

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Catherine Smith 4/25/18
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CAA-01-2018-0019 and EPCRA-01-2018-0020

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Finicky Pet Food, Inc.
68 Blackmer Street
New Bedford, MA 02744

Total Dollar Amount of Receivable \$ 89,140 Due Date: 1/23/19

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1st \$ 8,000 on 10/25/18
- 2nd \$ 82,154.25 on 1/23/19
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance: _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number



U. S. ENVIRONMENTAL PROTECTION AGENCY – NEW ENGLAND
5 POST OFFICE SQUARE, SUITE 100 (OES04-4)
BOSTON, MA 02109-3912

VIA HAND DELIVERY

September 25, 2018

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912



Re: Finicky Pet Food, Inc./EPA Docket Nos. CAA-01-2018-0019 and EPCRA-01-2018-0020

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter are an original and one copy of an executed *Consent Agreement and Final Order* (“CAFO”) for the above-referenced matter that the EPA has entered into with the Respondent. Also enclosed are an original and one copy of a Certificate of Service.

Finally, the Regional Judicial Officer asked that I file a joint statement with you concerning the installment payment regime. The parties filed a PDF copy of this joint statement with her by electronic mail before she signed the CAFO, but the original signatures should be filed with you.

EPA has sent copies of the CAFO, the Certificate of Service, and this letter to the Respondent by Certified Mail. Thank you for your assistance. Please call me at 617-918-1777 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Catherine Smith".

Catherine Smith
Senior Enforcement Counsel

Cc: Chelsea Dixon, EPA
Len Wallace, EPA
Barry P. Fogel, Esq., Keegan Werlin LLP

Nick Iwanisziw, Finicky Pet Food

Enclosures:

1. Original CAFO and copy of CAFO
2. Certificate of Service and copy
3. Joint Statement

In re: Finicky Pet Food, Inc./EPA Docket Nos. CAA-01-2018-0019 and EPCRA-01-2018-0020

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date and in the manner noted below:

Original and one copy,
hand-delivered:

Ms. Wanda Santiago, Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3812

Copy, by Certified Mail:

Nick Iwanisziw, Vice President of Operations
Finicky Pet Food, Inc.
68 Blackmer Street
New Bedford, MA 02744

Barry P. Fogel, Counsel
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, MA 02110

William F. Schofield, President
Finicky Pet Food, Inc.
68 Blackmer Street
New Bedford, MA 02744

Date:

9/25/18



Catherine Smith
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3812
617-918-1777
smith.catherine@epa.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF:)	
)	
FINICKY PET FOOD, INC.,)	Docket Nos.:
)	CAA-01-2018-0019
68 Blackmer Street)	EPCRA-01-2018-0020
New Bedford, MA 02744)	
)	
Respondent.)	
)	
Proceeding under Section 113(d) of the Clean)	
Air Act, 42 U.S.C. § 7413(d) and Section 325(c))	
of the Emergency Planning and Community)	
Right-to-Know Act, 42 U.S.C. § 11045(c))	
)	

CONSENT AGREEMENT AND FINAL ORDER

1. The United States Environmental Protection Agency Region 1 (“EPA” or “Complainant”) and Finicky Pet Food, Inc. (“Respondent”) consent to the entry of this Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”). This CAFO resolves Respondent’s liability for alleged violations of Section 112(r)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r)(1) and Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11022.

2. On the EPA’s behalf, the Director of the Office of Environmental Stewardship, EPA Region 1, is delegated the authority to settle civil administrative penalty proceedings under CAA Section 113(d) and EPCRA Section 325(c).

3. EPA and Respondent hereby agree to settle this matter through this CAFO without the filing of an administrative complaint, as authorized under 40 C.F.R. §§ 22.13(b) and 22.18(b).

4. EPA and Respondent agree that settlement of this matter is in the public interest, and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

5. Therefore, before taking any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law, it is hereby ordered as follows:

I. PRELIMINARY STATEMENT

6. This Consent Agreement is entered into under Section 113(d) of the CAA, as amended, 42 U.S.C. §7413(d), Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules, 40 C.F.R. Part 22.

7. The EPA and the United States Department of Justice jointly determined that this matter is appropriate for administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

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

9. This CAFO both initiates and resolves an administrative action for the assessment of monetary penalties, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d) and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). As more thoroughly discussed in Sections III through V below, the CAFO resolves the following CAA and EPCRA violations that Complainant

alleges occurred in conjunction with Respondent's storage and handling of anhydrous ammonia at its pet food-making facility in New Bedford, Massachusetts:

- a. failure to identify hazards which may result from accidental releases of extremely hazardous substances, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1);
- b. failure to design and maintain a safe facility, taking such steps as are necessary to prevent such releases, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1);
- c. failure to minimize the consequences of accidental releases, should they occur, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1); and
- d. failure to timely submit Tier 2 hazardous chemical inventory forms to the proper authorities, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370.

II. STATUTORY AND REGULATORY AUTHORITY

CAA Statutory Authority

10. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to (a) identify hazards which may result from accidental releases of such substances 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. This section of the CAA is referred to as the “General Duty Clause.”

11. The extremely hazardous substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), include, among others, anhydrous ammonia.

12. The term “accidental release” is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

13. The term “stationary source” is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

14. The term “have a general duty in the same manner and to the same extent as section 654, title 29 of the United States code” means owners and operators must comply with the General Duty Clause in the same manner and to the same extent as employers must comply with the Occupational Safety Health Act administered by OSHA.¹

¹ Section 654 of OSHA provides, in pertinent part, that “[e]ach employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees” and “shall comply with occupational safety and health standards promulgated under [OSHA].” 29 U.S.C. § 654. See Durion Company, Inc. v. Secretary of Labor, 750 F.2d 28 (6th Cir. 1984). According to the legislative history of the CAA General Duty Clause, Durion is cited as a guide for EPA’s application of the General Duty Clause. Durion criteria are those established earlier in National Realty & Construction Co. v. OSHRC, 489 F.2d 1257 (D.C. Cir. 1973), namely, that OSHA must prove (1) the employer failed to render the workplace free of a hazard; (2) the hazard was recognized either by the cited employer or generally within the employers’ industry; (3) the hazard was causing or was likely to cause death or serious physical harm; and (4) there was a feasible means by which the employer could have eliminated or materially reduced the hazard.

For purposes of complying with the CAA General Duty Clause, owners and operators must maintain a facility that is free of a hazard, the hazard must be recognized by the owner/operator or recognized by the owner/operator’s industry, the hazard from an accidental release must be likely to cause harm, and the owner/operator must be able to

15. Sections 113(a) and (d) of the CAA, 42 U.S.C. § 7413(a) and (d), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 28 U.S.C. § 2461 note, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, section 701 of Public Law 114-74, 129 Stat. 599 (Nov. 2, 2015), provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts of up to \$37,500 per day for violations occurring from January 12, 2009 through November 2, 2015, and up to \$46,192 per day per violation for violations that occurred after November 2, 2015 and are assessed on or after January 15, 2018.

