

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Christine Foot 7/16/15
Name of Case Attorney Date

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

Case Docket Number CAA-01-2014-0020

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

Pioneer Valley Refrigerated Warehouse
d/b/a Pioneer Cold
149 Plainfield St
Chicopee, MA 01013

Total Dollar Amount of Receivable \$ 41,000.00 Due Date: 8/15/15

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1st \$ _____ on _____
- 2nd \$ _____ on _____
- 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 _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED

JUL 16 2015

EPA ORC
Office of Regional Hearing Clerk

July 16, 2015

BY HAND

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency-Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912

Re: In the Matter of: Pioneer Valley Refrigerated Warehouse, Inc., Docket No. CAA-01-2014-0020

Dear Ms. Santiago:

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Christine M. Foot".

Christine M. Foot
Enforcement Counsel
EPA Region 1

Enclosures

cc: Mark S. Dreux, Esq.

RECEIVED

JUL 16 2015

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

EPA ORC
Office of Regional Hearing Clerk

IN THE MATTER OF

Pioneer Valley Refrigerated Warehouse, Inc.
d/b/a Pioneer Cold

149 Plainfield Street
Chicopee, MA 01013

Proceeding under Section 113
of the Clean Air Act

Docket No. CAA-01-2014-0020

**CONSENT AGREEMENT
AND FINAL ORDER**

CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA” or “Complainant”) and Pioneer Valley Refrigerated Warehouse, Inc., doing business as Pioneer Cold (“Pioneer Cold” or “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/Termination, or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”). This CAFO resolves Respondent’s liability for alleged violations of the chemical accident prevention provisions of Section 112(r)(7) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r)(7), and implementing federal regulations found at 40 C.F.R. Part 68.

EPA and Respondent 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). EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before taking any testimony, without adjudication of any issue of fact or law, without Respondent admitting or denying any factual or legal allegations herein, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

I. PRELIMINARY STATEMENT

1. 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). As more thoroughly discussed in Sections III and IV below, the CAFO resolves the following CAA violations that Complainant alleges occurred in conjunction with Respondent's handling of ammonia at its Chicopee, Massachusetts cold storage warehouse:

(a) *Failure to comply with risk management plan ("RMP") management requirements,* in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.15;

(b) *Failure to accurately evaluate off-site consequences in release scenarios,* in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and at 40 C.F.R. § 68.20;

(c) *Failure to adequately identify, evaluate, and control hazards,* in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.67(e);

(d) *Failure to comply with safety information requirements,* in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.65;

(e) *Failure to comply with Program 3 operating procedures requirements,* in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.69;

(f) *Failure to comply with Program 3 training requirements,* in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.71;

(g) *Failure to comply with Program 3 mechanical integrity requirements*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.73;

(h) *Failure to comply with Program 3 compliance audit requirements*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.79;

(i) *Failure to comply with Program 3 contractor requirements*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.87; and

(j) *Failure to have an adequate emergency response program*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.95.

II. APPLICABLE STATUTES AND REGULATIONS

Statutory and Regulatory Authority

2. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. In particular, Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates that EPA promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires that EPA establish, for each listed substance, the threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement an RMP.

3. The regulations promulgated pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), are found at 40 C.F.R. Part 68.

4. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), renders it unlawful for any person to operate a stationary source subject to the regulations promulgated under the authority of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in violation of such regulations.

5. Forty C.F.R. § 68.130 lists the substances regulated under Part 68 (“RMP chemicals” or “regulated substances”) and their associated threshold quantities, in accordance with the requirements of Sections 112(r)(3) and (7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and (7). This list includes anhydrous ammonia as an RMP chemical and identifies a threshold quantity of 10,000 pounds.

6. 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.

7. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

8. 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. Program 1 is the least comprehensive, and Program 3 is the most comprehensive. Pursuant to 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a

toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), 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. Under 40 C.F.R. § 68.10(c), a covered process that meets neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

9. Anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds is subject to OSHA’s PSM requirements at 29 C.F.R. § 1910.119.

10. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source subject to the requirements of Part 68 submit an RMP to EPA, as provided in 40 C.F.R. § 68.150. The RMP documents compliance with Part 68 in a summary format. For example, the RMP for a Program 3 process documents compliance with the elements of a program 3 Risk Management Program, including 40 C.F.R. § Part 68, Subpart A (including General Requirements and a Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-Site Consequences of a Release); 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

11. Additionally, 40 C.F.R. § 68.190(b) also requires that the owner or operator of a stationary source must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or most recent update. Other aspects of the prevention program must also be periodically updated.

12. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 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, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to \$37,500 per day for violations occurring after January 12, 2009.

13. 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).

III. GENERAL ALLEGATIONS

14. Respondent Pioneer Cold owns and operates a controlled-temperature storage warehouse for food products at 149 Plainfield Street in Chicopee, Massachusetts (the "Facility").

15. The Facility is located on the banks of the Connecticut River, within a quarter mile of residences and other businesses, within a half mile of two Interstate Routes (I-91 and I-395) and a large shopping center, and less than one mile from several schools, hospitals, and houses of worship.

16. Pioneer Cold is a corporation organized under the laws of Massachusetts, with its principal office located in Chicopee, Massachusetts. As a corporation, 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 assessing a civil penalty may be issued under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

17. The Facility is a building or structure from which an accidental release may occur and is therefore a “stationary source,” as 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.

18. At all times relevant to the violations alleged herein, Respondent was the “owner or operator” of the Facility, as defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

19. Pioneer Cold uses anhydrous ammonia in two refrigeration “processes,” as defined by 40 C.F.R. § 68.3, in two series of interconnected vessels at the Facility. The process located in Building Two was constructed sometime between 1996 and 1998 (“Building Two Process”), and the process located in Building Five was installed sometime between 2000 and 2004 (“Building Five Process” and collectively, “Processes”).

20. In 1999, Respondent filed a Program 3 RMP for the Building Two Process and reported that it used 13,000 pounds of anhydrous ammonia. In 2004, after the construction of the Building Five Process, Respondent re-submitted the RMP, listing two Program 3 processes: one again containing 13,000 pounds of anhydrous ammonia and another containing 11,000 pounds of anhydrous ammonia. Respondent’s 2009 RMP submission again reported that one Program 3 process uses 13,000 pounds of ammonia and the other Program 3 process uses 11,000 pounds of ammonia. Respondent’s most recent RMP re-submission, in 2014, identified one Program 3 process using 13,000 pounds of ammonia and another Program 3 process using 12,000 pounds of ammonia.

21. Chemical inventory reports submitted by Respondent for the years 2009, 2010, and 2011 each indicate that Pioneer Cold stored anhydrous ammonia in amounts greater than 10,000 pounds in two areas of the Facility.

22. Additionally, Respondent informed EPA in August 2013 that the Building Five Process contains nearly 13,000 pounds of anhydrous ammonia and that the Building Two Process contains nearly 10,400 pounds of anhydrous ammonia.

23. Accordingly, the Building Five Process and the Building Two Process are each a “covered process” subject to the provisions of Part 68 because Respondent “uses,” “stores,” and “handles” the RMP chemical anhydrous ammonia at the Facility in an amount greater than 10,000 pounds.

