



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202 - 2733

1 2 OCT 2016

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7007 1490 0004 0562 9989

Ms. Suzanne B. Murray, Partner
Haynes & Boone, LLP
2323 Victory Avenue
Suite 700
Dallas, Texas 75219

Re: Consent Agreement and Final Order
In the Matter of Tyson Foods, Inc., Docket No. CAA-06-2016-3349

Dear Ms. Murray:

Enclosed is a fully executed Consent Agreement and Final Order (CAFO) in the matter referenced above for Tyson Foods, Inc.

As provided in the CAFO, Tyson Foods, Inc. will have thirty (30) days from the effective date of the CAFO to pay the civil penalty of \$106,894.00

If you have any questions regarding this CAFO, please contact Jeffrey Clay, Assistant Regional Counsel, at (214) 665-7297.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen A. Gilrein".

F. Stephen A. Gilrein, P.E.
Acting Director
Compliance Assurance and
Enforcement Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2016 OCT 18 AM 10:57
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Tyson Chicken, Inc.

Respondent

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(CONSENT AGREEMENT
(DOCKET NO. CAA-06-2016-3349
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A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act, (the “CAA” or “Act”), 42 U.S.C. § 7413(d), and Sections 22.13, 22.18, and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permit (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency, Region 6 (the “EPA”). On the EPA’s behalf, the Director of the Compliance Assurance and Enforcement Division has been delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement along with the corresponding Final Order hereinafter known together as “CAFO” without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CAFO.

B. JURISDICTION

4. This CAFO is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. Complainant has jurisdiction to seek penalties in this matter pursuant to Section 113(a)(3)(A) of the CAA.

5. The Regional Judicial Officer is authorized to ratify this CAFO which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(b) and 22.18(b).

6. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

7. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

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

9. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Act. These regulations have been amended.

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

no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

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

12. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three “Programs” -- Program 1, Program 2, and Program 3.

13. Under 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the Part 68 regulations, as determined pursuant to 40 CFR § 68.10(d), must comply with the chemical accident prevention requirements of 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program, at 40 C.F.R. §§ 68.65-68.87).

14. Pursuant to 40 C.F.R. § 68.69(a) an owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information.

15. Pursuant to 40 C.F.R. § 68.73(f) an owner or operator shall ensure that equipment is properly installed and consistent with design specifications and the manufacturer’s instructions.

16. Under Sections §§ 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§

7413(a)(3) & 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA, 42 U.S.C. § 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A), the Administrator may issue an order assessing a civil administrative penalty.

17. As adjusted by the 2016 Civil Monetary Penalty Inflation Adjustment Rule (81 Fed. Reg. 43091), 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$44,539 per day of violation for a violation occurring after November 2, 2015.

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

19. “Person” is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

20. “Process” is defined in 40 C.F.R. § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

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

22. “RMP” is defined in 40 C.F.R. § 68.3 as the risk management plan required under subpart G of 40 C.F.R. Part 68.

23. “Stationary source” is defined in Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

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

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

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

26. Tyson Chicken, Inc. is a corporation authorized to do business in the State of Arkansas.

27. Respondent is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

28. Respondent owns and operates the poultry processing facility located at 2510 AR-72, Hope, Arkansas (the “Facility”).

29. At all times relevant to this proceeding, Respondent has owned and operated the Facility.

30. Respondent is the current owner and operator of the Facility.

31. The Facility includes various equipment and processes associated with food preparation, packaging, and transportation. At the Facility the Respondent utilizes a

refrigeration system to ensure processed food is maintained at safe temperature prior to, and during, shipment.

32. The refrigeration system uses anhydrous ammonia as a coolant.

33. Anhydrous ammonia is identified at 40 C.F.R. § 68.130 as a regulated substance due to its toxicity.

34. Emissions of regulated substances or other extremely hazardous substances are possible from the Facility or the equipment located therein.

35. The threshold quantity of anhydrous ammonia to trigger RMP applicability is 10,000 pounds in a single process.

36. The refrigeration system at the Facility is a single process.

37. More than 10,000 pounds of anhydrous ammonia is present in the refrigeration system at the Facility.

38. The refrigeration system at Respondent's Facility is a covered process subject to the requirements of 112(r)(7) of the Clean Air Act and the implementing regulations at 40 C.F.R. Part 68.