16. EPA and the U.S. Department of Justice have jointly determined that this action is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

EPCRA Statutory and Regulatory Authority

17. In accordance with Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), the owner or operator of a facility who is required to prepare or have available an SDS for a hazardous chemical under the Occupational Safety and Health Act ("OSHA") of 1970 shall submit to the state emergency response commission ("SERC"), local emergency planning committee ("LEPC"), and the fire department with jurisdiction over the facility an SDS for each chemical present at the facility in quantities equal to or greater than the chemical-specific minimum threshold level. Section 311(b) of EPCRA, 42 U.S.C. § 11021(b), authorizes EPA to establish

eliminate or reduce the hazard. U.S. EPA, *Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1)* (May 2000) at 11, footnote 4.

minimum threshold levels of hazardous chemicals for the purposes of Section 311(a) of EPCRA, 42 U.S.C. § 11021(a). The SDSs must be submitted within three months after the owner or operator of a facility first becomes subject to OSHA's requirements for hazardous chemicals and following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which an SDS was previously submitted.

18. In accordance with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), the owner or operator of a facility that is required under the Occupational Safety and Health Act ("OSHA") to prepare or have available an SDS for a hazardous chemical must prepare and submit an emergency and hazardous chemical inventory form ("Tier 1" or "Tier 2" form) to the state emergency response commission ("SERC"), the local emergency planning committee ("LEPC"), and the local fire department. Tier 1 or Tier 2 forms must be submitted annually on or before March 1 and are required to contain chemical inventory information with respect to the preceding calendar year. Additionally, Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), authorizes EPA to establish minimum threshold levels of hazardous chemicals for the purposes of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

19. The regulations promulgated pursuant to Sections 311 of EPCRA, 42 U.S.C. § 11021, are found at 40 C.F.R. Part 370. Under 40 C.F.R. §§ 370.30-370.33, the owner or operator of a facility must report the presence of hazardous chemicals exceeding the minimum threshold level by submitting an SDS or by submitting a list of all hazardous chemicals grouped by health and physical hazards to the LEPC, SERC, and the fire department with jurisdiction over the facility within three months after the facility becomes subject to reporting requirements and after discovering significant new information about a hazardous chemical for which an SDS was submitted.

20. The regulations promulgated pursuant to 312 of EPCRA, 42 U.S.C. § 11022, are found at 40 C.F.R. Part 370. Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level must prepare and submit a Tier 1 or Tier 2 form to the LEPC, SERC, and local fire department. Forty C.F.R. § 370.45 prescribes that Tier 1 or Tier 2 forms must be submitted annually on or before March 1 and are required to contain chemical inventory information with respect to the preceding calendar year. The LEPC, SERC, or local fire department may request that a facility submit the more comprehensive Tier 2 form in lieu of the Tier 1 form.

21. In accordance with Sections 311(b) and 312(b) of EPCRA, 42 U.S.C. §§ 11021(b) and 11022(b), 40 C.F.R. §§ 370.10(a) and 355 establish minimum threshold levels for hazardous chemicals that trigger reporting requirements for the purposes of Part 370. Minimum threshold limits of 500 pounds are established for specific extremely hazardous substances, including ammonia and sulfuric acid.

22. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the DCIA, 31 U.S.C. § 3701, provides for the assessment of civil penalties for violations of Section 311(a) of EPCRA, 41 U.S.C. § 11021(a), in amounts of up to \$16,000 per day for violations occurring from January 12, 2009 through November 2, 2015, and in amounts up to \$22,363 per day for violations that occurred after November 2, 2015 and are assessed on or after January 15, 2018; and for violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), in amounts of up to \$37,500 per day for violations occurring from January 12, 2009 through

November 2, 2015, and in amounts up to \$55,907 per day per violation for violations that occurred after November 2, 2015 and are assessed on or after January 15, 2018.

III. GENERAL ALLEGATIONS

23. Respondent, Finicky Pet Food, Inc., operates a facility located at 68 Blackmer Street in New Bedford, Massachusetts, where it processes fish to produce ingredients used by pet food manufacturers (the “Facility”).

24. The Facility is located in a designated industrial area of New Bedford, Massachusetts, within approximately 300 feet (0.05 mile) of JFK Memorial Highway, less than 500 feet (0.09 mile) from the nearest residence, and approximately 600 feet (0.11 mile) from Buzzard’s Bay. At the time of the violations alleged herein, a worst-case release of ammonia from the Facility could have seriously injured people off-site.

25. As a corporation, Respondent is a “person” within the meaning of:

- a. Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e); and
- b. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.

26. The Facility is a “stationary source” as that term is defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

27. At the time of the EPA inspection, 8,400 pounds of ammonia and 1,007 pounds of sulfuric acid were present at the Facility.

28. At the time of the violations alleged herein, the Facility had a refrigeration system, which cycled approximately 8,000 pounds of anhydrous ammonia through various physical states to cool Respondent’s products. Accordingly, Respondent “stored” and “handled” anhydrous ammonia.

29. Anhydrous ammonia is a clear, colorless gas at atmospheric conditions of temperature and pressure with a strong odor. It is often stored and shipped under pressure as a liquid. It presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. Ammonia vapors may be fatal if inhaled. Exposure to 300 parts per million by volume is immediately dangerous to life and health. Ammonia gas is generally regarded as nonflammable but does burn at concentrations of approximately 15.5% to 27% by volume in air with strong ignition. It can explode if released in an enclosed space with a source of ignition present or if a vessel containing anhydrous ammonia is exposed to fire. The fire hazard increases in the presence of oil or other combustible materials.

30. Anhydrous ammonia is an “extremely hazardous substance” subject to the General Duty Clause. Ammonia and sulfuric acid are “hazardous chemicals” subject to requirements under EPCRA Sections 311 and 312, 42 U.S.C. §§ 11021 and 11022.

31. Due to the dangers associated with anhydrous ammonia, the ammonia refrigeration industry has developed industry standards to control the risks associated with the use of ammonia. In collaboration with the American National Standards Institute, the International Institute of Ammonia Refrigeration (“IIAR”) has issued (and updates) “Standard 2: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems,” along with other applicable standards and guidance. Bulletins and guidance include without limitation: IIAR Bulletin No. 109, *Guidelines for IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System* (1997); IIAR Bulletin No. 110, *Guidelines for Start-Up, Inspection, and Maintenance of Ammonia Mechanical Refrigerating Systems* (rev. 2002); IIAR Bulletin No. 114, *Guidelines for Identification of Ammonia Refrigeration Piping and System Components* (1991 and 2014 editions); IIAR Bulletin 116, *Guidelines for Avoiding Component*

Failure in Industrial Refrigeration Systems Caused by Abnormal Pressure or Shock (1992); and the 2005 *Ammonia Refrigeration Management Program* (“IIAR ARM Program”), which is intended for systems containing less than 10,000 pounds of ammonia. Also in collaboration with the American National Standards Institute, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”) has issued (and updates) “Standard 15: Safety Standard for Refrigeration Systems.” These standards are consistently relied upon by refrigeration experts and are sometimes incorporated by reference into state building, mechanical, and fire codes.

