

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4

In the Matter of:

US Foods, Inc., Norcross, Georgia

Respondent.

Docket No. CAA-04-2019-9978(b)

HEARING CLERK

2019 AUG 26 AM 9:40

USEPA REGION 4
OFFICE OF ENFORCEMENT
2111 BENTLEY BLVD
ATLANTA, GA 30343

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 113(b) of the Clean Air Act or the Act, 42 U.S.C. § 7413(b) and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Administrator of the United States Environmental Protection Agency, (EPA). On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division, EPA Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
5. Respondent is US Foods, Inc., a corporation doing business in the State of Georgia and incorporated under the laws of the State of Delaware. This proceeding pertains to Respondent's facility located at 6685 Crescent Drive, Norcross, Georgia (the Facility).

III. GOVERNING LAW

6. Respondent is a “person” within the meaning of Section 302(e) of the Act. 42 U.S.C. § 7602(e).
7. Respondent is the “owner” and “operator” of the Facility within the meaning of Section 112(a)(9) of the Act, 42 U.S.C. §7412(a)(9).
8. Section 112 (r)(1) of the Act, 42 U.S.C. §7412(r)(1), commonly referred to as the General Duty Clause, addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. §7412(r)(3), or any other extremely hazardous substance. The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases.
9. EPA and the United States Department of Justice jointly determined 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 assessment. 42 U.S.C. § 7413(d).
10. The notice requirements of Section 113(a) of the CAA, 42 U.S.C. § 7413(a), do not apply to the alleged violations in this Consent Agreement.

IV. FINDINGS OF FACTS

11. At all relevant times, Respondent owned and operated the Facility, which is a food distribution warehouse.
12. The Facility is a “stationary source” within the meaning of the CAA Section 112(r)(2)(c), 42 U.S.C. §7412(r)(2)(C).
13. The Facility produces, processes, handles, and stores listed and/or other extremely hazardous substances within the meaning of Section 112(r)(1) and (3) of the Act.
14. At the Facility, Respondent operates an ammonia refrigerant system which contains approximately 8,487 pounds of ammonia.
15. Ammonia is processed, handled, and stored in the ammonia refrigerant systems, and ammonia is a regulated extremely hazardous substance listed under Section 112(r)(3) at 40 C.F.R. § 68.130.
16. EPA inspected the Facility on June 7, 2018.
17. Prior to the June 7, 2018 inspection, Respondent had not performed a hazard analysis nor developed standard operating procedures for the ammonia refrigerant system.

V. ALLEGED VIOLATIONS

Failure to Identify Hazards Which Result from Accidental Releases of Ammonia

18. Pursuant to the General Duty Clause, Section 112(r)(1) of the Act, Respondent had a duty to identify hazards which may result from accidental releases of extremely hazardous substances listed under 40 C.F.R. §68.130 such as ammonia, using appropriate hazard assessment techniques.
19. Respondent failed to identify hazards by not developing a hazard analysis for the ammonia refrigerant system prior to operation of the ammonia refrigerant system.
20. Respondent's failure to identify hazards associated with ammonia refrigerant system is a violation of the General Duty Clause under Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1).

Failure to Design and Maintain a Safe Facility Taking Necessary Steps to Prevent Accidental Releases of Ammonia

21. Pursuant to the General Duty Clause, Section 112(r)(1) of the Act, Respondent had a duty to design and maintain a safe facility taking such steps as are necessary to prevent releases.
22. Respondent failed to design and maintain a safe facility by not developing written procedures for the operation of the ammonia refrigerant system.
23. Respondent's failure to design and maintain a safe facility by not developing operating procedures for the ammonia refrigerant system is a violation of the General Duty Clause under Section 112(r)(1) of the Act, 42 U.S.C. §7412(r)(1).

