



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 19 2020

REPLY TO THE ATTENTION OF

ELECTRONIC SERVICE
VIA EMAIL

Bob Barrett
Associate General Counsel
Performance Food Group, Inc.
125000 West Creek Parkway
Richmond, Virginia 23238

Re: Performance Food Group, Inc. Fairfield, Ohio, Consent Agreement and Final Order
Docket Nos. MM-05-2020-0003 CERCLA-05-2020-0005 EPCRA-05-2020-0006

Dear Mr. Barrett:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on February 19, 2020.

Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$13,704 in the manner prescribed in paragraph 56, and reference your check with the billing document number 2752030B006 and the docket number CERCLA-05-2020-0005.

Please have your client pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$26,602 in the manner prescribed in paragraph 58 and reference your check with the docket number EPCRA-05-2020-0006.

Your payments are due on March 23, 2020.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jeffrey Cahn, Associate Regional Counsel, at (312) 886-6670. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Ms. Cindy DeWulf, Co-Chairperson (w/ enclosure)
Ohio EPA – SERC
Post Office Box 1049
Columbus, Ohio 43216-1049

Ms. Sima Merick, Co-Chairperson (w/ enclosure)
State Emergency Response Commission
Ohio Emergency Management Agency
2855 West Dublin-Granville Road
Columbus, Ohio 43235-2206

Jeff Beattie (w/ enclosure)
Ohio Environmental Protection Agency
Post Office Box 1049
Columbus, Ohio 43216-1049



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

MM-05-2020-0003

EPCRA-05-2020-0006

In the Matter of:)	Docket Nos. CERCLA-05-2020-0005
)	
Institution Food House, Inc.,)	Proceeding to Assess a Civil Penalty Under
d/b/a Performance Foodservice -)	Section 109(b) of the Comprehensive
Ellenbee)	Environmental Response, Compensation and
Fairfield, Ohio,)	Liability Act, and Section 325(b)(2) of the
)	Emergency Planning and Community Right-
Respondent.)	to-Know Act of 1986

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), and Sections 22.13(b) and 22.18(b)(2) and (3) 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 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Institution Food House, Inc., also known as Performance Foodservice - Ellenbee, a North Carolina corporation doing business in the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. For purposes of this settlement only, Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations or legal conclusions in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities

equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

14. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

15. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103, and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$32,500 per day of violation for each violation that occurred after March 15, 2004, through January 12, 2009, to \$37,500 per day of violation for each violation that occurred after January 12, 2009, through November 2, 2015. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015), amending 28 U.S.C. § 2461 note, and the implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$53,907 per day of violation for

each violation that occurred after November 2, 2015, and for which penalties are assessed on or after August 1, 2016, but before January 15, 2017, to \$54,789 per day of violation that occurred after November 2, 2015, and for which penalties are assessed on or after January 15, 2017, but before January 15, 2018, to \$55,907 per day of violation for each violation that occurred after November 2, 2015, and for which penalties are assessed on or after January 15, 2018, but before February 6, 2019, and to \$57,317 per day of violation for each violation that occurred after November 2, 2015, and for which penalties are assessed on or after February 6, 2019.

Factual Allegations and Alleged Violations

16. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 3765 Port Union Road, Fairfield, Ohio (facility).

19. At all times relevant to this CAFO, Respondent was in charge of the facility.

20. Respondent’s facility consists of a building, structure, installation, equipment, pipe, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

21. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. Respondent’s facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

23. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

24. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. Anhydrous ammonia (CAS #7446-41-7) is classified as a physical or health hazard, a simple asphyxiant, or hazard not otherwise classified.

27. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

28. At all times relevant to this Complaint, Respondent produced, used, or stored anhydrous ammonia at the facility.

29. Anhydrous ammonia (CAS #7664-41-7) is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

30. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

31. On July 18, 2018, at or about 7:30 p.m., a release was discovered from Respondent's facility of approximately 781 pounds of anhydrous ammonia (the release). On July 19, 2018, at approximately 5:13 pm, Respondent received from its consultant a written estimate that the amount of ammonia released was 781 pounds.