32. On August 9, 2016, a duly authorized EPA inspector, one of EPA’s Senior Environmental Employment (“SEE”) Program grantees, and an Eastern Research Group, Inc. (“ERG”) contract inspector (collectively, the “EPA Inspectors”) visited the Facility to determine whether the Respondent was complying with Section 112(r) of the CAA and Section 312 of EPCRA. The EPA inspectors toured the following areas of the Facility with Plant Controller Albert Ouellette, and New Bedford Fire Department Training Officer Captain Brandon Silva: the processing room, the cold storage freezer, the refrigeration system ammonia machinery room (AMR), the maintenance room, and the perimeter of the Facility.

33. At the time of the violations alleged herein, Respondent’s ammonia refrigeration system (“System”) had several components typically found in such systems, some of which are described below:

- a. *Compressors*: After being allowed to evaporate, ammonia gas flows at low pressure to a compressor where it is compressed to a higher pressure. This compression process also raises the temperature of the gas. The hot, compressed vapor is then in a thermodynamic state known as a superheated vapor and is at a temperature and pressure at which it next will be condensed with either cooling

water or cooling air. Oil is used in the compressors to help seal them and lubricate the compressor's parts. Used oil must be regularly removed from the compressors.

- b. *Automatic purgers ("Auto-Purger")*: A mechanical device integrated into a system that gathers, separates, and expels non-condensable gases (gases, commonly including air, nitrogen, hydrogen, and hydrocarbons, that will not liquefy at the temperatures and pressures present in condensers consistent with industrial refrigeration system) from multiple points in the refrigeration system without operator assistance.
- c. *Pumps and valves*: Like most ammonia refrigeration systems, the System had multiple pumps and valves to move and control the flow of ammonia through the System. Receivers have "king valves" that can be used to stop the flow of ammonia from the receivers to the rest of the System during an emergency. Closing the king valve can shorten the duration of any continuing ammonia releases. Often solenoid valves near these king valves can be activated by emergency switches outside the building so that emergency responders do not have to enter a building filled with ammonia vapors to turn off a system. This System did not have any such emergency switches.
- d. *Piping*: Pipes throughout the Facility and on the roof carried ammonia in all its various physical states.
- e. *Ammonia detectors*: These devices, typically placed in ammonia machinery rooms, detect ammonia vapors that have been released at certain concentrations. They activate alarms to warn of a release, and they activate ventilation systems to prevent vapors from building up to dangerous levels. It is essential for detectors to be properly placed, maintained, calibrated, and connected to alarms and ventilation systems so that they can fulfill their function.
- f. *Emergency controls*: An emergency control box, typically placed outside the designated machinery room door, allows emergency responders to control releases by actuating key refrigeration system equipment, such as compressors, ventilation, and king valves.

- g. *Evaporators*: These are the units in which the ammonia is allowed to evaporate (at a low -28° F boiling point), drawing and absorbing the heat from a room as the ammonia evaporates, thereby cooling a room.

34. During the inspection, the compressors at the Facility went into shutdown mode.

The inspection team observed the ammonia detection levels to be one part per million (ppm) in the Ammonia Refrigeration Room (AMR) and nine ppm in the pressure relief valve (PRV) vent line. Piping from the Auto-Purger discharged into a 33-gallon plastic container underneath the Auto-Purger. The container was filled with water and smelled of ammonia, indicating that ammonia had been released at some point from the Auto-Purger. After further investigation by the Facility, it was determined that the system went into emergency shutdown mode due to overheating of a Variable Speed Drive, a liquid-cooled motor transistorized PWM inverter that is the motor starter and capacity control for the System's compressor. Additionally, the Vent Line Sensor that showed a reading of nine ppm was determined to be out of calibration.

35. EPA alleges that during the August 9, 2016 inspection, the EPA Inspectors observed potentially dangerous conditions relating to the System. The alleged potentially dangerous conditions are listed in the chart attached hereto as Attachment A, which is incorporated by reference into this CAFO.

36. During the closing conference of the inspection, the EPA Inspectors identified areas of concern to be addressed by the Facility, including the following:

- a. *Lack of information about System*: There were no standard operating procedures and no piping and instrumentation diagrams to help employees, contractors, emergency responders, or regulators understand the System.
- b. *No Hazard Review*: There was no hazard analysis/review to identify all the hazards associated with the system.

- c. *Piping not protected from physical damage*: There were no safeguards in place to protect piping that was at risk of damage due to close proximity to pallets and potentially fork lifts.
- d. *Widespread corrosion*: Multiple sections of uninsulated piping showed signs of surface rust. Portions of the insulation on a pressure vessel were missing or damaged, and ice had built up underneath the insulation of a surrounding tank and piping. There was substantial corrosion on the support beams supporting the condensers.
- e. *AMR not separate from remainder of Facility*: The AMR was not sealed off from other parts of the building using tight-fitting construction and tight-fitting doors.
- f. *Combustible materials in AMR*: Combustible materials were stored between the AMR vessels, including welding equipment and extra cylinders of ammonia.
- g. *Inadequate labeling of pipes and valves*: The piping and valves were not all properly labeled to indicate contents, direction of flow, physical state of the refrigerant, and pressure level.
- h. *Inadequate visual/audible alarms*: The ammonia detection system alarm outside of the primary door to the AMR did not contain an audible alarm. There were no other audio/visual alarms in the Facility.
- i. *Inadequate signage throughout Facility*: The ammonia detection system alarm outside of the primary door to the AMR was not labeled. Several doors did not have adequate signs identifying the presence and hazards of ammonia. Machinery did not contain permanent signs displaying the required information about the operation of the System and Facility personnel. Access openings on condensers lacked confined-space warnings.
- j. *No spring-loaded valve for safe oil draining*: The oil drain system did not have either a self-closing or manual quick-closing emergency stop valve, or other suitably engineered system that is intended to immediately close the system in the event of a problem, minimizing a release of ammonia and reducing the likelihood that a mechanic will face injury from exposure to ammonia when draining oil from the System.

- k. *Inadequate ventilation capacity*: The Facility's maximum ventilation calculations were based only on the area that holds the refrigeration equipment and the maintenance area. The emergency exhaust fan may not have the minimum required capacity because the calculations did not include all areas open to the AMR.
- l. *Excessive storage of ammonia*: The facility is storing a minimum of 400 lbs. of ammonia inside the AMR.
- m. *Lack of safety showers*: There was no safety shower in the AMR.
- n. *Improperly placed discharge relief*: The ammonia system PRV discharges downward through a pipe that was not higher than the building roofline.
- o. *No emergency action plan*: The Facility did not provide an action plan detailing procedures for responding to an ammonia release.
- p. *Failure to submit EPCRA Tier II Reports for reporting years 2011-2015*: The Facility failed to submit the required Inventory Forms to the appropriate LEPC, the SERC, and the local fire department.

