

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

Received by
EPA Region 1
Hearing Clerk

In the Matter of:

Crystal Ice Co., Inc.
178 Front Street
New Bedford, Massachusetts 02740

Respondent.

Proceeding under Section 113(d) of the Clean
Air Act

Docket No.
CAA-01-2022-0024

I. PRELIMINARY STATEMENT

1. The issuance of this Consent Agreement (“Consent Agreement” or “Agreement”) and attached Final Order (“Final Order” or “Order”), in accordance with 40 C.F.R. § 22.13(b), simultaneously commences and concludes an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region 1 (“EPA”).
3. Respondent, Crystal Ice Co., Inc., is a Massachusetts corporation doing business in the state of Massachusetts.
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement and the attached final order without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order (“CAFO”).

II. JURISDICTION

5. This Consent Agreement is entered into under Sections 113(a)(3)(A) and (d) of the Act, as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules, 40 C.F.R. Part 22.
6. EPA and the United States Department of Justice jointly determined that this matter, is appropriate for an administrative penalty assessment in accordance with 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4.

III. GOVERNING LAW AND REGULATIONS

7. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs to prevent and minimize the consequences of accidental releases of certain regulated substances. The promulgated regulations are found at 40 C.F.R. Part 68 (“Part 68”).
8. Forty C.F.R. § 68.130 lists the substances regulated under Part 68 (“RMP chemicals” or “regulated substances”). This list identifies anhydrous ammonia as an RMP chemical with a threshold quantity of 10,000 pounds.
9. A “process” is defined by 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.
10. Pursuant to 40 C.F.R. § 68.10, each process in which a regulated substance is present in more than a threshold quantity (“covered process”) is subject to one of three risk management programs. A covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in a specified NAICS code or subject to the Occupational Safety and Health Administration (“OSHA”) process safety management (“PSM”) standard at 29 C.F.R. § 1910.119.
11. Pursuant to 40 C.F.R. § 68.12(a) and (d), the owner or operator of a stationary source with a process subject to Program 3 requirements must, among other tasks, submit a Risk Management Plan (“RMP”), develop a management system to implement the risk management program, and implement the release prevention requirements of 40 C.F.R. §§ 68.65-87.
12. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), allow EPA to assess civil penalties for violations of Part 68. Forty C.F.R. Part 19 sets out the statutory penalties as adjusted for inflation.

IV. ALLEGED VIOLATIONS

13. Respondent owns and operates an ice-making plant (the “Facility”) in New Bedford, Massachusetts.
14. Respondent is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), against whom an administrative order may be issued under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3).
15. 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), and 40 C.F.R. § 68.3.

16. At all times relevant to the violations alleged herein, Respondent was the “owner or operator” of the Facility.
17. Respondent uses anhydrous ammonia in a refrigeration “process,” as defined by 40 C.F.R. § 68.3, in a series of interconnected pipes and vessels at the Facility (the “Process”).
18. In 2016, Respondent filed a Program 3 RMP for the Process and reported that it used 22,000 pounds of anhydrous ammonia.
19. The anhydrous ammonia Process at the Facility is a “covered process” subject to the RMP provisions of Part 68.
20. In accordance with 40 C.F.R. § 68.10(a) and (f)-(h), Respondent’s use, storage, and handling of anhydrous ammonia in the Process is subject to the requirements of RMP Program 3.
21. In light of the potential hazards posed by the mishandling of anhydrous ammonia, industry trade associations have issued standards outlining the recognized and generally accepted good engineering practices (“RAGAGEP”) in the ammonia refrigeration industry. The standards of care are set out in Attachment A to this CAFO.
22. On April 3, 2018, an ammonia release occurred at the Facility.
23. Following Respondent’s report of the release to the National Response Center, EPA representatives visited the Facility on April 4 and 19, 2018 (the “Inspection”), and reviewed documents to assess Respondent’s compliance with Part 68.
24. Complainant alleges the following violations of 40 C.F.R. Part 68:

Count 1: Failure to Comply with Safety Information Requirements

25. Complainant realleges and incorporates by reference Paragraphs 1 through 24 of this document.
26. Pursuant to 40 C.F.R. § 68.65(a), the owner or operator of a Program 3 process is required, among other things, to compile written process safety information before completing the Process Hazard Analysis. This includes documenting information pertaining to the hazards of the RMP chemical in the process and information pertaining to the technology and equipment of the process. Pursuant to 40 C.F.R. §§ 68.65(d)(2) and (3), the owner or operator must also document that the equipment complies with recognized and generally accepted good engineering practices and document that any equipment designed according to outdated standards is designed, maintained, inspected, tested, and operated in a safe manner.

