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BEFORE THE HEARINGS CLERK
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY EPA--REGION 10

IN THE MATTER OF:)	
)	
Oregon Freeze Dry, Inc.)	Docket No. EPCRA-10-2011-0048
)	
Albany, Oregon)	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 U.S. Environmental Protection Agency (“EPA”) by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045, and Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9609. 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, who in turn has redelegated this authority to the Regional Judicial Officer.

1.2. In accordance with Section 22.13(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues and Oregon Freeze Dry, Inc. (“Respondent”) hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

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 owns and operates a facility located at 525 25th Avenue SW, Albany, Oregon (the “Facility”).

2.3. Respondent freeze-dries food and pharmaceutical products at the Facility.

2.4. A concise statement of the factual bases for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Respondent is a corporation incorporated in the state of Oregon.

3.2. Under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), “facility” means, among other things, any building, structure, installation, storage container, equipment, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed or otherwise come to be located.

3.3. Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), “facility” means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).

3.4. Under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

3.5. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires the person in charge of a facility to immediately notify the National Response Center (“NRC”) as soon as he or she has knowledge of a release of a hazardous substance from such facility in an amount equal to or greater than the reportable quantity (“RQ”).

3.6. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), requires that if a facility at which hazardous chemicals are produced, used, or stored releases an RQ of an extremely hazardous substance and the release requires, or occurred in a manner that would require, notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility must immediately notify the State Emergency Response Commission (“SERC”) of any state likely to be affected by the release.

3.7. Ammonia is a CERCLA “hazardous substance,” 40 C.F.R. § 302.4, and an “extremely hazardous substance” under Section 302 of EPCRA, 42 U.S.C. § 11002. The RQ for ammonia is 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A, and 40 C.F.R. § 304.2.

3.8. On November 22, 2009, the Facility released approximately 422 pounds of ammonia to the atmosphere.

3.9. The Facility managers knew of the release at approximately 5:45 a.m. on November 22, 2009.

3.10. The release was likely to affect the State of Oregon.

3.11. The Facility managers notified the NRC at approximately 8:52 a.m. and the Oregon SERC at approximately 8:55 a.m. of the release, approximately three hours after the release occurred.

3.12. Under Section 325(c) of EPCRA, 42 U.S.C. § 11045(b), EPA may assess a civil penalty of up to \$25,000 for each day of violation of Section 304 of EPCRA, 42 U.S.C. § 11004. Under Section 109 of CERCLA, 42 U.S.C. § 9609, EPA may assess a civil penalty of up to \$25,000 per day of violation of Section 103 of CERCLA, 42 U.S.C. § 9603. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 42 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day of violation occurring after January 12, 2009.

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 4.10, each party shall bear its own costs in bringing or defending this action.

4.6. Based on Respondent's willingness to settle this matter without litigation, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, and in accordance with the Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$3,323, of which \$1,661.50 constitutes payment for the alleged CERCLA violation and \$1,661.50 constitutes payment for the alleged EPCRA violation.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.6 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 "U.S. Treasury" and shall be delivered to the following addresses:

- (i) The EPCRA portion of the penalty (\$1,661.50) shall be mailed to:

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

- (ii) The CERCLA portion of the penalty (\$1,661.50) shall be mailed to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Respondent shall note on each check the title and docket number of this case.

4.9. Respondent shall submit a photocopy of the check described above to the following individuals:

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

Suzanne Powers
U.S. Environmental Protection Agency
Region 10
Washington Operations Office
300 Desmond Drive SE, Suite 102
Lacey, Washington 98503

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

under Section § 325(f) of EPCRA, 42 U.S.C. § 11045(f), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.11. Should Respondent fail to pay 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 by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1), from the effective date of the Final Order contained herein, 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 contained herein.

(b) Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

(c) Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.12. Respondent shall implement and complete a SEP that consists of: (i) the purchase and installation of ammonia detectors; and (ii) the purchase and installation of solenoid valves on the hot gas lines that allow remote and automatic shutdown of these valves in the event of a release. The SEP includes the components set forth in Appendix A. The SEP shall be implemented and completed within 90 days of the effective date of this CAFO, in accordance with all provisions described in this Consent Agreement. Respondent agrees that the SEP is

intended to improve emergency management by allowing a more immediate and effective response in the event of an emergency.

4.13. Respondent's deadline to perform the SEP shall be excused or extended if such performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of Respondent, including its employees, agents, consultants, and contractors, or which could not be overcome by due diligence and which delays or prevents the performance of the SEP within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.14. The cost to Respondent of implementing the SEP shall be not less than \$19,435. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

4.15. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. Furthermore, for federal income tax purposes, Respondent agrees that it will neither

capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

4.16. Respondent shall submit a SEP Completion Report to EPA within 180 days of the Effective Date of the CAFO. The SEP Completion Report shall contain the following information:

- (i) A description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders and receipts or cancelled checks;
- (iii) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;
- (iv) A description of any operating problems encountered and the solutions thereto; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP.

