

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2018 NOV -2 PM 12: 59
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:	§	
	§	
Butterball, LLC	§	EPA Docket No.
Jonesboro, Arkansas	§	CAA-06-2019-3302
	§	
Respondent	§	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency ("EPA"), Region 6 ("Complainant") and Butterball, LLC ("Respondent") in the above-referenced proceeding, hereby agree to 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) and 113(d)(1)(B) of the Clean Air Act, as amended ("Act" or "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. 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.

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

4. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for the specific violations and facts alleged in this CAFO.

5. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

II. ALLEGATIONS

6. Respondent is a limited liability corporation authorized to do business in the State of Arkansas.

7. Respondent is primarily engaged in poultry further processing at this plant. Many areas of the plant are refrigerated to preserve poultry products. Respondent's turkey processing activities take place at 9401 E. Highland Drive, Jonesboro, Arkansas ("Facility").

8. Ammonia is used as a refrigerant in the refrigeration system at the Facility. There is one closed-loop refrigeration system at the Facility.

9. Respondent produces, processes, stores, or handles more than 10,000 pounds of anhydrous ammonia in one process (refrigeration) throughout the Facility.

10. Ammonia (anhydrous) is identified at 40 C.F.R. Part 68.130 as a toxic regulated substance with a threshold quantity of 10,000 pounds.

11. Respondent's Facility includes a covered process, regulated by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the implementing regulations at 40 C.F.R. Part 68, and from

which an accidental release of regulated or other extremely hazardous substances could occur.

Respondent's Facility is a stationary source.

12. On Sunday, November 5, 2017, a storm caused a power outage at the plant. Safety relief valves opened to balance the pressure on the system. A manual restart was attempted for Compressor 15, but an ammonia cloud was seen in the Engine Room. Evacuation of that area and eventually the whole plant followed. Fifty-three people, including contractors, evacuated the Facility. The local Fire Department was called and a neighboring food processing plant, adjacent to the south of the Facility, was contacted and warned of the release.
13. After the initial alarm and response, crews attempted to partially re-pressurize the system, but found further leaks and shut down the process a second time.
14. Approximately 18,760 pounds of vapor and liquid ammonia was released during the incident. The vapor ammonia was subsequently vented to outside air. There were no injuries associated with the release event.
15. Several causes for the release were later identified by Respondent, including improperly rated safety release valves, opened unions on four compressors during the initial response that were not tightened before attempted re-pressurization, and a missing access port plug for the ammonia sensor on the relief line which allowed a release of liquid ammonia into the Engine Room rather than venting through the roof.
16. The improperly rated safety relief valves did not re-set but failed open.
17. The unions that were loosened to facilitate pressure balancing were not part of a procedure to re-tighten before re-pressurization was attempted.
18. The missing access port plug was not documented as present before the incident.
19. Respondent is a "person" as that term is defined by Section 302(e) of the CAA, 42 U.S.C.

§ 7602(e).

20. 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).

21. At the Facility, Respondent produces, processes, handles, or stores substances listed in, or pursuant to, Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3) or other extremely hazardous substances identified as such due to toxicity, reactivity, flammability, volatility, or corrosivity.

22. The release of anhydrous ammonia at the Facility on November 5-6, 2017, 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).

23. Respondent’s failures include improperly rated safety release valves, opened unions on four compressors during the initial response that were not tightened before attempted re-pressurization, and a missing access port plug for the ammonia sensor on the relief line; each failure constitutes a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

III. TERMS OF SETTLEMENT

24. Pursuant to the authority granted in Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), 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 (if any), the economic benefit of noncompliance, and the seriousness of the violation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is \$46,192. Complainant has also taken into consideration Respondent’s desire to enter into an Administrative Compliance Order that will require Respondent to

undertake actions at the Facility, which will increase safety and decrease the likelihood of future releases at the Facility.

A. PENALTY

25. After discussions with Complainant, the Respondent has suggested a Supplemental Environmental Project (“SEP”) to mitigate the proposed penalty. The SEP will be valued at \$4,192 dollars and will mitigate \$2,000 dollars of the penalty. Thus, Complainant will perform a SEP valued at \$4,192 dollars and pay the amount of \$44,192 dollars to the U.S. Treasury as described below.

26. Respondent shall pay to the U.S. Treasury the amount of \$44,192 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 mail (including certified mail), or U.S. Postal Service express 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), 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

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

PLEASE NOTE: Docket number CAA-06-2019-3302 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:

Samuel Tates
Chief, Chemical Accident Enforcement Section (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.

27. 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.
28. 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).

29. 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 (6%) 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.

30. 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.

B. SUPPLEMENTAL ENVIRONMENTAL PROJECT ("SEP")

31. Respondent shall complete a SEP as part of this settlement. The parties agree this SEP is intended to secure significant environmental or public health protection and improvements.

