

# 112(r) Clean Air Act/Enforcement: U.S. Environmental Protection Agency and Operator of Winchester, Kentucky Cold Food Storage Facility Enter into Consent Agreement



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

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The United States Environmental Protection Agency (“EPA”) and Save-A-Lot, Ltd. (“SAL”) entered into a May 8th Consent Agreement (“CA”) addressing alleged violations of Section 112(r) of the Clean Air Act and the regulations promulgated to implement this statutory provision. See Docket No. CAA-04-2018-8011(b).

The CA provides that SAL operates a cold food storage facility in Winchester, Kentucky, which is a stationary source as that term is defined by Section 302(z) of the Clean Air Act.

Section 112(r) of the Clean Air Act addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the statute. The purpose of such provisions is the prevention of the accidental release of extremely hazardous substances and to minimize the consequences of such releases.

EPA promulgated rules to implement this provision which are codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. The regulations are collectively referred to as the “Risk Management Program” and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process.

The CA states that SAL submitted and registered a Risk Management Program Plan to EPA for its stationary source and developed a Risk Management Program accidental release prevention program for the stationary source. The SAL stationary source is stated to have on-site for use 14,000 pounds of ammonia for cold food storage purposes. Further, SAL has one Risk Management Program level 3 covered process, which stores or otherwise uses ammonia in an amount exceeding its applicable threshold of 10,000 pounds.

EPA is stated to have conducted an on-site inspection of the SAL Risk Management Program related records and equipment on March 29, 2017, for purposes of assessing compliance with the relevant requirements and the implemented recognized and generally accepted good engineering practices for its covered process.

The CA provides that SAL did not adequately implement provisions of 40 C.F.R. Part 68 when it:

- Failed to compile written process safety information for the equipment in the process including a piping and instrument diagram, as required by 40 C.F.R. § 68.65(d)(1)(ii);
- Failed to document that equipment complies with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2);
- Failed to establish a system to promptly address the team's findings and recommendations of the Process Hazard Analysis (PHA); 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; and 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, as required by 40 C.F.R. § 68.67(e);
- Failed to review operating procedures as often as necessary and to annually certify that the operating procedures are current and accurate, as required by 40 C.F.R. § 68.69(c);
- Failed to initially train each employee in an overview of the process and in the operating procedures before being involved in operating a newly assigned process, as required by 40 C.F.R. § 68.71(a)(1);
- Failed to train each employee involved in maintaining the ongoing integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner, as required by 40 C.F.R. § 68.73(c);
- Failed to correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation, as required by 40 C.F.R. § 68.73(e);
- Failed to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected, as required by 40 C.F.R. § 68.79(d);
- Failed to obtain and evaluate information regarding contract owner or operators' safety performance and programs when selecting a contractor, as required by 40 C.F.R. § 68.87(b)(1);
- Failed to inform the contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process, as required by 40 C.F.R. § 68.87(b)(2); and
- Failed to explain to the contractor owner or operator the applicable provisions of the facility's emergency response, as required by 40 C.F.R. § 68.87(b)(3).

The CA provides that SAL neither admits nor denies the factual allegations.

The CA assesses a civil penalty of \$43,184.

A copy of the [CA can be downloaded here](#).