

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2022-0157
	)	
CONGDON PACKING COMPANY, LLC	)	CONSENT AGREEMENT
	)	
and	)	
	)	
D&H PROPERTIES YAKIMA, LLC	)	
	)	
Yakima, Washington	)	
	)	
Respondent.	)	

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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Congdon Packing Company, LLC (“Respondent Congdon”) and D&H Properties Yakima, LLC (Respondent D&H) (collectively “Respondents”) agree to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. Respondent Congdon is a limited liability company formed in the State of Washington. Respondent D&H a limited liability company formed in the State of Idaho.

3.2. Respondent Congdon operated a cold storage facility located at 10 West Mead Avenue in Yakima, Washington which was owned by Respondent D&H (the “facility”).

3.3. Section 112(r) of the CAA, 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 (“TQ”) in a process 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.

3.4. 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.

3.5. 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.

3.6. 40 C.F.R. § 68.3 defines “threshold quantity” (“TQ”) as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, in 40 C.F.R. § 68.130. The TQ of anhydrous ammonia is 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.7. Under 40 C.F.R. § 68.115, a TQ 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 TQ.

3.8. 40 C.F.R. § 68.150 requires that an owner or operator of a stationary source that has more than a TQ 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.

3.9. Respondents operated and owned a stationary source where anhydrous ammonia was present in a process above the 10,000 pounds TQ between at least April 3, 2009 and April 1, 2021. Therefore, Respondents were required to submit and have in place an RMP for the facility.

3.10. Under 40 C.F.R. § 68.10(i) a covered process is subject to Program 3 if the process does not meet the Program 1 applicability requirements, and the process is in one of the enumerated NAICS codes, or if the process is subject to the Occupational Safety and health Act (OSHA) process safety management standard, 29 C.F.R. § 1910.119.

3.11. Respondents had one program 3 process, as defined in 40 C.F.R. § 68.10(i), because it was subject to an OSHA process safety management standard: two ammonia refrigeration systems located within a single structure, each serving several cold storage rooms.

3.12. 40 C.F.R. § 68.12(a) and (d) require that, in addition to submitting a single RMP as provided in §§ 68.150 to 68.185, facilities with a Program 3 covered process shall among other things, develop a management system as provided in § 68.15, conduct a hazard assessment as

provided in §§ 68.20 to 68.42, implement the prevention program as required of §§ 68.65 to 68.87, develop the prevention requirements of §§ 68.90 through 68.96 and submit as part of the RMP the data on prevention program elements for Program 3 program processes as provided in 40 C.F.R. § 68.175.

3.13. An RMP was submitted for the Facility on April 23, 2009, May 13, 2014, April 13, 2015, and May 15, 2020.

3.14 Respondent Congdon ceased operating the facility in April 2021 and its lease of the facility was cancelled as of October 1, 2021. Respondent D&H Properties submitted an RMP de-registration form to EPA on June 22, 2023.

**Violation 1: Failure to keep required information in a compilation of written process safety information up to date.**

3.16. 40 C.F.R. § 68.65(a) and (d) require the owner or operator to complete a compilation of written process safety information pertaining to equipment in the process and to keep this information up to date.

3.17. 40 C.F.R. § 68.65(d)(1)(i) requires the owner or operator to have information concerning materials of construction for process vessels, storage vessels, piping, and valves.

3.18. Respondents failed to maintain information concerning the materials of construction for numerous east engine room pressure vessels, in violation of the requirements of 40 C.F.R. § 68.65(d)(1)(i).

3.19. 40 C.F.R. § 68.65(d)(1)(iv) requires the owner or operator to have written process safety information pertaining to the equipment in the processes including accurate information concerning relief system design and design for pressure relief valves in the process.

3.20. Respondents' written process safety information did not include calculations of loads/sizes and inlet/outlet sizes for pressure relief valves, in violation of 40 C.F.R. § 68.65(d)(1)(iv).

3.21. 40 C.F.R. § 68.65(d)(2) requires the owner or operator to document that equipment complies with recognized and generally accepted good engineering practices.

3.22. Respondents failed to document that pressure vessel equipment complied with recognized and generally accepted good engineering practices, including ANSI/IIAR 2-2014

Addendum A, which requires equipment to be labeled with a legible nameplate that includes such information as maximum allowable pressure, serial number, and national board number, in violation of 40 C.F.R. § 68.65(d)(2).