39. The Facility is subject to the RMP regulations at 40 C.F.R. Part 68.

40. The Facility is a "stationary source" as that term is defined in Sections 112(r)(2)(C) and 40 C.F.R. § 68.3.

41. Respondent's Facility, due to industrial sector, regulated substance, release scenarios, etc. is subject to the Program 3 requirements of the RMP program.

42. The Program 3 requirements include, but are not limited to, the development and implementation of written operating procedures that provide clear instructions for safely

conducting activities involved in each covered process and ensuring that the mechanical integrity of the covered process is preserved through proper installation and maintenance.

43. On April 22, 2016, maintenance work was performed at the Facility. Specifically, a maintenance worker replaced a belt on a spiral freezer. The worker utilized a written standard operating procedure (“SOP”) in performing the work.

44. To safely perform the belt replacement maintenance the worker turned off the spiral freezer, which was in defrost mode at the time. The defrost cycle was interrupted when the freezer power was turned off.

45. According to Respondent and the spiral freezer manufacturer, the spiral freezer requires routine and uninterrupted defrosting for proper performance.

46. Upon completion of the maintenance work the worker restored power to the spiral freezer, which returned to a defrost mode.

47. The following day, April 23, 2016, the spiral freezer was re-started and returned to use.

48. Workers operating the spiral freezer were unaware of the interruption to the defrost cycle due to the belt replacement that occurred the previous day.

49. During the loss of power, caused by the maintenance work, and subsequent interruption of the defrost cycle, gas built up in the ammonia system relating to the spiral freezer.

50. Soon after the spiral freezer was returned to service, hydraulic hammering, caused by the built-up gas, began in the ammonia piping related to the spiral freezer.

51. The hammering weakened the weld on an end cap to the point where it failed. The end cap of a 16" ammonia pipe fell off onto the protective floor spilling ammonia into a production area where employees were present.

52. Ammonia alarms sounded and the Facility was evacuated.

53. Upon mustering at designated points outside the Facility (per the Facility emergency plan) it was determined that one employee was missing.

54. Pursuant to the emergency plan predesignated workers entered the Facility to search for the missing worker who was found unconscious near the ruptured ammonia pipe.

55. The emergency plan identified that Facility emergency responders needed self-contained breathing apparatus ("SCBA") equipment to enter the Facility during releases of ammonia. SBCA equipment was available for all emergency responders at the Facility. One employee, an emergency responder, however, only put on an air purifying respirator ("APR") to enter the building.

56. Eight employees were sent to the hospital of whom seven were released after observation and/or treatment for non-serious injuries.

57. One employee, who was directly adjacent to the ammonia spill, required hospitalization. Doctors induced a coma and the worker was attached to a ventilator to provide breathing assistance for several weeks. The employee was subsequently released from the hospital.

58. Approximately 183 pounds of ammonia was released to the ambient air during the event. Ammonia inside the meat processing room was vented via fan to vents on the roof of the structure.

59. Respondent performed an incident investigation to determine the causes and identify any performance issues relating to the incident and Respondent's responses to the incident. Respondent made the following conclusions:

- a. Respondent did implement a standard operating procedure for performing maintenance work on the spiral freezer; however, the SOP did not identify or address the hazard of interrupting the defrost cycle of the spiral freezer.
- b. The 16" end cap that was ejected from the end of the ammonia pipe was installed in October of 2014. At the time of installation the welds were visually inspected and pressure tested. The materials used in constructing the weld in the piping system, related to the spiral freezer, were inadequate to maintain the integrity of the piping during hydraulic hammering, leading to the ejection of the end cap.
- c. The emergency plan requires that employees responding to the release of ammonia at the Facility wear SCBA equipment when entering the Facility. There was SCBA equipment available for all employees who might provide an emergency response to the release of ammonia; however, one employee entered the building wearing only the APR and not the required SCBA equipment.

E. ALLEGED VIOLATIONS

60. Respondent failed to adequately develop and implement written standard operating procedures relating to maintenance work on the spiral freezer. Specifically, Respondent failed to include procedures to preclude maintenance work from interrupting the defrost cycle of the spiral freezer in violation of 40 C.F.R. § 68.73(b).

61. Respondent's welds on the spiral freezer ammonia piping system were not adequate to function as designed when hydraulic hammering within the piping system occurred

on April 23, 2016 from an interrupted defrost cycle of the spiral freezer, as required by 40 C.F.R. § 68.73(f)(1).

62. Respondent failed to implement written operating procedures relating to emergency activities at the Facility by not following the Facility emergency response plan in response to the incident at the Facility on April 23, 2016, in violation of 40 C.F.R. § 68.69(a)(1)(v).

