

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS**

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|-----------------------------|---|-------------------|
| IN THE MATTER OF: | § | EPA DOCKET NO. |
| | § | CAA-06-2017-3338 |
| PILGRIM'S PRIDE CORPORATION | § | |
| GREELEY, COLORADO | § | CONSENT AGREEMENT |
| | § | AND FINAL ORDER |
| RESPONDENT | § | |
| Mount Pleasant, Texas | § | |

CONSENT AGREEMENT

The Director of the Compliance Assurance and Enforcement Division for the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Pilgrim's Pride Corporation (Respondent) in the above-referenced proceeding, hereby agree to simultaneously commence and resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to sections 113(a)(3)(A) and 113(d)(1)(B) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.¹

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).

¹ As adjusted by the 2016 Civil Monetary Penalty Inflation Adjustment Rule (2016 Rule) (81 Fed. Reg. 43,091), 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.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations contained herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

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

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

6. Nothing in this CAFO shall be construed to affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

7. For purposes of this proceeding, Respondent consents to the following: issuance of the CAFO hereinafter recited, and the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

II. STATUTORY AND REGULATORY BACKGROUND

8. 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.

9. 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.

10. 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 CAA.

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines person as an “individual, corporation, partnership, association [. . .] and any officer, agent, or employee thereof.”

12. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source” as:

any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

13. “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.

14. “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.

15. “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.

16. “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.

17. "Owner or operator" shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

18. 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.

19. 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.

20. 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.

21. 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 (§§ 68.65-68.87).

22. Pursuant to 40 C.F.R. § 68.73(f)(3), the owner or operator shall assure that maintenance materials, spare parts and equipment are suitable for the process application for which they will be used.

III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

23. Respondent is a corporation formed under the laws of Delaware and registered to do business in the State of Texas on November 12, 1986.

24. Respondent is a "person" as that term is defined by section 302(e) of the CAA, 42 U.S.C. § 7602(e).

25. Respondent's facility is a poultry processing facility and is a "stationary source" as that term is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

26. Respondent is the owner or operator of the facility located at 1000 Pilgrim Road, Mount Pleasant, Texas 75455.

27. Ammonia (anhydrous), CAS No. 7664-41-7, is a regulated toxic substance under Section 112(r) of the CAA, 42 U.S.C. § 7412, listed under Table 1 to 40 C.F.R. § 68.130, and has a threshold quantity of 10,000 pounds.

28. Respondent uses 145,000 pounds of ammonia (anhydrous), CAS No. 7664-41-7, as part of its covered process.

29. On March 26, 2016, at approximately 8:05 p.m., the refrigeration staff at Respondent's facility received an odor complaint. Upon inspection, they discovered a pressure release valve (PRV) released prematurely on the marination tanks located on the roof. The staff proceeded to close off the liquid ammonia feed to the tanks by using the liquid feed isolation valve and switched the feed to another PRV using a three-way valve, thereby ending the release at approximately 8:35 P.M.

30. It was determined that the failed PRV that resulted in the release was previously recalled by the manufacture on June 21, 2013.

31. Respondent received replacements for all of the recalled PRVs by July 1, 2014.

32. Respondent failed to replace the recalled valve that failed on March 26, 2016.

33. Respondent calculated a total release of 89 pounds of ammonia (anhydrous) to the ambient air.

IV. VIOLATIONS

34. Pursuant to 40 C.F.R. § 68.73(f)(3), the owner or operator shall assure that maintenance materials, spare parts and equipment are suitable for the process application for which they will be used.

35. It was determined that the failed PRV that resulted in the release was previously recalled by the manufacture on June 21, 2013.

36. Respondent received replacements for all of the recalled PRVs by July 1, 2014.

37. Respondent did not replace the recalled valve that failed on March 26, 2016.

38. Respondent's failure to replace the recalled PRV to ensure that the equipment was suitable for the process application constitutes a violation of 40 C.F.R. § 68.73(f)(3).

V. CIVIL PENALTY AND TERMS OF SETTLEMENT

A. Civil Penalty

39. Pursuant to the authority granted in sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the Respondent's business, the economic impact of the penalty on the Respondent's business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and Respondent's cooperation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is **\$40,000.00**.

40. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6."

Payment shall be remitted in one of four ways: regular U.S. Postal Service mail (including certified mail); overnight mail; or wire transfer.

For U.S. Postal Service mail, the check should be remitted to:

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

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

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

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

PLEASE NOTE: Docket number CAA-06-2017-3338 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter or wire transfer instructions to the following:

Tami Sundquist
Enforcement Officer (6EN-AS)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

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

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received in the Region.

41. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

42. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

43. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion

of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Parties Bound

44. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

C. Retention of Enforcement Rights

45. The final order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

D. Costs

47. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.


E. Effective Date

48. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

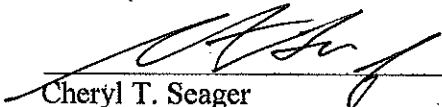
FOR THE RESPONDENT:

3.6.17
Date


Pilgrim's Pride Corporation

FOR THE COMPLAINANT:

14 MAR 2017
Date


Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division

FINAL ORDER

Pursuant to section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: _____

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2017, the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # _____

Nicholas M. White, General Counsel
Pilgrim's Pride Corporation
1770 Promontory Circle
Greeley, Colorado 80634

Date: _____

U.S. EPA, Region 6
Dallas, Texas