

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**In the Matter of:**

Commonwealth Cold Storage, Inc.,

**Respondent**

**CONSENT AGREEMENT AND  
FINAL ORDER**

Docket No. CAA-02-2013-1210

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 SEP 19 A 9:44  
REGIONAL HEARING  
CLERK

**PRELIMINARY STATEMENT**

1. This Consent Agreement and Final Order (“CA/FO”) is issued pursuant to Section 113(d) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(d). The Complainant in this action is the Director of the Caribbean Environmental Protection Division (“CEPD”) Environmental Protection Agency (“EPA”), Region 2, who has been delegated the authority to institute this action.

2. EPA and the U.S. Department of Justice have determined, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that EPA may pursue this matter through administrative enforcement action.

3. Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

4. It has been agreed by the parties that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without litigation.

**STATUTORY BACKGROUND**

5. Section 113(d) of the Act, 42 U.S.C. § 7413(d), provides for the assessment of penalties for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r).

6. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), requires the owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, to have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances

using appropriate hazard assessment techniques, to design and maintain a safe facility, taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

### **FINDINGS OF FACT**

7. Respondent Commonwealth Cold Storage, Inc. (“Respondent”), was the owner and/or operator of a facility located at Urb. Mario Julia, 918, Escorial Street, in the Puerto Nuevo Ward of San Juan, Puerto Rico (the “Facility”) at the time of the violations addressed in this administrative enforcement action. The Facility is a frozen food storage and distribution facility, which contains anhydrous ammonia refrigeration equipment.

8. On September 15, 16 and 20, 2011, EPA conducted inspections (“the 2011 Inspections”) at the Facility to determine compliance with Section 112(r) of the Act, 42 U.S.C. § 7412(r).

9. The 2011 Inspections revealed a number of safety concerns regarding the physical state of the anhydrous ammonia refrigeration equipment, which created the potential for an accidental release of anhydrous ammonia and/or that could increase and/or exacerbate the harmful effects of such a release.

10. At the time the 2011 Inspections, Respondent subleased the Facility to Quirch Foods Caribbean, Corp.

11. Commonwealth Cold Storage, Inc. had a principal lease agreement with Caparra Realty Associates, LLC.

12. On September 23, 2011, Complainant issued a Compliance Order to Respondent, and also to Quirch Foods Caribbean, Corp., and Caparra Realty Associates, LLC (“the Order”) pursuant to Section 113 of the Act regarding the Facility. The Order required these parties to perform certain activities at the Facility including the performance of repairs to the ammonia equipment.

13. The parties to the Order performed work at the Facility pursuant to the Order and then submitted the Final Report required by the Order to EPA on April 9, 2012.

### **EPA CONCLUSIONS OF LAW**

14. Respondent is, and at all times referred to herein was, a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

15. Respondent is the owner and/or operator of the Facility which is a stationary source, as that term is defined at 42 U.S.C. §7412(r)(2).

16. Anhydrous ammonia is a regulated substance pursuant to Section 112(r)(2) and (3) of the Act.

17. Respondent produced, processed, handled, and/or stored anhydrous ammonia at the Facility.

18. Respondent has a general duty, pursuant to Section 112(r)(1) of the Act, to: (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques, (b) design and maintain a safe facility taking such steps as are necessary to prevent releases, and (c) minimize the consequences of accidental releases which do occur.

19. Respondent failed to satisfy the general duty referred to in Paragraph 18 above, in that, among other things, at the time of the 2011 Inspections, Respondent did not identify hazards which may result from accidental releases of a regulated substance, design and maintain a safe facility taking such steps as are necessary to prevent releases of a regulated substance, and did not minimize the consequences of accidental releases. Therefore, Respondent violated the provisions of Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1). Respondent is therefore subject to the assessment of penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 113(d) of the Act and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (40 C.F.R. Part 22), it is hereby agreed by and between Complainant and Respondent, as follows:

1. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent a) admits the jurisdictional basis for this matter, b) admits the Findings of Fact set forth above, c) consents to the assessment of the civil penalty set forth below, d) consents to the issuance of the attached Final Order, and e) waives its right to contest or appeal the attached Final Order.

2. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

3. Respondent hereby certifies that it is now in compliance with all applicable requirements of Section 112(r) of the Act, 42 U.S.C. § 7412(r) at the Facility.

4. Respondent agrees to pay a civil penalty in the total amount of fifty five thousand five hundred and thirty seven dollars (\$55,537.00), in installments, according to the payment schedule identified in paragraph 5. Interest at a rate of one percent (1%) per annum shall be included in any and all payments made beyond thirty (30) days from the effective date and shall accrue from thirty (30) days after the effective date until the date of payment.

5. Respondent shall pay the total amount of fifty five thousand five hundred and thirty seven dollars (\$55,537.00), according to the following schedule:

- a. a payment of \$4,674.40 (\$4,628.12 principal plus \$46.28 accrued interest) shall be made within thirty (30) days of the effective date;
- b. a payment of \$4,670.50 (\$4,628.08 principal plus \$42.42 accrued interest) shall be made within sixty (60) days of the effective date;
- c. a payment of \$4,666.65 (\$4,628.08 principal plus \$38.57 accrued interest) shall be made within ninety (90) days of the effective date;
- d. a payment of \$4,662.79 (\$4,628.08 principal plus \$34.71 accrued interest) shall be made within one hundred and twenty (120) days of the effective date;
- e. a payment of \$4,658.93 (\$4,628.08 principal plus \$30.85 accrued interest) shall be made within one hundred and fifty days (150) days of the effective date;
- f. a payment of \$4,655.08 (\$4,628.08 principal plus \$27.00 accrued interest) shall be made within one hundred and eighty (180) days of the effective date;
- g. a payment of \$4,651.22 (\$4,628.08 principal plus \$23.14 accrued interest) shall be made within two hundred and ten (210) days of the effective date;
- h. a payment of \$4,647.36 (\$4,628.08 principal plus \$19.28 accrued interest) shall be made within two hundred and forty (240) days of the effective date;
- i. a payment of \$4,643.51 (\$4,628.08 principal plus \$15.43 accrued interest) shall be made within two hundred and seventy (270) days of the effective date;
- j. a payment of \$4,639.65 (\$4,628.08 principal plus \$11.57 accrued interest) shall be made within three hundred (300) days of the effective date;
- k. a payment of \$4,635.79 (\$4,628.08 principal plus \$7.71 accrued interest) shall be made within three hundred and thirty (330) days of the effective date; and
- l. a payment of \$4,631.94 (\$4,628.08 principal plus \$3.86 accrued interest) shall be made within three hundred and sixty (360) days of the effective date.

Each payment shall be made by cashier's or certified check or by Electronic Fund Transfer ("EFT").

If a payment is made by check, then the check shall be made payable to the "Treasurer, United States of America" and shall be mailed to:

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

Each such check shall be identified with a notation listing the following: "In the Matter of: Commonwealth Cold Storage, Inc." and shall bear thereon "Docket Number CAA-02-2013-1210."

If Respondent chooses to make a payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: Commonwealth Cold Storage, Inc.
- g. Case Number: CAA-02-2013-1210

If a payment is made by check, Respondent shall simultaneously furnish proof that such payment has been made to:

Carolina Jordán-García  
Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region 2  
City View Plaza II - Suite 7000  
# 48 Rd. 165 Km. 1.2  
Guaynabo, PR 00968-8069

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866

If payment is made by EFT, Respondent shall simultaneously send a letter to each of the above addressees which references the date of the EFT, the payment amount, the name of the case, the case number, and Respondent's name and address.

If Respondent fails to make a payment, or if a payment is late, then the entire amount of the remaining penalty, along with any accrued interest is due. In addition:

- a. Failure to pay the penalty in full according to the above provisions may result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for appropriate enforcement, including collection of the amount set forth in this Paragraph plus allowable interest and such other penalties as provided for in this Consent Agreement.
- b. Further, if payment is not received on or before the due date, Respondent agrees to the assessment of interest, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, Respondent agrees to pay a late payment handling charge of \$15 for each thirty day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. Respondent also agrees to pay a quarterly non-payment penalty for each calendar quarter during which such non-payment persists, pursuant to Section 113(d)(5) of the Clean Air Act, 42 U.S.C. § 7413(d)(5). This quarterly non-payment penalty will be imposed for each calendar quarter during which such non-payment persists. The quarterly non-payment penalty is 10% of the aggregate amount of penalties and quarterly non-payment penalties that are unpaid as of the beginning of such quarter.

