

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY RECEIVED

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HEARINGS CLERK
ERRAGTREGION 10

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO:

CAA-10-2017-0071

This ESA is issued to:

RainSweet, Inc., East Plant 1460 Sunnyview Road NE Salem, Oregon 97301-0631

This Expedited Settlement Agreement (ESA) is being entered into by the Complainant, U.S. Environmental Protection Agency Region 10 (EPA), and by Respondent pursuant to Section 113(a)(3) and (d) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). On December 9, 2016, EPA obtained the concurrence of the U.S. Department of Justice, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), to pursue this administrative enforcement action.

ALLEGED VIOLATIONS

EPA found that Respondent had violated regulations implementing Section 112(r) of the Act at 40 C.F.R. Part 68 by failing to comply with the regulations as noted on the enclosed Risk Management Plan Inspection Findings and Alleged Violations Summary, which is hereby incorporated by reference.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history, its good-faith effort to comply, and other factors as justice may require, and upon consideration of the entire record, the parties enter into the ESA in order to settle the violations described in the enclosed Summary for the total penalty amount of \$3,960.

This settlement is subject to the following terms and conditions:

Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained herein and in the Summary, and consents to the assessment of the penalty as stated above.

Respondent waives its rights to a hearing afforded by Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), and to appeal this ESA. Each party to this action shall bear its own costs and fees, if any.

Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the violations listed in the enclosed Summaries and has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$3,960 in payment of the full penalty amount to the following address:

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

The docket number of the ESA <u>must be included on the check</u>. (The docket number is located at the <u>top</u> of this ESA.)

This original ESA and a copy of the check must be sent by certified mail to:

Javier Morales, EPA RMP Coordinator Office of Compliance and Enforcement U.S. Environmental Protection Agency 1200 Sixth Avenue, Suite 900, Mail Stop: OCE-101 Seattle, Washington 98101

Upon Respondent's submission of the signed original ESA, EPA will take no further civil action against Respondent for the alleged violations of the Act referenced in the Summary. EPA does not waive its right to any other enforcement action for any other violations of the Clean Air Act or any other statute.

If the signed original ESA with an attached copy of the check is not returned to the EPA at the above address by Respondent within 45 days of the date of Respondent's receipt of it (90 days if an extension is granted), the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein and in the Summary.

This ESA is binding on the parties signing below.

Regional Judicial Officer

This ESA is effective upon filing with the Regional Hearing Clerk.

| FOR RESPONDENT: | |
|--|-----------------|
| Signature: Www. | Date: 5/22/17 |
| Name (print): Mark May | |
| Title (print): President | |
| Cost to correct violation(s): Estimated \$ 350,000 | |
| FOR COMPLAINANT: | Date: 5/25/2017 |
| Edward J. Kowalski | |
| Director | |
| Office of Compliance and Enforcement | |
| I hereby ratify the ESA and incorporate it herein by reference. It is so O | RDERED. |
| | Date: |
| M. Socorro Rodriguez | |

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

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Seattle, Washington 98101

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| Name (print): Mark May | |
| Title (print): President | |
| Cost to correct violation(s): Estimated \$ 350,000 | |
| FOR COMPLAINANT: | Date: 5/25/2017 |
| Edward J. Kowalski | Date. 3/43/2017 |
| Director | |
| Office of Compliance and Enforcement | |
| I hereby ratify the ESA and incorporate it herein by reference. It is so () | RDERED |

WORLAND STATES

U.S. ENVIRONMENTAL PROTECTION AGENCY

Enclosure 2

Risk Management Program Inspection Findings and Alleged Violations Summary Region 10

REASON FOR INSPECTION: This inspection is for the purpose of determining compliance with Section 112(r)(7) accidental release prevention requirements of the Clean Air Act, as amended 1990. The scope of this inspection may include, but is not limited to: reviewing and obtaining copies of documents and records; interviews and taking of statements; reviewing of chemical storage, handling, processing, and use; taking samples and photographs; and any other inspection activities necessary to determine compliance with the Act.

