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112(r)/Clean Air Act Enforcement: U.S. Environmental Protection Agency and Middlesboro, Kentucky, Food Manufacturing Facility Enter into Consent Agreement

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The United States Environmental Protection Agency (“EPA”) and Smithfield Packaged Meats Corporation (“Smithfield”) entered into an August 30th Consent Agreement (“CA”) addressing alleged violations of the regulations implementing Section 112(r) of the Clean Air Act. See Docket No. CAA-04-2022-0210(b).

The CA addresses a Smithfield food manufacturing facility (“Facility”) in Middlesboro, Kentucky.

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

EPA promulgated regulations codified at 40 C.F.R. Part 68 to implement what is described as a “Risk Management Program.”

Smithfield is stated to have registered a Risk Management Plan (“RMProgram”) with EPA for the Facility. Further, the company is stated to have developed an RMProgram accidental release prevention program for the Facility.

The Facility is stated to include:

- A food manufacturing process involving ammonia refrigeration
- More than 10,000 pounds of anhydrous ammonia on site
- An RMProgram Level 3 covered process, which stores or otherwise uses anhydrous ammonia in an amount exceeding its applicable threshold of 10,000 pounds

EPA is stated to have conducted an on-site inspection of the RMProgram on February 27, 2020, which included records and equipment. The purpose of the inspection was to assess compliance with the RMProgram requirements and the implemented recognized and generally accepted good engineering practices for covered processes at the Facility.

The CA alleges that Smithfield violated 40 C.F.R. Part 68 and Section 112(r) of the Clean Air Act when it:

1. Failed to document that equipment complies with RAGAGEP, as required by 40 C.F.R. § 68.65(d)(2);

2. Failed to provide refresher training at least every three years 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); and
3. Failed to establish a system to promptly address and resolve the incident report findings and recommendations as required by 40 C.F.R. § 68.81(e).

The CA requires that Smithfield certify to the best of its knowledge that it is currently in compliance with all requirements of the Clean Air Act and its implementing regulations and all alleged violations, which are neither admitted nor denied, have been corrected.

A civil penalty of \$83,061 is assessed.

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