperation with EPA, the duration of the violations as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violation (in addition to such other factors as justice may require), EPA and Respondent agree that an appropriate penalty to settle this action is NINETY-EIGHT THOUSAND TWO HUNDRED FORTY-ONE DOLLARS (\$98,241).

4.4. Respondent consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case. Respondent may also pay the penalty by wire transfer in accordance with instructions provided by EPA.

4.6. Respondent shall serve photocopies of the check or documentation of wire transfer on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158  
Seattle, Washington 98101-3140

Office of Environmental Cleanup  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, Mail Stop ECL-116  
Seattle, Washington 98101-3140  
Attn: Javier Morales

4.7. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, then pursuant to Section 113(d)(5), 42 U.S.C. § 7413(d)(5), Respondent shall pay the following amounts:

a. 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 date the penalty was due from Respondent; provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the date a conformed copy of this CAFO is mailed to Respondent.

b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order

contained herein, Respondent shall pay (in addition to any assessed penalty and interest) attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to ten percent (10%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. The penalty described in paragraph 4.3 of this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. Except as described in paragraph 4.8 of this CAFO, each party shall bear its own costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and to appeal the Final Order contained herein and, without admitting or denying the factual allegations contained in the Final Order, consents to the terms of this CAFO and the Final Order.

4.12. Pursuant to 40 C.F.R. § 22.18(c), full payment of the penalty assessed in this CAFO resolves Respondent's liability for federal civil penalties for the violations and facts alleged in Part III of this CAFO.

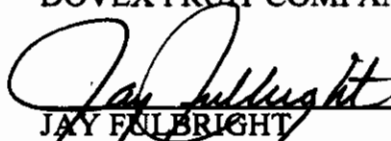
4.13. Except as provided in Paragraph 4.12 above, nothing in the CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statute and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.14. This CAFO 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.

4.15. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original.

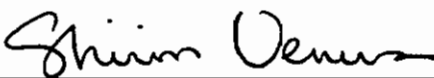
STIPULATED AND AGREED:

DOVEX FRUIT COMPANY

  
\_\_\_\_\_  
JAY FULBRIGHT  
Vice President

Dated: 9/12/08

U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
SHIRIN VENUS  
Assistant Regional Counsel

Dated: 9/15/08


**V. FINAL ORDER**

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

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CAA for the violations and facts alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations and permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 18<sup>th</sup> day of September 2008

  
\_\_\_\_\_  
RICHARD G. MCALLISTER  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10



CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Dovex Fruit Company, DOCKET NO.: CAA-10-2008-0156** was filed with the Regional Hearing Clerk on September 18, 2008.


On September 18, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Venus, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, WA 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 on September 18, 2008, to:

Jay Fullbright  
Vice President  
Dovex Fruit Company  
2833 Euclid Avenue  
Wenatchee, WA 98801

DATED this 18<sup>th</sup> day of September 2008.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10