

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

**\*\* FILED \*\***  
**30SEP2016 - 04:55PM**  
**U.S.EPA - Region 09**

In the matter of:	)	U.S. EPA Docket No.
	)	CAA(112r)- 09-2016- <u>0006</u>
Tanimura and Antle Fresh Foods, Inc.	)	
Spreckles, California	)	
	)	CONSENT AGREEMENT AND
Respondent.	)	FINAL ORDER PURSUANT TO
_____	)	40 C.F.R. §§ 22.13 AND 22.18

**CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the "CAA"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-7-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority with respect to enforcement of Section 112(r)(1) and (7) of the CAA to the Director of the Superfund Division, as well as the Director of the Enforcement Division. Regional Order 1265.05A, dated February 11, 2013.

3. Respondent is Tanimura and Antle Fresh Foods, Inc, a company that provides cooling and short-term storage for fresh vegetables.
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (“Consent Agreement”) and the final order (“Final Order”) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

### **B. JURISDICTION**

5. This Consent Agreement is entered into under CAA Section 113(d), as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.
6. In a letter dated October 14, 2014, the Department of Justice granted EPA authority to commence this administrative enforcement action pursuant to CAA Section 113(d)(1), 42 U.S.C. § 7413(d)(1).
7. The Regional Judicial Officer is authorized to ratify this Consent Agreement. 40 C.F.R. §§ 22.4(a) and 22.18(b).
8. Pursuant to 40 C.F.R. § 22.13(b), the issuance of this Consent Agreement and Final Order simultaneously commences and concludes this proceeding.

### **C. GOVERNING LAW**

9. The CAA seeks to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of the population.” 42 U.S.C. § 7401(b)(1).
10. The purpose of CAA Section 112(r), 42 U.S.C. § 7412(r), is to provide requirements and standards to help prevent and minimize accidental releases of regulated

substances.

11. In 1994, EPA promulgated the Risk Management Program regulations in accordance with CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7). *See* 40 C.F.R. Part 68, Chemical Accident Prevention Provisions.
12. Pursuant to 40 C.F.R. § 68.10, the owner or operator of a stationary source that has more than a threshold quantity (“TQ”) of a regulated substance in a process must comply with the Risk Management Program regulations.
13. The term “regulated substance” means any substance listed by EPA pursuant to CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(2)(B). Lists of regulated substances and threshold quantities are provided in tables located at 40 C.F.R. § 68.130.
14. Pursuant to 40 C.F.R. § 68.3, “process” is defined broadly to mean “any activity involving a regulated substance including any, use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.”
15. Pursuant to CAA Section 112(r)(7)(E), 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate any stationary source subject to Risk Management Program requirements and regulations in violation of such requirements and regulations.
16. Pursuant to 40 C.F.R. § 68.150, the owner or operator of a stationary source subject to the requirements of 40 C.F.R. Part 68 must submit a Risk Management Plan (“RMP”) in the method and format to the central point specified by EPA.
17. Pursuant to 40 C.F.R. § 68.190(b), the owner or operator of a stationary source is required to revise and update the RMP at least once every five years from the date of its initial submission or most recent update required by 40 C.F.R. § 68.190(b)(2)-(7), whichever is later.

#### **D. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

18. Respondent is a “person” as defined in CAA Section 302(e), 42 U.S.C. § 7602(e).
19. At all times relevant to this proceeding, Respondent owned and/or operated a facility located at 1 Harris Rd., Spreckles, CA 93902 (the “Facility”).
20. The Facility is a “stationary source” as that term is defined in CAA Section 112(r)(2), 42 U.S.C. § 7412(r)(2) and 40 C.F.R. § 68.3.
21. Anhydrous ammonia is a regulated substance with a TQ of 10,000 pounds. 40 C.F.R. § 68.130, Table 2.
22. At all times relevant to this Consent Agreement, Respondent produced, used or stored more than 10,000 lbs of anhydrous ammonia.

#### **E. ALLEGED VIOLATIONS OF LAW**

##### **COUNT 1**

##### **(Failure to Timely Submit an RMP)**

23. Paragraphs 1 through 22 above are incorporated herein by reference as if they were set forth here in their entirety.
24. Respondent did not review and update Respondent’s RMP within five years from April 20, 2009, the date of its most recent submission.
25. Respondent did not submit an update to the RMP for the Facility until on or about December 17, 2014.
26. Therefore, EPA alleges that Respondent failed to revise and update the RMP for the Facility at least once every five years, in violation of Section 112(r)(7) and 40 C.F.R. § 68.190.