27. Respondent failed to document that its equipment complied with recognized and generally accepted good engineering practices (“RAGAGEP”) and that equipment designed according to outdated standards was designed, maintained, inspected, tested, and operated in a safe manner. The primary RAGAGEP for the ammonia refrigeration industry is issued by the International Institute of Ammonia Refrigeration, American Society of Heating, Refrigerating and Air-Conditioning Engineers, and fire code associations.¹ Specifically:
- (a) In several areas, the ammonia machinery rooms (“AMRs”) were inadequately isolated to prevent ammonia releases from spreading to other areas. For example, in several places, the facility lacked tight-fitting doors, and the second floor AMR was not constructed to isolate releases;²
 - (b) Ventilation in several areas, including the first and second floor AMRs, was inadequate to clear ammonia releases and ensure that expelled ammonia-contaminated air would not be brought back into the building;³
 - (c) Several areas lacked required audio/visual alarms, and signage on existing alarms was sometimes confusing;⁴
 - (d) The facility lacked sufficient emergency stop buttons in some places. In one place, the e-stop was improperly labeled and could (and did) shut down emergency ventilation during a release;⁵
 - (e) There was no shower/eyewash outside the second floor AMR of the Block Ice Building;⁶
 - (f) Labeling on ammonia piping was inadequate in numerous places, often not providing information on the presence of ammonia, its physical state and flow direction;⁷

¹ In collaboration with the American National Standards Institute, the International Institute of Ammonia Refrigeration (“IIAR”) has issued (and updates) “Standard 2: *Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems (“IIAR 2”)*; Standard 9: *Standard for Minimum System Safety Requirements for Existing Closed-Circuit Ammonia Refrigeration Systems (“IIAR 9”)*; IIAR Bulletin No. 114, *Guidelines for Identification of Ammonia Refrigeration Piping and Components (“IIAR Bull. 114”)*, and other standards and guidances. Also, in collaboration with the American National Standards Institute, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”) has issued “Standard 15: *Safety Standard for Refrigeration Systems (“ASHRAE 15”)*. These standards are consistently relied upon by refrigeration experts and are often incorporated into state building and mechanical codes.

² See, e.g., IIAR 2-2014 §§ 6.2.1 and 6.10; IIAR 2-2008 § 13.3.3; IIAR 9-2020 §§ 7.3.2.1 and 7.3.9.2; ASHRAE 15-2007 § 8.11.2.

³ See, e.g., IIAR 2-2014 § 6.14; IIAR 2-2008 § 13.2; IIAR 9-2020 §§ 7.3.2.5; 7.4.2.1; 7.3.14.3; ASHRAE 15-2007 § 8.11.4.

⁴ See, e.g., IIAR 2-2014 §§ 6.13.1 and 6.15.2; IIAR 2-2008 § 13.2.1.3; IIAR 9-2020 §§ 7.2.9.1.2, 7.3.12.1.3, and 7.3.12.6; ASHRAE 15-2007 § 8.11.2.1.

⁵ See, e.g., IIAR 2-2014 §§ 6.1.2.1, 6.12.2, and 6.14.7.3; IIAR 2-2008 §§ 13.3.1.6 and 13.2.3.1; IIAR 9-2020 § 7.3.11; ASHRAE 15-2007 § 8.12(i).

⁶ See, e.g., IIAR 2-2014 § 6.7; IIAR 2-2008 § 13.3.1.4; and IIAR 9-2020 § 7.3.7.

