

FILED

2013 JUL 31 AM 11:44

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

US EPA - REGION IX
HEARING CLERK

IN THE MATTER OF:

Ventura Foods, LLC,

Respondent.

U.S. EPA Docket No.

CAA (112r) - 09 - 2013 - *0004*

CONSENT AGREEMENT AND
FINAL ORDER PURSUANT TO
40 CFR SECTIONS 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 ("Consolidated Rules"), 40 CFR Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Ventura Foods, LLC., a Delaware corporation organized to conduct business in California ("Respondent").
2. Respondent owns and operates a manufacturing facility located at 2900 East Jurupa Street, Ontario, California ("Ontario Facility").
3. This Consent Agreement and Final Order Pursuant to 40 CFR Sections 22.13 and 22.18, ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent, at the Ontario Facility, violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the regulations adopted pursuant thereto.

B. GENERAL ALLEGATIONS

4. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
5. The real property and improvements thereto located at the Ontario 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).
6. 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 CAA. For substances designated as "regulated toxic substances" or "regulated flammable substances," the TQs are specified at 40 CFR § 68.130.
7. Anhydrous ammonia, Chemical Abstract Service Registry ("CAS") Number 7664-41-7, is a "regulated toxic substance" listed under CAA § 112(r)(3) with a TQ of 10,000 pounds. 40 CFR § 68.130, Table 1.
8. At all times relevant to this CA/FO, the Ontario Facility produced, used, or stored more than 10,000 pounds of anhydrous ammonia.
9. At all times relevant to this CA/FO, Respondent has been the owner and operator of the Facility.
10. Under Section 112(r)(7) of the CAA and 40 CFR § 68.12(a), the owner or operator of a covered stationary source must submit a Risk Management Plan ("RMP"), as provided in 40 CFR §§ 68.150 - 68.185.
11. Pursuant to 40 CFR § 68.10 and 40 CFR § 68.150(b), the owner or operator of a covered stationary source must comply with the requirements of 40 CFR Part 68 and submit its first RMP 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 TQ in a process.

12. Pursuant to Section 112(r)(7) of the CAA, 40 CFR § 68.10, and 40 CFR § 68.65(d)(2), the owner or operator of a stationary source must document that equipment complies with recognized and generally accepted good engineering practices.

13. Pursuant to Section 112(r)(7) of the CAA, 40 CFR § 68.10, and 40 CFR § 68.75(d), the owner or operator of a stationary source must update process safety information when there is a change to process chemicals, technology, equipment, and procedures; and when there are changes to stationary sources that affect a covered procedure; and

14. Pursuant to Section 112(r)(7) of the CAA and 40 CFR § 68.195(b), the owner or operator of a stationary source for which an RMP was submitted shall submit updated emergency contact information, as required by 40 CFR § 68.160(b)(6), within one month of any change in the emergency contact.

15. Based on information supplied by Respondent, EPA alleges that Respondent has violated Section 112(r)(7) of CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR Part 68. Respondent neither admits nor denies this allegation.

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

17. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes the assessment of a civil penalty for any violation of Section 112(r) of CAA, 42 U.S.C. § 7412(r).

18. The EPA Administrator has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-6-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 Directors of the Superfund Division and the Air Division. Regional Order 1265.05A, dated August 14, 2003.

19. In a letter dated July 3, 2012, the Department of Justice granted EPA authority to commence this administrative enforcement action pursuant to Section 113(d)(1) of the CAA, 42

U.S.C. § 7413(d)(1).

C. ALLEGED VIOLATIONS

COUNT I

(Failure to Submit an RMP for the Ontario Facility)

20. Paragraphs 1 through 19 above are incorporated herein by this reference as if they were set forth here in their entirety.

21. The Ontario Facility had more than a TQ of anhydrous ammonia when the Facility started operation in December 2007 and at all subsequent relevant times.

22. Respondent was required to submit the RMP for the Ontario Facility by December 2007, pursuant to Section 112(r)(7) of the CAA and 40 CFR § 68.150(b)(3).

23. Respondent did not submit an RMP for the Ontario Facility to EPA until on or about March 26, 2009.

24. Therefore, EPA alleges that Respondent failed to timely submit an RMP for the Ontario Facility, in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR § 68.150(b)(3).

COUNT II

(Failure to Document that Equipment Complies with

Recognized and Generally Accepted Good Engineering Practices)

25. Paragraphs 1 through 24 above are incorporated herein by this reference as if they were set forth here in their entirety.

26. An October 7, 2011 site inspection by the manufacturer's representative for the votators (a type of heat exchanger) in use at the Ontario Facility indicated that the votator seals were not maintained in accordance with manufacturer's specifications.

27. Recognized and generally accepted good engineering practices specify that component parts of ammonia refrigeration system are to be labeled identifying the ammonia's phase,

pressure, temperature, and direction of flow. An EPA inspection on December 8, 2011 showed that ammonia refrigeration system labels were missing from numerous votator components.

