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EPA--REGION 10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	
TREE TOP, INC.)	Docket No. CAA-10-2008-0062
)	
)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	
)	

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 Tree Top, Inc. ("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

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 Prosser, 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. Anhydrous ammonia is a "regulated substance" under Section 112(r)(3) of the CAA, with a threshold quantity of 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.5. At the facility, Respondent operates a process that involves anhydrous ammonia above the 10,000-pound threshold.

3.6. The process referenced in paragraph 3.5 is categorized as Program 3, as that program level is defined in 40 C.F.R. § 68.10(d).

3.7. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations at 40 C.F.R. Part 68, require the owner and operator of a stationary source at which a regulated substance is present in more than a threshold quantity to develop and implement a risk management program to detect and prevent or minimize accidental

releases of such substances from the stationary source and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

3.8. Respondent is the owner and/or operator of a stationary source at which anhydrous ammonia is present above the 10,000-pound threshold in a process categorized as Program 3.

3.9. Based on an EPA inspection of the facility on June 20, 2006, and follow-up information provided by Respondent, EPA alleges that Respondent has committed the following violations from at least June 20, 2004 through October 1, 2006:

PROCESS SAFETY INFORMATION:

- 1) 40 C.F.R. § 68.65(c)(1)(i,iii-v) - Failure to include in the compilation of written safety information required by § 68.65(a) information pertaining to the technology of the process including: (i) a block flow diagram or simplified process flow diagram; (iii) maximum intended inventory; (iv) safe upper and lower limits for such items as temperatures, pressures, flows, or compositions; and (v) an evaluation of the consequences of deviations.
- 2) 40 C.F.R. § 68.65(d)(i-iii,v) - Failure to include in the compilation of written safety information referenced above, information pertaining to the equipment in the process including: (i) materials of construction; (ii) piping and instrument diagrams, except for the cherry line; (iii) electrical classification; and (v) ventilation system design.

PROCESS HAZARD ANALYSIS:

- 3) 40 C.F.R. § 68.67(g) - Failure to retain process hazard analyses and updates or revalidations for the process covered, as well as the documented resolution of recommendations described in § 68.67(e) for the life of the process.

OPERATING PROCEDURES:

- 4) 40 C.F.R. § 68.69(a)(1)(iv) - Failure to produce emergency shutdown procedures in written operational documents and to clearly assign responsibilities to qualified operators to ensure that emergency shutdown can be executed in a safe and timely manner.
- 5) 40 CFR 68.69(a)(2)(i-ii) – Failure to have written operating procedures that address operating limits including: (i) consequences of deviations; and (ii) the steps required to correct or avoid deviation.
- 6) 40 C.F.R. § 68.69(a)(3)(i-v) - Failure to have written operating procedures that address safety and health considerations including: (i) properties of, and physical hazards presented by, the chemicals used in the process; (ii) precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment; (iii) control measures to be taken if physical contact or airborne exposure occurs; (iv) quality control for raw materials and control of hazardous chemical inventory levels; and (v) any special or unique hazards.
- 7) 40 C.F.R. § 68.69(a)(4) - Failure to indicate safety systems and their functions.
- 8) 40 C.F.R. § 68.69(c) - Failure to certify annually that the operating procedures are current and accurate and that the procedures have been reviewed as often as necessary to assure that they reflect current operating practice.

TRAINING:

- 9) 40 C.F.R. § 68.71(a)(1) - Failure to document that each employee involved in operating a process, and each employee before being involved in operating a newly assigned process, has been initially trained in an overview of the process and in the operating procedures with emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

- 10) 40 C.F.R. § 68.71(a)(2) - Failure to certify in writing, in lieu of initial training for those employees already involved in operating a process on June 21, 1999, that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.
- 11) 40 C.F.R. § 68.71(b) - Failure to document that refresher training has been provided at least every three years, or more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.
- 12) 40 C.F.R. § 68.71(c) - Failure to ascertain that each employee involved in operating a process has received and understood the training required and to document this by preparing a record that contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

MECHANICAL INTEGRITY:

- 13) 40 C.F.R. § 68.73(c) - Failure to document training for each employee involved in maintaining the on-going integrity of the process equipment.