⁷ See, e.g., IIAR 2-2014 § 5.14.5; IIAR 2-2008 § 10.5; IIAR 9-2020 § 7.2.9.4; and IIAR Bull. 114 § 4.1. *Consent Agreement and Final Order, In the Matter of Crystal Ice Co., Inc.*; Docket CAA-01-2022-0024

- (g) Door, refrigeration system, and emergency signage were inadequate in some places;⁸
 - (h) Some ammonia-containing pipes and a valve were inadequately supported and lacked protection from physical impacts;⁹
 - (i) There was inadequate access to key valves on the high-pressure receiver;¹⁰
 - (j) The relief header pipe for the Main Building did not vent at least 20 ft. from a window.¹¹ This issue had been identified in the previous EPA inspection; and
 - (k) The egress from the roof where ammonia equipment was located was unsafe. For example, the door lacked panic hardware and swung in the wrong direction.¹²
30. Accordingly, Respondent violated 40 C.F.R. § 68.65(d)(2) and (3) and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 2: Failure to Adequately Identify, Evaluate, and Control Hazards

31. Complainant realleges and incorporates by reference Paragraphs 1 through 30 of this document.
32. Pursuant to 40 C.F.R. § 68.67, the owner or operator of a Program 3 process is required, among other things, to perform an initial process hazard analysis (“PHA”) on each covered process. The PHA must identify, evaluate, and control the hazards involved in the process. The owner or operator must update the PHA every five years and when a major change in the process occurs. Additionally, pursuant to 40 C.F.R. § 68.67(e), the owner or operator must establish a system to promptly address the recommendations identified in the PHA, including by defining a schedule for completing the action items, taking the actions as soon as possible, and documenting the resolution of the recommendations.
33. Respondent performed an updated PHA in 2015, and identified recommended action items. However, the 2015 PHA was incomplete. Specifically, Respondent did not identify basic engineering deficiencies in the second floor AMR, including isolation and emergency ventilation deficiencies.
34. Accordingly, Respondent violated the PHA requirements of 40 C.F.R. § 68.67 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), for the Process.

⁸ See, e.g., IIAR 2-2014 §§ 6.3.4; 6.15.1, 5.15, and 6.15.3; IIAR 9-2020 §§ 7.2.9.1 and 7.3.3.4; ASHRAE 15-2007 §§ 8.11.8, 11.7; 11.2;

⁹ See, e.g., IIAR 2-2014 §§ 5.16; 5.17.1; 13.4.2; IIAR 2-2008 § 10.4; IIAR 9-2020 § 7.2.7.1; ASHRAE 15-2007 § 11.1.

¹⁰ See, e.g., IIAR 2-2014 § 6.3.3; IIAR 2-2008 § 13.1.1.4; IIAR 9-2020 § 7.3.3.3; ASHRAE 15-2007 § 8.3.

¹¹ See, e.g., IIAR 2-2014 §§ 15.5.1 and 6.14.3.4; IIAR 2-2008 §§ 13.2.3.9 and 11.3.6.3; IIAR 9-2020 § 7.4.2.1; ASHRAE 15-2007 §§ 9.7.8 and 8.11.4.

¹² See, e.g., IIAR 2-2014 § 6.10.2; IIAR 2-2008 § 13.3.3; and IIAR 9-2020 § 7.3.9.2.

COUNT 3: Failure to Comply with Training Requirements

35. Complainant realleges and incorporates by reference Paragraphs 1 through 34 of this document.
36. Pursuant to 40 C.F.R. § 68.71, the following training must be conducted at the facility:
- a. Initial training** (1) Each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in § 68.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks. (2) In lieu of initial training for those employees already involved in operating a process on June 21, 1999 an owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.
- b. Refresher training.** Refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.
- c. Training documentation.** The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.
37. After the Inspection, the inspection team reviewed training documentation provided to EPA for the years 2015-2018. The following deficiencies were identified:
- a. Comprehensive refresher ammonia safety training was not routinely being provided at least every three years to four employees working in the AMR;
 - b. During the period reviewed, operator training was limited only to review of start-up/shutdown SOPs, or general ammonia properties training;
 - c. Records provided indicate that one employee received an "Ammonia System Component Review" in 2017, but no other similar training was completed by the other three employees with AMR duties/responsibilities;
 - d. Training documentation provided does not include information on the means used to verify that the employees understood the training.
38. Employees did not receive adequate training on Crystal Ice's emergency response procedures in 2017.