Steps Taken by Respondent to Achieve Compliance

24. Respondent prepared a process hazard analysis of the ammonia refrigerant system on June 21, 2018, and submitted it to EPA on June 27, 2018.
25. Respondent prepared written procedures for the operation of the ammonia refrigerant system on June 11, 2018, and submitted them to EPA on June 27, 2018.

VI. STIPULATIONS

26. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
27. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - (a) admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
 - (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - (c) consents to the assessment of a civil penalty as stated below;

- (d) consents to the conditions specified in this CAFO;
- (e) waives any right to contest the factual allegations set forth in this CAFO; and
- (f) waives its rights to appeal the Order accompanying this CAFO.

28. For the purpose of this proceeding, Respondent:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- (d) by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- (e) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);
- (f) agrees to comply with the terms of the CAFO.

VII. TERMS OF PAYMENT

29. Respondent consents to the payment of a civil penalty in the amount of **\$90,693**, which is to be paid within thirty (30) calendar days of the effective date of this CAFO.

30. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: John Schmid, (202) 874-7026
REX (Remittance Express): 1-866-234-5681

31. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

- a) Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

b) Todd Groendyke
U.S. EPA, Region 4
Enforcement and Compliance Assurance Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
Groendyke.Todd@epa.gov

32. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and “Docket No. CAA-04-2019-9978(b).”
33. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, EPA may require the Respondent to pay the following amounts on any amount overdue:
- (a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest is paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b), and 40 C.F.R. § 13.11(c).
 - (b) Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due under Section VII and is not paid in full, as provided by 31 U.S.C. § 3717(e)(2), and 31 C.F.R. § 901.9(d). This non-payment is in addition to the charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
 - (c) Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. and 31 C.F.R. § 901.9 (c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
34. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may request the Attorney General to bring a civil action in an appropriate district court to recover; (a) the amount assessed; (b) interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); (c) the United States’s attorneys’ fees and enforcement expenses; and (d) a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5), 31 C.F.R. § 901.9 (d), and 40

C.F.R. § 13.11(c). In any such action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

35. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:
- (a) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14;
 - (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
 - (c) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
 - (d) refer the debt to the Department of Justice after having taken aggressive collection action, as provided in 40 C.F.R. § 13.33.
36. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

37. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
38. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case 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. 40 C.F.R. § 22.18(c).
39. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
40. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.

41. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
42. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
43. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
44. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
45. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
46. By signing this Consent Agreement, the undersigned of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
47. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
48. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
49. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
50. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
51. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

52. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of **US Foods, Inc., Docket No. CAA-04-2019-9978(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

William Ray

7/8/19

Signature

Date

Printed Name: William Ray

Title:


Area President

Address: US Foods, Inc.
6685 Crescent Drive
Norcross, GA 30071

The foregoing Consent Agreement In the Matter of **US Foods, Inc., Docket No. CAA-04-2019-9978(b)** is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:



Suzanne G. Rubini, Acting Director
Enforcement and Compliance Assurance Division
EPA, Region 4

8/13/19

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

US Foods, Inc.

Respondent.

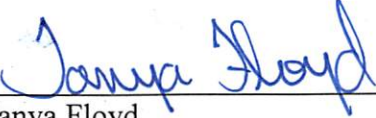
Docket No. **CAA-04-2019-9978(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 19th day of August, 2019.



Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of **US Foods, Inc.**, **Docket No. CAA-04-2019-9978(b)**, were filed and copies of the same were mailed to the parties as indicated below.

Via United Parcel Service:

William Ray
Area President
US Foods, Inc.
6685 Crescent Drive
Norcross, GA 30071

Stacey M. Moore, Esq.
US Foods
7950 Spence Road
Fairburn, GA 30213

Via EPA's internal email:

Todd Groendyke
U.S. EPA, Region 4
Enforcement and Compliance Assurance Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

Lucia C. Mendez, Associate Regional Counsel
U.S. EPA, Region 4
Office of Regional Counsel, 13th Floor
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

8-20-19

DATE



Patricia A. Bullock, Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960