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 HEARINGS CLERK  
 EPA--REGION 10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	
CHIAWANA, INC.	)	Docket No. CAA-10-2008-0054
	)	
	)	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 Chiawana, 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 the Columbia Reach Pack facility in Yakima ("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 February 24, 2006, and follow-up information provided by Respondent, EPA alleges that Respondent has committed the following violations from at least March 17, 2005 through February 1, 2007:

#### **MANAGEMENT**

- 1) 40 C.F.R. § 68.15(a) – Failure to develop a management system to oversee the implementation of the risk management program elements.
- 2) 40 C.F.R. § 68.15(b) – Failure to assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.
- 3) 40 C.F.R. § 68.15(c) – Failure to document the names and positions of other persons responsible for implementing individual requirements of the risk management program and define the lines of authority through an organization chart or similar document.

#### **HAZARD ASSESSMENT**

- 4) 40 C.F.R. § 68.28(b)(2)(i, iii-v) – Failure to consider alternative release scenarios

including, where applicable: (i) transfer hose releases due to splits or sudden hose uncoupling; (iii) process vessel or pump releases due to cracks, seal failure, or drain, bleed, or plug failure; (iv) vessel overfilling and spill, or overpressurization and venting through relief valves or rupture disks; and (v) shipping container mishandling and breakage or puncturing leading to a spill.

- 5) 40 C.F.R. § 68.28(e)(2) – Failure to consider the failure scenarios identified under the hazard review and process hazard analysis regulations (§ 68.50 and § 68.67) when conducting the alternative release scenario analysis.
- 6) 40 C.F.R. § 68.30(a) – Failure to estimate the population in the offsite consequence analysis in the risk management plan (RMP) based on a circle with the point of release at the center.
- 7) 40 C.F.R. § 68.30(c) – Failure to use the most recent (2000) census data, or other updated information to estimate the population in the offsite consequence analysis.
- 8) 40 C.F.R. § 68.33(a) – Failure to identify the environmental receptors in the offsite consequence analysis in the RMP based on a circle with the point of release at the center.
- 9) 40 C.F.R. § 68.33(b) – Failure to identify the environmental receptors in the offsite consequence analysis in the RMP based on information provided on local U.S. Geological Survey (USGS) maps or on a data source containing USGS data.

- 10) 40 C.F.R. § 68.36(a) – Failure to review and update the offsite consequence analyses at least once every five years.
- 11) 40 C.F.R. § 68.39(a) – Failure to maintain records on the offsite consequence analysis which describe the vessel or pipeline that was selected for the worst-case scenario as well as the rationale for the selection.
- 12) 40 C.F.R. § 68.39(b) – Failure to maintain records on the offsite consequence analysis which describe the alternative release scenario that was identified including the assumptions and parameters used, the rationale for the selection of the specific scenario chosen, and the anticipated effect of active mitigation on the release quantity and rate.
- 13) 40 C.F.R. § 68.39(e) – Failure to maintain records on the offsite consequence analysis which describe the data used to estimate the population and environmental receptors potentially affected.

#### **PREVENTION PROGRAM - PROCESS SAFETY INFORMATION**

- 14) 40 C.F.R. § 68.65(b)(1-7) - Failure to complete, prior to conducting a process hazard analysis, a compilation of written process safety information pertaining to the hazards of the regulated substances in the process including: (1) toxicity information; (2) permissible exposure limits; (3) physical data; (4) reactivity data; (5) corrosivity data; (6) thermal and chemical stability data; and (7) hazardous effects of inadvertent mixing of different materials that could foreseeably occur.

- 15) 40 C.F.R. § 68.65(c)(1)(i, ii, iv, v) – Failure to include in the compilation of written safety information referenced above, information pertaining to the technology of the process including: (i) a block flow diagram or simplified process flow diagram; (ii) process chemistry; (iv) safe upper and lower limits for such items as temperatures, pressures, flows, or compositions; and (v) an evaluation of the consequences of deviations.
  
- 16) 40 C.F.R. § 68.65(d)(1)(i, iv-viii) – 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; (iv) relief system design and design basis; (v) ventilation system design; (vi) design codes and standards employed; (vii) material and energy balances for processes built after June 21, 1999, and (viii) safety systems (e.g., interlocks, detection or suppression systems).
  