24. According to Respondent’s RMP, the endpoint for a worst case release of the amount of anhydrous ammonia used in the Processes is greater than the distance to a public receptor. Likewise, modeling performed by EPA indicates that the endpoint for a worst case release from each Process is greater than the distance to a public receptor.

25. Additionally, the Processes are subject to OSHA’s PSM requirements at 29 C.F.R. § 1910.119 because they each use anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds.

26. Therefore, in accordance with 40 C.F.R. § 68.10(a)–(d), Respondent’s use, storage, and handling of anhydrous ammonia in the Building Five Process and the Building Two Process is subject to the requirements of RMP Program 3.

27. On December 6, 2012, EPA inspectors visited the Facility (“Inspection”) to assess Respondent’s compliance with Section 112(r) of the CAA and with Sections 302–312 of the Emergency Planning and Community Right-to-Know Act.

28. Ammonia presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. Exposure to 300 parts per million is immediately dangerous to life and health. Ammonia is also flammable at concentrations of approximately 16% to 25% by volume in air. 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. 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. 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. 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 into state building and mechanical codes.¹

29. Both Processes are separate “closed-loop” refrigeration systems, each with components and piping in four interconnected areas. For both Processes, this includes: a Machinery Room, where most of the refrigeration components are located; areas on the roof above each Machinery Room, where the condensers and piping are located; the freezer warehouse spaces, where the evaporators and associated piping are located; and the loading docks, which have additional evaporators and associated piping. The Building Five Process Machinery Room has four access doors: two from the exterior, one from the warehouse space,

¹ For example, the Massachusetts State Building Code, Sixth Edition, Base Volume, is based on the 1993 edition of the Building Officials and Code Administrators (“BOCA”) National Building Code, with certain amendments. 780 C.M.R. Forward at 1 (1997). Both the BOCA National Building Code, and the Massachusetts State Building Code that is based on it, state that “[a]ll mechanical equipment and systems shall be constructed, installed and maintained in accordance with the BOCA National Mechanical Code....” Id. § 2801.2; BOCA Nat’l Bldg. Code § 2801.2 (1993). The BOCA National Mechanical Code, in turn, specified that systems are limited to twenty pounds of refrigerant except that those using ammonia “shall not be limited in capacity where the system is designed and installed in accordance with ASHRAE 15 and IIAR 2.” BOCA Nat’l Mech. Code § M-1303.2 & .2.1 (1993).

and an additional exterior roll-up service door. The Building Two Process Machinery Room is located on the second floor and has two access doors: one at the top of a metal staircase in the Loading Dock and another that opens to a narrow stairway with a door at the base leading to office areas.

30. During the Inspection of the Facility, EPA requested and received certain documentation pertaining to the Processes, including the Facility's emergency action plan ("EAP").

31. Following the Inspection, EPA issued a Reporting Requirement requiring Respondent to submit information regarding the total amount of ammonia in each of the Processes, in order to confirm whether both processes are subject to the RMP regulations, which Respondent received July 5, 2013. At that time, EPA also shared with Respondent a draft Notice of Violation and Administrative Order ("Draft NOV/AO") and invited Respondent's comments thereon. On or about August 12, 2013, Respondent submitted to EPA a response to the Reporting Requirement, along with additional information pertaining to EPA's allegations in the Draft NOV/AO ("Submission").

32. EPA issued a final Notice of Violation and Administrative Order ("Final NOV/AO") pursuant to CAA Sections 113 and 114, 42 U.S.C. §§ 7413 and 7414, which became effective on September 27, 2013. The Final NOV/AO summarized RMP deficiencies and potentially dangerous conditions observed by the EPA inspectors; ordered Respondent to comply with RMP requirements at the Facility; and ordered Respondent to certify and document its compliance with applicable RMP requirements. Respondent had begun to address its compliance deficiencies after the Inspection and was likewise cooperative after receiving the Final NOV/AO.

33. On November 22, 2013, Respondent provided EPA with a work plan and schedule for addressing the issues identified in the Final NOV/AO.

34. The Inspection and EPA's review of subsequently submitted information, including the Submission, revealed some potentially dangerous conditions relating to the Processes at the time of Inspection, including that Respondent:

- a. Had not developed a system to adequately manage RMP compliance, in that the person assigned responsibility for RMP implementation (Mr. Stanley Galenski) informed EPA that he did not have a good understanding of, had not been trained in, and did not manage all of the program elements. Of particular note, Mr. Galenski did not realize that both Processes were subject to the RMP regulations;
- b. Had not correctly analyzed the off-site consequences of its worst-case and alternative release scenarios, in that Respondent used an "urban" instead of a "rural" topography parameter in the air dispersion model, even though the area surrounding the Facility consists of a river and low-profile buildings. The selection of this parameter reduced the extent of the impacted area under each scenario from an estimated 1.4 miles to .75 miles, due to the assumption that increased obstructions would impede the spread of a release plume. As a result, the affected population was calculated to be less than 5,000 people while EPA estimates it would be close to 25,000 people using the correct parameter;
- c. Had not developed a schedule for addressing the recommendations identified in Respondent's 2009 update to its Process Hazard Analysis ("PHA") nor documented that the actions were taken, and in a timely manner, by noting the date of completion for each. Additionally, with respect to the Building Two Process, Respondent had not

identified, evaluated, and controlled the hazards posed by the lack of an ammonia detector in the main relief vent pipe and the positioning of the relief vent discharge, such that it was aimed downwards and thus not designed to avoid spraying on persons in the vicinity and it was situated to vent within ten feet of the fresh air intake for the Building Two Process Machinery Room ventilation system;

- d. Did not have, or have available for EPA review, all of the necessary information and documentation pertaining to the two Processes to allow Respondent to adequately identify hazards posed by and maintain the Processes. For example, Respondent did not have information and supporting calculations regarding the maximum ammonia inventory for either the Building Five Process or the Building Two Process.

Likewise, Respondent did not have certain information relating to the equipment for the Building Five Process, including information regarding: materials of construction for the equipment (as distinct from the piping, which was addressed on the block flow diagram included in the Submission), relief system design and design basis, material and energy balances, and safety systems.² Additionally, Respondent did not have any documentation pertaining to the Manning portable ammonia detector, which is a piece of safety system equipment that is identified as part of the Facility's emergency response procedures in the EAP;

² In the Submission, Respondent provided a sample of Standard Operating Procedures ("SOPs") that included some general information regarding safety systems but lacked necessary information, including the set point(s) and actions taken by each element associated with the safety system. The safety system PSI should also identify all local and remote alarms and should document that the equipment complies with RAGAGEP. Respondent has Health and Safety Equipment that needs defining, as well as the following systems, which were identified in its 2009 RMP submission to the EPA Central Data Exchange System: Relief Valves, Check Valves, Manual Shutoffs, Automatic Shutoffs, Interlocks, Alarms and Procedures, Purge System, Fire Walls, Enclosure, and Process Area Detectors.