F. CIVIL PENALTY

General

63. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2),

Respondent:

- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. neither admits nor denies the specific factual allegations contained in the CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the conditions and requirements specified in this CAFO;
- e. waives any right to contest the alleged violations set forth in Section E of this CAFO; and
- f. waives its rights to appeal the Final Order included in this CAFO.

64. For the purpose of this proceeding, Respondent:

- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;

- b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- d. consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the District of Arkansas and
- e. waives any right it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
- f. agrees that in any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other relief relating to this 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 preclusion, claim splitting, or other defenses based on any contention that the claims raised by the Complainant or the United States

were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to this CAFO.

Penalty Assessment and Collection

65. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of the size of the business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require, EPA has assessed a civil penalty in the amount of one hundred and six thousand, eight hundred and ninety-four dollars (\$106,894) ("EPA Penalty"). The EPA Penalty has been determined in accordance with the Section 113 of the Act, 42, U.S.C. § 7413 and at no time exceeded EPA's statutory authority.

66. Respondent agrees to:

- a. pay the EPA Penalty within 30 calendar days of the Effective Date of this CAFO
- b. pay the EPA Penalty by cashier's check, certified check, or wire transfer made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of five (5) ways: (1) regular U.S. Postal Service mail including certified mail; (2) overnight mail; (3) wire transfer; (4) Automated Clearinghouse for receiving US currency; or (5) On Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service

certified mail, or U.S. Postal Service express mail, payment should be
remitted to:

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

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

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

Contact: Natalie Pearson
(314) 418-4087

For wire transfer, payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact – Jesse White (301) 887-6548

For On Line Payment:

<https://www.pay.gov/paygov/>

Enter sfo 1.1 in search field

Open form and complete required fields.

PLEASE NOTE: The docket number CAA-06-2016-3349 should be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter that shall reference Tyson Chicken Inc.'s name and address, the case name, and docket number CAA-06-2015-3349. Tyson Chicken Inc.'s adherence to this request will ensure proper credit is given when penalties are received for the Region. Tyson Chicken Inc. shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following addresses:

Marie Stucky (6EN-AS)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

And

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

67. Respondent agrees to pay the following on any overdue EPA Penalty:

- a. Interest. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any unpaid portion of a civil penalty must bear interest at the rates established pursuant to 26 U.S.C. § 6621(a)(2).
- b. Nonpayment Penalty. On any portion of a civil penalty more than 90 calendar days delinquent, Respondent must pay a nonpayment penalty, pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), which shall accrue from the date the penalty payment became delinquent, and which shall be in addition to the interest which accrues under subparagraph a. of this paragraph.

Enforcement and Collection Expenses

68. Respondent shall pay a charge to cover the cost of processing and handling any delinquent penalty claim, pursuant to 42 U.S.C. § 7413(d)(5), including but not limited to attorneys' fees incurred by the United States for collection proceedings.

69. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, the EPA may:

- a. refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court (in which the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review) to secure payment of the debt, which may include the original penalty, enforcement and collection expenses, nonpayment penalty and interest, 42 U.S.C. § 7413(d)(5) and 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- b. collect the above-referenced debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

G. CONDITIONS OF SETTLEMENT

Condition – Audits and FLIR Camera Requirements

70. As a Condition of Settlement, Respondent agrees to the following:

a. conduct comprehensive third party Part 68 audits of twenty facilities in

Region 6, including:

1. Amarillo, Texas
2. North Richland Hills, Texas
3. Hope, Arkansas
4. Green Forest, Arkansas
5. Rogers, Arkansas
6. North Little Rock, Arkansas
7. Springdale, Arkansas
8. Fayetteville, Arkansas
9. Seguin, Texas
10. Clarksville, Arkansas
11. Dardenelle, Arkansas
12. Dallas, Texas
13. Center, Texas
14. Pine Bluff, Arkansas
15. Waldron, Arkansas
16. Springdale, Arkansas (Randall Road Facility)
17. Berryville, Arkansas
18. Van Buren, Arkansas
19. Broken Bow, Oklahoma

