





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

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EPA--REGION 10

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA-10-2016-0066
This ESA is issued to: Borton & Sons, Inc.
2550 Borton Road
Yakima, Washington

This Expedited Settlement Agreement (ESA) is being entered into by the Complainant, U.S. Environmental Protection Agency Region 10 (EPA), and by Respondent pursuant to Section 113(a)(3) and (d) of the Clean Air Act, 42 U.S.C. § 7413(a)(3) and (d), and by 40 C.F.R. § 22.13(b). On October 14, 2014, EPA 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

EPA found that Respondent had violated regulations implementing Section 112(r) of the Act at 40 C.F.R. Part 68 by failing to comply with the regulations as noted on the enclosed Risk Management Plan Inspection Findings and Alleged Violations Summary, which is hereby incorporated by reference.

SETTLEMENT

In consideration of Respondent's size of business, its full compliance history, its good-faith effort to comply, and other factors as justice may require, and upon consideration of the entire record, the parties enter into the ESA in order to settle the violations described in the enclosed Summary for the total penalty amount of \$12,100.

This settlement is subject to the following terms and conditions:

Respondent, by signing below, waives any objections that it may have regarding jurisdiction, neither admits nor denies the specific factual allegations contained herein and in the Summary, 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 costs and fees, if any.

Respondent also certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the violations listed in the enclosed Summaries and has sent a cashier's check or certified check (payable to the "Treasurer, United States of America") in the amount of \$12,100 in payment of the full penalty amount to the following address:



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

The docket number of the ESA must be included on the check. (The docket number is located at the top of this ESA.)

This original ESA and a copy of the check must be sent by certified mail to:

Javier Morales, 112(r) Enforcement Coordinator
Office of Compliance and Enforcement
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, Mail Stop: OCE-101
Seattle, Washington 98101

Upon Respondent's submission of the signed original ESA, EPA will take no further civil action against Respondent for the alleged violations of the Act referenced in the Summary. EPA does not waive its right to any other enforcement action for any other violations of the Clean Air Act or any other statute.

If the signed original ESA with an attached copy of the check is not returned to the EPA at the above address by Respondent within 45 days of the date of Respondent's receipt of it (90 days if an extension is granted), the proposed ESA is withdrawn, without prejudice to EPA's ability to file an enforcement action for the violations identified herein and in the Summary.

This ESA is binding on the parties signing below.

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

FOR RESPONDENT:

Signature: [Handwritten Signature]
Name (print): Jeremy Lassitt
Title (print): Compliance Director
Cost to correct violation(s): \$18,000

Date: 5/14/16

FOR COMPLAINANT:

[Handwritten Signature]
Edward J. Kowalski
Director
Office of Compliance and Enforcement

Date: 5/23/2016

I hereby ratify the ESA and incorporate it herein by reference. It is so ORDERED.

[Handwritten Signature]
M. Socorro Rodriguez
Regional Judicial Officer

Date: 6/2/16

2/10/2012

2/11/12

The Game Boy



U.S. ENVIRONMENTAL PROTECTION AGENCY

Risk Management Program Inspection Findings and Alleged Violations Summary Region 10

REASON FOR INSPECTION: This inspection is for the purpose of determining compliance with Section 112(r)(7) accidental release prevention requirements of the Clean Air Act, as amended 1990. The scope of this inspection may include, but is not limited to: reviewing and obtaining copies of documents and records; interviews and taking of statements; reviewing of chemical storage, handling, processing, and use; taking samples and photographs; and any other inspection activities necessary to determine compliance with the Act.