39. By failing to comply with training requirements, Respondent violated 40 C.F.R. § 68.71 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

V. TERMS OF CONSENT AGREEMENT

40. For the purpose of this proceeding, Respondent:
- a. admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - b. neither admits nor denies the specific factual allegations contained in this CAFO;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the issuance of any specified compliance or corrective action order;
 - e. consents to the conditions specified in this CAFO;
 - f. waives any right to contest the alleged violations of law set forth in Section IV of this CAFO; and
 - g. waives its rights to appeal the Final Order accompanying this Consent Agreement.
41. For the purpose of this proceeding, Respondent:
- a. agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - b. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - c. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
 - d. consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, in the United States District Court for the District of Massachusetts; and
 - e. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
42. Except as provided in paragraph 47, Respondent certifies that it has corrected the violations alleged in this CAFO and is currently in compliance with 40 C.F.R. Part 68 at the Facility. Respondent further certifies that its compliance at the Facility includes all the safety measures listed in the "Key Safety Measures" appended to this CAFO as Attachment A.
43. Pursuant to Sections 113(d)(2)(B) and (e) of the CAA, 42 U.S.C. § 7413(d)(2)(B) and (e), and taking into account the relevant statutory penalty criteria, the applicable penalty policy, and Respondent's cooperation in agreeing to perform the non-penalty obligations in this CAFO, EPA has determined that it is fair and proper to assess a civil penalty of \$170,000 for the violations alleged in this matter. Respondent consents to the issuance of this CAFO and consents for purposes of settlement to:

- a. pay the civil penalty cited in Paragraph 44, below; and
- b. come into compliance with 40 C.F.R. Part 68, as described in paragraph 47 below.

44. Respondent agrees to:

- a. pay the civil penalty of \$170,000 (“EPA Penalty”) within 30 calendar days of the Effective Date of this CAFO.
- b. pay the EPA Penalty within 30 days of the effective date of this CAFO in the following manner:

The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference “*In the Matter of Crystal Ice Company, Inc.*; Consent Agreement and Final Order, EPA Region 1,” Respondent’s name and address, and the EPA Docket Number of this action (CAA-01-2022-0024), and be payable to “Treasurer, United States of America.” The payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Environmental Protection Agency
Cincinnati Finance Center Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

- c. At the time of payment, a copy of the check (or notification of other type of

payment) shall also be sent to (copy to both Wanda Santiago and Andrea Simpson may be sent by email):

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC 4-6
Boston, MA 02109-3912
r1_hearing_clerk_filings@epa.gov

Andrea Simpson, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC 4-2
Boston, MA 02109-3912
simpson.andrea@epa.gov

45. Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), specifies the consequences of failure to pay the penalty on time. There are other actions EPA may take if respondent fails to timely pay: (a) refer the debt to a credit reporting agency or a collection agency pursuant to 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33; (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; (c) suspend or revoke Respondent's licenses or other privileges; or (d) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to revision.
46. As a condition of settlement, Respondent agrees to come into compliance with 40 C.F.R. Part 68, as described in Paragraph 47 below.
47. Respondent agrees to take the following actions to correct the violations cited in Counts 1 through 3 above, at Respondent's facility:
 - a. By 180 days from the effective date of this CAFO, Respondent shall properly design and install emergency ventilation in the Pump-Package Room where ammonia is used on the first floor of Respondent's facility. Openings for inlet air shall be positioned to avoid recirculation. Air supply and exhaust ducts to the Pump Package Room shall serve no other area and the discharge of the air shall be to the outdoors in such a manner as not to cause a nuisance or danger, in accordance with the most recent available RAGAGEP on ventilation and 40 C.F.R. § 68.65(d)(2) and (3);