| FACILITY NAME | | |
|---|---|--|
| RainSweet Inc., East Plant | PRIVATE GOVERNMENTAL/MUNICIPAL | |
| | # EMPLOYEES 75 POPULATION SERVED: | |
| 1460 Sunnyview Road NE, Salem, OR | INSPECTION START DATE AND TIME: May 6, 2016 8:30 am | |
| MAILING ADDRESS 1460 Sunnyview Road NE, Salem, OR | INSPECTION END DATE AND TIME: May 6, 2016 12:20 pm | |
| RESPONSIBLE OFFICIAL, TITLE, PHONE NUMBER | EPA FACILITY ID# | |
| Kevin Hofstetter, Plant Manager, (503) 932-3490 | 1000 0011 6199 | |
| FACILITY REPRESENTATIVE(S), TITLE(S), PHONE NUMBER(S) Mark May, President Phone: (24-hr) (503) 363-4293 | INSPECTOR NAME(S), TITLE(S), PHONE NUMBER(S) Terry Garcia, SEE Grantee RMP Inspector, 206-553-1761 Bob Hales, SEE Grantee RMP Inspector, 206-553-4090 Peter Phillips, SEE Grantee RMP Inspector, 206-553-1757 David Magdangal, EPA Inspector, 206-553-4044 INSPECTOR SIGNATURE | |
| INSPECTION FINDINGS | | |
| INSPECTION | 4 FINDINGS | |
| IS FACILITY SUBJECT TO RMP REGULATION (40 C.F.R. § 68)? | | |
| DID FACILITY SUBMIT AN RMP AS PROVIDED IN 68.150 TO 68.185? | ☐ YES ☐ NO | |
| DATE RMP FILED WITH EPA: _06/22/1999 | | |
| 1) PROCESS/NAICS CODE: 311411 | PROGRAM LEVEL: 1 □ 2 □ 3 ⊠ | |
| REGULATED SUBSTANCE: Anhydrous Ammonia | MAX. QUANTITY IN PROCESS: 32,000 (lbs) | |

DESCRIPTION OF ALLEGED VIOLATIONS

CAA Section 112(r) and its implementing regulations in 40 C.F.R. Part 68 require an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance (listed in § 68.130) in a process, to develop a Risk Management Plan (RMP) and Risk Management Program. Three EPA representatives inspected the Rainsweet Inc., East Plant facility on May 6, 2016. Based upon this inspection the Rainsweet, Inc., East Plant is in violation of the following risk management program elements:

- 1. RainSweet Inc. failed to document that the equipment complies with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.65(d)(2). Permacold's 2013 MI Audit identified a significant number of process equipment design problems that do not meet industry standards such as IIAR and ASHRAE. For example, Permacold 2013 MI audit notes: C-11, malleable fittings used on the relief valve (RV) on atmospheric side of relief. Replace with approved fittings; per IIAR 2-2008 "B" (11.3.3); and ASHRAE 15-2010 (9.1.5). Due Date: Kevin 6/1/2017.
- 2. RainSweet Inc. process safety information failed to contain information on the relief system design and design basis for the ammonia storage process as required by 40 C.F.R. § 68.65(d)(1)(iv). Permacold's 2013 MI Audit identified relief system design issues with the length of the relief vent pipes for process equipment failing to meet code requirements and industry standards such as IIAR and ASHRAE for the LPR-6, Turbo Chiller Accumulator, Big Chiller and Small Chiller.
- 3. RainSweet Inc. failed to retain the process hazard analyses for the ammonia refrigeration process, as well as the documented resolution of recommendations for the life of the process as required by 40 C.F.R. § 68.67(g). RainSweet Inc. was unable to produce action items documentation for the initial 2002 PHA. RainSweet's November 11-18, 2013 PSM/RMP Compliance Audit, Action Item C.12, states that the 2007 PHA is the initial PHA. The 2007 copy, presented for review was incomplete and recommendations were not assigned. This initial PHA date contradicts RainSweet's first time RMP submission date of June 10, 2002 that reported a PHA dated April 1, 2002.
- 4. RainSweet Inc. failed to correct deficiencies in equipment that were outside acceptable limits defined by the process safety information before further use or in a safe and timely manner when necessary means were taken to ensure safe operation as required by 40 C.F.R. § 68.73(d)(4)(e). The 2013 RainSweet Inc., PSM/RMP Audit Report, no date, p. 5, Item #C.31 states "The Permacold independent MI report, noted several deficiencies. Although most were corrected, some of them have not been addressed, for example, actions related to the Turbo chiller, chiller and the LPR 4 were delayed because RainSweet Inc. is planning to decommission equipment, however, equipment is still in use and it is unclear what steps the facility has taken to ensure safe operation of the equipment in question. Also daily inspection reports indicate that the high stage compressor C-9 had high oil levels on 10-14-2013 but there don't seem to be any follow up actions or ensuring operators address operating limits." This action item in correcting the deficiency of the high stage compressor C-9 is scheduled for completion in December 30, 2018.
- 5. RainSweet Inc. failed to certify that they have evaluated compliance with the provisions of 40 C.F.R. § 68, Subpart D Program 3 Prevention Program, to verify that procedures and practices developed are adequate and being followed as required by 40 C.F.R. § 68.79(a). RainSweet Inc.'s 2013 PSM/RMP Compliance Audit Report, no date, was not certified after the completion of audit done on November 11-18, 2013. Also, RainSweet Inc.'s 2010 PSM/RMP Compliance Audit Report, no date, was not certified after the completion of audit done on December 2-3, 2010.