FACILITY NAME Borton & Sons Fruit & Cold Storage, Inc.	<input checked="" type="checkbox"/> PRIVATE # EMPLOYEES: 350	<input type="checkbox"/> GOVERNMENTAL/MUNICIPAL POPULATION SERVED: _____
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FACILITY LOCATION 2550 Borton Road, Yakima, WA 98903	INSPECTION START DATE AND TIME: July 17, 2015; 08:30
MAILING ADDRESS 2550 Borton Road, Yakima, WA 98903	INSPECTION END DATE AND TIME: July 17, 2015; 14:30

RESPONSIBLE OFFICIAL, TITLE, PHONE NUMBER John Borton, Owner, (509) 966-3905	EPA FACILITY ID# 1000 0013 1323
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FACILITY REPRESENTATIVE(S), TITLE(S), PHONE NUMBER(S) Malcolm Hawks, Mechanical Supervisor, (509) 966-3905 Ted Kronberg, Refrigeration Supervisor, (509) 966-3905	INSPECTOR NAME(S), TITLE(S), PHONE NUMBER(S) Robert Hales, US EPA SEE Grantee, RMP Inspector Lead Inspector, 206-563-4090 Peter Phillips, US EPA SEE Grantee, RMP Inspector Javier Mezales, US EPA, RMP Coordinator/Inspector INSPECTOR SIGNATURE: <i>[Signature]</i> DATE: 3-3-15
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INSPECTION FINDINGS

IS FACILITY SUBJECT TO RMP REGULATION (40 C.F.R. § 68)?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
DID FACILITY SUBMIT AN RMP AS PROVIDED IN 68.150 TO 68.185?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
DATE RMP FILED WITH EPA: 06/23/1999	DATE OF LATEST RMP UPDATE: 08/29/2012
1) PROCESS/NAICS CODE: 49313 REGULATED SUBSTANCE: Ammonia (anhydrous)	PROGRAM LEVEL: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/> MAX. QUANTITY IN PROCESS: 15,334 (lbs)
2) PROCESS/NAICS CODE: 49313 REGULATED SUBSTANCE: Ammonia (anhydrous)	PROGRAM LEVEL: 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input checked="" type="checkbox"/> MAX. QUANTITY IN PROCESS: 34,138 (lbs)

DESCRIPTION OF ALLEGED VIOLATIONS

CAA Section 112(r) and its implementing regulations in 40 C.F.R. Part 68 require an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance (listed in § 68.130) in a process, to develop a Risk Management Plan (RMP) and Risk Management Program.

EPA representatives inspected the Borton & Sons Fruit & Cold Storage, Inc. facility in Yakima, Washington on July 17, 2015. Based upon this inspection the facility is in violation of the following risk management program elements:

- Process Safety Information:** Borton & Sons failed to provide information pertaining to the equipment in the ammonia refrigeration processes for the ventilation system design as required by 40 C.F.R. § 68.65(d)(1)(v). Borton & Sons Fruit provided ventilation system design calculations for normal and emergency ventilation requirements using the American National Standards Institute/International Institute of Ammonia Refrigeration (ANSI/IIAR) 2-2008 for the South, West/Middle and North compressor rooms. Borton & Sons Fruit ventilation system design calculations did not identify the actual air compressor exhaust fans CFM capacity installed in the West/Middle and North compressor rooms for normal and emergency ventilation requirements. The South compressor room did not have air intakes and exhaust fans for normal and emergency ventilation requirements. Borton & Sons Fruit did not identify the ammonia detection level to activate the emergency ventilation in the West/Middle and North compressor rooms. An emergency remote control was not located outside the door entrance of the compressor rooms. Reference ANSI/IIAR 2-2008 with Addendum B, Section 13.3, Ventilation.
- Process Safety Information:** Borton & Sons failed to provide information pertaining to the equipment in the ammonia refrigeration processes for the electrical classification as required by 40 C.F.R. § 68.65(d)(1)(iv). Borton & Sons ventilation design documents does not show that the South, West/Middle and North compressor (engine/machine) rooms are classified per the National Electric Code as a "Non-Hazardous (Unclassified) Location" or classified as Class I, Group D, Division 2 location. Reference ANSI/IIAR 2-2008 with Addendum B, Section 13.1.7, Electrical Safety.
- Process Safety Information:** Borton & Sons failed to provide information pertaining to the equipment in the ammonia refrigeration processes for the design codes and standards employed as required by 40 C.F.R. § 68.65(d)(1)(vi). Borton & Sons did not properly document the design codes and standards employed for the South, West/Middle and North compressor (engine/machine) rooms covering equipment such as ventilation, emergency shutdown, ventilation controls, audible/visual alarms and emergency showers. Reference ANSI/IIAR 2-2008 (includes Addendum B), Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems.