- 17) 40 C.F.R. § 68.65(d)(2) – Failure to document that the equipment referenced above complies with recognized and generally accepted good engineering practices.
  
- 18) 40 C.F.R. § 68.65(d)(3) – Failure to determine and document that the existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, is designed, maintained, inspected, tested, and operating in a safe manner.

## **PREVENTION PROGRAM – PROCESS HAZARD ANALYSIS**

- 19) 40 C.F.R. § 68.67(a) – Failure to perform an initial process hazard analysis (PHA) that identified, evaluated, and controlled the hazards involved in the process.  
Failure to identify and document the priority order for conducting the PHA based on an appropriate rationale.
- 20) 40 C.F.R. § 68.67(b)(1-7) – Failure to use one or more of the following technologies to determine and evaluate the hazards of the process being analyzed: (1) What-if; (2) Checklist; (3) What-if/Checklist; (4) Hazard and Operability Study (HAZOP); (5) Failure Mode and Effects Analysis (FMEA); (6) Fault Tree Analysis; or (7) an appropriate equivalent methodology.
- 21) 40 C.F.R. § 68.67(c)(1-7) – Failure to perform a PHA that addresses: (1) the hazards of the process; (2) identification of any incident that had a likely potential for catastrophic consequences; (3) engineering and administrative controls applicable to the hazards and their interrelationships; (4) consequences of failure of engineering and administrative controls; (5) stationary source siting; (6) human factors; and (7) a qualitative evaluation of a range of the possible safety and health effects of failure of controls.
- 22) 40 C.F.R. § 68.67(d) – Failure to assure that the PHA was performed by a team with expertise in engineering and process operations and other appropriate personnel.
- 23) 40 C.F.R. § 68.67(e) – Failure to establish a system to promptly address the team's PHA findings and recommendations to assure that recommendations are

resolved in a timely manner and are documented. Documentation must include what actions are to be taken and must be completed as soon as possible. A written schedule of when these actions are to be completed must be developed and communicated to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations.

- 24) 40 C.F.R. § 68.67(f) – Failure to have the PHA updated and revalidated by a team every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process.
- 25) 40 C.F.R. § 68.67(g) – Failure to retain all PHAs and updates or revalidations of each covered process to assure that they are consistent with the current process.

#### **PREVENTION PROGRAM – OPERATING PROCEDURES**

- 26) 40 C.F.R. § 68.69(a)(1)(i-vii) – Failure to develop and implement written operating procedures that provide clear instructions for safely conducting activities associated with each covered process consistent with the process safety information. Failure to have written operating procedures that address the steps for each operating phase including: (i) initial startup; (ii) normal operations; (iii) temporary operations; (iv) emergency shutdown including the conditions under which emergency shutdown is required and assignment of shutdown responsibilities; (v) emergency operations; (vi) normal shutdown; and (vii) startup following a turnaround, or after an emergency shutdown.
- 27) 40 C.F.R. § 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.

- 28) 40 C.F.R. § 68.69(a)(3)(ii-v) – Failure to have written operating procedures that address safety and health considerations including: (ii) the 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.
- 29) 40 C.F.R. § 68.69(a)(4) – Failure to have written operating procedures that include safety systems and their functions.
- 30) 40 C.F.R. § 68.69(b) – Failure to have written operating procedures that are readily accessible to employees who are involved in the process.
- 31) 40 C.F.R. § 68.69(c) – Failure to have written operating procedures that are current and accurate and are reviewed as often as necessary, but at least annually.
- 32) 40 C.F.R. § 68.69(d) – Failure to implement and develop safe work practices to provide for the control of hazards during specific operations on the mezzanine.

#### **PREVENTION PROGRAM – TRAINING**

- 33) 40 C.F.R. § 68.71(a)(1) – Failure to provide initial operator training that includes an overview of the specific process and the operating procedures that includes an emphasis on safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.
- 34) 40 C.F.R. § 68.71(a)(2) – In lieu of initial training for those employees already involved in operating a process on or before June 21, 1999, failure to certify in

writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.

- 35) 40 C.F.R. § 68.71(b) – Failure to provide written refresher operator training at least every three years, and 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.
- 36) 40 C.F.R. § 68.71(c) – Failure to ascertain that each employee involved in a covered process has received and understood the training required. Failure to prepare a record that contains the identity of the employee, the date of the training, and the means used to verify that the employee understood the training.