37. On November 10, 2016, EPA issued a Potential Notice of Violation and inspection report to Respondent, providing notice of potential General Duty Clause violations.

38. Respondent was responsive to the letter and began taking steps to address alleged deficiencies at the Facility. According to Respondent, Respondent has completed the following actions:

- a. Installed a higher ammonia relief stack with a diffuser that extends above the roof line and meets IIAR standards;
- b. Commissioned and mounted a set of P&IDs;
- c. Commissioned a full 3rd Party Mechanical Integrity Inspection and is addressing identified concerns;
- d. Designed and constructed a tight wall to separate the AMR from the dock and facility;

- e. Established a monthly maintenance contract with American Refrigeration Co. to ensure that ammonia detectors are inspected monthly and tested every six months per manufacturer recommendations;
- f. Waterproofed and maintained the exterior condenser;
- g. Purchased additional Personal Protective Equipment;
- h. Maintained and painted piping;
- i. Disposed of six empty 100-pound cylinders of ammonia;
- j. Re-calibrated the Vent Line Sensor and ordered a replacement sensor;
- k. Removed the ancillary maintenance equipment and combustible materials from AMR;
- l. Replaced degraded insulation;
- m. Removed four 100-pound cylinders of ammonia;
- n. Ordered replacement parts for the Variable Speed Drive that overheated during August 9, 2016 inspection;
- o. Drafted Emergency Plans;
- p. Undertook employee training;
- q. Filed a Tier II Report for RY 2015;
- r. Developed Limited Process Safety Management Program/ARM Program;
- s. Obtained a Massachusetts Hazardous Materials Processing Permit from the New Bedford Fire Department;
- t. Completed upgrade of the detection system, including audio/visual alarms, additional emergency shutdown/ventilation controls, and upgrades to system software;
- u. Protected pipes from physical damage;
- v. Improved signage and labeling;
- w. Installed a quick-closing valve on all system oil pots;
- x. Sealed machinery room doors and walls; and
- y. Installed safety showers and eyewash stations.

As a result of EPA's inspections and review of information provided by Respondent, EPA alleges the following violations:

IV. VIOLATIONS

COUNT I – FAILURE TO IDENTIFY HAZARDS IN VIOLATION OF THE CAA’S GENERAL DUTY CLAUSE

39. The allegations in Paragraphs 1 through 38 above are hereby realleged and incorporated herein by reference.

40. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing extremely hazardous substances have a general duty, in the same manner and to the same extent as Section 654 of Title 29, to, among other things, identify hazards which may result from accidental releases of such substances, using appropriate hazard assessment techniques.

41. As alleged in Paragraphs 23 through 28, Respondent owns or operates a stationary source that handled and stored anhydrous ammonia, an extremely hazardous substance. Accordingly, at the time of the violations alleged herein, Respondent was subject to the General Duty Clause.

42. Industry standards and guidelines with respect to ammonia refrigeration systems are found in, among other places, ANSI/IIAR Standard 2, ANSI/ASHRAE Standard 15, IIAR bulletins, the IIAR ARM Program, and other materials consistently relied upon in the refrigeration industry.

43. The recommended industry practice and standard of care for identifying, analyzing, and evaluating potential hazards associated with ammonia refrigeration systems of the same size and type as Respondent’s System is to use, among other things, standard, industry-developed hazard identification checklists, a “What If” analysis, or a Hazard and Operability (a/k/a “HAZOP”) study. IIAR has developed checklists for this purpose. See, e.g., IIAR ARM

Program, Section 10 and Appendix 10.1. See also IIAR's Bulletin No. 110, Startup, Inspection, and Maintenance of Ammonia Mechanical Refrigeration Systems, Section 5.2.1; and U.S. Environmental Protection Agency, *Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1)*, May 2000 ("EPA's GDC Guidance"), Section 2.3.1, currently available at <https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf>.

44. According to EPA's GDC Guidance, the General Duty Clause's duty to identify hazards that may result from hazardous releases includes determining (a) the intrinsic hazards of the chemicals used in the processes, (b) the risks of accidental releases from the processes through possible release scenarios, and (c) the potential effect of these releases on the public and the environment. The document that contains this analysis is often referred to as a process hazard analysis or process hazard review ("Process Hazard Review").

45. As described in Paragraphs 32 through 36 above and in Attachment A, EPA alleges that EPA Inspectors and the Expert observed potentially dangerous conditions at the Facility that indicated a failure to identify hazards associated with the System.

46. Moreover, Respondent was not able to produce any Process Hazard Review while the EPA inspectors were at the Facility during the inspection.

47. Accordingly, EPA alleges that Respondent violated the General Duty Clause's requirement to identify hazards associated with the refrigeration system using industry-recognized hazard assessment techniques, in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

**COUNT II - FAILURE TO DESIGN AND MAINTAIN A SAFE FACILITY IN
VIOLATION OF THE CAA'S GENERAL DUTY CLAUSE**

48. The allegations in Paragraphs 1 through 47 are hereby realleged and incorporated herein by reference.

49. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a second general duty – to, in the same manner and to the same extent as Section 654 of Title 29, design and maintain a safe facility, taking such steps as are necessary to prevent releases.

50. The recommended industry practice and standard of care for designing and maintaining a safe facility with an ammonia refrigeration system of the same size and type as Respondent's System is to base design considerations upon applicable design codes, federal and state regulations, and industry guidelines to prevent releases or minimize their impacts as well as to develop and implement standard operating procedures, maintenance programs, personnel training programs, management of change practices, incident investigation procedures, self-audits, and preventative maintenance programs. IIAR, ASHRAE and others have developed standards and guidelines for this purpose, such as the IIAR Bulletins, ANSI/IIAR Standard 2, the IIAR ARM Program, and ANSI/ASHRAE Standard 15. See also EPA's GDC Guidance, Section 2.3.2 and National Fire Protection Association 1, Fire Code, Section 53.

51. At all times relevant to the allegations in this CAFO, Respondent failed in its general duty to design and maintain the Facility as a safe facility, taking such steps as were necessary to prevent a release of an extremely hazardous substance, in at least the respects listed in the subparagraphs below. Attachment A provides more information about each listed hazard, such as examples of industry standards of care that address each type of hazard, and an

explanation of how each hazard could result in a harmful release or exacerbate the consequences of a release. The industry standards of care illustrate how the ammonia refrigeration industry has recognized hazards associated with designing and maintaining an ammonia refrigeration system and developed measures to reduce such hazards. Some of the hazards listed in the subparagraphs below also have resulted in violations of the General Duty Clause's third duty, as further discussed in Count III.