4. **Process Safety Information:** Borton & Sons failed to document that the equipment complies with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.65(d)(2). Borton & Sons did not properly document that South, West/Middle and North compressor (engine/machine) rooms meet ANSI/IIAR 2-2008 (includes Addendum B), Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems to cover equipment such as ventilation, emergency shutdown, ventilation controls, audible/visual alarms and emergency showers.
5. **Process Hazard Analysis:** Borton & Sons failed to establish a system to promptly address the team's findings and recommendations; assured that the recommendations are resolved in a timely manner and documented; documented what actions are to be taken; completed actions as soon as possible; developed a written schedule of when these actions are to be completed; and communicated the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations as required by 40 C.F.R. § 68.67(e). Borton & Sons was unable to provide documentation on the actions taken for the seventy-four (74) recommendations given in the 2005 and 2011 Process Hazard Analysis (PHAs).
6. **Process Hazard Analysis:** Borton & Sons failed to update and revalidate their PHA every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process as required by 40 C.F.R. § 68.67(f). Borton & Sons completed their 2011 PHA update and revalidation more than five years after the 2005 PHA.
7. **Operating Procedures:** Borton & Sons failed to certify annually that their operating procedures are current and accurate and that procedures have been reviewed as often as necessary as required by 40 C.F.R. § 68.69(c). Borton & Sons was unable to produce documentation that the standard operating procedures (SOPs) were certified annually for the ammonia refrigeration processes.
8. **Training:** Borton & Sons failed to initially train each employee involved in operating a process, and each employee before being involved in operating a newly assigned process in an overview of the process and in the operating procedures as required by 40 C.F.R. § 68.71(a)(1). Borton & Sons was unable to produce training documentation on the initial training for the operator, Clifford Wilson.
9. **Training:** Borton & Sons failed to provide refresher training at least every three years, or 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 as required by 40 C.F.R. § 68.71(b). Borton & Sons was unable to produce training documentation on the fresher training for the operator, Clifford Wilson and Ted Kronberg, Refrigeration Supervisor.
10. **Employee Participation:** Borton & Sons failed to consult 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 chemical accident prevention provisions as required by 40 C.F.R. § 68.83(b). Borton & Sons was unable to produce documentation that they are implementing employee awareness of the Risk Management Program using Employee Participation Procedure, Rev 1, dated 5/21/2015.

DID FACILITY CORRECTLY ASSIGN PROGRAM LEVELS TO PROCESSES?

YES NO

ATTACHED CHECKLIST(S):

PROGRAM LEVEL 1 PROCESS CHECKLIST PROGRAM LEVEL 2 PROCESS CHECKLIST PROGRAM LEVEL 3 PROCESS CHECKLIST

OTHER ATTACHMENTS: _____

Certificate of Service

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: Borton & Sons, Inc., Docket No.: CAA-10-2016-0066**, 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:

Javier Morales, RMP Coordinator
1200 Sixth Avenue, OCE-101
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:

Jeremy Leavitt
Food Safety & Compliance Director
Borton & Sons, Inc.
2550 Borton Road
Yakima, Washington 98903

DATED this 2 day of June, 2016



Teresa Luna
Regional Hearing Clerk
EPA Region 10

Region 10 - CAA 112(r) EPA Report

CCDS (Case Conclusion Data Sheet)

Conclusion ID: 1743

A. CASE INFORMATION:

1. Case Name (facility name): Borton & Sons Fruit & Cold Storage Inc.
2. Enforcement DOCKET System # / Regional Hearing Clerk Admin Docket # CAA-10-2016-0066
3(a). Regional Attorney: Bob Hartman
3(b). EPA Case Developer: Javier Morales
4. Statute(s) and Section(s) violated (Not authorizing section or CFR):
Statute Violation: 42 USC 7412(r)- CAA Section Violation: CAA 112(r)(7) RMP Facilities
CORE Priority

5. Authorizing section for administrative actions: 40 CFR 22.13(b)

6. Administrative / Judicial Action Date:

Administrative Action Date:

Issued/Filed:

Final Order:

Civil Judicial Action Date:

Settlement Lodged Date:

Settlement Entered Date:

7. Was this a multi-media action? NO

8. Small Business: NO Environmental Justice:

9. Is this action part of a MOA Priority Activity? NO

B. FACILITY INFORMATION:

10. Facility Name: Borton & Sons Fruit & Cold Storage, Inc.
11. Facility Street: 2550 Borton Road Facility City: Yakima Facility State: WA Facility Zip Code: 98903
12. NAIC 5/6 digit code: 49312 Refrigerated Warehousing and Storage
13. EPA Program 12-digit RMP ID # for the Facility: 100000131323

C. CASE CONCLUSION INFORMATION:

14. Was Alternative Dispute Resolution used in this action? NO

15(a) Action Type: CAA 113(d) Administrative Action (includes administrative order, civil penalty)

ESA/CEP Y using the Expedited Settlement Agreement N using the Combined Enforcement Policy

15(b) Sections Violated: CAA 112(r)(7) RMP Facilities
CORE Priority

D. CASE CONCLUSION - COMPLIANCE ACTION:

16(a) What action did violator accomplish prior to receipt of settlement/order or will take to return to compliance or meet additional requirements? This may be due to settlement/order requirements or otherwise required by statute or regulation. Include actions completed prior to the final settlement/order and actions to be taken by violator to return to compliance or meet additional requirements. Where separate penalty and/or compliance orders are issued in connection w/same violations(s), report the following information for only one of those orders. Select response(s) from the following:

Physical Actions:

Non-Physical Actions:

Permit (RMP) Application
Record Keeping
Training

Region 10 - CAA 112(r) EPA Report

CCDS (Case Conclusion Data Sheet)

Conclusion ID: 1743

Other (must describe):

16(b). Specific regulations (eg. 68.130) that were corrected based on the enforcement:

68.65(d)(1)(v), 68.65(d)(1)(iv), 68.65(d)(1)(vi), 68.65(d)(2), 68.67(e), 68.67(f), 68.69(c), 68.71(a)(1), 68.71(b), 68.83(b)

17. Cost of actions described in item #17(a). (Actual cost data supplied by violator is preferred figure.)

Physical Actions: \$0.00 Non-Physical Actions: \$18000.00

18. Quantitative environmental impact of actions described in item #18:

Pollutant/Chemical/Waste Stream:	Annual Amount:	Unit:	Media:
anhydrous ammonia	15334	pounds	air

19. Compliance order action and due date:

Compliance Order Action: Due Date:

E. CASE CONCLUSION - SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) INFORMATION:

20. Categories of SEP(s):

21. SEP description:

22. Cost of SEP (Cost calculated by the Project Model is required): \$0.00

23. Is Environmental Justice addressed by SEP? NO

24. Quantitative environmental impact of SEP: pollutants and/or chemicals and/or waste-streams, and amount of reductions/eliminations (e.g., emissions/discharges):

Pollutant/Chemical/Waste Stream:	Annual Amount:	Unit:	Media:
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25. Assessed Penalty: \$12,100.00

26. For multi-media actions, Federal Penalty Assessed by statute:

Statute:	Amount:
	\$0.00
	\$0.00
	\$0.00

Region 10 Resolves Clean Air Act § 112(r) Violations at Borton & Sons Fruit & Cold Storage, Inc. Facility (Yakima, WA)

On May XX, 2016, Region 10 filed an expedited settlement agreement which both initiated and concluded an administrative action against the Borton & Sons Fruit & Cold Storage, Inc. facility in Yakima, Washington for violations of CAA § 112(r) Risk Management Program requirements. Respondent failed to comply with several risk management program requirements that apply to its use of anhydrous ammonia. The company agreed to pay a penalty of \$12,100. Contact: Javier Morales, 206-553-1255.

DRAFT