20. Fort Worth, Texas

- b. the results of all external audits will meet the requirements for auditor independence, audit results and responses identified below.
- c. Potential RMP violations, or other areas of concern, will be specifically identified in each audit report; however, the report will also identify observations or improvement actions that are not necessarily violations. This document (the CAFO) does not in any way release violations of federal law identified as a result of these audits. EPA Region 6 reserves the right, in its discretion, to pursue enforcement of any violations of federal law identified as a result of these audits. Respondent does not admit to any violations identified in the audit reports and reserves all of its rights to contest any such findings, or in any subsequent action or proceeding.
- d. all audits, audit reports, and audit responses shall be completed within three years of the effective date of this CAFO.
- e. audits conducted pursuant to this settlement and any associated documents will be provided to Region 6 for any purpose, including forming the basis for an enforcement action.
- f. purchase one FLIR camera that will be used to detect leaks in RMP regulated processes at Respondent's RMP regulated facilities as part of the audit process at the 20 facilities identified above. Respondent will secure, whether through direct hiring or by contract, employees or contractors

with appropriate experience and training to operate the FLIR camera and provide analysis of the FLIR camera imaging.

g. FLIR imaging will be confined to the following external areas of each facility:

1. Condensing towers and associated valves and piping; and
2. Vessels (receivers and recirculators) and associated valves and piping.

h. Respondent shall submit, as part of the audit of each facility, a brief report describing the nature and extent of releases found, and a description of the corrective actions taken to correct identified releases. Respondent shall also include a description of releases that were identified by the FLIR camera under this audit that may not have been identified as quickly had the FLIR technology not been utilized.

Condition – Ventless Ammonia System Pilot Project

i. design and implement a pilot project to create a ventless closed ammonia system for a covered process at a Region 6 facility. One of Respondent's 40 covered processes in Region 6 will be fully re-piped and equipped to close the system from any ammonia releases to the ambient air from safety relief valves. Pressure relief valves will be re-piped within the new system and would "vent" to an ammonia diffusion tank that will capture and absorb ammonia that would have otherwise been released to the ambient air from the safety relief valve. Respondent has agreed to provide

a report, described below, to EPA that will allow EPA to assess the proposed project.

- j. within 90 days of the effective date of this CAFO the Respondent shall submit a report to EPA Region 6 detailing design and engineering considerations, advantages -- including safety and environmental benefits, risks to both human health and the environment from a ventless covered process as described by Respondent. This report shall be freely available to the public or any party upon request.
- k. Respondent will design and fully implement a pilot project, as described under this condition, at a facility of their choice in Region 6 within 24 months of the effective date of this CAFO.
- l. after 12 months of full operation of the pilot project the Respondent shall produce a second report that analyzes the project with an emphasis on creating lessons learned in design and construction and implementation of the pilot project and provide information about the type and quantity of releases that were avoided as a result of implementing the pilot project. This report shall be freely available to the public or any party upon request. Submittal of this second report to EPA shall complete the Ventless Ammonia System Pilot Project condition of this document.

H. SELECTION OF THIRD PARTY AUDITOR AND AUDIT TEAM

71. Each audit shall have an audit leader (“Auditor”) who meets the requirements of independence outlined below. Different standards shall apply to audit team members.

72. Auditors shall be impartial and independent in conducting all third-party audit activities.

73. Auditors shall receive no compensation or financial benefit from the outcome of the audit, apart from payment for auditing services.

74. Auditors shall be:

- a. knowledgeable with the requirements of 40 C.F.R. Part 68 and the implementing statute,
- b. experienced with the stationary source type and processes being audited and applicable recognized and generally accepted good engineering practices, and
- c. trained or certified in proper auditing techniques.

Auditors do not need to be registered Professional Engineers. The audit team does not require the participation of a Professional Engineer.

75. Respondent may not select an Auditor who has performed work for the Respondent within the last two years at the time of contract between the Auditor and Respondent.

76. For purposes of the preceding paragraph, the phrase “has performed work” shall not include being an auditor in an independent third-party audit that meets the requirements for independence as described in this document.

77. Respondent may not hire, as either employees or contractors, Auditors, or audit team members, for a period of two years following the submission of the final audit report from the Auditor to the Respondent.

78. For purposes of the preceding paragraph, the term “hire, as either employees or contractors” shall not include being an auditor in an independent third-party audit that meets the requirements for independence as described in this document.

79. All Auditors, and audit team members, shall sign and date a conflict of interest statement verifying that they are eligible to perform the audit under the terms of this agreement.

80. These requirements shall not apply to an organization that employs, or is owned by, an Auditor and in which an employee has performed work for the Respondent in the past two years where the organization ensures that such personnel do not participate in the audit, or manage or advise the audit team concerning the audit.

