

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX



In the matter of:)	U.S. EPA Docket No.
)	
)	
Arctic Glacier U.S.A., Inc.)	
43960 Fremont Blvd)	
Fremont, CA 94538)	CAA(112r)-09-2023-0061
)	
)	
)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
Respondent.)	40 C.F.R. §§ 22.13 AND 22.18

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Sections 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and 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. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”).
3. Respondent is Arctic Glacier U.S.A., Inc. (“Respondent”), a Delaware corporation doing business in the State of California.
4. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority to the Director of the Enforcement and Compliance Assurance Division, with Regional Delegation R9-7-6-A, dated February 11, 2023.
5. This Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations.

6. EPA and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CA/FO. Respondent agrees to comply with the terms of this CA/FO.

B. GENERAL ALLEGATIONS

7. Respondent owns and operates a facility located at 43960 Fremont Boulevard, Fremont, California (the "Facility"). At the Facility, Respondent maintains a refrigeration system that contains approximately 14,000 pounds of anhydrous ammonia. The refrigeration system, consisting of piping, valves, and equipment, cycles ammonia through various physical states (high pressure liquid, low pressure liquid, low pressure vapor, high pressure vapor, and then back to high pressure liquid), and provides refrigeration for the processing, production and storage of ice.
8. On August 23, 2018, EPA performed an inspection of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r); Sections 304-312 of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. §§ 11104-12; and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9603(a). EPA provided its Notice of Inspection Findings conveying potential areas of noncompliance to Respondent on December 21, 2018. Based upon the information gathered during this inspection and subsequent investigation, EPA alleges that Respondent violated certain provisions of the CAA.
9. At all times relevant to this CA/FO, Respondent has been and continues to be a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
10. At all times relevant to this CA/FO, the Facility has been a "stationary source" as defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.
11. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.
12. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity ("TQ") must develop a risk management plan ("RMP") to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.
13. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each "regulated substance" at or above which a facility that has such substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42

U.S.C. § 7412(r). For substances designated as “regulated toxic substances,” the TQs are specified at 40 C.F.R. § 68.130, Table 1.

14. Anhydrous ammonia is a “regulated toxic substance” pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds, specified in 40 C.F.R. § 68.130, Table 1.
15. At all times relevant to this CA/FO, Respondent had 10,000 pounds or more of ammonia (anhydrous) in one or more processes at its Facility, exceeding the TQ for ammonia (anhydrous) and making the Facility subject to the RMP requirements.
16. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

C. ALLEGED VIOLATIONS OF LAW

Count I

(Failure to document Process Safety Information for pressure relief system)

17. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.
18. 40 C.F.R. §§ 68.65(a) and 68.65(d)(1)(iv) require that owners or operators compile written process safety information pertaining to the equipment in the process, including the relief system design and design basis.
19. Based on information gathered during the inspection and subsequent investigation, EPA determined that Respondent’s pressure relief system design documentation for the Facility did not include calculations for recirculating compressor RC-6.
20. By failing to compile complete information for the Facility’s pressure relief system design and design basis, Respondent violated 40 C.F.R. §§ 68.65(a) and 68.65(d)(1)(iv).

Count II

(Failure to document Process Safety Information in accordance with RAGAGEP)

21. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.
22. 40 C.F.R. § 68.65(d)(2) requires owners or operators to document that equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).

23. 40 C.F.R. § 68.65(d)(3) requires owners and operators to determine and document that any existing equipment that was designed or constructed in accordance with standards that are no longer in general use, is designed, maintained, inspected, tested, and operating in a safe manner.
24. Based on observations during the inspection, EPA found inadequate and inconsistent labeling on process piping and equipment. The industry practice and standard of care is that all piping mains, headers, and branches shall be identified. See, e.g. ANSI/ Int'l Inst. of Ammonia Refrigeration, Standard 2-2014: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems (2014) [hereinafter "IIAR 2-2014"] § 5.14.5; American Society for Mechanical Engineers [hereinafter "ASME"] standard for Ammonia Refrigeration A13.1-2015.
25. Based on observations during the inspection, EPA found two open electrical junction boxes one box was located near the top of the high-pressure receiver and the other box was located beneath a compressor. The recommended industry practice and standard of care is not to have open junction boxes See, e.g., Section 605.6 of California Fire Code 2016.
26. Based on observations during the inspection, EPA determined that Respondent did not have an emergency eye wash station and deluge body shower installed outside of the Engine Room. The recommended industry practice and standard of care is that an emergency eye wash station and deluge body shower shall be located just outside the machine room exit door and that an additional emergency eye wash station and deluge body shower should be readily accessible inside the machinery room. See, e.g., as stated in Section 4.10.10 of IIAR Bulletin No. 109; Section 4.4.7 ANSI//IIAR 2-1992.
27. Based on observations during the inspection, EPA determined that Respondent had operated the pressure relief system and ventilation system based on 1994 standards, which had since been updated, and did not document that the existing equipment could comply with IIAR 2-2014 pressure relief requirements as designed, maintained, inspected, tested, and operated in a safe manner until Respondent performed their analyses and upgrades in 2019-2020.
28. By failing to document that its process piping and equipment, electrical junction boxes, eye wash station and shower, and pressure relief system and ventilation comply with RAGAGEP, or were designed, maintained, inspected, tested, and are operating in a safe manner, Respondent violated 40 C.F.R. §68.65(d)(2)-(3).