**Violation 2: Failure to Adequately Address Process Hazard Analysis Recommendations**

3.23. 40 C.F.R. § 68.67 requires an owner or operator to perform an initial process hazard analysis on processes covered by this part at least every five years, and 40 C.F.R. § 68.67(e) requires, among other things, that the owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

3.24. In 2014, Respondents performed a process hazard analysis that identified three recommendations, but these recommended actions have not yet been completed.

3.25. Respondents failed to assure that all recommendations made pursuant to a process hazard analysis were promptly addressed and resolved in a timely manner, in violation of 40 C.F.R. § 68.67(e).

3.26. 40 C.F.R. 68.67(f) requires that at least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated to assure that the process hazard analysis is consistent with the current process.

3.27. Respondents completed a process hazard analysis in April 2014 and August 2019. Thus, the August 2019 process hazard analysis was performed four months late.

3.28. Respondents violated the requirement of 40 C.F.R. 68.67(f) to perform a process hazard analysis every five years.

**Violation 3: Training**

3.29. 40 C.F.R. § 68.71(a) requires that each employee involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in §68.69. The training

shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

3.30. 40 C.F.R. § 68.71(c) requires an owner or operator to document that the training requirements of 40 C.F.R. § 68.71(a) have been satisfied, and that includes, among other things, the means used to verify that the employee understood the training provided.

3.31. Respondents failed to provide initial training for three employees involved in operating a process, in violation of 40 C.F.R. § 68.71(a), and failed to document that such training had been provided and understood, in violation of 40 C.F.R. § 68.71(c).

#### **Violation 4: Mechanical Integrity**

3.32. 40 C.F.R. § 68.73(d) requires inspections and tests shall be performed on process equipment, including pressure vessels and storage tanks, piping systems (including piping components such as valves), relief and vent systems and devices, and pumps.

3.33. 40 C.F.R. § 68.73(d)(3) requires that the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

3.34. Respondents operated process equipment that included numerous evaporators, compressors, condensers, and pressures vessels. This process equipment is subject to daily, weekly, and monthly inspection requirements pursuant to good engineering practices as specified in “ANSI/IIAR 6-2019 Standard for Inspection, Testing, and Maintenance of Closed-Circuit Ammonia Refrigeration Systems.”

3.35. Respondents failed to perform numerous daily, weekly, and monthly inspections on its evaporators, compressors, condensers, and pressures vessels, in violation of the requirements of 40 C.F.R. § 68.73(d).

3.36. 40 C.F.R. § 68.73(e) requires the owner or operator to correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in 40 C.F.R. § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

3.37. Respondents continued to operate pressure relief valves for a surge drum, a high pressure receiver, and accumulator that, pursuant to process safety information, were overdue for replacement, in violation of the requirements of 40 C.F.R. § 68.73(e).

#### **Violation 5: Management of Change**

3.38. 40 C.F.R. § 68.75(a) requires that the owner or operator establish and implement written procedures to manage changes (except for “replacements in kind”) to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process. 40 C.F.R. § 68.75(c) requires that employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process. 40 C.F.R. § 68.75(d) requires that if a change results in a change in the process safety information required by § 68.65 of this part, such information shall be updated accordingly. 40 C.F.R. § 68.75(e) requires that if a change results in a change in the operating procedures or practices required by §68.69, such procedures or practices shall be updated accordingly.

3.39. On or before December 12, 2018, Respondents were operating the facility when process equipment was decommissioned in “Room 2 North” and “Room 2 South” of the facility, effectively removing it from service at the Facility. This decommissioning of equipment constituted a change within the meaning of 40 C.F.R. § 68.75(a).

3.40. Respondents failed to provide training to employees whose job tasks were affected by the change (decommissioned equipment) in Room 2 North and Room 2 South, in violation of the requirements of 40 C.F.R. § 68.75(c).

3.41. Respondents failed to update its process safety information required by 40 C.F.R. § 68.65 after the change (decommissioning of equipment) in Room 2 North and Room 2 South, in violation of the requirements of 40 C.F.R. § 68.75(d).

3.42. Respondents failed to update its operating procedures required by 40 C.F.R. § 68.69 after the change (decommissioning of equipment) in Room 2 North and Room 2 South, in violation of the requirements of 40 C.F.R. § 68.75(e).

#### **Violation 6: Pre-Start Up Safety Review**

3.43. 40 C.F.R. § 68.77(a) requires the owner or operator to perform a pre-startup safety review for modified stationary sources when the modification is significant enough to require a change in the process safety information.