#### **F. TERMS OF CONSENT AGREEMENT**

27. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement;
- (b) neither admits nor denies the alleged violations of law stated above;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the conditions specified in this Consent Agreement;
- (e) waives any right to contest the alleged violations of law set forth in Section E of this Consent Agreement; and
- (f) waives its rights to appeal the Final Order accompanying this Consent Agreement.

28. For the purpose of this proceeding, Respondent:

- (a) agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Final Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

- (d) consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in a United States District Court; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

29. Penalty Payment. Respondent agrees to:

- (a) pay the civil penalty of Five Thousand Dollars (\$5,000) (“EPA Penalty”) within thirty (30) calendar days of the Effective Date of this Consent Agreement.
- (b) pay the EPA Penalty by cashier’s check, certified check, or wire transfer made payable to ”Treasurer, United States of America, EPA – Region 9.” Payment shall be remitted in one of five (5) ways: (1) regular U.S. Postal Service mail including certified mail; (2) overnight mail; (3) wire transfer; (4) Automated Clearinghouse for receiving US currency; or (5) On Line Payment.

For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, payment should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. FedEx), payment should be remitted to:

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Spreckles, California  
Consent Agreement and Final Order*

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
(314) 418-4087

For wire transfer, payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact – Jesse White (301) 887-6548

For On Line Payment:

<https://www.pay.gov/paygov/>  
Enter sfo 1.1 in search field  
Open form and complete required fields.

PLEASE NOTE: All payments shall indicate the name of the Facility, EPA identification number of the Facility, Respondent's name and address, and the EPA docket number of this Action.

In addition, a copy of each check, or notification that payment has been made by one of the other methods listed above, including proof of the date of payment was made, shall be sent with a

transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

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

And

Regional Hearing Clerk (RC-1)  
U.S. EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

30. If Respondent fails to timely pay any portion of the penalty assessed under this Consent Agreement, the EPA may:
- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
  - (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
  - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
  - (d) suspend or revoke Respondent's licenses or other privileges, or

(e) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

31. Conditions. Prior to signing this Consent Agreement, the Respondent reviewed and updated its RMP and submitted the RMP to EPA.
32. The provisions of this Consent Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Consent Agreement, Respondent must give written notice and a copy of this Consent Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Consent Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.
33. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and agrees that this Consent Agreement does not contain any confidential business information or personally identifiable information.
34. By signing this Consent Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Consent

Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

35. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
36. Except as qualified by Paragraph 30, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **G. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER**

37. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
38. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.
39. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
40. The terms, conditions, and compliance requirements of this Consent Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

41. Any violation of this Final Order may result in a civil judicial action for an injunction or civil penalties of up to \$93,750 per day per violation, or both, as provided in CAA Section 113(b)(2), 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in CAA Section 113(c), 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Final Order in an administrative, civil judicial, or criminal action.
42. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
43. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
44. The EPA reserves the right to revoke this Consent Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

## **H. EFFECTIVE DATE**

45. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of Tanimura and Antle Fresh Foods, Inc., Spreckles, California, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

8/25/16

Date



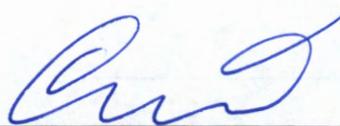
Frank Garcia  
Vice President of Support Operations  
Tanimura and Antle Fresh Foods, Inc.

The foregoing Consent Agreement In the Matter of Tanimura and Antle Fresh Foods, Inc., Spreckles, California, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

9/29/16

DATE



Enrique Manzanilla, Director  
Superfund Division  
U.S. Environmental Protection Agency, Region IX

**FINAL ORDER**

**IT IS HEREBY ORDERED** that this Consent Agreement and Final Order ("CA/FO") (Docket No. CAA(112r)-09-2016-0006) be entered and that Respondent pay a civil penalty of **Five Thousand Dollars (\$5,000)** in accordance with the terms of this CA/FO.

**THE FINAL ORDER SHALL BE EFFECTIVE UPON FILING WITH THE REGIONAL HEARING CLERK**

09/30/16  
Date

  
Steven Jawgiel  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region IX

**CERTIFICATE OF SERVICE**

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of Tanimura and Antle Fresh Foods, Inc., Spreckles, California, Docket No. CAA(112r)-09-2016-0006, were 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:

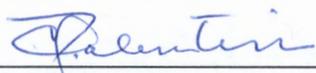
A copy was mailed via CERTIFIED MAIL to:

Frank Garcia  
Vice President of Operations  
Tanimura and Antle Fresh Foods, Inc.  
PO Box 4070  
Salina, CA 93912

**CERTIFIED MAIL NUMBER:** 7005 0390 2000 5330 2014

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

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

  
FOR: Steven Armsey  
Acting Regional Hearing Clerk  
U.S. EPA, Region IX

10/3/16  
Date