- e. Had not equipped the ammonia detectors to actuate visual and audible alarms inside either the Building Five or Building Two Process Machinery Rooms nor outside of any of access doors to either Machinery Room;
- f. Had not adequately installed and labeled switches controlling emergency ventilation and emergency shutdown immediately outside the principal access doors to either Machinery Room. The switches outside the principal exterior Building Five Process Machinery Room door were of the push-button variety and had no markings identifying their function or operational status. The Building Two Process switches were also of the push-button variety and were some distance away from the Building Two Process Machinery Room access door: they were inside a door leading from a general office space area that opened to a stairway ending at the east access door of the Machinery Room. These Building Two Process switches were labeled “emergency vent” and “king valve,” without providing any clarity as to whether the latter controlled shutdown of the entire the Building Two Process, and neither had a mechanism for indicating the operational status of the emergency systems;
- g. Had not posted adequate ammonia warning signs and signs restricting entry to authorized personnel at each entrance to the Machinery Room for each Process, nor signs displaying information about each Process’s operation, alarms, or emergency shutdown procedure outside any of the access doors to either of the two Machinery Rooms. None of the four access doors to the Building Five Process Machinery Room had a sign restricting entry to authorized personnel, nor did any of them they have the other necessary signage. Only one of the access doors to the Building Two Process Machinery Room (the door just inside the office area at the base of the stairs leading

to the east access door) had a sign restricting entry to authorized personnel, and neither of the two access doors had any of the other necessary signage;

- h. Had not labeled or tagged many of the pipes and valves associated with both the Building Five Process and the Building Two Process, including within the Machinery Rooms, the warehouse rooms, and on the roof, and also including the King Valve for each Process, both of which were painted yellow but were not otherwise clearly identified;
- i. Had not developed, drafted, implemented, and certified sufficient written practices and operating procedures for safely conducting various activities associated with both the Building Five Process and the Building Two Process. For example, while Respondent had some written operating procedures covering the Processes, it did not have written procedures to address all of the required safety and health considerations, including the control measures to be taken in case of physical contact or airborne exposure.³ Respondent also had not certified in writing that the written operating procedures accurately reflected current operations at the Facility and had not implemented a lockout/tagout program for controlling hazards while servicing and maintaining equipment;
- j. Had not conducted an adequate training program for Facility employees involved in operating the two Processes. During the Inspection, Mr. Russell Warren informed EPA that he had not received initial training specific to his responsibilities when he began working as a refrigeration technician in 2009. Additionally, according to

³ In general, the SOPs provided by Respondent in the Submission adequately address the health and safety information for ammonia. However, the SOP provided for Personal Protective Equipment ("PPE") was not adequate: the guideline direction with respect to the permissible exposure levels is wrong, and it lacked supporting documentation as to how the level of PPE was determined and who certified that it meets the requirements.

statements by Mr. Galenski at the Inspection, Respondent had not provided refresher training to any employees since 2006;

- k. Had not developed and implemented written mechanical integrity (“MI”) procedures to maintain the on-going integrity of the equipment in the Building Five Process and the Building Two Process. Respondent had not established and implemented a schedule and procedures for inspecting and testing the equipment and for maintaining documentation thereof. Respondent also had not performed all the necessary inspections and tests of the Process equipment; for example, facility records indicate that Respondent had not tested or calibrated the ammonia detectors since 2010.⁴ Additionally, Respondent had no records of ever maintaining, calibrating, or testing the Manning portable detector, which is to be used in responding to emergencies, nor could it perform such tests according to the manufacturer’s recommendations because it did not have the operating manual for this device. Respondent also had not maintained complete documentation regarding inspections, tests, and other preventative maintenance of Process equipment, in that aside from notes regarding active equipment maintenance and repair in a daily log book, the only documentation of equipment testing was a partially completed annual inspection form from 2010;
- l. Had not maintained the integrity of certain equipment by correcting deficiencies in a safe and timely manner. For example, at least two electrical boxes associated with the Building Five Process did not have their covers attached, leaving the wires of both exposed and ice accumulating among the wires inside of one. Additionally, some of

⁴ In the Submission, Respondent reported that it updates its mechanical integrity schedule annually, and it provided an undated list detailing inspection frequencies. However, Respondent still has not provided any MI procedures, which should meet manufacturer requirements and RAGAGEP. Additionally, Respondent still has not provided any inspection and preventative maintenance records.

- the vapor barrier insulation on piping associated with both the Building Five and Building Two Processes was damaged, some of the piping was significantly rusted, and the roof lacked bridge crossovers to allow access to the roof and pipes thereon without stepping on the pipes and risking further damage to the insulation;
- m. Had not ensured that all components and piping of the Building Two Process were protected from forklift traffic or other potential impact, in that the safety barriers around the evaporators had been moved to increase storage space;
 - n. Had not installed the main pressure-relief vent pipe for the Building Two Process in a safe manner. The vent pipe opening was less than fifteen feet above the roof surface, it was aimed downwards and thus not designed to avoid spraying on persons in the vicinity, it was not equipped with an ammonia detector, and it was situated to vent within ten feet of the fresh air intake for the Building Two Process Machinery Room ventilation system;
 - o. Had not documented that all deficiencies identified during compliance audits performed for the two Processes in 2007 and 2010 had been corrected. All of the items that were identified as issues in 2007 were still outstanding at the time of, and were again listed in, the 2010 compliance audit. Some of those issues identified for the second time in 2010 (including replacing failed insulation, protecting the Building Two Process evaporators from potential forklift damage, putting certain PSI in the file, and annually recertifying operating procedures) had still not been addressed by the time of the Inspection in December 2012;
 - p. Did not have documentation showing that Respondent had adequately evaluated the safety performance and programs of at least two of the contractors used at the

Facility, in accordance with the Facility's RMP procedures. Facility records and a 2012 facility evaluation identified "Mullaly Brothers" and "FES" as contractors who had performed work at the Facility. Respondent's RMP identifies four forms relating to contractors that should be completed, but none were completed for either Mullaly Brothers or FES. Respondent's RMP included a folder for Mullaly Brothers, which contained a single, uncompleted form identified as "CG-3," and it had no folder at all for FES;⁵

- q. Had not developed an adequate emergency response program, including an up-to-date and accurate emergency action plan. For example, the EAP stated that the emergency coordinator will mobilize and direct an Emergency Response Team; however, facility representatives informed EPA at the Inspection that no such team currently existed. Similarly, the plan directed employees look to wind socks to determine appropriate evacuation areas, but the Facility had no wind socks, and it referenced evacuation route maps that were not included with the EAP. The EAP also stated that the Facility's ammonia detectors are set to alarm at 50 parts per million ("ppm"), but that was contradicted by statements by Facility representatives who reported different levels, including one as high as 150 ppm. This confusion was also noted in a report from a February 2012 facility evaluation, which included as action items: 1) "Verify ventilation fans are turned on at ? ppm..." and 2) "Verify the action taken when ammonia detectors hit 250 ppm." There is no indication that these action items were ever completed. This problem is further compounded by the fact that, despite the EAP stating that facility employees should use a Manning portable ammonia detector

⁵ Respondent reported in the Submission that it previously had obtained the necessary forms, but that they were damaged by water and it was in the process of re-obtaining them.

in their response to a release, the reliability and accuracy of this detector is unknown in that there is no indication that it has ever been maintained, calibrated, or tested, nor was the operating manual available on-site. Finally, the EAP called for annual emergency response drills, none of which have been conducted.