81. Retired employees who satisfy the requirements of independence may qualify as independent if their sole continuing financial attachments to the owner or operator are employer-financed or managed retirement and/or health plans.

I. THIRD-PARTY AUDITOR RESPONSIBILITIES

82. *Third-party auditor responsibilities.* Respondent shall ensure that the third-party auditor :

- a. Manages the audit and participates in audit initiation, design, implementation, and reporting,
- b. Evaluates the competency of audit team members, as applicable, to determine appropriate roles and responsibilities for the audit.
- c. Prepares the audit report and documents the full team’s views and opinions in the final audit report, and
- d. Certifies the final audit report and its contents as meeting the requirements of this document.

J. AUDIT REPORT AND RESPONSE

83. *Audit Report.* Respondent shall ensure that the auditor prepares and submits an audit report that:

- a. Identifies the lead auditor or manager, participating individuals, and any other key persons participating in the audit, including names, titles, and summaries of qualifications;
- b. Documents the auditor's evaluation of each process audited to determine whether procedures and practices developed by Respondent are adequate and being followed;
- c. Documents the findings of the audit, including any identified compliance or performance deficiencies. The Auditor shall also ensure that photographs and video recordings will be made of each audit to enhance understanding of the audit reports and provide context to the audit results. These photographs and video recordings shall be included in the audit reports submitted for each facility;
- d. Includes a summary of Respondent's comments on, and identify any adjustments made by the auditor to, any draft audit report provided by the auditor to Respondent for review or comment; and
- e. Include the following certification, signed and dated by the auditor or supervising manager for the audit:

I certify that this compliance audit report was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information upon which the audit is based. I further certify that the audit was conducted and this report was prepared pursuant to all applicable auditing, competency, independence, impartiality, and conflict of interest standards and protocols. Based on my personal knowledge and experience, the inquiry of personnel involved in the

audit, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for making false material statements, representations, or certifications, including the possibility of fines and imprisonment for knowing violations.

84. The auditor shall submit the audit report, including all draft and final copies, to the EPA Region 6 and the Respondent at the same time.

85. The audit report and related records, including any documents reviewed, cited, or relied on the audit team in undertaking the audit, shall not be privileged as attorney-client communications or attorney work products, even if written for or reviewed by legal staff.

86. *Response Report.* As soon as possible, but no later than 90 days after receiving the final audit report, Respondent shall determine an appropriate response to each of the findings in the audit report, and develop and provide to EPA Region 6 a findings response report that includes:

- a. A copy of the final audit report;
- b. An appropriate response to each of the audit report findings;
- c. A schedule for promptly addressing deficiencies; and
- d. A certification, signed and dated by Respondent's senior corporate officer or other official in an equivalent position, stating:

I certify under penalty of law that the attached compliance audit report was received, reviewed, and responded to under my direction or supervision by qualified personnel. I further certify that appropriate responses to the findings have been identified and deficiencies were corrected, or are being corrected, as documented herein. Based on my personal knowledge and experience, or inquiry of personnel involved in evaluating the report findings and determining appropriate responses to the findings, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

87. Respondent shall implement the schedule to address deficiencies identified in the audit findings response report.

88. Respondent shall document the actions taken to address each deficiency, along with the date completed. If deficiencies are corrected prior to the response report then they may be included in that document. If deficiencies are corrected after submittal of the response report then those actions should be identified under separate letter, as they occur.

89. Respondent shall retain all copies of draft and final audit reports, including associated documents, for a period of five years from the date of the final audit report, and provide any audit reports or documents to EPA Region 6 upon request.

J. DISPUTE RESOLUTION

90. The parties shall use their best efforts to resolve all disputes, including disputes over audit reports, informally. If the dispute is resolved through informal dispute resolution, the resolution shall be reduced to writing, signed by representatives of each party, and incorporated into this document after being approved by the Regional Judicial Officer and filed with the Regional Hearing Clerk. If, however, disputes arise concerning this agreement which the parties are otherwise unable to resolve, then the parties shall utilize the procedures set forth below relating to formal dispute resolution. Unless otherwise agreed to by EPA, the informal dispute resolution period may not last longer than 30 days from the day that the issue in dispute is raised. An issue is considered "raised" when one party indicates to the other in writing that there is a dispute in need of resolution.

91. In the event that the parties cannot resolve a dispute by informal negotiations pursuant to this Section then the position advanced by EPA shall be considered binding unless Respondent invokes the formal dispute resolution procedures pursuant to this Section.

