



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

FILED

JUL 16 2012 2:35 PM

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

DOCKET NO: CAA (112r)-09-2012-0003

This ESA is issued to: Apio Cooling
4595 West Main Street
Guadalupe, CA 93434

For: Violation of Section 112(r)(7) of the Clean Air Act.
At: Apio Cooling, 4595 West Main St., Guadalupe, CA 93434

This Expedited Settlement Agreement ("ESA") is being entered into by the United States Environmental Protection Agency ("EPA"), Region IX, by its duly delegated official, Jane Diamond, Superfund Director, and Apio Cooling ("Respondent") pursuant to Section 113(a)(3) and (d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). EPA has 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

I. Respondent was required to review and update its risk management plan ("RMP") for the stationary source referenced above and submit it to EPA, as required by Section 112(r)(7) of the Act and 40 C.F.R. § 68.150(c), 68.190(a) and 68.195, by Apio Cooling. Respondent failed to review and update its RMP and submit it to EPA on or before 10-04-2011 in violation of Section 112(r)(7) of the Act and 40 C.F.R. §§ 68.150(c), 68.190(a) and 68.195.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history and previous penalties assessed, if any, its good faith effort to comply, the duration and seriousness of the violation, the economic impact of the penalty, economic benefit, and other factors as justice may require, and upon consideration of the entire record, the parties enter into this ESA in order to settle the violations described above for the total penalty amount of **\$2,000.00**.

This settlement is subject to the following terms and conditions:

The Respondent by signing below admits to jurisdiction, neither admits nor denies the specific factual allegations contained above, 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 attorney's fees and costs, if any. Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent has corrected the violations listed above and has sent a cashier's check or certified check (payable to the Treasurer, United States of America) in the amount of **\$2,000.00** in payment of the full penalty amount to the following address:

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

Or the Respondent has the option to do an Online Payment through the Department of Treasury: WWW.PAY.GOV (Enter SFO 1.1 in search field. Open form and complete required fields).

The check or online payment should reference Respondent's name and a copy of this ESA must be included with the check/online payment going to the Cincinnati Finance Center. This original ESA and a copy of the check or online receipt must also be sent by certified mail to:

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

Upon Respondent's submission of the signed original ESA, EPA will take no further civil penalty action against Respondent for the violations of the Act alleged above. This ESA shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal that EPA has under the Act or any other statutory, regulatory, or common law enforcement authority of the United States, except as stated above.

If the signed original ESA with an attached copy of the check is not returned to the EPA Region IX office at the above address in correct form by the Respondent within 45 days of the date of Respondent's receipt of the proposed ESA, the ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT -- Apio Cooling

Signature:

Joe Reynoso Director

Date: 12-20-11

Name (print): Joe Reynoso

Jennifer Beyer
Director

805 249-5284

Title (print): Operations Manager

FOR COMPLAINANT:

Jane Diamond
Superfund Director
U.S. EPA Region IX

Date: 26 Jan 2012

It is hereby ORDERED that this ESA be entered and Respondent pay the above penalty.

Steven L. Jawgiel
Chief Judicial Officer
U.S. EPA Region IX

Date: 02/02/12

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Expedited Settlement Agreement with APIO COOLING (Docket #: CAA(112r)-09-2012-0003) was 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:

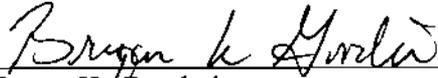
A copy was mailed via CERTIFIED MAIL to:

Jennifer Beyer
Director
Apio Cooling
P.O. Box 627
Guadalupe, CA 93434

CERTIFIED MAIL NUMBER: 7010-1060-0002-0234-9605

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

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



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

Date 2/2/12