IV. VIOLATIONS

Count 1: Failure to Comply with RMP Management Requirements

35. Complainant realleges and incorporates by reference paragraphs 1 through 34 of this document.

36. Pursuant to 40 C.F.R. § 68.15, the owner or operator of a Program 3 process is required, among other things, to assign a qualified person or position responsible for development, implementation, and integration of the RMP elements. If any of the individual requirements are assigned to anyone other than the person or position just described, those names or positions and lines of authority shall be documented.

37. As described in Paragraph 34(a), above, at the time of Inspection, Respondent had not developed a system to adequately manage RMP compliance, in that Mr. Stanley Galenski is responsible for overall RMP implementation but did not have a good understanding of all of the program elements or even that both of the Processes were subject to the RMP regulations. Additionally, even though Mr. Galenski reportedly did not manage all RMP program elements, Respondent had not documented the names of, and lines of authority for, the employees who manage those elements that Mr. Galenski did not. Further, the Lockout/Tagout procedures provided in the Submission identify a position that is not included in Respondent's PSM/RM Program Management System document.

38. By failing to comply with RMP management requirements, Respondent violated 40 C.F.R. § 68.15 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 2: Failure to Accurately Evaluate Offsite Consequences in Release Scenarios

39. Complainant realleges and incorporates by reference paragraphs 1 through 38 of this document.

40. Pursuant to 40 C.F.R. § 68.20, the owner or operator of a Program 3 process is required, among other things, to analyze, document, and report on the off-site consequences of a worst-case and an alternative release scenario. Forty C.F.R. § 68.22(e) defines the surface roughness parameter to be used in this analysis and specifies that the “rural” parameter is to be used to define the surrounding terrain type if there are not many obstacles, such as buildings and trees, in the immediate area.

41. As described in Paragraph 34(b), above, Respondent used an “urban” surface roughness parameter in its analysis of the off-site consequences of its worst-case and alternative release scenarios. This selection erroneously, and significantly, reduced the area of impact and affected population of such releases.

42. By failing to accurately evaluate offsite consequences in release scenarios, Respondent violated 40 C.F.R. § 68.20 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 3: Failure to Adequately Identify, Evaluate, and Control Hazards

43. Complainant realleges and incorporates by reference paragraphs 1 through 42 of this document.

44. 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 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, the owner or operator must establish a system for addressing 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.

45. As described in Paragraph 34(c), above, Respondent performed an updated PHA in 2009 and identified recommended action items. However, Respondent did not establish a schedule for addressing those items and did not document that, or when, they were completed. Additionally, as also described in Paragraph 34(c), Respondent had not fully identified, evaluated, and controlled the hazards associated with the Building Two Process, including those posed by the location and positioning of the relief vent.

46. By failing to adequately identify, evaluate, and control hazards, Respondent violated 40 C.F.R. § 68.67(e) and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 4: Failure to Comply with Safety Information Requirements

47. Complainant realleges and incorporates by reference paragraphs 1 through 46 of this document.

48. Pursuant to 40 C.F.R. § 68.65, the owner or operator of a Program 3 process is required, among other things, to compile written process safety information before completing the PHA, in order to perform an adequate PHA and to enable proper maintenance of process equipment. This includes documenting information pertaining to the hazards of the RMP chemical in the process; information pertaining to the technology and equipment of the process, including that the equipment complies with RAGAGEP; and information showing that any equipment that was designed according to outdated standards is designed, maintained, inspected,

tested, and operated in a safe manner. This compilation enables appropriate identification and understanding of hazards posed by regulated substances in the process and the technology and equipment of the process.

49. As described in Paragraph 34(d), above, at the time of Inspection, Respondent had not compiled all of the necessary process safety information pertaining to the technology and equipment of the Building Five Process or the Building Two Process.

50. Additionally, as described in Paragraphs 34(e) through (h), 30(m), and 30(n) above, Respondent also failed to document that the Building Five and Building Two Processes comply with RAGAGEP, as discussed below.

51. As described in Paragraphs 34(e), Respondent had not equipped the ammonia detectors to activate visual and audible alarms inside either Process's Machinery Room nor just outside any of either of the Machinery Rooms' access doors. The recommended industry practice and standard of care is to equip the detectors to activate visual and audible alarms inside the Machinery Room and at each of its entrances. See, e.g., Am. Nat'l Standards Inst./Am. Soc'y of Heating, Refrigerating and Air-Conditioning Eng'rs, Standard 15-2007: Safety Standard for Refrigeration Systems § 8.11.2.1 (2007) [hereinafter "ASHRAE 15-2007"]; 6 Int'l Inst. of Ammonia Refrigeration, Bulletin No. 111: Ammonia Machinery Room Ventilation § 3.5.3 (2002) [hereinafter "IIAR Bull. 111"].⁷

52. Also, as described above in Paragraph 34(f), at the time of the Inspection, Respondent had not adequately provided and labeled emergency shutdown and ventilation switches for either Process immediately outside their respective principal Machinery Room

⁶ This CAFO cites the industry standards in effect at the time of the Facility's last PHA (2009).

⁷ IIAR Bulletin No. 111 was in effect from 2002 until 2010, when it was withdrawn and its requirements were incorporated into the 2010 update to IIAR Standard 2-2008.

doors. The recommended industry practice and standard of care for ammonia refrigeration systems is to provide clearly marked emergency shutdown and ventilation switches immediately outside the principal Machinery Room door (and, preferably, all access doors). See, e.g., Int'l Inst. of Ammonia Refrigeration, Standard 2-2008: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems § 13.3.1.6 (2008) [hereinafter "IIAR 2-2008"] (immediately outside door); ASHRAE 15-2007, supra, §§ 8.12(i) (provide switches), 11.2.2 (identify switches). The shutdown switch should be of the break-glass type and the ventilation switch should have "on/auto" settings. See, e.g., IIAR Bull. 111, supra, §§ 3.5.1 & 3.5.2.

53. As described above in Paragraph 34(g), at the time of the Inspection, Respondent did not have sufficient signs on the doors to the Building Five Process and Building Two Process Machinery Rooms. The recommended industry practice and standard of care for ammonia refrigeration systems is to post signs warning of the presence of ammonia and restricting entry to authorized personnel at each entrance to the Machinery Room, see, e.g., ASHRAE 15-2007, supra, §§ 8.11.8, 11.2.4, and to post other signs with information about the operation of the process, including about the alarms and the emergency shutdown procedures, outside the principal Machinery Room door. See, e.g., id., supra, §§ 8.11.2.1 (meaning of alarms), 11.7 (emergency shutdown procedures and precautions).

54. Also, as described above in Paragraph 34(h), at the time of the Inspection, many of the Building Five Process and Building Two Process pipes were unlabeled and valves untagged, including the King Valve for each Process. The recommended industry practice and standard of care is to label all system pipes and valve systems. See, e.g., IIAR 2-2008, supra, § 10.5 (pipes need to be marked with physical state of refrigerant, relative pressure level, and direction of flow); ASHRAE 15-2007, supra, §§ 9.12.6 (stop valves), 11.2.2 (piping, valves, and switches for

refrigerant flow, ventilation, and compressor); Int'l Inst. of Ammonia Refrigeration, Bulletin No. 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, supra, § 4.7.6 (1997) [hereinafter "IIAR Bull. 109"] (all piping needs attached markers indicating the use of the pipe and direction of flow). See generally, Int'l Inst. of Ammonia Refrigeration, Bulletin No. 114: Guidelines for Identification of Ammonia Refrigeration Piping and System Components (1991) [hereinafter "IIAR Bull. 114"] (all piping should be identified with physical state of the refrigerant, the relative pressure level, and the direction of flow; all components of the system should be uniformly identified as to the name of the equipment and a pressure level designation).