Count III

(Failure to timely update and revalidate the Process Hazard Analysis)

29. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.

30. 40 C.F.R. § 68.67(f) requires that at least every five (5) years after the initial process hazard analysis (“PHA”), the PHA shall be updated and revalidated to assure that the PHA is consistent with the current process.
31. Based on EPA’s inspection and information gathered during EPA’s investigation, EPA determined that the PHA for the Facility had been conducted February 7, 2017, approximately 3 months and 15 days past the five-year update requirement to update and revalidate the PHA.
32. By failing to update and revalidate the Facility’s PHA within the five-year requirement, Respondent violated 40 C.F.R. § 68.67(f).

Count IV
(Failure to correct deficiencies in a timely manner)

33. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.
34. 40 C.F.R. § 68.73(e) requires the owner or operator to correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in 40 C.F.R. § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.
35. Based on EPA’s inspection and information gathered during EPA’s investigation, EPA determined that Respondent had not addressed 8 of the 26 recommendations in the Mechanical Integrity Inspection Final Report (October 4, 2014).
36. By failing to adequately document resolution of 8 recommendations in its Mechanical Integrity Inspection Final Report in a complete or timely manner, Respondent violated 40 C.F.R. § 68.73(e).

Count V
(Failure to correct deficiencies identified in compliance audits)

37. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.
38. 40 C.F.R. § 68.79(d) requires owners and operators to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

39. Based on EPA's inspection and information gathered during EPA's investigation, EPA determined that Respondent did not adequately document the resolution of the March 13, 2015 Compliance Audit Findings until June 14, 2021, indicating that the Facility did not promptly determine and document an appropriate response to each of the audit findings, and subsequently document that deficiencies had been corrected.
40. By failing to adequately document resolution of compliance audit findings in a complete or timely manner, Respondent violated 40 C.F.R. § 68.79(d).

Count VI
(Failure to correct deficiencies in PHA findings)

41. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.
42. 40 C.F.R § 68.67(e) requires owners and operators to establish a system to promptly address the Process Hazard Analysis ("PHA") findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; and develop a written schedule of when these actions are to be completed.
43. Based on EPA's inspection and information gathered during EPA's investigation, EPA determined that the Facility's most recent PHA, dated February 7, 2017, identified six recommendations, some of which related to critical safety systems. According to the recommendations tracking spreadsheet, the six items indicated target completion dates by July 27, 2019, but full completion of outstanding recommendations did not occur until April 28, 2021.
44. By failing to adequately document resolution of the PHA recommendations in a complete or timely manner, Respondent violated 40 C.F.R § 68.67(e).

Count VII
(Failure to correct equipment deficiencies)

45. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.
46. 40 C.F.R. § 68.73(e) requires the owner or operator to correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation.
47. On August 23, 2018, EPA inspectors observed that two of the Evaporative Condensers, EC-3 and EC-4, had extensive algae growth and corrosion, significant corrosion on the

ammonia vent line near Evaporative Condenser EC-2, and unusual ice buildup on the Compressor RC-5 piping.

48. EPA inspectors also observed water sweating on the insulation of the Recirculator LP-2 piping. Water sweating indicated compromised vapor barriers and/or damaged insulation.
49. EPA inspectors noted that Respondent's own documentation found the pressure relief system was too small. Specifically, the pressure relief system design review in Figure PSI: 8.8 PRV Review, Refrigeration System (Pre-2001 Code) stated, "Relief vent too small - replace with larger pipe. Pipe all RV's from RPV to top or side of the RV header."
50. By failing to correct deficiencies in equipment in a safe and timely manner, Respondent violated 40 C.F.R. § 68.73(e).

Count VIII

(Failure to properly evaluate the performance of its contract owner or operator)

51. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.
52. 40 C.F.R § 68.87(b)(5) requires the owner or operator to periodically evaluate the performance of the contract owner or operator in fulfilling their obligations.
53. According to Respondent's contractor policy for the Facility, dated May 1, 2017, the Plant Manager was to meet and evaluate the performance of contract employees with respect to one-time work efforts, or annually for contractors involved in on-going programs. Based on EPA's inspection and information gathered during its subsequent investigation, EPA determined that Respondent did not provide completed Contractor Evaluation forms in accordance with its contractor policy.
54. By failing to properly evaluate the performance of its contract owner or operator, Respondent violated 40 C.F.R § 68.87(b)(5).