#### **PREVENTION PROGRAM – MECHANICAL INTEGRITY**

- 37) 40 C.F.R. § 68.73(b) – Failure to establish and implement written procedures to maintain the on-going integrity of the process equipment including pressure vessels and storage tanks, piping systems, relief and vent systems and devices, emergency shutdown systems, and controls including monitoring devices and sensors, alarms, interlocks, and pumps.
- 38) 40 C.F.R. § 68.73(c) – Failure to train each employee involved in maintaining the on-going integrity of the process equipment in the overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.
- 39) 40 C.F.R. § 68.73(d)(1) – Failure to perform inspections and tests on the process equipment.

## **PREVENTION PROGRAM – MANAGEMENT OF CHANGE**

- 40) 40 C.F.R. § 68.75(a) – Failure to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process.
- 41) 40 C.F.R. § 68.75(b)(1-5) – Failure to establish and implement written procedures regarding management of change that assure that the following considerations are/will be addressed prior to any change: (1) the technical basis for the proposed change; (2) impact of the change on safety and health; (3) modifications to operating procedures; (4) necessary time period for the change; and (5) authorization requirements for the proposed change.

## **PREVENTION PROGRAM – COMPLIANCE AUDIT**

- 42) 40 C.F.R. § 68.79(a)-(e) – Failure to conduct and retain at least two written compliance audits that evaluate compliance with the provisions of the prevention program and verify that the developed procedures and practices are adequate and being followed. The compliance audits must be completed by at least one person knowledgeable in the process and include prompt documented responses to each documented deficiency.

## **EMPLOYEE PARTICIPATION**

- 43) 40 C.F.R. § 68.83(a)-(b) – Failure to develop a written plan of action regarding the implementation of the employee participation requirements that demonstrates that the owner or operator consulted with employees and their representatives on the conduct and development of process hazards analyses and on the development

of the other elements of process safety management in the chemical accident prevention rule.

- 44) 40 C.F.R. § 68.83(c) – Failure to provide employee access to process hazard analyses and all other information required to be developed under the chemical accident prevention rule.

#### **CONTRACTORS**

- 45) 40 C.F.R. § 68.87(b)(1) - Failure to obtain and evaluate safety performance of the contract owner or operator (i.e., DoublKold) prior to selection.
- 46) 40 C.F.R. § 68.87(b)(2) – Failure to inform contractors (i.e., DoublKold) of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.
- 47) 40 C.F.R. § 68.87(b)(3) – Failure to explain the applicable provisions of the emergency response or emergency action program to contractors (i.e., DoublKold).

#### **RISK MANAGEMENT PLAN**

- 48) 40 C.F.R. § 68.190(b)(5) – Failure to submit an updated RMP to EPA within six months of the complete overhaul of the cold storage system in 2004 which is a change requiring a revised PHA.

#### **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 FIFTY-EIGHT THOUSAND DOLLARS (\$58,000).

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: Kelly Huynh

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.

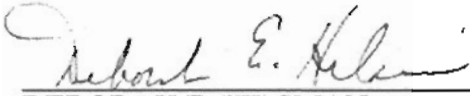
STIPULATED AND AGREED:

CHIAWANA, INC.

  
\_\_\_\_\_  
BRUCE ALLEN  
PRESIDENT

Dated: 2/19/08

U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
DEBORAH E. HILSMAN  
Assistant Regional Counsel

Dated: Feb. 22, 2008



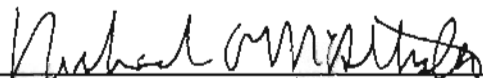
## V. FINAL ORDER

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 22<sup>nd</sup> day of February, 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: Chiawana, Inc., DOCKET NO.: CAA-10-2008-0054** was filed with the Regional Hearing Clerk on February 22, 2008.

On February 22, 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

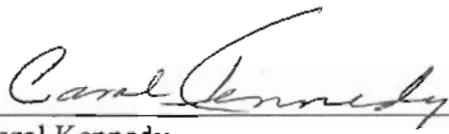
Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on February 22, 2008, to:

Bruce Allen, President  
Chiawana, Inc.  
3107 River Road  
Yakima, WA 98902

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail on February 22, 2008, to:

Walter Meyer, Secretary/Treasurer  
Chiawana, Inc.  
3107 River Road  
Yakima, WA 98902

DATED this 22<sup>nd</sup> day of February 2008.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10