55. Additionally, as described above in Paragraph 34(m), at the time of the Inspection, Respondent had not protected all of the components and piping of the Building Two Process from forklift traffic or other potential impact. The recommended industry practice and standard of care for ammonia refrigeration systems is to safeguard piping, controls, and other refrigeration equipment to minimize the chance of accidental damage by external sources such as forklifts. See, e.g., ASHRAE 15-2007, supra, § 11.1; IIAR Bull. 109, supra, §§ 4.4.2, 4.7.3.

56. Additionally, as described above in Paragraph 34(n), at the time of the Inspection, Respondent had not safely installed the main pressure-relief vent pipe for the Building Two Process. The recommended industry practice and standard of care for ammonia refrigeration systems is to raise the relief header pipe at least fifteen feet above the adjoining surface level, orient it to point up and away from where any people may be nearby, and locate it at least twenty feet from any ventilation intake or opening. See, e.g., IIAR 2-2008, supra, §§ 11.3.6.3 & .4; ASHRAE 15-2007, supra, § 9.7.8; IIAR Bull. 109, supra, § 4.9.6.

57. By failing to compile the necessary information about the technology and equipment of the Processes, including by documenting that the Processes comply with RAGAGEP,

Respondent violated 40 C.F.R. § 68.65 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 5: Failure to Comply with Program 3 Operating Procedures Requirements

58. Complainant realleges and incorporates by reference paragraphs 1 through 57 of this document.

59. Pursuant to 40 C.F.R. § 68.69, the owner or operator of a Program 3 process is required to develop and implement written operating procedures that provide instructions or steps for safely conducting activities associated with the covered process. These operating procedures must address steps for each operating phase, operating limits, safety and health considerations, and safety systems. The owner or operator must make these procedures available to employees involved in the process, keep them up-to-date with current practices, and certify annually that they are current. The owner or operator must also develop and implement safe work practices to control hazards during specific operations, including by developing a “lockout/tagout” program for handling equipment during maintenance or bringing equipment in or out of service.

60. As described in Paragraph 34(i), above, at the time of Inspection, Respondent did not have sufficient written operating procedures to address the required safety and health considerations for either Process, had not certified that the written operating procedures were current and accurate for operations at the Facility, and had not developed a lockout/tagout program for controlling hazards while servicing and maintaining equipment.

61. By failing to comply with the operating procedures requirements, Respondent violated 40 C.F.R. § 68.69 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 6: Failure to Comply with Program 3 Training Requirements

62. Complainant realleges and incorporates by reference paragraphs 1 through 61 of this document.

63. Pursuant to 40 C.F.R. § 68.71, the owner or operator of a Program 3 process must train each employee involved in operating the process, provide those employees with refresher training at least every three years, and document such training and the employee's understanding of it. Training documentation must record the date of the training and the means used to verify that employees understood the training.

64. As described in Paragraph 34(j), above, at the time of Inspection, Respondent had not provided and documented adequate training for employees involved in operating the Processes, in that Respondent had not provided Mr. Russell Warren with initial training when he began work in 2009, and no employees had been provided refresher training since 2006.

65. By failing to adequately train and record compliance 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).

Count 7: Failure to Comply with Program 3 Mechanical Integrity Requirements

66. Complainant realleges and incorporates by reference paragraphs 1 through 65 of this document.

67. Pursuant to 40 C.F.R. § 68.73, the owner or operator of a Program 3 process must establish and implement written procedures to maintain the ongoing integrity of certain process equipment and train employees accordingly. The owner or operator must inspect and test the equipment either in accordance with the manufacturer's recommendations and good engineering practices, or more frequently if needed based on prior operating experience. The owner or

operator must also document the inspections or tests on process equipment, correct deficiencies, assure that any new equipment is suitable for the process application, perform checks to ensure that equipment is installed properly, and assure that maintenance materials and spare parts are suitable for the process application.

68. As described in Paragraph 34(k), above, at the time of Inspection, Respondent had not developed and implemented written mechanical integrity schedules and procedures to maintain the on-going integrity of the equipment in the two Processes, had not performed all the necessary inspections and tests of the equipment in the two Processes, and had not maintained documentation thereof. The limited equipment inspection records indicated that, at the very least, the ammonia detectors had not been tested or calibrated since 2010 and the Manning portable detector had never been maintained, tested, or calibrated. Ammonia detectors should be tested in accordance with the manufacturer's recommendations and good engineering practices, which require annual inspections where no manufacturer recommendations exist. See, e.g. IIAR 2-2008, supra, § 13.2.2; Bulletin No. 110: Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems § 6.6.4 (1993) [hereinafter "IIAR Bull. 110"].

69. Also, Respondent had not maintained the mechanical integrity of the Processes by correcting deficiencies in equipment that are outside of acceptable bounds before continuing to use the equipment, or in a safe and timely manner when steps have been taken to ensure safe operation. For example, as described in Paragraph 34(l), Respondent had not maintained the vapor barrier insulation on piping in several places in both Processes, resulting in some significantly rusted piping, and had failed to provide mechanisms for preventing further damage.

70. By failing to establish and implement a sufficient mechanical integrity program and by not correcting equipment deficiencies before further use or in a safe and timely manner,

Respondent violated 40 C.F.R. § 68.73 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 8: Failure to Comply with Program 3 Compliance Audit Requirements

71. Complainant realleges and incorporates by reference paragraphs 1 through 70 of this document.

72. Pursuant to 40 C.F.R. § 68.79, the owner or operator of a Program 3 process must evaluate compliance with the provisions of the prevention program at least every three years; document the audit findings; promptly determine and document a response to each of the findings of the audit; document that deficiencies have been corrected; and retain the two most recent compliance reports.

73. As described in Paragraph 34(o), above, Respondent performed compliance audits in 2007 and 2010, but did not correct all of the identified deficiencies and/or did not document that all of the deficiencies identified in the audits had been corrected and when.

74. By failing to comply with the compliance audit requirements, Respondent violated 40 C.F.R. § 68.79 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 9: Failure to Comply with Program 3 Contractor Requirements

75. Complainant realleges and incorporates by reference paragraphs 1 through 74 of this document.

76. Pursuant to 40 C.F.R. § 68.87, the owner or operator of a Program 3 process must take certain steps to ensure that contractors who work on or adjacent to the covered process do not inadvertently cause a chemical release. Those steps include evaluating information regarding the contractor's safety performance and programs when selecting a contractor; informing the

contractor of known hazards relating to the contractor's work and the process; explaining the emergency response program to the contractor; developing and implementing safe work practices to control the entrance, presence, and exit of the contractor in covered process areas; and periodically evaluating the contractor's conformance with the contractor safety requirements of 40 C.F.R. § 68.87(c).