- b. By 30 days from the effective date of this CAFO, Respondent shall compile an inventory of all audio alarms installed both inside and outside of each door of each room at the Facility where ammonia is used;
 - c. By 30 days from the effective date of this CAFO, Respondent shall install an eyewash/shower outside the second floor ammonia machinery room in the Block Ice Building; and
 - d. By 30 days from the effective date of this CAFO, include in Respondent's employee training program a test to verify that employees understand the content of the training specified in 40 C.F.R. § 68.71, and comply with contractor training requirements of 40 C.F.R. § 68.87.
48. Respondent shall submit written confirmation of its compliance or noncompliance with paragraphs 47.b., c. and d. within 35 days of the effective date of this CAFO. Respondent shall submit written confirmation of its compliance or noncompliance with paragraph 47.a. within 185 days of the effective date of this CAFO. Respondent shall include the costs of compliance in its written confirmations (accompanied by a copy of appropriate supporting documentation, including documentation of costs). Any notice of noncompliance shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance unless EPA agrees otherwise in writing or approves a delay.
49. Submissions required by this CAFO shall be in writing and sent by electronic mail to:

Drew Meyer
U.S. Environmental Protection Agency, Region 1
meyer.drew@epa.gov

Andrea Simpson
U.S. Environmental Protection Agency, Region 1
simpson.andrea@epa.gov

- a. EPA will send all written communications to the following representative(s) for Respondent:

Joseph A. Farside, Jr. Esq.
Krystle Tadesse, Esq.
Locke Lord LLP
joseph.farside@lockelord.com
krystle.tadesse@lockelord.com

- b. All documents submitted to EPA in the course of implementing this CAFO shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

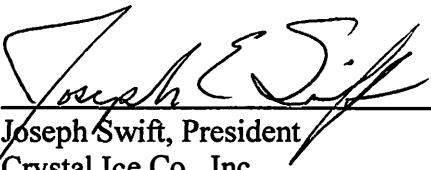
50. Respondent's failure to comply with each of the provisions in Paragraphs 47.a. through d., above ("the Non-Penalty Conditions") shall become liable for stipulated penalties as set forth below.
51. In the event that Respondent fails to satisfactorily complete all provisions related to the compliance provisions as described above in Paragraphs 47.a. through d., Respondent shall be liable for stipulated penalties in the following amounts: \$500 per day for the first fifteen (15) days of such violation; \$1,000 per day for the sixteenth (16th) through 30th days of such violation; and \$1,500 per day for each day of violation thereafter. The determination of whether the compliance requirements have been satisfactorily completed shall be in the sole discretion of EPA.
52. 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 44, above. Interest and late charges shall be paid as stated in Paragraph 53.
53. *Collection of Unpaid Stipulated Penalty for Failure to Perform Non-Penalty Conditions:* 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 Respondent fails to timely pay any portion of the stipulated penalty relating to the performance of the Non-Penalty Conditions, 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.
54. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.
55. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements modifying schedules for the compliance Conditions in Paragraphs 47.a. through d.
56. Respondent agrees that the time period from the Effective Date of this CAFO until all of conditions specified in Paragraphs 47.a. through d. are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set

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

57. The provisions of this CAFO shall apply to and be binding upon Respondent, its successors and assigns. From the Effective Date of this CAFO until the end of the Tolling Period, as set out in Paragraph 56 above, Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CAFO unless the EPA has provided written approval of the release of said obligations or liabilities.
58. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
59. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents.
60. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
61. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.
62. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes. 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 conditions in paragraph 47 is restitution or required to come into compliance with the law.
63. 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.

64. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
65. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes. Nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, or be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
66. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
67. 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.
68. 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.
69. Except as qualified by Paragraphs 45 and 53 (overdue penalty collection), each party shall bear its own costs and fees in this proceeding including attorney's fees. Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.
70. Complainant and Respondent, by entering into this CAFO, consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by e-mail, at joseph.farside@lockelord.com and krystle.tadesse@lockelord.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.
71. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk.

FOR RESPONDENT:



Joseph Swift, President
Crystal Ice Co., Inc.

4-26-2022
Date

FOR COMPLAINANT:

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
BEFORE THE ADMINISTRATOR

In the Matter of:

Crystal Ice Co., Inc.,

Respondent.