Within 18 months of the effective date of this CAFO, Respondent shall identify and retain, a nationally recognized expert on ammonia refrigeration systems who will make a presentation at the national meeting of both the North American Meat Institute and the U.S. Poultry & Egg Association, or a similarly situated national meat or poultry processing industry group. Each presentation shall be one to three hours in length and shall be designed to communicate the requirements of 40 C.F.R. Part 68 to facilities with ammonia refrigeration systems. Within 90 days of the effective date of this CAFO, Respondent shall identify the experts and specific meeting dates for those presentations. This SEP must be completed within 18 months of the effective date of this CAFO.

32. The extended duration of this SEP was identified because of the annual nature of the associations' meetings. Respondent has indicated that the agendas for currently scheduled seminars and meetings of these two groups have already been set for the upcoming 12 months. If unable to secure time on the 2019 agendas, then Respondent is confident that it can secure time on the agendas for the following year's meetings in 2020. The SEP valuation reflects the extended timeframe given for this SEP.

33. All cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$4,192.

34. As of the date of executing this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum.

35. The SEP is not a project that Respondent was planning or intending to construct, perform,

or implement other than in settlement of the claims resolved in this Consent Agreement.

36. Respondent has not received and will not receive credit for the SEP in any other enforcement action.

37. Respondent will not receive reimbursement for any portion of the SEP from another person or entity; notwithstanding the foregoing sentence, Respondent may seek and receive reimbursements, offsets, or other recovery pursuant to contract, tort or equitable claims against third persons which assert that professional errors and/or omissions or other breach of duty by such persons caused Respondent to incur the costs imposed under this Agreement or otherwise incurred by Respondent.

38. For federal income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

39. Respondent has performed a reasonable inquiry to ensure that this SEP does not inadvertently augment federal appropriations.

40. The total expenditure for the SEP shall be no less than \$4,192. Respondent shall include documentation of the expenditures made about the SEP as part of the SEP Completion Report.

41. Respondent shall submit a final SEP Completion Report to EPA within two (2) weeks of the completion of this project. The SEP Completion Report shall contain the following information:

- i. A detailed description of the SEP as implemented;
- ii. A description of any operating or logistical problems encountered and the solutions thereto;
- iii. Itemized final costs with copies of receipts for all expenditures;
- iv. Certification that the SEP has been fully implemented pursuant to the

provisions of this CAFO; and

- v. A description of the environmental, emergency preparedness, and/or public health benefits resulting from implementation of this SEP.

Respondent agrees that failure to submit the final SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for the stipulated penalties pursuant to this CAFO.

42. Respondent shall submit all notices and reports required by this CAFO to the following:

Samuel Tates
Chief, Chemical Accident Enforcement Section (6EN-AS)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

43. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- i. Except as provided in subparagraphs (ii) – (iv) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$4,192 (100% of the amount the penalty was mitigated).
- ii. If the SEP is not completed in accordance with the terms described above, but the Complainant determines that the Respondent (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent

shall not be liable for any stipulated penalty.

- iii. If the SEP is completed in accordance with the terms described above, but the Respondent spent less than 90 percent (90%) of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$839 (20% of the mitigated penalty).
- iv. If the SEP is completed in accordance with the terms described above, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
- v. For failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until the report is submitted.

44. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

45. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of this CAFO. Interest and late charges shall be paid as provided in this CAFO.

46. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of

Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

47. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language prominently displayed:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Air Act.

48. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

Certifying Official

49. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent

in connection with the SEP undertaken pursuant to this Agreement.

IV. RETENTION OF ENFORCEMENT RIGHTS

50. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of federal or state laws, regulations, or permitting conditions other than the violations specifically alleged in this CAFO.

51. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

52. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under federal, state, or local laws or regulations.

53. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to this CAFO.

V. COSTS

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

specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

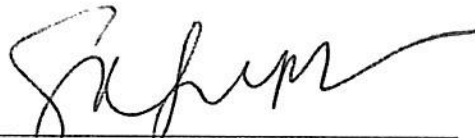
VI. EFFECTIVE DATE

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:


1 Nov 2018
Date



Butterball, LLC
Suzanne R. Griffin
SVP and General Counsel

FOR THE COMPLAINANT:

November 1, 2018
Date

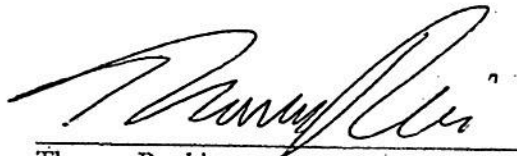


Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

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 this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement 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: 11/2/18


Thomas Rucki
Regional Judicial Officer

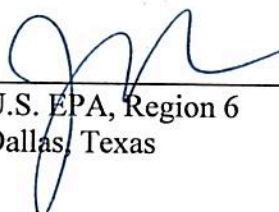
CERTIFICATE OF SERVICE

I hereby certify that 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: # 7015 1520 0003 3990 9026

Ms. Suzanne Griffin
Butterball, LLC
General Counsel
1 Butterball Lane
Garner, North Carolina 27529

Date: Nov 2, 2016



U.S. EPA, Region 6
Dallas, Texas