

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED

2019 FEB 12 AM 10:12  
REGIONAL HEARING CLERK  
EPA REGION VI

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IN THE MATTER OF:	§	EPA DOCKET NO.
	§	CAA-06-2019-3317
SYSCO NORTH TEXAS Houston, Texas	§	CONSENT AGREEMENT AND FINAL ORDER
RESPONDENT Lewisville, Texas	§	

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**CONSENT AGREEMENT**

The Director of the Compliance Assurance and Enforcement Division for the United States Environmental Protection Agency ("EPA"), Region 6 ("Complainant") and Sysco North Texas, a division of Sysco USA I, Inc. ("Respondent") in the above-referenced proceeding, hereby agree to simultaneously commence and resolve this matter through the issuance of this Consent Agreement and Final Order ("CAFO").

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Sections 113(a)(3)(A) and 113(d)(1)(B) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.
2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).
3. For purposes of this proceeding, Respondent admits the jurisdictional allegations contained herein. However, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement, and waives all defenses, which have been raised or could have been raised to the claims set forth in this CAFO.

5. Respondent's compliance with all the terms and conditions of this CAFO shall only resolve respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

6. Nothing in this CAFO shall be construed to affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

7. For purposes of this proceeding, Respondent consents to the issuance of the CAFO hereinafter recited, and the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

## II. STATUTORY AND REGULATORY BACKGROUND

8. Under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, the Administrator may issue an administrative order assessing a civil administrative penalty.<sup>1</sup>

9. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous

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<sup>1</sup> As adjusted by the *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule (2018 Rule)* (83 Fed. Reg. 1194), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$46,192 per violation per day of violation occurring after November 2, 2015.

substance, has a general duty to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur.

10. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements.

11. On June 20, 1996, the 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.

12. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

13. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines person as an “individual, corporation, partnership, association [ . . . ] and any officer, agent, or employee thereof.”

14. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source” as:

any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

15. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three

“Programs” -- Program 1, Program 2, and Program 3.

16. “Covered process” is defined in 40 C.F.R. § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

17. “Owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

18. “Process” is defined in 40 C.F.R. § 68.3 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 the 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.

19. “Regulated substance” is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in § 68.130.

20. “Threshold quantity” is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA as amended, listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part.

21. Pursuant to 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process (Covered Process), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68.

22. Pursuant to 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan (RMP) as provided in 40 C.F.R. Part 68, Subpart G (§§ 68.150-68.185) that reflects all covered processes at the stationary source.

23. Pursuant to 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a

process subject to the "Program 3" requirements of the Part 68 regulations, as determined pursuant to 40 CFR § 68.10(d), must comply with the chemical accident prevention requirements of 40 C.F.R. Part 68, Subpart D (§§ 68.65-68.87).

### III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

24. Respondent is a corporation formed under the laws of Delaware and registered to do business in the State of Texas.

25. Respondent is a "person" as that term is defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

26. Respondent is the owner or operator of the facility located at 800 Trinity Drive, Lewisville, Texas 75056 ("Facility").

27. The Facility is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

28. Ammonia (anhydrous), CAS No. 7664-41-7, is a regulated toxic substance under Section 112(r) of the CAA, 42 U.S.C. § 7412, listed under Table 1 to 40 C.F.R. § 68.130, and has a threshold quantity of 10,000 pounds.

29. Respondent uses approximately 28,170 pounds of ammonia (anhydrous), a regulated substance in an amount that exceeds the threshold quantity, as part of the Facility's covered process.

30. Respondent's ammonia refrigeration system is a Program Level 3 covered process, as provided by 40 C.F.R. § 68.10(d).

31. Respondent's process at the Facility operates under the NAICS code: 42411-General Line Grocery Merchant Wholesalers.

32. On February 12, 2018, at or around 1500-1700, a contractor was performing

scheduled maintenance work on swing compressor SC-05 ("SC-05") and a leak occurred.

33. On February 12, 2018, at or around 1728, Respondent's ammonia detection alarms in the mechanical room sounded at 100 ppm.

34. The ammonia alarm did not notify any of Respondent's personnel and was redirected to a third party who did not respond to the alarm nor notify Respondent's staff.

35. The ammonia leak was not responded to until February 13, 2018, at or around 0500, when an ammonia technician for Respondent approached the room and detected the presence of ammonia in the area of the ammonia suction valve at SC-05.

36. The duration of the releases is estimated to be around 12-15 hours with a release of 8,300 pounds of anhydrous ammonia.