92. Formal dispute resolution may be invoked by either party within ten days after informal dispute resolution has concluded. Formal dispute resolution will be initiated by submitting a written Notice of Objection that includes: the basis for the objection, a factual description of the issue and an analysis of related issues, and a history of the issue within the context of the dispute.

93. Within 30 days of receipt of the Notice of Objection the parties shall meet (“First Meeting”) at EPA’s offices in Dallas, Texas. The Air Enforcement Associate Division Director of Region 6’s Compliance Assurance and Enforcement Division shall attend on behalf of EPA. Respondent shall have an appropriate manager attend with decision making capacity. If resolution is not achieved at the first meeting then the parties shall organize a second meeting between the parties within 30 days of the first meeting. At the second meeting the Division Director of the Region 6 Compliance Assurance and Enforcement Division shall attend. A corporate officer shall attend on behalf of Respondent.

94. If the parties are unable to resolve their differences in formal dispute resolution within ten days of the second meeting then the Director of the Region 6 Compliance Assurance and Enforcement Division Director shall issue a “Dispute Decision” that communicates his or her decision relating to the dispute and provides a basis for that decision. The Dispute Decision shall be final.

95. Any resolution or Dispute Decision that is achieved during formal dispute resolution shall be reduced to writing, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

K. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER

96. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

97. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

98. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

99. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

100. Any violation of the included Final Order may result in a civil judicial action for an injunction or civil penalties of up to \$44,539 per day of violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

101. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

102. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

103. Respondent agrees that the time period from the Effective Date of this CAFO until all the conditions and requirements specified in Paragraphs 70 through 89, and the full payment of the penalty, are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims set forth in Section E of this CAFO (the "Tolled Claims").

104. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

105. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, Respondent must give written notice and a copy of this CAFO to any successors in interest prior to transfer of ownership or control of any portion or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment or delegation, Respondent shall continue to be bound by the obligations or liabilities of this CAFO until the EPA has provided written approval.

106. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information.

107. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has legal capacity to bind the party he or she represents to this CAFO.

108. By signing this CAFO, both parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.

109. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

110. 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. Except as qualified by Paragraph 68, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

L. TERMINATION

111. At such time as the Respondent believes that it has complied with all terms and conditions of this CAFO, Respondent agrees to certify to EPA completion of the Conditions of Settlement and other requirements described in Paragraphs 70 through 89 above and provide any necessary documentation. Respondent represents that the signing representative will be

fully authorized by Respondent to certify that the terms and conditions of this CAFO have been met. The certification should include the following statement:

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

The certification required above shall be sent to:

Marie Stucky
Enforcement Officer (6EN-AS)
Surveillance Section
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
[email stucky.marie@epa.gov]

EPA has 90 days to respond with questions or disagreement that the conditions of the CAFO have been satisfied.

M. EFFECTIVE DATE

112. Respondent and Complainant agree to the issuance of the included Final Order. Upon filing the EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of Tyson Chicken, Inc., Docket No. CAA-06-2016-3349, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:


Date: 10/3/16



Mr. Donnie King
President of North American Operations
Tyson Foods, Inc.

FOR COMPLAINANT:

Date: 10/12/16


for Stephen A. Gilrein, P.E.
Acting Director
Compliance Assurance and
Enforcement Division

Tyson Chicken, Inc. Docket No. CAA-06-2016-3349

FOR COMPLAINANT:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

Tyson Chicken, Inc.

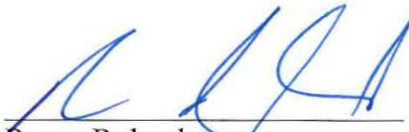
RESPONDENT

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FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act (“CAA” or the “Act”), 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 attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Tyson Chicken, Inc. is ORDERED to comply with all terms of the Consent Agreement. In accordance with 40 C.F.R. §22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 10/18/16



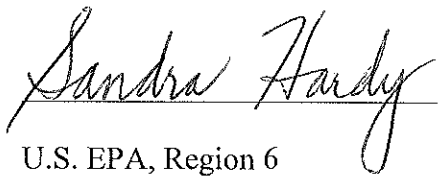
Renea Ryland
Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October, 2016, the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED 9007 1490 0004 0562 9989

Ms. Suzanne B. Murray, Partner
Haynes & Boone, LLP
2323 Victory Avenue
Suite 700
Dallas, Texas 75219



U.S. EPA, Region 6
Dallas, Texas