28. An EPA inspection on December 8, 2011 showed that an electrical junction box, located in a wet environment on top of the enclosure below the surge tank, had been left open.

Recognized and generally accepted good engineering practices specify that electrical junction boxes used in wet environments be specially rated for such use and are to be kept tightly sealed.

29. Therefore, EPA alleges that Respondent failed to document that equipment complies with recognized and generally accepted good engineering practices, in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR § 68.65(d)(2).

COUNT III

(Failure to Timely Update Emergency Contact Information)

30. Paragraphs 1 through 29 above are incorporated herein by this reference as if they were set forth here in their entirety.

31. Respondent changed its emergency contact for the Ontario Facility in early October 2011, and the facility failed to update its emergency contact information in EPA's RMP registration system until December 8, 2011.

32. Respondent was required to update its emergency contact information pursuant to 40 CFR §68.195(b) within one month of any change.

33. Therefore, EPA alleges that Respondent failed to timely update its emergency contact information for the Ontario Facility, in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR § 68. 195(b).

COUNT IV

(Failure to Update Process Safety Information)

34. Paragraphs 1 through 33 above are incorporated herein by this reference as if they were

set forth here in their entirety.

35. Respondent has replaced the following pieces of votator equipment at the Ontario Facility in the indicated month: a) "Line 44 No. 1" in approximately January 2010; b) "Line 46 pre-chill" in approximately June 2010; and c) "Line 44 No. 1A Left & Right" in approximately June 2011.

36. Management of Change regulations at 40 CFR 68.75(d) require that changes covered by that paragraph resulting in a change in the process safety information required by 40 C.F.R. 68.65, including Piping and Instrumentation Diagrams (P&IDs) as set forth at 40 C.F.R. 68.65(d)(ii), shall be updated accordingly.

37. As of EPA inspection on December 8, 2011, the P&IDs had not been updated to reflect the above-referenced new pieces of votator equipment.

38. Therefore, EPA alleges that Respondent failed to appropriately update the applicable Process Safety Information, in particular the P&IDs, after replacing certain votator units at the Ontario Facility in violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 CFR § 68.75(d).

D. CIVIL PENALTY

39. Section 113(d) of the CAA, as adjusted by the Debt Collection Improvement Act of 1996, *see* 40 CFR Part 19, authorizes a civil penalty of up to THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500) per day for each day after March 15, 2004, that a violation of Section 112(r) of the CAA and the implementing regulations continues. *See* Table 1 of 40 CFR § 19.4, 69 Fed. Reg. 7121, 7126 (Feb. 13, 2004).

40. Based on the facts alleged herein and upon all the factors which the Complainant considers pursuant to the Combined Enforcement Policy for Section 112(r) of the Clean Air Act ("CEP"), dated June 20, 2012, including the nature, extent, and gravity of the violations, the Respondent's ability to pay, prior history of violations, degree of culpability, any economic benefit, and such other matters as justice may require, the Complainant proposes that the

Respondent be assessed, and Respondent agrees to pay **ONE HUNDRED FORTY THOUSAND, SIX HUNDRED DOLLARS (\$140,600)** as the civil penalty for the violations alleged herein. The proposed penalty was calculated in accordance with the CEP.

E. ADMISSIONS AND WAIVERS OF RIGHTS

41. Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, and 40 CFR Part 22. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

42. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to a hearing or an appeal on any issue relating to the factual allegations or legal conclusions set forth in the CA/FO, including without limitation a hearing pursuant to Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), or judicial review pursuant to Section 113(d)(4) of the CAA, 42 U.S.C. § 7413(4). Respondent hereby consents to the terms of this CA/FO and the issuance of this CA/FO without adjudication.

43. 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

44. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons acting under or for Respondent, until such time as the civil

penalty required under Section D (and any additional civil penalty required under Section I) and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full and complete settlement of the violations alleged herein.

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

46. Until termination of this CA/FO, 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.

47. The undersigned representative of Respondent hereby certifies that he is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. CERTIFICATION OF COMPLIANCE

48. Upon signing this CA/FO, Respondent certifies to EPA that it has fully complied with the requirements of Section 112(r) of the CAA that formed the basis for the violations alleged in the CA/FO, and the Facility is now in compliance with Section 112(r) of the CAA.

49. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

H. PAYMENT OF CIVIL PENALTY

50. Respondent consents to the assessment of and agrees to pay a civil penalty of **ONE HUNDRED FORTY THOUSAND, SIX HUNDRED DOLLARS (\$140,600)** in settlement of the civil penalty claims made in this CA/FO.

51. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this

CA/FO, by sending a certified or cashier's check in the amount of **ONE HUNDRED FORTY THOUSAND, SIX HUNDRED DOLLARS (\$140,600)**, payable to "U.S. EPA," which shall be mailed as follows:

Regular Mail

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

Overnight Mail

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
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)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White (301-887-6548)
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency

Account 31006
CTX Format

On Line 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

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

Jeremy Johnstone
Emergency Prevention & Preparedness Section (SFD-9-3)
Superfund Division
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Bryan K. Goodwin
Regional Hearing Clerk (ORC-1)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

52. 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 CFR §13.11. In addition, a twelve percent (12%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

53. 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.

I. DELAY IN PERFORMANCE / STIPULATED PENALTIES

54. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. 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.

55. For failure to submit a payment to EPA by the time required in this CA/FO: 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.

56. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO, are within the sole discretion of the Division Director, Superfund Division, EPA Region IX. The decision of the Division Director, Superfund Division, EPA Region IX is not reviewable in any forum.

57. 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 H of this CA/FO.

58. 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 CFR §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.

59. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

J. RESERVATION OF RIGHTS

60. EPA expressly reserves all rights and defenses that it may have.

61. 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.

62. 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 or federal laws and regulations.

63. 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.

64. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States. Notwithstanding compliance with the terms of this CA/FO, Respondent is not released from liability, if any, for the costs of any response actions taken by EPA.

K. MISCELLANEOUS

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

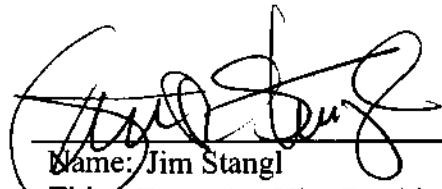
66. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

67. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.


68. In accordance with 40 CFR §§ 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 either the Regional Judicial Officer or Regional Administrator, is filed.

IT IS SO AGREED.

1-9-13
Date


Name: Jim Stangl
Title: Executive Vice President, Operations
Ventura Foods, LLC.

7-30-13
Date


Jane Diamond Enrique Manzanilla
Director
Superfund Division
United States Environmental Protection Agency
Region IX


FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) (Docket No. CAA (112r) – 9 – 2013 - 00__ be entered and that Respondent pay a civil penalty of **ONE HUNDRED FORTY THOUSAND, SIX HUNDRED DOLLARS (\$140,600)** payable to “Treasurer, United States of America,” in the manner and form specified in Section H of this CA/FO within thirty (30) days after the Effective Date, and complete any and all tasks required by this CA/FO.

THIS FINAL ORDER SHALL BE EFFECTIVE IMMEDIATELY.

07/30/13

Date



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

CERTIFICATE OF SERVICE

Docket No. CAA(112r)-09-2013-0004
and
Docket No. CERCLA(103)-09-2013-0001

I hereby certify that the original copy of the foregoing CAFOs with the Docket numbers referenced above, have been filed with the Region 9 Hearing Clerk and that copies were sent by certified mail, return receipt requested, to:

Mr. Christopher Furman
President and CEO
Ventura Foods, LLC
40 Pointe Dr.
Brea, CA 92821

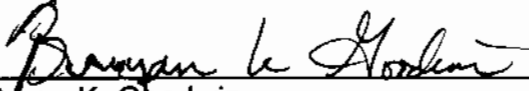
CERTIFIED MAIL NUMBER: 7011 0470 0002 9197 6299

Additional copies were hand-delivered to the following U.S. EPA case attorney:

Bethany Dreyfus, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne St.
San Francisco, CA 94105

Date

7/31/13


Bryan K. Goodwin

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No.: 7011 0470 0002 9197 6299
Refer to: Ventura Foods, LLC

JUL 31 2013

Mr. Christopher Furman, President and CEO
Ventura Foods, LLC
40 Pointe Dr.
Brea, CA 92821

Re: Consent Agreement and Final Orders
Settlement of CAA §112(r)(7), EPCRA §104, and CERCLA §103 Violations at
Ventura Foods, LLC, Ontario Facility

Dear Mr. Furman:

Please find enclosed fully executed Consent Agreement and Final Orders (CA/FOs) negotiated between the United States Environmental Protection Agency, Region IX (EPA), and Ventura Foods, LLC, concerning the Ventura Foods' Ontario Facility in California. Each CA/FO simultaneously commences and concludes the respective proceeding concerning the violations of the Clean Air Act Section 112(r)(7), and CERCLA Section 103 and EPCRA Section 104, as alleged in each CA/FO.

If you have any questions regarding the requirements governing operations at these facilities, or which concern the proceedings terminated by the enclosed documents, please contact Bethany Dreyfus at (415) 972-3886.

Sincerely,

A handwritten signature in black ink, appearing to read "Enrique Manzanilla".

Enrique Manzanilla
Director
Superfund Division

Enclosures

cc: Mark E. Elliot, Pillsbury Winthrop Shaw Pittman LLP