

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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EPA REGION III, PHILA. PA

In the Matter of:)	EPA Docket No. CAA-03-2015-
Tyson Poultry, Inc.)	0087
2200 Don Tyson Drive)	
Springdale, Arkansas 72765,)	
)	
Respondent.)	Proceeding Under Sections
)	112(r) and 113 of the Clean Air
403 South Custer Avenue)	Act, 42 U.S.C. §§ 7412(r) and 7413,
New Holland, Pennsylvania 17557,)	40 C.F.R. §§ 22.13(b) and
)	22.18(b)
Facility.)	
)	

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 113 of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7413, and under the authority of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Administrator has delegated these authorities to the Regional Administrator, who has, in turn, delegated them to the Director, Hazardous Site Cleanup Division.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as “CA/FO”) as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).

2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).

3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order and the enforcement of this CA/FO.

4. With the exception of Paragraph 3, above, for purposes of this proceeding, Respondent neither admits nor denies factual allegations set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

COUNT I**FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

5. Respondent, Tyson Poultry, Inc., is the owner and operator of the poultry processing plant located at 403 South Custer Avenue in New Holland, Lancaster County, Pennsylvania (the "Facility").

6. Respondent is a corporation reincorporated in the State of Delaware in 1998 with its principal place of business located at 2200 Don Tyson Drive in Springdale, Arkansas.

7. The Facility is located in an industrial area in New Holland, and consists of Plant 1 on the northern area of the Facility and Plant 2 on the southern area of the Facility. Upon information and belief, approximately 13,052 people live within 2.8 miles of the Facility.

8. At all times relevant to this CA/FO, Respondent has been the owner and operator of Plant 1 and Plant 2 at the Facility.

9. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).

10. Section 112(r) to the CAA, 42 U.S.C. § 7412(r), requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7), 42 U.S.C. § 7412(r)(7). Specifically, Section 112(r)(7) requires the

Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7). The list of regulated substances and threshold levels can be found in 40 C.F.R. § 68.130.

11. On June 20, 1996, EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. The regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program is described in a risk management plan (“RMP”) that must be submitted to EPA. The RMP must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in response to an accidental release of a regulated substance, so as to protect human health and the environment.

12. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and its regulations at 40 C.F.R. §§ 68.10(a) and 68.150(a), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity must submit a RMP to EPA no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

13. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996 and the subsequent Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$32,500 per day for each violation of Section 112(r) of the CAA that occurs after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation of Section 112(r) of the CAA that occurs after January 12, 2009.

14. The regulations at 40 C.F.R. § 68.3 define “stationary source,” in part, 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.

15. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), in 40 C.F.R. § 68.130.

17. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

18. EPA conducted an inspection of the Facility on October 15, 2014, to determine Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the Chemical Accident Prevention Provisions at 40 C.F.R. Part 68.

19. The Facility is a poultry processing facility. Plant 1 has a machinery room containing an ammonia refrigeration system with a maximum inventory of 87,644 pounds of ammonia. Plant 2 has a machinery room containing a second ammonia refrigeration system with a maximum inventory of 80,018 pounds of ammonia.

20. The Facility handles and/or stores, and has handled and/or stored, anhydrous ammonia, Chemical Abstracts Service (“CAS”) Number 7664-41-7, since at least 1946 and at all times relevant to this CA/FO.

21. Respondent submitted an initial RMP on June 18, 1999, and resubmitted the RMP on June 21, 2004, September 25, 2008, and September 23, 2013.

22. The Standard Industrial Classification code for the Facility is 2015 (Poultry Processing) and the North American Industrial Classification System code for the Facility is 311615 (Poultry Processing).

23. The Chemical Accident Prevention Provisions require an owner or operator to comply with process safety information requirements at 40 C.F.R. § 68.65(d)(1)(vi) and (d)(2), *i.e.* to compile process safety information pertaining to the equipment in the process including design codes and standards employed and to document that the equipment in the process complies with recognized and generally accepted good engineering practices.

24. “Design codes and standards” and “recognized and generally accepted good engineering practices,” for purposes of 40 C.F.R. § 68.65, include, as applicable, the American National Standards Institute and the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 15-2007, *Safety System for Refrigeration Systems* (2007). (“ANSI/ASHRAE 15-2007”). Section 8 of ANSI/ASHRAE 15-2007 covers installation restrictions. Section 8.11.2 states:

Each refrigerating machinery room shall have a tight-fitting door or doors opening outward, self-closing if they open into the building, and adequate in number to ensure freedom for persons to escape in an emergency. With the exception of access doors and panels in air ducts and air-handling units conforming to Section 8.11.7, there shall be no openings that will permit passage of escaping refrigeration to other parts of the building.

25. The inspection revealed that Respondent failed to ensure that the machinery room of Plant 1 was designed to prevent passage of escaping refrigerant from the ammonia refrigeration system into other parts of the buildings. An opening above the door to the machinery room, through which pipes ran to other parts of the building, allowed for the potential release of ammonia from the machinery room.