4.17. Respondent agrees that failure to implement the SEP and/or submit the SEP Completion Report required by Paragraph 4.16, shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to this CAFO.

4.18. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail, overnight mail, or hand delivery to:

correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 4.23.

4.22. In the event that the SEP is not completed as contemplated by this CAFO, and this failure was not caused solely by events which constitute a Force Majeure as defined by Paragraph 4.13, then stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 4.23. Schedules herein may be extended based upon mutual written agreement of the parties.

4.23. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) If the SEP is not satisfactorily completed pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$15,548, less the amount actually expended.

(ii) For failure to submit the SEP Completion Report as required by Paragraph 4.16, Respondent shall pay a stipulated penalty in the amount \$100 for each day after the report is due until the report is received by EPA, not to exceed \$2,500.

4.24. Stipulated penalties under Paragraph 4.23 shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of satisfactory completion of the activity, subject to the maximum set forth in Paragraph 4.23(ii).

Suzanne Powers
U.S. Environmental Protection Agency
Region 10
Washington Operations Office
300 Desmond Drive SE, Suite 102
Lacey, WA 98503

4.19. Respondent agrees that EPA may inspect Respondent's records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.20. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this CAFO until the SEP Completion Report is accepted pursuant to Paragraph 4.21, and Respondent shall provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this CAFO, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such document or report is true, accurate and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

4.21. Following receipt of the SEP Completion Report described in Paragraph 4.16, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent in writing of deficiencies in the Report and provide Respondent an additional 30 days in which to

4.25. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraph 4.8. Interest and late charges shall be paid as specified in Paragraph 4.11.

4.26. Except as provided in Paragraph 4.30, 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 statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.27. Any public statement, oral or written, in print, film, or other media made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Emergency Planning and Community Right-to-Know Act and the Comprehensive Environmental Response, Compensation, and Liability Act."


4.28. 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, nor shall it be construed to constitute EPA approval of the equipment or technology purchased by Respondent in connection with the SEP under the terms of this CAFO.

4.29. 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.

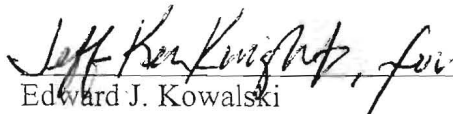
4.30. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III.

STIPULATED AND AGREED:

FOR OREGON FREEZE DRY, INC.

Signature: 
Print Name: DALE BOOKWALTER
Title: CONTROLLER Dated: 3/17/11

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

 Dated: 4/21/11
Edward J. Kowalski
Director, Office of Compliance and Enforcement

Appendix A

Purchase and Installation of Ammonia Detectors:

The primary objective of this project is to provide early detection of ammonia leaks in three areas at the Facility. Oregon Freeze Dry will install ammonia detectors at Plant 1 Accumulator 12, Plant 2 Accumulator 3, and the Research and Development freeze dryers at Plant 2. The sensors will be tied into the control systems at each plant. Once the signal is in the control system, refrigeration mechanics/engineers will get an alarm when ammonia is detected in the air.

Equipment to be purchased and installed includes:

1. Sensor GG-VL-NH3 for Plant 1 Accumulator 12
2. Sensor GG-NH3 for Plant 2 R/D area
3. Sensor GG-NH3 Plant 2 1 Accumulator 3

Purchase and Installation of Hot Gas Solenoids (King Valves):

The primary objective of this project is to be able to immediately isolate the North and South vaporized ammonia (hot gas) lines at Plant 1. Oregon Freeze Dry uses vaporized ammonia (hot gas) to defrost ammonia coils throughout the plant. Manual valves that isolate the hot gas are located in the North and South Compressor rooms at a height of approximately 15-20 feet. Oregon Freeze Dry will install two, two-step solenoid valves. One valve will be installed on the South Engine room supply line and the other on the North Engine room supply line. The valves will be wired into Oregon Freeze Dry's existing control system so that operators, maintenance supervisors, and engineers will have remote access to the systems and be able to immediately isolate the system from anywhere in the world in the event of a leak.

Equipment to be purchased and installed includes:

1. Hansen 2" Two-Step Solenoid Valves & Herl Valve
2. Power FlexIO

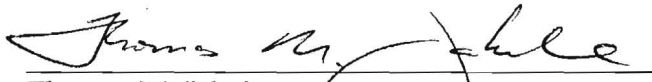
V. FINAL ORDER

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 terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to EPCRA and CERCLA for the particular violations alleged in Part III. 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 Act and regulations issued thereunder.

This Final Order shall become effective upon filing.

SO ORDERED this 22nd day of April, 2011


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 **In the Matter of: OREGON FREEZE DRY, INC.**, DOCKET NO.: EPCRA-10-2011-0048, was filed with the Regional Hearing Clerk on April 25, 2011.


On April 25, 2011 the undersigned certifies that a true and correct copy of the document was delivered to:

Stephanie Mairs, 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 25, 10th, to:

Cory Kaip, PE
PSM Coordinator
Oregon Freeze Dry
525 25th Avenue SW
Albany, OR 97321

DATED this 25th day of April 2011.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10