77. As described in Paragraph 34(p), above, Respondent had not implemented an adequate contractor safety program, including by not obtaining and evaluating contractor safety performance information.

78. By failing to comply with the contractor requirements, Respondent violated 40 C.F.R. § 68.87 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 10: Failure to Have an Adequate Emergency Response Program

79. Complainant realleges and incorporates by reference paragraphs 1 through 78 of this document.

80. Pursuant to 40 C.F.R. § 68.90, the owner or operator of a stationary source of a Program 3 process must comply with the emergency response program requirements of 40 C.F.R. § 68.95 unless such owner or operator's employees will not be responding to accidental releases and various other requirements are met. Forty C.F.R. § 68.95 requires the owner or operator of a Program 3 process to develop and implement an emergency response program, including by: maintaining an emergency response plan; outlining procedures for using, inspecting, testing and maintaining response equipment; training employees on response procedures; and creating procedures to review and update the emergency response plan to reflect current conditions at the Facility and to inform employees accordingly.

81. Pioneer Cold's EAP indicates that its employees will respond to accidental releases at the Facility. Accordingly, 40 C.F.R. § 68.95 applies.

82. As described in Paragraph 34(q), above, at the time of Inspection, Respondent did not have an adequate emergency response program in place, in that the Facility's EAP did not accurately reflect current conditions at the Facility, it referenced an Emergency Response Team that did not exist at that time, it directed employees to use untested and uncalibrated response equipment, and it called for annual emergency response drills that were not being conducted.

83. By failing to comply with the emergency response program requirements, Respondent violated 40 C.F.R. § 68.95 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

V. TERMS OF SETTLEMENT

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

85. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that the CAFO states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying the factual and legal allegations contained herein, consents to the terms of this CAFO.

86. 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.

87. Respondent certifies that it has corrected the violations alleged in this CAFO and will continue to operate the Facility in compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and with 40 C.F.R. Part 68, as applicable.

88. Respondent consents to the issuance of this CAFO hereinafter recited and consents for purposes of settlement to the performance of the Supplemental Environmental Projects (“SEPs”) described in paragraphs 89 through 112 below and to the payment of the civil penalty cited in paragraph 113 below.

Supplemental Environmental Projects

89. Respondent shall satisfactorily complete the pollution prevention and reduction SEPs described below and in the Scope of Work attached to this CAFO as Exhibit A, which is incorporated herein by reference and which is enforceable by this CAFO. The Parties agree that the SEPs are intended to secure significant environmental and public health protection and benefits by a) helping prevent or mitigate releases of ammonia from, and improve chemical safety at, the Facility, and b) enhance the emergency planning and chemical spill response capabilities of the Fire Department for the City of Chicopee.

Facility Safety Upgrades to Prevent and Minimize Ammonia Releases

90. Respondent shall make safety improvements to the Facility according to the requirements and deadlines described in Exhibit A. The purpose of this SEP is to protect workers, emergency responders, and the community by preventing ammonia releases at the Facility and by limiting the effects of any releases that do occur. Hereinafter, this SEP will be referred to as the “Safety Upgrade SEP.”

91. Respondent represents that, to the best of its knowledge after thorough review of the most current industry standards by Respondent or its agents, the safety upgrades described in Exhibit A exceed the requirements of the most current industry standards.

92. The Safety Upgrade SEP is anticipated to cost approximately \$308,600. “Satisfactory completion” of the SEPs shall mean: (a) making safety improvements to the Facility according to

the requirements and deadlines described in Exhibit A, and (b) spending approximately \$308,600 to carry out the Safety Upgrade SEP.

93. Respondent shall include documentation of the expenditures made in connection with the Safety Upgrade SEP as part of the SEP Completion Report described in paragraph 103 below. Cost overruns on one of the Safety Upgrade projects described in Exhibit A may be offset by savings from another Safety Upgrade project that costs less than anticipated, as the case may be.

94. Within seven (7) days of completion of each separate Safety Upgrade project listed in Exhibit A, Respondent shall send an electronic mail message to Jim Gaffey, gaffey.jim@epa.gov and Christine Foot, foot.christine@epa.gov, to confirm that the new equipment has been installed and is in operation. Upon completion of all three Safety Upgrade projects, Respondent shall submit a SEP Completion Report for the Safety Upgrade SEP, as specified in paragraph 103 below.

Local Emergency Response Enhancements

95. Respondent shall provide emergency response equipment and a calibration contract to the Fire Department of the City of Chicopee, which Respondent has selected to be the SEP Recipient, according to the requirements and deadlines described in Exhibit A. The purpose of this SEP is to enhance the emergency planning and chemical spill response capabilities for local first responders. Hereinafter this SEP shall be referred to as the “Emergency Response SEP.”

96. The SEP is anticipated to cost approximately \$13,500. “Satisfactory completion” of the SEP shall mean: (a) providing the Chicopee Fire Department with emergency response equipment and an associated calibration contract, according to the requirements and deadlines

described in Exhibit A, and (b) spending approximately \$13,500 to carry out the Emergency Response SEP.

97. Respondent shall include documentation of the expenditures made in connection with the Emergency Response SEP as part of the SEP Completion Report described in paragraph 103 below. Cost overruns on one of the Emergency Response projects described in Exhibit A may be offset by savings from another Emergency Response project that costs less than anticipated, as the case may be. Further, if either the Safety Upgrade or Emergency Response SEP costs less than currently anticipated, Respondent may apply the excess to completion of the other SEP described above and in Exhibit A, if that SEP costs more than anticipated.

98. Within seven (7) days of completing each separate Emergency Response project listed in Exhibit A, Respondent shall send an electronic mail message to Jim Gaffey, gaffey.jim@epa.gov and Christine Foot, foot.christine@epa.gov, to confirm that the new equipment or contract has been purchased and given or assigned to the Chicopee Fire Department, or that the emergency response exercise has been completed. Upon completion of all the Emergency Response projects, Respondent shall submit a SEP Completion Report for the Emergency Response SEP, as specified in paragraph 103 below.

99. With regard to the Safety Upgrade and Emergency Response SEPs, Respondent hereby certifies the truth and accuracy of each of the following:

- a. that all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Respondent, in good faith, estimates that the cost to complete the Safety Upgrade SEP is \$308,618 and that the cost to complete the Equipment Purchase SEP is \$13,516;

b. that, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation, and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum.

c. that the SEPs are not projects that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO and that any equipment being replaced or upgraded was otherwise intended to remain in use for at least ten years but for this settlement;

d. that Respondent has not received and will not receive credit for the SEPs in any other enforcement action;

e. that Respondent will not receive any reimbursement for any portion of the SEPs from any other person;

e. 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 SEPs;

g. 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 SEPs; and

h. that Respondent has inquired of the Chicopee Fire Department and of Mr. Larry Aleksandrich, an ammonia refrigeration expert whom it has selected to assist with the implementation of the SEPs, 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 Chicopee Fire Department and Mr. Aleksandrich that neither is a party to such a transaction.

100. For the purposes 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.

101. Respondent agrees that EPA may inspect the Facility at any time to confirm that the Safety Upgrade SEP was undertaken in conformity with the representations made herein.

102. Respondent hereby waives any confidentiality rights they have under 26 U.S.C. § 6103 with respect to such SEP costs on their tax returns and on the information supporting their 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.

