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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	
Custom Apple Packers, Inc.	)	Docket No. CAA-10-2012-0022
	)	
Wenatchee, 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).

1.2. 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 has redelegated this authority to the Regional Judicial Officer in Region 10.

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 Custom Apple Packers, Inc. (“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 \$295,000 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 22.18, 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. The Director of the Office of Compliance and Enforcement, EPA Region 10 has been delegated the authority to sign consent agreements between EPA and the party against who a penalty is proposed to be assessed pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

2.3. Respondent is a corporation formed in the State of Washington.

2.4. Respondent owns and operates a cold fruit storage facility (“facility”) located at 2701 Euclid Avenue, Wenatchee, Washington.

2.5. 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 August 1, 2002. Therefore, Respondent was required to submit an RMP for the facility.

3.9. Respondent submitted an RMP to EPA on April 1, 2009.

3.10. Respondent's failure to submit and have in place an RMP for the facility between August 1, 2002 and April 1, 2009, 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 4.9., 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 \$69,480.

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 or credit card in accordance with instructions provided by EPA. 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

4.9. 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 any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

a. Interest. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) of 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 Section 113(d)(5) of the CAA, 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.

4.10. The penalty described in Paragraph 4.6, including any additional costs incurred under Paragraph 4.9. above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. Except as provided in Paragraph 4.14., 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.

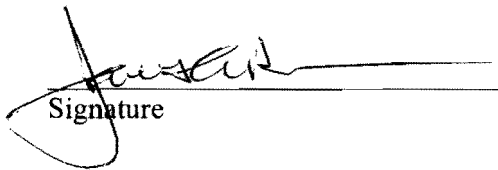
4.12. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.13. 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.

4.14. 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 CUSTOM APPLE PACKERS, INC.

  
Signature

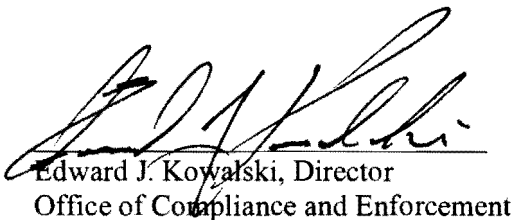
Dated: 12/22/11

Print Name: JAMES A. BROWN

Title: General Counsel

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 10

  
Edward J. Kowalski, Director  
Office of Compliance and Enforcement

Dated: 1/9/2012



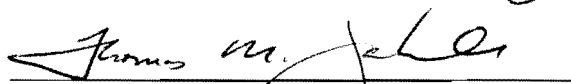
## V. FINAL ORDER

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 11<sup>th</sup> day of January, 2012

  
\_\_\_\_\_  
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: Custom Apple Packers, Inc. Docket No.: EPCRA 10-2012-0022**, was filed with the Regional Hearing Clerk on January 11, 2012.

On January 11, 2012 the undersigned certifies that an original and true and correct copy was hand delivered to:

Robert Hartman  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
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 on January 11, 2012 to:

Mr. James A. Brown  
General Counsel  
Custom Apple Packers, Inc.  
P.O. Box 4640  
Wenatchee, WA 98807

DATED this 11 day of January, 2012

*Carolee H. Smith for*  
Signature: Carol Kennedy  
Print Name: Carol Kennedy  
EPA Region 10