3.44. 40 C.F.R. § 68.77(b) provides in relevant part that the pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process: (1) construction and equipment is in accordance with design specifications; (2) safety, operating, maintenance, and emergency procedures are in place and are adequate; and (3) for modified stationary sources, that they meet the requirements contained in management of change at 40 C.F.R. § 68.75, and (4) that training of each employee involved in operating a process has been completed.

3.45. Respondents did not perform a pre-start up safety review subsequent to the major change made to the Room 2 North and Room 2 South process equipment (discussed above) and prior to the introduction of regulated substances into the process, even though the modification was significant enough to require a change in the process safety equipment. Respondents' failure to conduct the pre-start up safety review, confirm that management of change requirements had been satisfied, and train employees involved in operating the process violated the requirements of 40 C.F.R. § 68.77(b).

#### **Violation 7: Compliance Audit**

3.46. 40 C.F.R. § 68.79(a) requires that the owner or operator certify that they have evaluated compliance with the provisions of this subpart for each covered process, at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

3.47. Respondents conducted a compliance audit in 2013, however Respondents failed to conduct compliance audit three years later (in 2016) and only conducted an audit six years later in 2019. Respondents failed to conduct a timely compliance audit, in violation of 40 C.F.R. § 68.79(a).

3.46. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$51,796. per day of violation.

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondents admit the jurisdictional allegations of this Consent Agreement.



4.2. Respondents neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering these factors, EPA has determined and Respondents agree that an appropriate penalty to settle this action is \$194,302. (the “Assessed Penalty”).

4.4. Respondents agree to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, Missouri 63197-9000

Respondents must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondents must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
[R10\\_RHC@epa.gov](mailto:R10_RHC@epa.gov)

Javier Morales  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
[Morales.Javier@epa.gov](mailto:Morales.Javier@epa.gov)

4.7. If Respondents fail to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondents 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 collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondents fail to pay any portion of the Assessed Penalty in full by its due date, Respondents shall 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 contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondents fail to pay the Assessed Penalty and interest on a timely basis, Respondents 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 Respondents' outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representatives of Respondents certify that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondents to this document.

4.11. Respondents certify that, as of the date of Respondents' signature of this Consent Agreement, Respondents have corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondents expressly waive any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondents and their agents, servants, employees, successors, and assigns.

4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

7-19-23

FOR RESPONDENTS:



\_\_\_\_\_  
GENE R. WOODIN, JR., President  
Congdon Packing Company, LLC

\_\_\_\_\_  
HOWARD DELBERT BAFFORD, Managing  
Member  
D&H Properties Yakima, LLC

DATED:

\_\_\_\_\_

FOR COMPLAINANT:

\_\_\_\_\_  
EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division  
EPA Region 10

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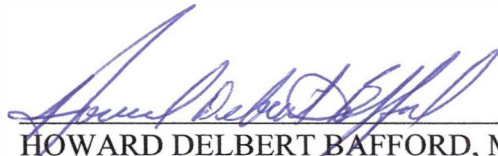
DATED:

FOR RESPONDENTS:

\_\_\_\_\_

\_\_\_\_\_  
GENE R. WOODIN, JR., President  
Congdon Packing Company, LLC

7-18-23

  
\_\_\_\_\_  
HOWARD DELBERT BAFFORD, Managing  
Member  
D&H Properties Yakima, LLC

DATED:

FOR COMPLAINANT:

\_\_\_\_\_

\_\_\_\_\_  
EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division  
EPA Region 10

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DATED:

FOR RESPONDENTS:

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GENE R. WOODIN, JR., President  
Congdon Packing Company, LLC

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HOWARD DELBERT BAFFORD, Managing  
Member  
D&H Properties Yakima, LLC

DATED:

FOR COMPLAINANT:

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EDWARD J. KOWALSKI, Director  
Enforcement and Compliance Assurance Division  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CAA-10-2022-0157
	)	
CONGDON PACKING COMPANY, LLC	)	<b>FINAL ORDER</b>
	)	
and	)	
	)	
D&H PROPERTIES YAKIMA, LLC	)	
	)	
Yakima, Washington	)	
	)	
Respondent.	)	

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1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2023.

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RICHARD MEDNICK  
Regional Judicial Officer  
EPA Region 10