#### IV. ALLEGED VIOLATIONS

##### **Violation 1: General Duty Clause**

37. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, has a general duty to minimize the consequences of accidental releases that do occur.

38. Complainant alleges that the release at the facility on February 12-13, 2018 constituted an "accidental release" as that term is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

39. On February 12, 2018, at or around 1500-1700, a contractor was performing scheduled maintenance work on SC-05 and a leak occurred.

40. On February 12, 2018, at or around 1728, Respondent's ammonia detection alarms in the mechanical room sounded at 100 ppm.

41. The ammonia alarm did not notify any of Respondent's personnel and was redirected to a third party who did not respond to the alarm nor notify Respondent's staff.

42. The ammonia leak was not responded to until February 13, 2018, at or around 0500, when an ammonia technician for Respondent approached the room and detected the presence of ammonia in the area of the ammonia suction valve at SC-05.

43. The duration of the releases is estimated to be around 12-15 hours with a release of 8,300 pounds of anhydrous ammonia.

44. Complainant finds Respondent did not minimize the consequences of the accidental releases that occurred on February 12-13, 2018, in violation of the general duty clause in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

#### **Violation 2: Required Corrections**

45. 40 C.F.R. § 68.195 requires an owner or operator of a stationary source for which a RMP was submitted to correct the RMP as follows: (b) Emergency contact information— Beginning June 21, 2004, within one month of any change in the emergency contact information required under §68.160(b)(6), the owner or operator shall submit a correction of that information.

46. Respondent's emergency contact information, including telephone numbers and e-mail were not accurate.

47. Complainant finds Respondent failed to submit a corrected RMP for its emergency contact information, in violation of 40 C.F.R. § 68.195.

### **V. CIVIL PENALTY AND TERMS OF SETTLEMENT**

#### **A. Civil Penalty**

48. Pursuant to the authority granted in Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and taking into consideration the size of the Respondent's business, the

economic impact of the penalty on the Respondent's business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and Respondent's cooperation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is **\$50,000.00 (Fifty-thousand dollars).**

49. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of three ways: regular U.S. Postal Service mail (including certified mail); overnight mail; or wire transfer.

For U.S. Postal Service mail, the check should be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service; e.g., FedEx), the check should be remitted to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account No. 68010727  
SWIFT address = FRNYUS33



33 Liberty Street  
New York, NY 10045

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

**PLEASE NOTE: Docket number CAA-06-2019-3317 shall be clearly typed on the check to ensure proper credit.** If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter or wire transfer instructions to the following:

Blake Sieminski  
Enforcement Officer (6EN-AS)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Lorena Vaughn  
Regional Hearing Clerk (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received in the Region.

50. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

51. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will 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. Interest on

the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the due date. Interest 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). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

52. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c).

Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

#### **B. Parties Bound**

53. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

#### **C. Costs**

54. Each party shall bear its own costs and attorney's fees.

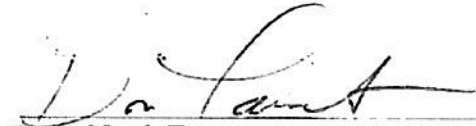
#### **D. Effective Date**

55. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:**

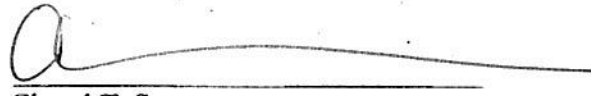
**FOR THE RESPONDENT:**

2/6/2019  
Date

  
\_\_\_\_\_  
Sysco North Texas,  
a division of Sysco USA I, Inc.

**FOR THE COMPLAINANT:**

2/7/19  
Date

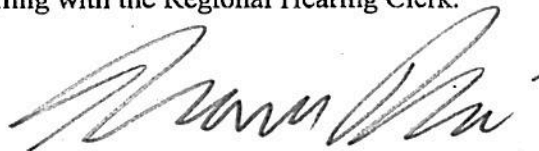
  
\_\_\_\_\_  
Cheryl T. Seager  
Director  
Compliance Assurance and  
Enforcement Division  
U.S. EPA Region 6

**FINAL ORDER**

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order 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. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date:

2-11-19



Regional Judicial Officer

Thomas Ruck:

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of February 2019, the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 705152000339908999

Barrett G. Flynn  
Senior Counsel, Litigation  
Sysco Corporation  
1390 Enclave Parkway  
Houston, TX 77077

Date: 02-12-2019

Lori Jackson  
U.S. EPA, Region 6  
Dallas, Texas