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EPA REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
Jack Frost Fruit Company, Inc.) Docket No. CAA-10-2009-0030
)
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 Jack Frost Fruit Company, 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) 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 formed in the State of Washington.

2.3. Respondent owns and operates a fruit packing facility ("the facility") located at 2820 River Road, 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 stationery source where anhydrous ammonia has been present in a process above the 10,000-pound threshold quantity since at least June 1, 1999. Therefore, Respondent was required to submit an RMP for the facility.

3.9. Respondent's failure to submit an RMP for the facility by June 21, 1999, 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 4.11, 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, 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 \$20,554.

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. Respondent shall implement and complete two supplemental environmental projects (SEPs), which the parties agree are intended to secure significant environmental benefits by reducing the risk of release of anhydrous ammonia and by

improving emergency management to allow a more immediate and effective response in the event of an emergency, pursuant to the following conditions:

(a) Respondent shall remove the Rubatex foam rubber insulation from the steel pipes which transport anhydrous ammonia to its refrigerated storage facilities in Respondent's 2820 & 2809 River Road buildings; replace the removed insulation with an insulation system that provides a better fit and more reliable moisture seal; replace any damaged, and/or pitted pipes; and install drip pans. Within 12 months of the effective date of this CAFO, Respondent shall have completed at least 70% of this work for the 15 cold air storage rooms as described in Attachment A for this project, and have spent at least \$55,000. Respondent must complete the entire project by September 30, 2010. This project will reduce the risk of release of anhydrous ammonia from Respondent's pipes in 2820 & 2809 River Road buildings.

(b) Within 12 months of the effective date of this CAFO, Respondent shall submit a SEP Progress Report to EPA for the SEP identified in Paragraph 4.12(a) above. The progress report must include the same information required for the SEP Completion Reports as described in Paragraph 4.16 of this Order.

(c) Within 90 days of the effective date of this CAFO, Respondent shall donate thermal imaging cameras, communication equipment, and miscellaneous rescue equipment to the Yakima County Fire District No.5 Fire Department and the City of Wapato Fire Department as detailed in Attachment A of this CAFO. The equipment will be used to improve the departments' capabilities in responding to hazardous materials emergencies in a safe and effective manner.

(d) Further details concerning the SEPs in subparagraphs (a) and (c) above are contained in Attachment A to this CAFO.

4.13. Respondent's deadlines to perform these SEPs 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, which could not be overcome by due diligence and which delays or prevents the performance of a 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 SEPs in accordance with the specifications set forth in Paragraph 4.12 above, and as further detailed in Attachment A of this CAFO, shall be not less than \$85,000. Respondent shall include documentation of the expenditures made in connection with the SEPs as part of the SEP Completion Reports.

4.15. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop either SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop either 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 these SEPs. For federal income tax purposes, Respondent agrees that it will neither capitalize in inventory or basis nor deduct any costs or expenditures incurred in performing these SEPs.

4.16. Respondent shall submit a SEP Completion Report to EPA for each SEP, no later than 30 days after the completion of the SEP. The SEP Completion Report shall contain the following information:

- (a) A description of the SEP as implemented;
- (b) Itemized costs, documented by copies of purchase orders and receipts or cancelled checks;
- (c) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- (d) A description of the environmental and public health benefits resulting from implementation of the SEP.

4.17. Respondent agrees that failure to submit the SEP Completion Reports required by Paragraph 4.16 above, and the SEP Progress Report as required by Paragraph 4.12(b) of this CAFO, 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:

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

4.19. Respondent agrees that EPA may inspect Respondent's records related to the SEPs at any reasonable time in order to confirm that the SEPs are 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 Reports and SEP Progress 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 Reports and SEP Progress 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 a 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 Reports and SEP Progress Report described in Paragraph 4.16 above, 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 correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraph 4.23.

4.22. In the event a 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 above, then stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 4.23, below. 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 SEPs described above and/or to the extent that the actual expenditures for the SEPs do not equal or exceed the cost of the SEPs, described in this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(a) If the SEP identified in Paragraph 4.12(a) of this CAFO is not completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$55,000, less the amount actually expended.

(b) If the SEP identified in Paragraph 4.12(c) of this CAFO is not completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$30,000, less the amount actually expended.

(c) For failure to submit a SEP Completion Report as required by Paragraph 4.16, or the SEP Progress Report as required by Paragraph 4.12(b), 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, above, 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(b), above.

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, above. Interest and late charges shall be paid as stated in Paragraph 4.11, above.

4.26. 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 Clean Air Act."

4.27 Except as provided in Paragraph 4.30, 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.

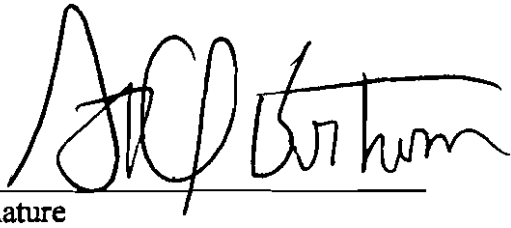
4.28. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

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

4.30. 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 above.

STIPULATED AND AGREED:

FOR JACK FROST FRUIT COMPANY, INC.