6. Respondent may accelerate its payments described in the payment schedule in paragraph 5, and thereby reduce payments. If Respondent chooses to accelerate its payments, Respondent will notify EPA of the decision to do so in advance and inform EPA of a proposed date for each accelerated payment. Based on the date of each proposed accelerated payment, EPA will inform Respondent of the revised payment amount, including interest calculated as described in paragraph 5 above.

7. The penalties specified in Paragraph 4, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or federal taxes.

8. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liability that might have attached under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), as a result of the violations set forth in the Findings of Fact and Conclusions of Law. Respondent's payment of the civil penalty in accordance with the terms and conditions of this section shall resolve any such liability.

9. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and its terms and conditions, including payment of the full amount of the civil penalty allocated to Respondent in accordance with the terms set forth above. Respondent also consents to the issuance of the accompanying Final Order.

10. Respondent waives its right to request and/or obtain a hearing on this Consent Agreement, or the accompanying Final Order, including any right to contest any of the Findings of Fact and Conclusions of Law set forth in this Consent Agreement and any right to contest any of the terms or conditions set forth in this Consent Agreement.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions between EPA staff and the Regional Administrator or Deputy Regional Administrator of EPA Region 2, and further waives the right to be served with and to reply to any memorandum or communication addressed by EPA staff to the Regional Administrator or Deputy Regional Administrator, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official issue the attached Final Order.

12. This CA/FO and any provision herein shall not be construed of as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CA/FO or any of its terms and conditions.

13. This CA/FO 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. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

14. Each party hereto shall bear its own costs and fees in this matter.

15. Full and complete satisfaction of the requirements of this CA/FO shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

16. The person signing below on behalf of Respondent hereby certifies that he or she is fully authorized by Respondent to execute this Consent Agreement on behalf of Respondent and to bind Respondent legally to this Consent Agreement in accordance with all of the terms and conditions contained herein.

17. The Director of the Caribbean Environmental Protection Division of EPA, Region 2, has been delegated the authority to sign the Consent Agreement in this action, and the Regional Administrator of EPA Region 2 has been delegated the authority to sign the Final Order in this action.

18. Respondent consents to service upon Respondent of a copy of this CA/FO by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

Signature

*Jose' L. Ponce*

\_\_\_\_\_  
Name (Printed or Typed)

*PRESIDENT*

\_\_\_\_\_  
Title (Printed or Typed)



**Re: In the Matter of: Commonwealth Cold Storage, Inc.  
Docket Number CAA-02-2013-1210**

**For Complainant  
U.S. Environmental Protection Agency, Region 2**



Date: 6-10-2013

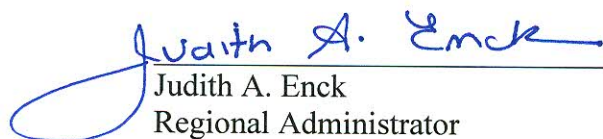
José C. Font, Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency, Region 2

*[Faint handwritten notes and a signature]*

**Re: In the Matter of: Commonwealth Cold Storage, Inc.  
Docket Number CAA-02-2013-1210**

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.

  
\_\_\_\_\_  
Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway  
New York, New York 10007-1866

Date: 9.16.13

In the Matter of:

Commonwealth Cold Storage, Inc.

Respondent

CONSENT AGREEMENT AND  
FINAL ORDER

Docket Number CAA-02-2013-1210

**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order, bearing Docket Number CAA-02-2013-1210 in the following manner to the respective addressees below:

Original and One Copy

By Hand:

Karen Maples  
Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

Copy by Certified Mail

Return Receipt Requested:

Attorney for Respondent:  
Alfonso Fernández  
P.O. Box 9023479  
San Juan, Puerto Rico 00902-3479

Signature: \_\_\_\_\_

*Lynn Khawng*

Date: \_\_\_\_\_

*9/18/13*