103. As described in paragraphs 94 and 98 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, for the Safety Upgrade SEP, photographs of the newly installed equipment, and for the Emergency Response SEP, a list of the equipment and calibration contract purchased and provided to the Chicopee Fire Department;
- 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 the 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.

104. Except as specified in paragraphs 94 and 98, Respondent shall submit all notices and reports required by this CAFO, by first class mail or any other commercial delivery service, to:

Christine M. Foot, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912

and

Jim Gaffey, Chemical Engineer
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mailcode: OES05-1
Boston, MA 02109-3912

105. 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.

106. 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 109(d) below.

107. After receipt of the SEP Completion Report described in paragraph 103 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 109 below.

108. If EPA elects to exercise options (ii) or (iii) in paragraph 107 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 109 below.

STIPULATED PENALTIES

109. In the event that Respondent fails to satisfactorily complete the SEPs as outlined in Exhibit A, 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 Safety Upgrade SEP in accordance with this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$385,750, plus interest from the effective date of the CAFO;⁸

b. If EPA determines that Respondent completely or substantially failed to implement the Equipment Purchase SEP in accordance with this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$16,875, plus interest from the effective date of the CAFO;⁹

c. If Respondent spends less than \$322,100 on the two SEPs but EPA determines that Respondent otherwise satisfactorily completes each SEP, Respondent shall only be required to pay a stipulated penalty to the United States in the amount equal to the

⁸ This SEP includes three separate safety upgrades. If Respondent's substantial or complete failure to implement the SEP is attributable to the failure to perform of one or more but not all of the upgrades, the stipulated penalty would be 125% of the estimated cost for that upgrade, as outlined in the chart in paragraph 1 of Exhibit A.

⁹ This SEP includes two equipment purchases, one contract purchase, and one emergency exercise. If Respondent's substantial or complete failure to implement the SEP is attributable to the failure to perform of one or more but not all of the projects, the stipulated penalty would be 125% of the estimated cost for each such project, as outlined in paragraph 2 of Exhibit A.

difference between \$322,100 and the actual amount spent on the SEPs, plus interest from the effective date of this CAFO;

d. 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 paragraphs 94 and 98; and (b) the SEP Completion Report required by paragraph 103 above.

e. 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 114 below. Interest and late charges shall be paid as stated in Paragraph 116 below.

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

111. 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 paragraph 116 below.

112. Any public statement, oral or written, in print, film, or other media, made by Respondent or its contractors making reference to a SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Air Act."

Civil Penalty

113. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and taking into account the relevant statutory penalty criteria, the facts alleged in the Complaints, the SEPs

described above, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of \$41,000 for the violations alleged in this matter.

114. Within thirty (30) days of the effective date of this CAFO, Respondent shall make a payment by cashier's or certified check, or by wire transfer, in the amount of \$41,000 and shall include the case name and docket number (CAA-01-2014-0020) on the face of the check or wire transfer confirmation. A check should be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 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"

In addition, at the time of payment, Respondents should also forward notice of payment of the civil penalty as well as copies of the payment check or payment receipt to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100

Mail Code ORA18-1
Boston, MA 02109-3912

and

Christine Foot, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912

115. **Collection of Unpaid Civil Penalty:** Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay the civil penalty referenced in paragraph 113 in full, it 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 within thirty (30) calendar days of the effective date of this CAFO. In that event, interest will accrue from the effective date of this CAFO 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 attorneys’ 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.

116. **Collection of Unpaid Stipulated 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 stipulated penalty relating to the performance of the SEPs and accrued pursuant to paragraph 109

above 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.

117. All penalties, interest, and other charges shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not deductible for purposes of federal, state or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, 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.

118. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

119. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 113(a) and (d) of the CAA for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

120. Nothing in this CAFO 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 this CAFO is based, or for Respondent's violation of any applicable provision of law.

121. 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.

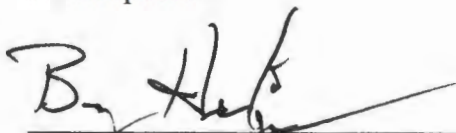
122. Each party shall bear its own costs and fees in this proceeding including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

123. The terms, conditions, and requirements of this CAFO may not be modified without the written agreement of all Parties and the approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements (a) modifying the SEP schedules described in Exhibit A; or (b) allowing any excess amounts from one SEP to be applied towards another.

124. 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.

125. Each undersigned representative of the parties certifies that he 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.

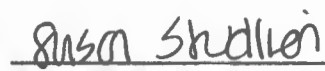
For Respondent:



Bryan Hedge
Chief Operating Officer
Pioneer Valley Refrigerated Warehouse, Inc.
d/b/a Pioneer Cold

7/6/2015
Date

For Complainant:



Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England

07/09/15
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

_____)
IN THE MATTER OF)
Pioneer Valley Refrigerated Warehouse, Inc.)
d/b/a Pioneer Cold)
149 Plainfield Street)
Chicopee, MA 01013)
Proceeding under Section 113)
of the Clean Air Act)
_____)

Docket No. CAA-01-2014-0020

CONSENT AGREEMENT
AND FINAL ORDER

FINAL ORDER

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

The Respondent, as specified in the Consent Agreement, is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

SO ORDERED THIS 15th DAY OF JULY 2015

[Signature]
LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

7/15/15
Date:

EXHIBIT A

Scope of Work for Supplemental Environmental Projects

1. Facility Safety Upgrades to Prevent and Minimize Ammonia Releases

Although ammonia is a very efficient refrigerant, it is toxic when released and at certain concentrations can be flammable. Accordingly, the refrigeration industry has taken steps to improve safety at ammonia refrigeration facilities by publishing industry standards and guidelines to help the refrigeration operators identify hazards at their facilities, avoid releases, and mitigate the effects of any releases that do occur. In Clean Air Act Section 112(r) cases, EPA often refers to these industry standards and guidelines when it is determining whether a particular refrigeration facility is meeting the standard of care that one would expect from such a facility.

To prevent and limit the effects of releases of ammonia at Respondent's cold storage facility at 149 Plainfield Street, Chicopee, Massachusetts, Respondent shall make the safety upgrades listed in the following chart and described in more detail below.

Safety Upgrade	Estimated Cost	Completion Deadline*
Replace two ammonia liquid pumps with two hermetically-sealed pumps in Building Two	\$34,980	Sept. 1, 2015
Replace six compressor panels with six GEA Omni computerized control panels in Building Two	\$130,136	Ordered by Aug. 1, 2015; installed within 4 months of receipt by Respondent
Install master computerized control system in Building Two	\$143,502	Jun. 15, 2016

*Subject to the Force Majeure provision in Paragraph 3, below.

Respondent represents that these equipment upgrades exceed the requirements of the most current industry standards and that, with routine maintenance and upkeep, the equipment being replaced has a remaining useful life of at least ten years.