Signature

Dated: 1/19/2009

Print Name: STANLEY Q. BOSTROM

Title: CFO

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10


Robert E. Hartman
Assistant Regional Counsel

Dated: 1/30/09

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 30th day of January, 2009



Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Attachment A

IN THE MATTER OF: JACK FROST FRUIT COMPANY, INC.
EPA DOCKET NO. CAA-10-2009-0030
SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP)

SEP 1: Rubatex Insulation Replacement Project

Jack Frost Fruit Company, Inc. (Jack Frost) will remove the Rubatex foam rubber insulation from steel pipes in its 2820 & 2809 River Road Buildings that transport anhydrous ammonia to its refrigerated storage facilities.

Following the insulation removal and inspection of piping, Jack Frost will replace the removed insulation with an insulation system that provides a better fit and more reliable moisture seal than the Rubatex foam rubber insulation.

Jack Frost will replace any damaged or pitted pipes caused by the use of the Rubatex insulation prior to installing the new insulation.

Within 12 months of the effective date of this CAFO, Respondent will have completed 70% of the fifteen (15) cold air storage rooms as described herein, and have spent at least \$55,000. Respondent will complete the entire project by September 30, 2010.

The estimated cost of insulation removal, pipe inspection, and insulation replacement in the 2820 & 2809 River Road Buildings is about \$55,000 without considering the cost of any steel pipe replacement that may be required and the installation of drip pans. Jack Frost will spend at least \$55,000 on the SEP, broken down as follows:

Jack Frost Labor - Removed Rubatex	\$3,000
Man Lift Rental	\$7,000
McCown - Insulation	<u>\$45,000</u>
Total	\$55,000

A more detailed description of the scope of project appears on page 2 of this attachment.

Attachment A

South Side of River Road (2820 River Road) CA Rooms 1, 2, 3, 4, 5, 6, 7, 8, & 9:

1. CA Rooms 1 & 2
 - Piping 2 1/2" to 6" 436 feet
 - 2 Surge Drums
2. CA Rooms 3 & 4
 - Piping 2" to 6" 213 feet
 - 2 Surge Drums
3. CA Room 5
 - Piping 2 1/2" to 6" 361 feet
 - 1 Surge Drum
4. CA Room 6
 - Piping 2 1/2" to 6" 187 feet
 - 1 Surge Drum
5. CA Room 8
 - Piping 2 1/2" to 6" 329 feet
 - Surge Drum
6. CA Rooms 7 & 9
 - Piping 2" to 6" 469 feet
 - 2 Surge Drums

North Side of River Road (2809 River Road) CA Rooms 11, 12, 13, 14, 15, & 16

1. CA Room 11
 - Piping 2 1/2" to 5" 54 feet
 - 2 Surge Drums
2. CA Room 12
 - Piping 2 1/2" to 5" 54 feet
 - 2 Surge Drums
3. CA Room 13
 - Piping 2 1/2" to 5" 54 feet
 - 2 Surge Drums
4. CA Room 14
 - Piping 2 1/2" to 5" 54 feet
 - 2 Surge Drums
5. CA Room 15
 - Piping 3" to 6" 34 feet
 - 1 Surge Drum
6. CA Room 16
 - Piping 3" to 6" 34 feet
 - 1 Surge Drum
7. Hallway Mains
 - Piping 3" to 5" 253 feet

Attachment A

SEP 2: Emergency Equipment Project

Respondent shall donate thermal imaging cameras, communication equipment, and miscellaneous rescue equipment listed below to the Yakima County Fire District No.5 Fire Department and the City of Wapato Fire Department. These items were specifically identified by the Yakima County Fire District No.5 Fire Department and the City of Wapato Fire Department as equipment that will improve the departments' capabilities in responding to hazardous materials emergencies in a safe and effective manner.

Jack Frost will complete this SEP within three months of the entry of the Consent Agreement and Final Order. Jack Frost will spend at least \$30,000 on the SEP. Jack Frost will spend \$15,437.00 on equipment for the Yakima County Fire District No.5 Fire Department, and \$14,969.81 for the City of Wapato Fire Department. Estimated casts are listed below:

Yakima County Fire District No.5 Fire Department Equipment List:

Quantity 1: 16 Channel Voice Recorder. This voice recorder will record all radio frequencies and telephone lines in the communications center.
Cost: \$ 15,437.00.

City of Wapato Fire Department Equipment List:

Quantity 1: Thermal Imaging Camera (TIC) & accessories
Cost: \$10,674.01

Quantity 1: Light package hardwired to existing generator on the first engine out plus labor.
Cost: \$2,306.93

Quantity 1: RIT (Rapid Intervention Team) kit.
Cost: \$1,385.27

Quantity 1: Ventilation chain saw & accessories.
Cost: \$ 603.60

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Jack Frost Fruit Company, Inc., DOCKET NO.: CAA-10-2009-0030** was filed with the Regional Hearing Clerk on January 30, 2009.

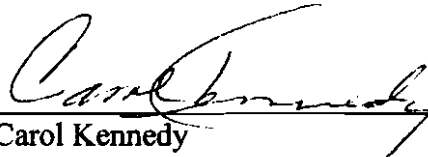
On January 30, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Bob Hartman, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
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 January 30, 2009, to:

Stanley Bostrom
Jack Frost Company, Inc.
Chief Financial Officer
P.O. Box 1552
Yakima, Washington

DATED this 30th day of January 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10