MANAGEMENT OF CHANGE:

- 14) 40 C.F.R. § 68.75(b)(1-5) - Failure to implement written management of change procedures to assure that the following considerations were addressed prior to adding the new cherry line in 2006 (2006 change): (1) the technical basis for the 2006 change; (2) impact of the 2006 change on safety and health; (3) modifications to operating procedures; (4) time needed to implement the 2006 change; and (5) authorization requirements for the 2006 change.
- 15) 40 C.F.R. § 68.75(c) - Failure to document that employees involved in operating the process and maintenance and contract employees whose job tasks would be

affected by the 2006 change were informed of, and trained in, the change prior to start-up of the process or affected parts of the process.

- 16) 40 C.F.R. § 68.75(d) - Failure to document if the 2006 change resulted in a change in the process safety information and whether such information was updated accordingly.
- 17) 40 C.F.R. § 68.75(e) - Failure to document if the 2006 change resulted in a change in the operating procedures or practices and whether such procedures or practices were updated accordingly.

PRE-STARTUP SAFETY REVIEW:

- 18) 40 C.F.R. § 68.77(b)(1-4) - Failure to conduct a pre-startup safety review prior to the introduction of the regulated substance to the process after the 2006 change to confirm that: 1) construction and equipment were in accordance with design specifications; 2) safety, operating, maintenance, and emergency procedures were in place and were adequate; 3) a process hazard analysis was performed and recommendations resolved or implemented before startup; and 4) training of each employee involved in operating the process was completed.

COMPLIANCE AUDIT:

- 19) 40 C.F.R. § 68.79(a) - Failure to certify that the company has evaluated compliance with the provisions of the prevention program at the facility at least every three years to verify that the developed procedures and practices are adequate and being followed.
- 20) 40 C.F.R. § 68.79(d) - Failure to determine and document an appropriate response to each of the findings of the audit and document that deficiencies had been corrected.
- 21) 40 C.F.R. § 68.79(e) - Failure to retain the two most recent compliance audit reports.

EMERGENCY RESPONSE:

- 22) 40 C.F.R. § 68.95(a)(1)(i) - Failure to document in an emergency response plan procedures for informing the public and local emergency response agencies about accidental releases.
- 23) 40 C.F.R. § 68.95(a)(1)(ii) - Failure to document in an emergency response plan proper first-aid and emergency medical treatment necessary to treat accidental human exposures.
- 24) 40 C.F.R. § 68.95(a)(1)(iii) - Failure to document in an emergency response plan procedures and measures for emergency response after an accidental release of a regulated substance.
- 25) 40 C.F.R. § 68.95(c) - Failure to coordinate a facility emergency response plan with the community emergency response plan developed under 42 U.S.C. § 11003 (Section 303 of the Emergency Planning and Community Right-To-Know Act).

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 EIGHTY-NINE THOUSAND SIXTY-SEVEN DOLLARS (\$89,067).

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: Calvin Terada

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.

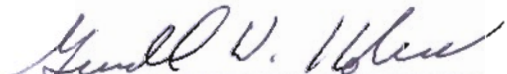
4.11. Respondent expressly waives any right to contest the allegations and to appeal the Final Order contained herein and, without admitting or denying the factual allegations contained in the Final Order, consents to the terms of this CAFO and the Final Order.

4.12. 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.

4.13. 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.

STIPULATED AND AGREED:


TREE TOP INC.



GERALD W. KOBES
Vice President
Engineering & Technical Support

Dated: 3/27/2008

U.S. ENVIRONMENTAL PROTECTION AGENCY



DEBORAH E. HILSMAN
Assistant Regional Counsel

Dated: March 31, 2008

TREE TOP, INC.
CONSENT AGREEMENT AND
FINAL ORDER

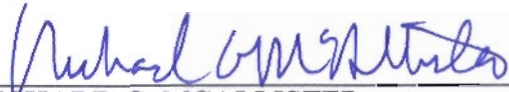
V. FINAL ORDER

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 31st day of March 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: TREE TOP, INC., DOCKET NO.: CAA-10-2008-0062** was filed with the Regional Hearing Clerk on April 01, 2008.

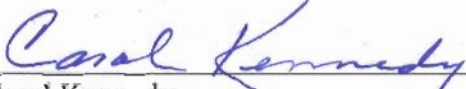
On April 01, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Deborah Hilsman, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
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 April 01, 2008, to:

Gerald W. Kobes, P.E.
Vice President
111 S. Railroad Avenue
P.O. Box 248
Selah, WA 98942-0248

DATED this 1st day of April 2008.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10