DESCRIPTION OF ALLEGED VIOLATIONS (Cont'd)

- 6. RainSweet Inc. failed to promptly determine and document an appropriate response to each of the findings of the compliance audit and documented that deficiencies have been corrected as required by 40 C.F.R. § 69.79(d). RainSweet Inc.'s 2013 PSM/RMP Compliance Audit Report, no date, identified findings in Process Safety Information, Mechanical Integrity, and Contractors with schedule completion dates that are within or beyond the next compliance audit due in December 2016. For example, the Mechanical Integrity, Action Item C.29, due December 1, 2016. In addition, RainSweet Inc.'s 2010 PSM/RMP Compliance Audit Report, (no date) had similar findings that were identified in 2013 report that were documented as complete. For example, the Mechanical Integrity, Action Item C.29, had a completion date of June 30, 2012.
- 7. RainSweet Inc. failed to periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in as required by 40 C.F.R. § 68.87(b)(5) and as required by 68.87(c)(1) (c)(5). RainSweet Inc.'s 2013 PSM/RMP Compliance Audit Report, no date, identified a finding that states "Contractors stating that RainSweet Inc., does not currently instruct contractors to advise them of the unique hazards presented or discovered by the contractor's work. According to interviews conducted by RainSweet Inc., the contractors are generally good about reporting hazards, but their contractor program is not following 68.87(c)(5)." Reference 2013 CA; Employer/Contractor Responsibilities Item # F 3.5, page 7.

The following area of concern was observed during the RMP inspection:

Corrosion and damaged insulation were observed on the process equipment such as piping on the roof above the engine room. Process equipment conditions such as corrosion and damaged insulation could lead to a potentially significant ammonia release during operations if unaddressed. The EPA understands that RainSweet Inc. utilized an ammonia refrigeration contractor, PermaCold Engineering Inc., to conduct a Mechanical Integrity Audit in 2013 to address the process equipment conditions that were observed during the inspection. RainSweet Inc. should provide a maintenance schedule on when these process equipment conditions will be completed and have been corrected.

| corrected. | | |
|--|-------------------------------------|-----------------------------------|
| DID FACILITY CORRECTLY ASSIGN PROGRAM ATTACHED CHECKLIST(S): | LEVELS TO PROCESSES? | ⊠ YES □ NO |
| PROGRAM LEVEL 1 PROCESS CHECKLIST OTHER ATTACHMENTS: | ☐ PROGRAM LEVEL 2 PROCESS CHECKLIST | PROGRAM LEVEL 3 PROCESS CHECKLIST |

Certificate of Service

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: RainSweet, Inc., Docket No.: CAA-10-2017-0071**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Javier Morales, RMP Coordinator U.S. Environmental Protection Agency 1200 Sixth Avenue, Suite 900, OCE-101 Seattle, Washington 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 to:

Mr. Mark May, President RainSweet Inc. 1460 Sunnyview Road NE Salem, Oregon 97301-0631

DATED this 31 day of May, 2017

Teresa Young Regional Hearing Clerk

EPA Region 10