32. In a 24-hour time period, the release of anhydrous ammonia exceeded 100 pounds.

33. During the release, approximately 781 pounds leaked, emitted, or escaped into the ambient air.

34. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
35. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).
36. Respondent had knowledge of the release on July 18, 2018, at approximately 7:30 p.m.
37. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
38. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).
39. The release was likely to affect Ohio.
40. At all times relevant to this Complaint, the Ohio EPA was the SERC for Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).
41. The release was likely to affect Butler County, Ohio.
42. At all times relevant to this Complaint, the Butler County LEPC was the LEPC for Butler County, Ohio under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

Count 1 (failure to notify NRC)

43. Complainant incorporates paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.
44. Respondent notified the NRC of the release on July 19, 2018, at 9:19 p.m.
45. EPA alleges that Respondent did not immediately notify the NRC as soon as Respondent had knowledge or should have had knowledge of the release in an amount equal to or greater than the reportable quantity of the hazardous substance.
46. EPA alleges that Respondent’s failure to immediately notify the NRC of the release

is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Count 2 (failure to notify SERC)

47. Complainant incorporates paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.

48. Respondent notified the Ohio SERC of the release on July 19, 2018, at 5:42 p.m.

49. EPA alleges that Respondent did not immediately notify the SERC after Respondent had knowledge or should have had knowledge of the release in an amount equal to or greater than the reportable quantity of the hazardous substance.

50. EPA alleges that Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 3 (failure to notify LEPC)

51. Complainant incorporates paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.

52. Respondent notified the Butler County LEPC of the release on July 19, 2018, at 5:49 p.m.

53. EPA alleges that Respondent did not immediately notify the LEPC after Respondent had knowledge or should have had knowledge of the release in an amount equal to or greater than the reportable quantity of the hazardous substance.

54. EPA alleges that Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Civil Penalty

55. Complainant has determined that an appropriate civil penalty to settle this action is \$13,704 for the CERCLA violation. In determining the penalty amount, Complainant considered

the nature, circumstances, extent and gravity of the violation, Respondent's agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

56. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,704 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

For checks sent by express mail by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Bank
Government Lockbox 979076 U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Performance Food Group, Inc., the docket number of this CAFO and the billing document number 2752030B006.

57. Complainant has determined that an appropriate civil penalty to settle this action is \$26,602 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, Respondent's agreement to

perform a supplemental environmental project, and with respect to Respondent, its ability to pay, effect on ability to continue to do business, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

58. Within 30 days after the effective date of this CAFO, Respondent must pay a \$26,602 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

For checks sent by express mail by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the following: Performance Food Group, Inc., and the docket number of this CAFO **EPCRA-05-2020-0006** .

59. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket numbers and the billing document number, if any, must accompany each payment. Respondent must send a copy of the checks and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

James Entzminger (SE-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.

Jeffrey Cahn (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

60. This civil penalty is not deductible for federal tax purposes.

61. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 76, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

62. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

63. Respondent must complete a supplemental environmental project (SEP) designed to protect human health and the environment by purchasing and installing, as a pollution prevention device, a Hot Gas Liquid Drainer header drain line on its ammonia refrigeration system.

64. Within 90 days after the effective date of the CAFO, Respondent must implement at its Fairfield, Ohio facility, the SEP as follows:

- Purchase and install one Hot Gas Liquid Drainer at the end of Hot Gas Drainer header above the roof
- Install a return to cooler #1 suction branch piping
- Isolate, pump down, leak test, and pull vacuum the refrigeration system
- Patch insulation with a metal jacket, and
- Return the refrigeration system back to service.

65. Respondent must spend at least \$11,279 to purchase and install the equipment for the SEP described in paragraph 64.

66. Respondent must continuously use or operate the equipment installed as the SEP for one year following its installation.

67. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That, as of the date of executing this CAFO, 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;
- b. That the SEP is not a SEP that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
- c. That Respondent has not received and will not receive credit for the SEP in any other enforcement action; and
- d. That Respondent shall neither generate nor use any pollutant reductions from the SEP as netting reductions, pollutant offsets, or to apply for, obtain, trade, or sell any pollutant reduction credits.

68. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

69. Respondent must maintain copies of the underlying data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying data to U.S. EPA within seven days of U.S. EPA's request for the information.

70. Within 120 days of the effective date of the CAFO, Respondent must submit an interim report identifying when the SEP was installed.