Docket No.
CAA-01-2022-0024

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the EPA's Consolidated Rules of Practice and sections 113(d)(1) and (d)(2)(B) of the Clean Air Act, 42 U.S.C. §§ 7413(d)(1) and (d)(2)(B), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, which shall become effective on the date it is filed with the Regional Hearing Clerk.

So ordered.

DATE

LeAnn Jensen
Regional Judicial Officer

ATTACHMENT A

LIST OF KEY SAFETY MEASURES

As part of a national compliance initiative, EPA developed the following key safety measures with input from the International Institute of Ammonia Refrigeration. They are measures that EPA and IIAR agreed should be in place, regardless of an ammonia refrigeration system's age or size, for the system to meet the requirements of 40 C.F.R. Part 68 or the General Duty Clause. This is not intended to be a complete list of important safety measures but rather a subset of easily verifiable items that could help facilities prevent ammonia releases and prepare for any releases that do occur.

Identifying Hazards

- Hazard Addressed: Releases or safety deficiencies that stem from a failure to identify hazards in design/operation of system
 - Facility has completed a process hazard analysis or review.

Operating Activities:

- Hazard Addressed: High risk of release from operating or maintenance activity
 - System has self-closing/quick closing valves on oil pots.
 - Facility has written procedures for maintenance and operation activities.
 - Only authorized persons have access to machinery room and the ability to alter safety settings on equipment.

Maintenance/Mechanical Integrity:

- Hazard Addressed: Leaks/releases from maintenance neglect
 - A preventative maintenance program is in place to, among other things, detect and control corrosion, deteriorated vapor barriers, ice buildup, and pipe hammering, and to inspect integrity of equipment/pipe supports.
 - All piping system openings except the relief header are plugged or capped, or valve is locked.
 - Equipment, piping, and emergency shutdown valves are labeled for easy identification, and pressure vessels have legible, accessible nameplates.
 - All atmospheric pressure relief valves have been replaced in the last five years with visible confirmation of accessible pressure relief valves [note – replacement every five years is the general rule but there are other options in IIAR Standard 6].

Machinery Room and System Design

- Hazard Addressed: Inability to isolate and properly vent releases
 - The System(s) has/have emergency shut-off and ventilation switches outside each machinery room.
 - The machinery room(s) has/have functional, tested, ventilation. Air inlets are positioned to avoid recirculation of exhaust air and ensure sufficient inlet air to replace exhausted air.

- Documentation exists to show that pressure relief valves that have a common discharge header have adequately sized piping to prevent excessive backpressure on relief valves, or if built prior to 2000, have adequate diameter based on the sum of the relief valve cross sectional areas.

Emergency Actions

- Hazard Addressed: Inability to regain control and reduce release impact
 - Critical shutoff valves are accessible, and a schematic is in place to show responders where to access them.
 - EPCRA Tier II reporting is up to date.

Additional Compliance Items

Identifying Hazards

- For systems that employ hot gas defrost, the process hazard analysis/review includes an analysis of, and identifies, the engineering and administrative controls for the hazards associated with the potential of vapor propelled liquid slugs and condensation-induced hydraulic shock events.

Operating Activities and Maintenance/Mechanical Integrity

- Written procedures are in place for proper use and care of personal protective equipment.
- If respirators are used, facilities know the location of their respirators, and they are inspected and maintained per manufacturer or industry standards.
- All changes to automation systems (programmable logic controls and/or supervisory control and data acquisition systems) if present, are subject to management of change procedures.

Machinery Room and System Design

- The facility has engineering controls in place to protect equipment and piping against overpressure due to hydrostatic expansion of trapped liquid refrigerant. Administrative controls are acceptable where hydrostatic overpressure can occur only during maintenance operations.
- Eyewash station(s) and safety shower(s) is/are present and functional.

Emergency Actions

- Emergency response communication has occurred or has been attempted with the Local Emergency Planning Committee and local responders.
- The facility has an emergency action plan pursuant to 29 C.F.R. § 1910.38(a) or an emergency response plan pursuant to 29 C.F.R. § 1910.120(q) and 40 C.F.R. § 68.90.