- a. ***Inadequate information available about System:*** At the time of the EPA inspection, inadequate documentation was available about the technology and equipment of the ammonia refrigeration system. For example, there was no Process and Instrumentation Diagram or floor plan that would allow Facility personnel, inspectors, or emergency responders to identify the location of key System equipment, piping, and valves. Such information is critical to conducting a Process Hazard Review, writing standard operating procedures, and setting up an appropriate preventative maintenance program. Attachment A, pages 1 to 2, lists examples of industry standards of care for documenting ammonia refrigeration system information.
- b. ***Piping not protected from physical damage:*** There were no safeguards in place to protect piping on the mezzanine level and evaporators in the cold storage freezer that was at risk of damage due to close proximity to pallets and potentially fork lifts. The mezzanine and freezer room contained pallets with drums on them, and the only way to get palleted materials on the mezzanine level was via forklift and hydraulic jack lift in close proximity to ammonia piping and evaporators. This risks an ammonia release from accidental damage to the system components.

Attachment A, pages 6 to 7, lists examples of industry standards of care for safeguarding refrigeration system equipment.

- c. ***Widespread corrosion:*** At the time of the EPA inspection, there were severely corroded pipes and components throughout the facility, risking ammonia release if corrosion continues to the point of failure. EPA Inspectors found surface rust on specific uninsulated pipes and piping components, reducing the useful life of the equipment. Multiple sections of uninsulated piping showed signs of surface rust. Portions of the insulation on a pressure vessel were missing or damaged, and ice had built up underneath the insulation of a surrounding tank and piping. There was substantial corrosion on the support beams supporting the condensers.

Attachment A, pages 7 to 10, lists examples of industry standards of care for avoiding corrosion.

- d. ***Combustible materials and extra ammonia in AMR:*** At the time of the EPA inspection, there were combustible materials stored in the machinery room, including at least 400 pounds of extra ammonia stored in cylinders and portable welders. These conditions increase the risk of fire or explosion in the event of an ammonia release because ammonia is flammable at certain concentrations. A fire or explosion also could cause a much bigger release of ammonia than would otherwise occur. Accordingly, this condition also was a violation of the duty to minimize consequences of releases that do occur, as alleged in Count III, below.

Attachment A, pages 13 to 15, lists examples of industry standards of care for fire safety in ammonia machinery rooms and for use and storage of ammonia cylinders in ammonia machinery rooms.

- e. ***Inadequate visual/audible alarms and detectors:*** At the time of the EPA inspection, the ammonia detection system alarm outside of the primary door to the AMR did not contain an audible alarm. There were no other audible/visual alarms or detectors in the Facility. Ammonia detectors and alarms provide early warning that a release is taking place, enabling a quick system shutdown and response, and protecting workers, emergency responders, and the public from a larger release. Failure to have a vapor detector also was a violation of the duty to minimize consequences of releases that do occur, as alleged in Count III, below. Attachment A, page 10 to 11, lists examples of industry standards of care for visual and audible alarms and detectors in ammonia machinery rooms.
- f. ***Inadequate signage and labeling on System:*** There was inadequate signage and labeling on various parts of the System, which meant that workers maintaining the system and emergency responders responding to releases did not have the information needed to safely perform their jobs. Signs and posted information can provide a level of protection in addition to training and operating procedures, keeping workers from inadvertently causing releases and allowing responders to quickly understand the System. Examples of deficient labeling and signage include the following:
- i. There was not a legible, permanent sign anywhere on the System indicating the name and address of the installer, the refrigerant number and amount of refrigerant in the System, lubricant identity and amount, and the field test pressure(s) applied;

- ii. The piping and valves were not labeled to indicate contents, direction of flow, physical state (i.e., liquid or vapor), pressure level (i.e., high or low). Nor were there distinctive markers for other system components (e.g., high pressure receiver, accumulator, etc.);
- iii. The door to the machinery room lacked appropriate hazard warning labels and signage (including emergency procedures), increasing the chance of inadvertent exposure to ammonia and potentially frustrating efforts to react quickly and safely during an ammonia release.
- iv. There were no tags or other documentation for pressure relief valves showing the date of installation and when they had last been inspected.
- v. The ammonia detection system alarm outside of the primary door to the AMR was not labeled.
- vi. Access openings on condensers lacked confined space warnings.

Some of the labeling and signage deficiencies also violated the duty to minimize consequences of releases that do occur, as alleged in Count III, below. Examples of industry standards of care for a permanent, legible sign on the System are provided in Attachment A, page 5; on pages 2 to 4 for piping and component labeling; on page 4 for door labeling; on pages 10 to 11 for alarm labeling; and on page 18 for confined-space labeling.

- g. **Poor design of oil drain system:** At the time of the EPA inspection, Respondent did not have an oil drain system that was self-closing, a manual quick-closing emergency stop valve, or other suitably engineered system. A spring-loaded valve would immediately close the System in the event of a problem during oil draining,

minimizing a release of ammonia and reducing the likelihood of catastrophic injury to a mechanic draining oil from the System. This condition also was a violation of the duty to minimize consequences of releases that do occur, as alleged in Count III, below. Attachment A, page 10, lists examples of industry standards of care for oil drain systems.

- h. ***Inadequate ventilation capacity:*** The Facility's maximum ventilation calculations were based on the rectangular room that includes the refrigeration equipment and the maintenance area. The calculations did not include the other areas of the Facility that are open to the AMR without separation, including the loading dock/hallway and the processing room. Due to the inaccurate calculations, the installed emergency exhaust fan may not meet ventilation requirements. Inadequately-sized pressure relief valves and header could result in a buildup of ammonia vapors to levels that present significant inhalation and dermal hazards or that risk causing fire or explosion. The buildup of dangerous levels of toxic and flammable vapors in a machinery room can delay the entry of emergency response personnel to shut off the system, resulting in a prolonged release. Accordingly, in addition to being a violation of the duty to design and maintain a safe facility, this condition also was a violation of the duty to minimize consequences of releases that do occur, as alleged in Count III, below. Attachment A, pages 12 to 13, lists examples of industry standards of care for ventilating ammonia machinery rooms.

**COUNT III- FAILURE TO MINIMIZE THE CONSEQUENCES OF
ACCIDENTAL RELEASES THAT DO OCCUR IN VIOLATION OF THE CAA'S
GENERAL DUTY CLAUSE**

52. The allegations in Paragraphs 1 through 51 are hereby realleged and incorporated herein by reference.

53. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a third general duty -- to, in the same manner and to the same extent as Section 654 of Title 29, minimize the consequences of any accidental releases of anhydrous ammonia which do occur.

54. Industry standards and guidelines for minimizing the consequence of an accidental release from ammonia refrigeration systems are found, among other things, in the IIAR ARM Program, ANSI/IIAR Standard 2, ANSI/ASHRAE Standard 15, IIAR bulletins, and other materials (including updates and revisions) consistently relied upon by refrigeration experts. They include design and maintenance measures to minimize the severity and duration of releases that do occur, such as, among other things, standards for vapor detection, alarms, equipment and door labeling, emergency shut-off switches, ventilation, keeping combustible materials and electrical hazards away from ammonia, safe oil drain systems, tight construction of machinery rooms; designing safe pressure relief valves and associated piping; reducing obstructions for responders; and having emergency eye wash stations and showers.