71. Within 470 days of the effective date of the CAFO, Respondent must submit a SEP completion report to U.S. EPA. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

72. Respondent must submit all notices and reports required by this CAFO by first class mail to James Entzminger of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 59, above.

73. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

74. Following receipt of the SEP completion report described in paragraph 71, above,

U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP, or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 76.

75. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 76, below.

76. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 64, Respondent must pay a penalty of \$11,279.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 65, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 65, Respondent must pay a penalty of \$1,128.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

77. U.S. EPA’s determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

78. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA’s written demand for the penalties. Respondent will use the method of payment specified in paragraphs 56 and 58, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts. Respondent must pay 34% of the stipulated penalty to “EPA Hazardous Substance Superfund” and 66% to “Treasurer, United States of America”. At the time U.S. EPA makes a demand for any stipulated penalties it will also send a copy of that demand to U.S. EPA’s Cincinnati Finance Center via email at CINWD_AcctsReceivable@epa.gov.

79. Any public statement that Respondent makes referring to the SEP must include the following language, “Respondent undertook this project under the settlement of the United States Environmental Protection Agency’s enforcement action against Respondent for violations of CERCLA Section 103 and EPCRA Section 304.”

80. If an event occurs that causes or may cause a delay in completing the SEP as

required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

81. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

82. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

83. The parties consent to service of this CAFO by email at the following valid email addresses: cahn.jeff@epa.gov (for Complainant) and Bob.Barrett@pfgc.com (for Respondent).

84. Full payment of the penalty and compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

85. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

86. Respondent certifies that the facility is currently in compliance with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304 of EPCRA, 42 U.S.C. § 11004.

87. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA, and other applicable federal, state and local laws and regulations.

88. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

89. The terms of this CAFO bind Respondent and its successors and assigns.

90. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

91. Each party agrees to bear its own costs and attorney's fees in this action.

92. This CAFO shall terminate when Respondent is informed in writing by U.S. EPA that it has complied with the requirements of this CAFO in full.

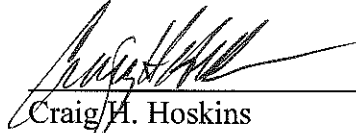
93. This CAFO constitutes the entire agreement between the parties.

**In the Matter of: Institution Food House, Inc.,
d/b/a Performance Foodservice - Ellenbee
Fairfield, Ohio**

Docket Nos. MM-05-2020-0003 CERCLA-05-2020-0005 EPCRA-05-2020-0006

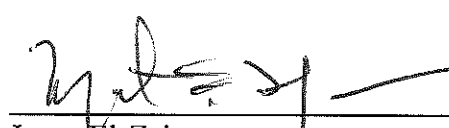
Institution Food House, Inc., d/b/a Performance Foodservice - Ellenbee, Respondent

2/6/20
Date



Craig H. Hoskins
Executive Vice President
Performance Food Group, Inc.

U.S. Environmental Protection Agency, Complainant

2/18/2020
Date

*Michael E. Hays
for JEZ*

Jason El-Zein
Chief, Emergency Response Branch 1
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

2/19/2020
Date


Douglas Ballotti
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

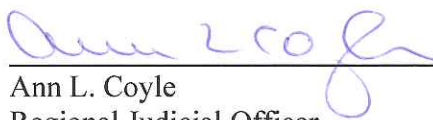
**In the Matter of: Institution Food House, Inc.,
d/b/a Performance Foodservice - Ellenbee
Fairfield, Ohio**

Docket Nos. MM-05-2020-0003 CERCLA-05-2020-0005 EPCRA-05-2020-0006

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2/19/2020
Date


Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

**In the Matter of: Institution Food House, Inc.,
d/b/a Performance Foodservice - Ellenbee
Fairfield, Ohio**

Docket Nos. MM-05-2020-0003 CERCLA-05-2020-0005 EPCRA-05-2020-0006

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on February 19, 2020 in the following manner to the addressees:

Copy by E-mail

Attorney for Respondent: Bob Barrett
Associate General Counsel
Performance Food Group, Inc.
125000 West Creek Parkway
Richmond, Virginia 23238
Bob.Barrett@pfgc.com
(804) 287-8195

Copy by E-mail to

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Dated: February 19, 2020


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5