26. On December 1, 2014, Respondent submitted information to EPA indicating that Respondent had sealed the opening above the door to the machinery room in Plant 1 at the Facility.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

27. The findings of fact contained in Paragraphs 5 through 26 of this CA/FO are incorporated by reference herein as though fully set forth at length.

28. Anhydrous ammonia is a regulated substance pursuant to Section 112(r)(2) and (3) of the CAA, 42 U.S.C. § 7412(r)(2) and (3), and is listed at 40 C.F.R. § 68.130, with a threshold quantity of 10,000 pounds.

29. At all times relevant to this Consent Agreement, anhydrous ammonia has been present in a process at the Facility in an amount exceeding its threshold quantity.

30. Respondent is a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

31. Respondent has been the owner and operator of a “stationary source,” as the term is defined at 40 C.F.R. § 68.3, since at least 1999.

32. Respondent is subject to the requirements of Section 112(r) of the CAA, 40 U.S.C. § 7412(r), and 40 C.F.R. Part 68, because it is the owner and/or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

33. The Facility is a Program 3 Facility under the Chemical Accident Prevention Provisions, in accordance with 40 C.F.R. § 68.10(d).

34. Prior to Respondent’s corrections to the access door in November 2014, Respondent failed to comply with the process safety information requirements at 40 C.F.R. § 68.65(d)(1)(vi) and (d)(2) at the Facility, *i.e.*, to compile process safety information pertaining to design codes and standards relevant to the equipment and to document that the equipment in the process complies with recognized and generally accepted good engineering practices.

33. Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its regulations at 40 C.F.R. Part 68, by failing to meet the requirements of Subpart D of the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68, as set forth in Paragraph 23

above. Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

SETTLEMENT

34. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), as set forth above, in the amount of **\$9,042.00**.

35. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

PAYMENT TERMS

36. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the civil penalty of \$9,042 no later than thirty (30) days after the effective date of the Final Order (the "Final Due Date") by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, CAA-03-2015-0087;
- b. All checks shall be made payable to **United States Treasury**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell, 513-487-2044

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

37. Respondent shall submit copies of the check, or verification of wire transfer or ACH, to the following persons:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Cynthia T. Weiss
Senior Assistant Regional Counsel (3RC42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

38. The CAA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012).

39. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the Final Due Date or to comply with the conditions of this CA/FO shall result in the assessment of late payment charges, including interest, penalties and/or administrative costs of handling delinquent debts.

40. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within such thirty (30) calendar day period will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

41. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix B of EPA's *Resource Management Directives – Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

42. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

43. Failure of Respondent to pay the penalty assessed by the Final Order in full by the Final Due Date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

44. By entering into this CA/FO, Respondent does not admit any liability for the civil claims alleged herein.

45. For purposes of this proceeding, Respondent expressly waives its right to hearing and to appeal the Final Order pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

46. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, the Facility is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

47. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind said Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

48. This CA/FO does not constitute a waiver, suspension or modification of the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), or any regulations promulgated thereunder.

49. This CA/FO is a complete and final settlement of all civil and administrative claims and causes of action set forth in this CA/FO for alleged violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Nothing herein shall be construed to limit the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

50. Each party to this action shall bear its own costs and attorney's fees.

FOR TYSON POULTRY, INC.

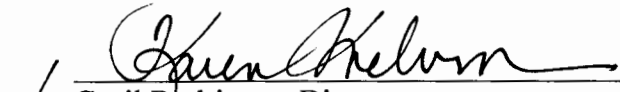


R. Read Hudson
Secretary and Vice President

May 5 - 2015

Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Cecil Rodrigues, Director
Hazardous Site Cleanup Division
Region III

MAY 14 2015

Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:)	EPA Docket No. CAA-03-2015-
Tyson Poultry, Inc.)	0087
2200 Don Tyson Drive)	
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Respondent.)	Proceeding Under Sections
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403 South Custer Avenue)	Act, 42 U.S.C. §§ 7412(r) and 7413,
New Holland, Pennsylvania 17557,)	40 C.F.R. §§ 22.13(b) and
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Facility.)	

FINAL ORDER

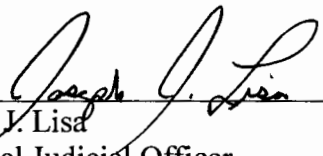
Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Tyson Poultry, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, with specific references to Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to herein is based upon consideration of, *inter alia*, EPA's Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012), and the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

NOW, THEREFORE, PURSUANT TO Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty of NINE THOUSAND FORTY-TWO DOLLARS (\$9,042.00), plus any applicable interest, and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: May 20, 2015



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III



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New Holland, Pennsylvania 17557,)	
)	
Facility.)	

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via certified mail, return receipt requested

Timothy Jones, Esquire
Tyson Foods, Inc.
2200 Don Tyson Drive
Springdale, Arkansas 72765

MAY 20 2015

Date

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel