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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: )  
)  
Cascade View Fruit and Cold Storage, LLC ) Docket No. CAA-10-2008-0097  
)  
Yakima, Washington ) 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 Cascade View Fruit and Cold Storage, LLC (“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) 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 corporation that is a limited liability corporation formed in the State of Washington.

2.3. Respondent owns and operates a fruit packing facility ("facility") located at 1100 East Pomona in Yakima, Washington.

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, 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 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. § 68.150 requires that an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process

submit an RMP to EPA no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under § 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

3.3. 40 C.F.R. § 68.3 defines “stationary source” as any buildings, structures, equipment, installations, or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

3.4. 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. Anhydrous ammonia is listed as a regulated substance in 40 C.F.R. § 68.130.

3.5. 40 C.F.R. § 68.3 defines “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, in 40 C.F.R. § 68.130. The threshold quantity of anhydrous ammonia is 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.6. 40 C.F.R. § 68.3 defines “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substance, or combination of these activities.

3.7. Under 40 C.F.R. § 68.115, a threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is “present at a stationary source” if the total quantity of the regulated substance contained in a process exceeds the threshold quantity.

3.8. Respondent owns a stationary source where anhydrous ammonia has been present in a process above the 10,000-pound threshold quantity since at least November 1, 2004. Therefore, Respondent was required to submit an RMP for the facility.

3.9. Respondent's failure to submit an RMP for the facility by November 1, 2004, is a violation of Section 112(r) of the CAA and 40 C.F.R. § 68.150.

#### **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., 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, 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 \$81,193.00.

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 4.16., 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. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original.

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

STIPULATED AND AGREED:

FOR CASCADE VIEW FRUIT AND COLD STORAGE, LLC


  
Signature

Dated: 7-10-08

Print Name: J. Scott Carpenter

Title: Controller / CFO

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

  
Robert E. Hartman  
Assistant Regional Counsel

Dated: July 25, 2008



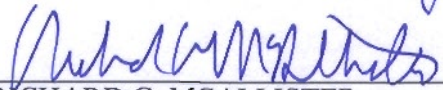
## V. FINAL ORDER

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 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 25<sup>th</sup> day of July, 2008

  
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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: Cascade View Fruit and Cold Storage, LLC, DOCKET NO.: CWA-10-2008-0097** was filed with the Regional Hearing Clerk on July 25, 2008.


On July 25, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Robert Hartman, Esquire  
US Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, 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 July 25, 2008, to:

Scott Carpenter, Comptroller  
Cascade View Fruit and Cold Storage, LLC.  
1100 East Pomona  
Yakima, WA 98901

DATED this 25<sup>th</sup> day of July 2008.



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Carol Kennedy  
Regional Hearings Clerk  
EPA Region 10