

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 \$295,000 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) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. Respondent is a company in the State of Washington.

2.3. Respondent owned and operated a fresh fruit and vegetable processing facility located at 2809 Euclid Avenue, Wenatchee, Washington (the "facility"). The facility was sold on March 3, 2010.

2.4. 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. ALLEGATIONS

3.1 Section 112(r) of the CAA, 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 (TQ) to develop and implement a risk management plan (RMP) 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.

3.2 40 C.F.R. § 68.3 defines "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the CAA and 40 C.F.R. § 68.130.

3.3 Anhydrous ammonia is a regulated substance with a TQ of 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.4 Under 40 C.F.R. § 68.150, any facility that uses, stores, manufactures, or handles more than the TQ of anhydrous ammonia in a single process must submit an RMP to EPA no later than the date on which the anhydrous ammonia is first present above the TQ in a single process.

3.5 Dovex has a Program 3 covered process, as defined in 40 C.F.R. § 68.10(d)(2).

3.6 40 C.F.R. § 68.12(a) and (d) require that, in addition to submitting a single RMP as provided in §§ 68.150 to 68.185, facilities with a Program 3 covered process shall among other things conduct a hazard assessment as provided in §§ 68.20 to 68.42 and implement the prevention requirements of §§ 68.65 to 68.87.

3.7 Dovex has been subject to the RMP requirements since August 2003, the date on which the facility first used, stored, manufactured, or handled more than the TQ of 10,000 pounds of anhydrous ammonia in a single process.

3.8 Dovex submitted an RMP to EPA on August 5, 2008.

3.9 From August 5, 2008 to March 3, 2010, Dovex failed to follow recognized and generally accepted good engineering practices for inspections and testing procedures, as required by 40 C.F.R. § 68.73(d)(2).

3.10 From August 5, 2008 to March 3, 2010, Dovex failed to ensure that the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience, as required by 40 C.F.R. § 68.73(d)(3).

3.11 From August 5, 2008 to March 3, 2010, for each inspection and test that had been performed on process equipment, Dovex failed to document the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, the type of inspection or test performed, and the results of the inspection or test, as required by 40 C.F.R. § 68.73(d)(4).

3.12 Dovex's failure to comply with 40 C.F.R. Part 68 is a violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), making it subject to a penalty pursuant to Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19. On March 12, 2012, EPA served Dovex a Notice of Intent to File an Administrative Complaint for CAA § 112(r) Violations.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.11, below, each party shall bear its own costs in bringing or defending this action.

4.6. 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, Respondent's cooperation with EPA, the duration of the violation 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 \$134,613.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in Paragraph 4.6 above within 30 days of the effective date of the Final Order.

4.8. 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.

4.9. Respondent shall serve a photocopy of the check or documentation of wire transfer on the Regional Hearing Clerk and EPA at the following two addressees:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Javier Morales
Office of Environmental Cleanup
U.S. Environmental Protection Agency, Region 10
Mail Stop ECL-116
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.10. 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 pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the assessed penalty under the CAA. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.11. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of 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 effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

(b) Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the assessed penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.12. Except as provided in Paragraph 4.15, below, nothing in the CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statute and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.13. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.14. 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.

4.15. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

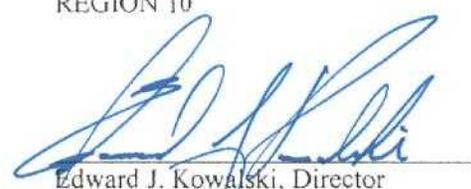
FOR DOVEX FRUIT COMPANY



Mauro Felizia, President
Dovex Fruit Company

Dated: 9/13/12

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10



Edward J. Kowalski, Director
Office of Compliance and Enforcement

Dated: 9/20/2012

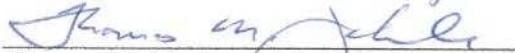
V. FINAL ORDER

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 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 25th day of September, 2012



Thomas M. Jahnke
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 the Matter of Doyex Fruit Co., Docket No.: CAA-10-2012-0194**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

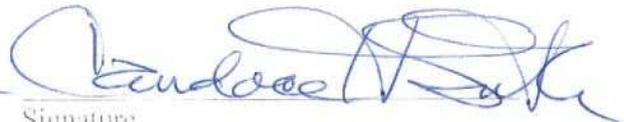
The undersigned certifies that a true and correct copy of the document was delivered to:

Mercer St. Peter, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
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:

Donald L. Dimmitt, Esquire
Jeffers, Danielson, Sonn & Aylward, P.S.
2600 Chester Kimm Road, P.O. Box 1688
Wenatchee, WA

DATED this 25th day of Sept, 2012



Signature

Candace H. Smith

Print Name

Regional Hearing Clerk
EPA Region 10