55. In addition, EPA's General Duty Clause Guidance discuss the standard of care for emergency response planning at facilities that have extremely hazardous substances, such as anhydrous ammonia. The recommended industry practice and standard of care for emergency planning at ammonia refrigeration systems of this size is to inter alia, design and implement an

emergency response plan that specifically addresses release scenarios developed from hazard analyses and facility-based knowledge; identifies emergency response equipment and its whereabouts, includes communication with and involvement of emergency planning and response officials (e.g., the Local Emergency Response Planning Committee); incorporates accident training for employees; and involves conducting periodic exercises to ensure that the plan is adequate to address emergency scenarios. EPA's GDC Guidance at 16-18, referencing items from EPCRA Section 303(c), 42 U.S.C. § 11002. IIAR, ANSI, ASHRAE, and other organizations have developed standards and guidelines for this purpose, including, among other things, ANSI/IIAR Standard 2, the IIAR ARM Program (2005), and ANSI/ASHRAE Standard 15. For example, Section 7 of IIAR's ARM Program for smaller ammonia refrigeration systems provides that refrigeration facilities should develop an up-to-date, facility specific emergency response plan that accurately describes the facility and the potentially affected population. Such a plan should include, among other items, types of evacuation; evacuation procedures and routes; procedures for employees who remain to maintain critical operations; procedures for accounting for evacuated employees; any employee's rescue and medical duties; and means for reporting emergencies. An adequate emergency response program should also identify procedures for responding to an ammonia release, including shutting the system down; starting emergency ventilation; and coordinating with relevant off-site emergency responders. IIAR's ARM Program, Section 7.

56. At all times relevant to the allegations in this CAFO, Respondent failed in its general duty to minimize the consequences of an accidental release of an extremely hazardous substance at or from the Facility, in accordance with applicable industry standards for systems of

this size, in at least the following respects. Examples of industry standards of care are found in Attachment A.

Design and maintenance measures to minimize releases that do occur

57. ***Inadequate emergency ventilation system in machinery room:*** As explained in Count II, the ammonia machinery room had an inadequate emergency ventilation system. Without adequate ventilation, vapors are more likely to build up to levels that are hazardous to human health or that risk causing fire or explosion. Moreover, a buildup of vapors makes it difficult to turn off equipment in the machinery room. Responders and employees cannot enter the machinery room to turn off the equipment until vapors have been ventilated, resulting in a prolonged release.

58. ***Inadequate visual/audible alarms and detectors:*** As explained in Count II, the ammonia detection system alarm outside of the primary door to the AMR did not contain an audible alarm. There were no other audio/visual alarms or detectors in the Facility. Ammonia detectors and alarms provide early warning that a release is taking place, enabling quick response and protecting workers, emergency responders, and the public from a larger release.

59. ***Poor design of oil drain system:*** As discussed in Count II, Respondent did not have an oil drain system that was self-closing, a manual quick-closing emergency stop valve, or other suitably engineered system. A spring-loaded valve would immediately close the System in the event of a problem during oil draining, minimizing a release of ammonia and reducing the likelihood of catastrophic injury to a mechanic draining oil from the System.

60. ***Combustible materials and extra ammonia in AMR:*** As discussed in Count II, there were combustible materials stored in the machinery room, including at least 400 pounds of extra ammonia stored in cylinders. These conditions exacerbate the risk of fire or explosion if

there is an ammonia release because ammonia is flammable at certain concentrations. A fire or explosion could result in a much bigger release of ammonia than would otherwise occur.

61. ***Inadequate signage and labeling on System:*** As discussed in Count II, above, there was inadequate signage and labeling on various parts of the System, including doors, pipes, valves and equipment. The lack of signage and labeling could prevent workers and emergency responders responding to releases from having the information they would need to safely and timely perform their jobs. Signs and posted information provide a level of protection in addition to worker training and operating procedures.

62. ***Machinery room door and walls not sealed tight:*** At the time of the EPA inspection, the AMR was not sealed off from other parts of the facility with tight-fitting construction. A door from the chemical storage rooms into the AMR had a gap at the bottom of the door and was not tight-fitting. In the event of a release, this risks the spread of ammonia vapors to other parts of the Facility and outdoors, putting employees and responders at risk. Attachment A, pages 15 to 16, lists examples of industry standards of care for machinery room doors and construction.

Emergency response and preparedness planning to minimize releases

63. ***Inadequate emergency action plan or coordination with fire department:*** Respondent did not report the presence and amounts of ammonia (or other chemicals) to emergency response and planning agencies as required by EPCRA. Also, the Facility had no emergency action or response plan. Examples of industry standards of care for emergency planning and coordination are found in Attachment A at page 18 and in paragraph 57, above.

64. ***Lack of safety showers:*** At the time of the EPA inspection, there were no safety showers inside or directly outside of the AMR. There was an eyewash station inside the AMR

The lack of adequate safety showers and eyewash stations would make it difficult for emergency responders and workers to safely respond to releases and wash off ammonia, a corrosive and toxic chemical, in the event of exposure. Examples of industry standards for the placement of eyewashes and safety showers are found in Attachment A at page 16.

65. ***Improperly placed discharge relief:*** At the time of the EPA inspection, the ammonia system PRV vent header piping discharged through a gooseneck pipe that exits the east wall of the AMR. The discharge point for the pipe was not higher than building roofline, and the line discharged downward. Improperly placed discharge reliefs can result in ammonia being sprayed on people during a release, further exacerbating the consequences of a release. Examples of industry standards for the placement of pressure relief device discharge piping are found in Attachment A on page 17.

66. Accordingly, Respondent violated the requirement to minimize the consequences of any accidental release of anhydrous ammonia which does occur, as required under the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), by failing to: notify emergency planners and responders about the presence and amount of ammonia on-site; develop and implement adequate emergency response procedures; have adequate ventilation; have adequate detector and alarm systems; have a proper oil draining system; have proper signage on machinery room doors, piping, and System components; control fire hazards in and around the AMR; seal the machinery room and doors tightly; properly place discharge relief pipes; and have eye wash stations and showers inside and outside of the AMR.

COUNT V: FAILURE TO SUBMIT CHEMICAL INVENTORY FORMS IN COMPLIANCE WITH EPCA SECTION 312

67. Complainant realleges and incorporates by reference Paragraphs 1 through 66.

68. Pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370, commencing on or before the March 1 following the date upon which Respondent was required to prepare or have available an SDS for anhydrous ammonia and sulfuric acid at or in connection with the Facility, and on or before the March 1 of each year thereafter, Respondent was required to submit “emergency and hazardous chemical inventory forms,” containing the data regarding anhydrous ammonia and sulfuric acid at the Facility, required under Section 312, for the preceding calendar year (“Inventory Form”), to the appropriate LEPC, the SERC, and the fire department with jurisdiction over the facility.

69. At the time of the EPA inspection, 8,400 pounds of ammonia and 1,007 pounds of sulfuric acid were present at the facility. Respondent had not reported the presence of either hazardous chemical at the Facility.