Count IX

(Failure to revise and update the RMP at least once every five years)

55. Paragraphs 1 through 16, above, are incorporated herein by this reference as if they were set forth here in their entirety.
56. 40 C.F.R. § 68.190(b)(1) requires the owner or operator of a stationary source to revise and update the RMP at least once every five years from the date of its initial submission or most recent update as required by the regulations.

57. Based on EPA's inspection and information gathered during its investigation, EPA determined that, the current RMP five-year update for the Facility was submitted on April 12, 2022, which was overdue by approximately 1 month and 25 days, from the previous five-year update submission on February 15, 2017. Additionally, Respondent's previous five-year update submission for the Facility was on February 15, 2017, which was overdue by approximately 2 months and 6 days, from its then-previous five-year update submission on December 9, 2011.
58. By failing to revise and update the RMP at least once every five years, Respondent violated 40 C.F.R. § 68.190 (b)(1).

D. CIVIL PENALTY

59. EPA proposes that Respondent be assessed, and Respondent agrees to pay ONE HUNDRED SIXTY-NINE THOUSAND FOUR HUNDRED DOLLARS (\$169,400) as the civil administrative penalty for the violations alleged herein.
60. The proposed penalty was calculated in accordance with the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" dated June 2012, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. RESPONDENT'S ADMISSIONS AND WAIVERS OF RIGHTS

61. In accordance with 40 C.F.R. § 22.18(b)(2) for the purpose of this proceeding, Respondent:
- (a) admits the jurisdictional allegations of the CA/FO;
 - (b) neither admits nor denies specific factual allegations contained in the CA/FO;
 - (c) consents to all conditions specified in this CA/FO and to the assessment of the civil administrative penalty set forth in Section D above;
 - (d) waives any right to contest the allegations set forth in this CA/FO; and
 - (e) waives its right to appeal this proposed Final Order.

F. PARTIES BOUND

62. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until the civil penalty required under Section D has been paid, and any delays in performance and/or stipulated penalties have been resolved. At such times as

those matters are concluded, this CA/FO shall terminate and constitute full settlement of civil penalty liability for the violations alleged herein.

63. No change in ownership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
64. Until all requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.
65. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. CERTIFICATION OF COMPLIANCE

66. Respondent certifies to EPA that as of the Effective Date, has corrected the violations alleged in this Consent Agreement, and is currently in compliance with 40 C.F.R. Part 68 at the Facility.
67. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

H. PAYMENT OF CIVIL PENALTY

68. Respondent consents to the assessment of and agrees to pay a civil administrative penalties of ONE HUNDRED SIXTY-NINE THOUSAND FOUR HUNDRED DOLLARS (\$169,400) in settlement of the civil penalty claims made in this CA/FO.
69. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO, as established in Section L of this CA/FO. All payments shall indicate the Respondent's name and address, Respondent's point of contact person and phone number, the EPA docket numbers for this action. Payment made by corporate, certified, or cashier's checks shall be payable to "Treasurer of the United States." Information on how to make a payment to EPA can accessed here:
<https://www.epa.gov/financial/makepayment>.
70. Respondent shall send a copy of each check, or notification that the payment has been made by one of the other methods provided on the website on how to make a payment provided in Paragraph 72 above, including proof of the date payment was made, via

electronic mail with a transmittal letter indicating Respondent's name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region IX
R9HearingClerk@epa.gov

And

Andrew Chew
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region IX
Chew.andrew@epa.gov

71. Failure to send the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. § 13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.
72. The penalties specified in this CA/FO shall represent civil administrative penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

73. In the event that Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.
74. All penalties and interest owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
75. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

76. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.
77. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO are within the sole discretion of the Director of ECAD, EPA Region IX.

J. RESERVATION OF RIGHTS

78. EPA reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413, or any other statutory, regulatory, or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under CERCLA, EPCRA, the CAA, or any other statutory, regulatory, or common law enforcement authority in the United States.
79. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA, or any other applicable local, state, tribal, or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, tribal, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state, or local permit.
80. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Respondent's full compliance with this CA/FO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this CA/FO.
81. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

K. MISCELLANEOUS

82. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

83. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
84. Each party to this action shall bear its own costs and attorneys' fees.
85. Respondent consents to entry of this CA/FO without further notice.
86. By signing this CA/FO, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.

L. EFFECTIVE DATE

87. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.


IT IS SO AGREED

Respondent Arctic Glacier U.S.A., Inc.

DATE: June 28, 2023
BY: Debra Rodd
Debra Rodd
Chief Accounting Officer and Authorized Signatory
Arctic Glacier U.S.A., Inc.

Complainant United States Environmental Protection Agency, Region IX

DATE: **AMY MILLER-**
BY: **BOWEN**
Amy C. Miller-Bowen
Director,
Enforcement and Compliance Assurance
Division

 Digitally signed by AMY MILLER-
BOWEN
Date: 2023.08.02 14:34:04 -07'00'