- a. *Replace two ammonia liquid pumps with two hermetically sealed pumps to nearly eliminate the potential for ammonia releases from pump failure*

By September 1, 2015, Respondent shall replace two open-drive style liquid ammonia pumps in Building Two at the Facility, with hermetically sealed pumps to nearly eliminate the potential for ammonia releases from pump failure. An ammonia refrigeration expert often used by EPA estimates that up to fifteen percent of the leaks to which he responds are attributable to pump

failures. This upgrade involves the conversion and upgrade of the current ammonia liquid pumps from “open drive” pumps to canned, hermetically sealed pumps that have no mechanical seals and no shafts to penetrate the pressure containment area of the pumps. Installation of hermetically sealed pumps would eliminate the “weak link” on the open-drive pump, which is the shaft seal. The hermetically sealed pump operates with the motor and pump sealed within the ammonia system, which nearly eliminates the potential for the pump itself to be the cause of a leak. If the inner fluid containment system were to fail, the external stator shell still prevents the release of ammonia to the atmosphere. The technology being replaced, even when working properly, presents a greater risk of leak due to lubrication failures, physical degradation, and both normal and unanticipated wear and tear. Furthermore, this upgrade would improve worker safety by reducing the need for manual observation of the oil reservoir. The approximate cost for the replacement of the two ammonia pumps is \$34,980, including purchase and installation costs.

b. Upgrade and replace six existing compressor panels with six GEA Omni computerized compressor control panels:

By August 1, 2015, Respondent shall place a purchase order for six GEO Omni compressor control panels to replace four local MicroMASTER compressor panels and two local Micro III compressor panels. The new GEO Omni compressor panels, which are made-to-order and which may take up to 18 weeks for manufacture, shall be installed by Respondent in Building Two of the Facility within four (4) months of receiving them.

The upgraded panels will provide enhanced operational control of the six screw compressors. They will also allow for display of pre-loaded operating manuals and wiring diagrams at the site of the equipment, which provides improved access to this critical safety information. This will enhance preventative maintenance of the equipment so as to reduce the likelihood of an ammonia release. The compressor panels have safety cut-out switches that shut the compressors down in cases of excessively high pressure or temperature, reducing the likelihood of a catastrophic failure and release of ammonia. These upgraded panels are also a necessary first step to installing a system-wide master control panel (see next project). The approximate cost for the purchase, installation, and worker training of the six compressor control panels is \$130,136.

c. Install GEA Omni master computerized control system:

By June 15, 2016, Respondent shall install and operate a centralized, computerized control system to monitor and control the entire refrigeration system in Building Two of the Facility. The control system will be comprised of a system control panel that will tie into the upgraded compressor control panels described above, as well as various pressure, temperature, and ammonia probes and sensors system-wide. The installation of control system shall include approximately two weeks of startup supervision by a company technician. The approximate cost for the purchase, installation, and worker training of the master control panels is \$143,502.

The entire system will be fully integrated to monitor and control all components for temperature, pressure, and ammonia and will provide immediate detection and notification (via alarms, text

messages, or electronic mail) of any problematic reading or device failure. It can prevent or minimize ammonia releases by triggering automatic shutdown of certain components or refrigeration zones if readings hit specified set-points, and by providing for remote control and shutdown (by owner and authorized third parties, such as the company's refrigeration consultant and/or its refrigeration contractor) more quickly than currently possible, and from any personal computer, without specialized software. The system tracks historical trends, aiding in predictive maintenance to avoid potential failures, and logs maintenance tasks, including when the next service action/inspection is due.

2. Emergency Response Enhancements

a. *Provide emergency response equipment and calibration contract to local emergency responders*

Respondent shall purchase and deliver, or shall ensure the purchase and delivery of, the following emergency response equipment to the Chicopee Fire Department, the response agency that operates in the vicinity of the Facility, by August 1, 2015:

- Three (3) Biosystems 54-45-21 ToxiPro ammonia gas detectors, at an approximate cost of \$1,527.33 (\$509.11 each), and
- Two (2) RAE Systems MiniRAE 3000 photo ionization detectors and calibration kits, at an approximate cost of \$8,298 (\$4,149 each).

The equipment consists of gas detectors, which are needed during responses to emergencies involving chemicals that are regulated pursuant to Section 112(r) of the Clean Air Act, including anhydrous ammonia.

Additionally, Respondent shall fund a five-year contract to provide for the necessary annual calibration of the above-listed ToxiPro detectors. The contract shall begin at the time of the equipment donation and extend for five years. The approximate cost of the calibration contract is \$177.71 a year for each unit, for an approximate five-year total of \$2,665.65.

The total approximate cost for the emergency equipment and calibration contract is \$12,491.

b. *Develop and conduct a table-top emergency exercise to enhance planning and coordination between the facility and local emergency responders*

By December 1, 2015, Respondent shall, through an ammonia refrigeration consultant, develop and conduct a table-top exercise program in which Pioneer Cold and the Chicopee Fire Department personnel shall meet in an informal, classroom setting to discuss their roles during an emergency and their responses to particular emergency scenarios. Other nearby emergency response organizations shall be invited to participate.

Development of the exercise shall begin with an assessment of needs and current capabilities of the respective parties, and shall include risk assessment and program performance objectives. The exercise shall include a walkthrough or orientation session to familiarize team members with the preparedness plans, a review of roles and responsibilities, and ensure everyone is familiar with incident management. This process shall assist in identifying probable scenarios for emergencies and business disruption.

The ammonia refrigeration consultant will then use these ammonia release scenarios as the basis for conducting a tabletop exercise in which the participants assess the incident(s), identify response objectives and necessary resources, discuss roles and responsibilities, and simulate responses to the emergency scenarios.

Following the exercise, a hot-wash debrief will be held to determine whether exercise objectives were met and to identify opportunities for program improvement. To complete the exercise process, the consultant will produce an after-action report that includes an improvement plan matrix, which will be provided to Pioneer management as well as the Chicopee Fire Department. Improvement items applicable to Pioneer Cold should be addressed through Pioneer's corrective action program.

The approximate cost for the emergency response exercise is \$1,025.

3. Force Majeure

a. "Force majeure," for purposes of this CAFO, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent or Respondent's contractors that delays or prevents the performance of any obligation under this CAFO despite Respondent's best efforts to fulfill the obligation. "Force majeure" does not include financial inability to complete the Work.

b. If any event occurs or has occurred that may delay the performance of any obligation under this CAFO for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify EPA orally within three business days of when Respondent first knew that the event might cause a delay. Within five business days thereafter, Respondent shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and Respondent's rationale for attributing such delay to a force majeure. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent or Respondent's

contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure and that Respondent has exercised its best efforts, EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

c. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this CAFO that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

IN THE MATTER OF)
)
)

Pioneer Valley Refrigerated Warehouse, Inc.)

d/b/a Pioneer Cold)

149 Plainfield Street)

Chicopee, MA 01013)
)

Proceeding under Section 113)

of the Clean Air Act)
_____)

Docket No. CAA-01-2014-0020

CERTIFICATE OF SERVICE

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

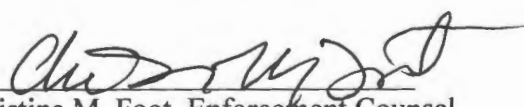
Original and one copy
(hand-delivered):

Ms. Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

Copy (certified mail, return
receipt requested):

Mark S. Dreux, Esq.
Arent Fox LLP | Attorneys at Law
1717 K Street, NW
Washington, DC 20006-5344

Dated: 7/16/15


Christine M. Foot, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912