70. Specifically, Respondent was required to submit Inventory Forms to the appropriate LEPC, the SERC, and the fire department with jurisdiction over the Facility, at least on or before the following dates:

- a. March 1, 2012 for reporting year (“RY”) 2011;
- b. March 1, 2013 for RY 2012;
- c. March 1, 2014 for RY 2013;
- d. March 1, 2015 for RY 2014; and
- e. March 1, 2016 for RY 2015

71. At the time of the EPA inspection, Respondent had never submitted Inventory Forms to the appropriate LEPC, the SERC, and the fire department with jurisdiction over the Facility.

72. Pursuant to EPCRA Section 325(c)(3), 42 U.S.C. § 11045(c)(3), each day that Defendant failed to timely submit an Inventory Form for anhydrous ammonia to the appropriate LEPC, SERC, and fire department with jurisdiction over the Facility, constitutes a separate violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

73. Accordingly, Respondent's failure to submit the required Inventory Forms for reporting years 2011, 2012, 2013, 2014, and 2015 violated Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370.

V. TERMS OF SETTLEMENT

74. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent and its officers, directors, agents, successors, and assigns.

75. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states a claim upon which relief may be granted against Respondent. Respondent hereby waives any defenses it might have as to jurisdiction and venue relating to the violations alleged in this CAFO.

76. Respondent neither admits nor denies the specific factual allegations contained in Section III of this CAFO or the violations alleged in Section IV of this CAFO. Respondent consents to the assessment of the penalty stated herein.

77. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its right to appeal the Final Order.

78. Respondent certifies that it is currently operating the Facility in compliance with Section 312 of EPCRA, 42 U.S.C. § 11022 and is currently upgrading the Facility to be in compliance with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Such compliance includes complying with the key safety measures included in Attachment B. Respondent has

documented that many of the alleged violations have been fixed, and an Administrative Compliance Order between the parties issued pursuant to Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), requires Respondent to address the remaining alleged violation.

79. Respondent consents to the issuance of this CAFO hereinafter recited and consents for purposes of settlement to the performance of the Supplemental Environmental Projects (“SEP”) described in Paragraphs 80 through 87, below, and to the payment of the civil penalty cited in Paragraphs 92 through 96, below.

Supplemental Environmental Project

80. Respondent shall satisfactorily complete the SEP described below and in the Letter attached to this CAFO as Attachment C, which is incorporated herein by reference. The Parties agree that the SEP is intended to secure significant environmental and public health protection and benefits by enhancing the hazardous materials response capabilities of the Fire Department for the Town of New Bedford, MA. Respondent has selected the New Bedford Fire Department to be the SEP recipient.

- a. Respondent shall provide emergency response equipment to the New Bedford Fire Department according to the specifications described in Attachment C. The purpose of this SEP is to enhance the chemical spill response capabilities, including those for an ammonia release, for local first responders.
- b. The cost of this SEP is approximately \$99,000.
- c. Respondent shall provide the emergency response equipment described in Attachment C to the New Bedford Fire Department in three installments within twelve months of issuance of this CAFO.

- d. "Satisfactory completion" of the SEP shall mean: (a) providing the New Bedford Fire Department with emergency response equipment according to the specifications described in Attachment C and the deadline described herein; (b) confirming that the purchased equipment is functional and that New Bedford Fire Department personnel are trained to use it; and (c) spending approximately \$99,000 to carry out the SEP.
- e. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 82, below.
- f. Within seven (7) days of completing each of the three separate installments of the SEP, Respondent shall send an electronic mail message to Len Wallace, Wallace.IILen@epa.gov, and Chelsea Dixon, Dixon.Chelsea@epa.gov, to confirm that the new equipment has been purchased and given to the New Bedford Fire Department. Upon completion of the SEP, Respondent shall submit a SEP Completion Report, as specified in Paragraph 82, below.
- g. With regard to the SEP, Respondent hereby certifies the truth and accuracy of each of the following:
 - h. That all cost information provided to EPA in connection with EPA's approval of the Sep is complete and accurate and that Respondent, in good faith, estimates that the cost to complete the SEP is approximately \$99,000;
 - i. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, and is

not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- j. That the SEP is not a project that Respondent was planning or intending to perform or implement other than in settlement of the claims resolved in this CAFO;
- k. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;
- l. That Respondent will not receive any reimbursement for any portion of the SEP from any other person;
- m. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
- n. That Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP; and
- o. That Respondent has inquired of the New Bedford Fire Department whether either is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the New Bedford Fire Department that it is not a party to such a transaction.
- p. For the purpose of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

81. Respondent hereby waives any confidentiality rights it has under 26 U.S.C. § 6103 with respect to such SEP costs on its tax return and on the information supporting its tax returns. This waiver of confidentiality is solely as to EPA and the Department of Justice and solely for the purpose of ensuring the accuracy of Respondent's SEP cost certification.

82. As described in Paragraph 80, above, Respondent shall submit a SEP Completion Report to EPA within sixty (60) days of completion of the SEP. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented, including a list of the equipment and maintenance contract;
- b. A description of any implementation problems encountered and the solutions thereto;
- c. Itemized costs, documented by copies of invoices, purchase orders, receipts, canceled checks, or wire transfer records that specifically identify and itemize the individual costs associated with the SEP. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such;
- d. Certification that each SEP has been fully completed;
- e. A description of the environmental and public health benefits resulting from the implementation of the SEP;
- f. A statement that no tax returns filed or to be filed by Respondent will contain deductions or depreciations for any expense associated with the SEP; and

- g. The following statement, signed by Respondent's officer, under penalty of law, attesting that the information contained in the SEP Completion Report is true, accurate, and not misleading:

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

83. Respondent shall submit all notices and reports required by this CAFO, by first class mail or any other commercial delivery service, to:

Len Wallace, Environmental Scientist
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: OES 05-1
Boston, MA 02109-3912
Wallace.Len@epa.gov

with a copy by electronic mail to:

Chelsea Dixon, Attorney-Advisor
U.S. EPA, Office of Enforcement and Compliance Assurance
Dixon.Chelsea@epa.gov

84. Respondent shall maintain, for a period of three (3) years from the date of submission of each SEP completion Report, legible copies of all research, data, and other information upon which the Respondent relied to write the SEP Completion Reports and shall provide such documentation within fourteen (14) days of a request from EPA.

85. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO, and the Respondent shall become liable for stipulated penalties in accordance with Paragraph 88, below.

86. After receipt of the SEP Completion Report described in Paragraph 82, above, EPA will notify Respondent in writing: (i) indicating that the project has been completed satisfactorily; (ii) identifying any deficiencies in the SEP Completion Report itself and granting Respondent an additional thirty (30) days to correct any deficiencies; or (iii) determining that the project has not been completed satisfactorily and seeking stipulated penalties in accordance with Paragraph 88, below.

87. If EPA elects to exercise options (ii) or (iii) in Paragraph 86, above, Respondent may object in writing to the notice of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notice, except that this right to object shall not be available if EPA found that the project was not completed satisfactorily because Respondent failed to implement or abandoned the project. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's objection to reach agreement on changes necessary to the SEP or SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period as may be extended by the written agreement of both EPA and Respondent, EPA shall provide a written statement of its decision on the adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any reasonable requirements imposed by EPA that are consistent with this CAFO as a result of any failure to comply with the terms of this CAFO. In the event that the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent in accordance with Paragraph 88, below.

Stipulated Penalties

88. In the event that respondent fails to satisfactorily complete the SEP as outlined in Paragraphs 80 through 87 and in Attachment C, Respondent shall be liable for stipulated penalties in accordance with the provisions set forth below. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

- a. If EPA determines that Respondent completely or substantially failed to implement the SEP in accordance with this CAFO, Respondent shall pay a stipulated penalty in the amount of 125% of the estimated cost for such project;
- b. If Respondent spends less than \$99,076 on the SEP, but EPA determines that Respondent otherwise satisfactorily completes the SEP, Respondent shall only be required to pay a stipulated penalty in the amount equal to the difference between \$99,076 and the actual amount spent on the SEPs, plus interest from the effective date of this CAFO;
- c. After giving effect to any extensions of time granted by EPA, Respondent shall pay a stipulated penalty in the amount of \$200 for each day the following submissions are late: (a) each electronic mail message required by Paragraph 83, above; and (b) the SEP Completion Report required by Paragraph 82, above;
- d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 95, below. Interest and late charges shall be paid as stated in Paragraphs 97 and 98, below.

89. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

90. Pursuant to 31, U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim, as further discussed in Paragraphs 97 and 98, below.

91. Respondent agrees that any public statement, oral or written, in print, film, or other media, made by Respondent, contractors, or third-party implementers making reference to a SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, *In the Matter of Finicky Pet Food, Inc.*, taken by the U.S. Environmental Protection Agency to enforce federal laws."

Penalty Payment

92. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and taking into account the relevant statutory penalty criteria (particularly the economic impact of the penalty on the business), the facts alleged in this CAFO, the SEP, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of \$89,140 for the violations alleged in this matter.

93. Respondent consents to the issuance of this CAFO and to the payment of the civil penalty cited in paragraph 92.

94. Respondent shall pay the penalty of \$89,140 in two installments over four months from the effective date of this CAFO. The first payment of \$8,000 shall be made within thirty (30) days of the effective date of this CAFO. The second and final payment of \$82,154.25, an amount that includes \$1,014.25 in interest at a rate of five percent per month shall be made within 120 days of the effective date of this CAFO. If the due date for any payments falls on a weekend or federal holiday, then the due date is the next business day. The date a payment is

made is considered to be the date processed by U.S. Bank, as described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

95. Respondent shall make each payment due under this CAFO according to the following instructions:

a. Respondent shall make each payment in the amount specified herein by submitting a company, bank, cashier's, or certified check, payable to the order of the "Treasurer, United States of America," to:

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

b. Respondent may make payment by electronic funds transfer instead of check via:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

c. Respondent shall include the case name and docket numbers ("*In re. Finicky Pet Food, Inc.*, Docket Nos. CAA-01-2018-0019, EPCRA-01-2018-0020") on the face of each check or wire transfer confirmation. In addition, at the time of payment, Respondent shall simultaneously send notice of the payment and a copy of each check or electronic wire transfer confirmation to:

Wanda I. Santiago
Regional Hearing Clerk (Mail Code ORA 18-1)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Chelsea Dixon, Attorney-Advisor
U.S. EPA, Office of Enforcement and Compliance Assurance
1200 Pennsylvania Avenue NW
Mail Code: 2261A
Washington, DC 20460

96. If Respondent fails to make any of the payments required under this CAFO by the required due dates, all remaining installments shall become immediately due and payable as of the missed payment date. Interest as calculated in Paragraphs 97 and 98 on such unpaid penalty amounts shall accrue from the missed payment date until the total amount due has been received by the United States. Respondent shall be liable for such amount regardless of whether EPA has notified Respondent of its failure to pay or made a demand for payment. All payments to the United States under this paragraph shall be made by company, bank, cashier's, or certified check, or by electronic funds transfer, as described in Paragraph 95.

97. **Collection of Unpaid EPCRA Penalty:** Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that any portion of the civil penalty amount relating to the alleged EPCRA violations is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31

C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

98. **Collection of Unpaid CAA Civil Penalty:** In the event that any portion of the civil penalty amount relating to the alleged CAA violations is not paid when due without demand, pursuant to Section 113(d)(5) of the CAA, Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid when due. In that event, interest will accrue from the due date at the “underpayment rate” established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorney’s fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

99. The civil penalty under this CAFO and any interest, nonpayment penalties, and other charges described herein shall represent penalties assessed by EPA, and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.62-21 of the Internal Revenue Code, 26 U.S.C. § 162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

100. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of the actions in paragraph 38 and 79 is restitution or required to come into compliance with law.

101. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA and Section 325(c) of EPCRA for the violations alleged herein. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, or local law.

102. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

103. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which the Complaint and this CAFO is based, or for Respondent's violation of any applicable provision of law.

104. Nothing in this CAFO 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.

105. This CAFO 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.

106. The parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other parties pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

107. 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.

108. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

109. The terms, conditions, and requirements of this CAFO may not be modified without the written agreement of all parties and approval of the Regional Judicial Officer.

110. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

111. Each undersigned representative of the parties certifies that he or she is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR RESPONDENT FINICKY PET FOOD, INC.:



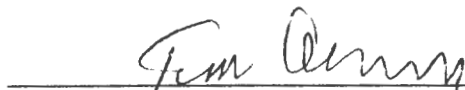
Name: *William Scheffield*

Title: *President*

Finicky Pet Food, Inc.

Date: *8-22-18*

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



Tim Conway, Acting Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date: *8/29/18*

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of)	
)	
Finicky Pet Food, Inc.)	Docket Nos.:
)	CAA-01-2018-0019
68 Blackmer Street)	EPCRA-01-2018-0020
New Bedford, MA 02744)	
)	
Respondent.)	
)	
Proceeding under Section 113(d) of the Clean)	
Air Act, 42 U.S.C. § 7413(d),)	
and Section 325(c) of the)	
Emergency Planning and Community)	
Right-to-Know Act, 42 U.S.C. § 11045(c))	
)	

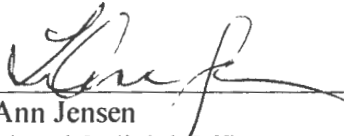
FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) and 22.31 of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement is hereby ratified and incorporated by reference into this Final Order.

As described in paragraph 94 of the Consent Agreement, the Respondent, Finicky Pet Food Inc., agreed to pay the civil penalty amount (\$89,140) over four months in installment payments. On September 20, 2018, counsel for the parties filed a joint statement representing that the installment payment plan was developed in accordance with 40 C.F.R. § 13.11(a)(2), 40 C.F.R. § 13.18, and EPA's *Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Matter (June 2015)*.

Respondent is hereby ordered to comply with the terms of the above Consent Agreement,
which will be effective on the date is filed with the Regional Hearing Clerk.

Date: 9/20/18



LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1