



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 05 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Doug Griffin
Plant Manager
Tyson Fresh Meats, Inc.
201 Cartwright Street
Goodlettsville, Tennessee 37072

Re: Tyson Fresh Meats, Inc., Goodlettsville, Tennessee
Consent Agreement and Final Order
Docket Number: CAA-04-2019-8005(b)

Dear Mr. Griffin:

Enclosed, please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2019-8005(b)) involving Tyson Fresh Meats, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing. The penalty payment should be made within 30 days after the receipt of the signed, approved and filed CAFO.

If you have any questions, please call Mr. Om P. Devkota at (404) 562-8963.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief
Chemical Safety and Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:)
)
Tyson Fresh Meats, Inc.)
)
Respondent.)
_____)

Docket No.
CAA-04-2019-8005(b)

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HEARING OFFICE
OFFICE OF REGIONAL
COUNSEL

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 CFR Part 22.
2. Complainant is the United States Environmental Protection Agency, Region 4 (the EPA). The Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is Tyson Fresh Meats Inc, a corporation doing business in the State of Tennessee. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (Consent Agreement or Agreement) and the attached final order (Final Order or Order) without adjudication of any issue of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order (CAFO).

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 CFR Part 22. The alleged violations in this Consent Agreement are of Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7).
6. On May 18, 2018, the EPA issued to Respondent a Notice of Potential Violation (NOPV), providing notice that the EPA found that Respondent potentially committed the alleged violation described in Section E of this Agreement and provided Respondent an opportunity to confer with the EPA. On August 23, 2018, representatives of Respondent and the EPA held a Show Cause meeting to discuss the May 18, 2018, NOPV.

7. The Regional Judicial Officer is authorized to ratify this Consent Agreement, which memorializes settlement between Complainant and Respondent. 40 CFR § 22.4(b) and 22.18(b).
8. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 CFR § 22.13(b).

C. GOVERNING LAW

9. Section 112(r) of the Act, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), and other extremely hazardous substances. The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

10. Pursuant to Sections 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 CFR Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the Risk Management Program (RMProgram) and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 CFR § 68.130.

11. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 CFR §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 CFR § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

D. FACTUAL ALLEGATIONS

12. Respondent operates a “stationary source” as that term is defined by Section 302(z) of the Act, 42 U.S.C. § 7602(z). The Respondent’s stationary source is located at 201 Cartwright Street, Goodlettsville, Tennessee.

13. Respondent has registered an RMPlan with the EPA for its stationary source and has developed an RMProgram accidental release prevention program for the stationary source.

14. For the purpose of this Agreement:

- (a) At its stationary source, the Respondent operates an ammonia refrigeration process facility.
- (b) At its stationary source, the Respondent has 13,000 pounds of ammonia in onsite storage.

- (c) At its stationary source, the Respondent has one RMProgram level 3 covered process, which processes ammonia in an amount exceeding its applicable threshold of 10,000 pounds.
- (d) On March 13, 2018, the EPA conducted an onsite inspection of the RMProgram related records and equipment for the purpose of assessing the Respondent's compliance with the RMProgram requirements and the implemented recognized and generally accepted good engineering practices for its covered process at its stationary source.
- (e) The Respondent could not document that the following equipment complied with recognized and generally accepted good engineering practices.
 - 1. At the time of the inspection, some of the ammonia piping did not have labels and tags indicating the pipe contents or direction of flow. The International Institute of Ammonia Refrigeration (IIAR) Bulletin 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, Section 4.7.6, indicates, "All ammonia piping should have appropriate pipe markers attached to indicate the use of the pipe and arrows to indicate the direction of flow, such as in IIAR Bulletin 114." Bulletin 114: Guidelines for Identification of Ammonia Refrigeration Piping and System Components, Section 4.1 Piping Markers, indicates, "Piping markers shall be designed to identify the refrigerant, the physical state of the refrigerant, and the relative pressure level of the refrigerant and the direction of flow."
 - 2. Some of the piping supports, pipes and valves outside where the high-pressure receiver is located were rusted. IIAR Bulletin 110, Section 6.7.1 indicates, "All uninsulated piping and associated components such as flanges and supports shall be inspected annually for any damage to or deterioration of the piping or its protective finish; and remedial action taken where necessary. Areas affected by slight corrosion should be cleaned off and appropriately treated before reinstating the protective finish."

E. ALLEGED VIOLATIONS OF LAW

15. Based on EPA's compliance monitoring investigation, the EPA alleges that the Respondent violated the codified rules governing the Act's Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 CFR Part 68 when it:

Failed to demonstrate that process equipment complies with recognized and generally accepted good engineering practices as required by 40 CFR § 68.65(d)(2).

F. TERMS OF CONSENT AGREEMENT

16. For the purpose of this proceeding, as required by 40 CFR § 22.18(b)(2), Respondent:
- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
 - (b) neither admits nor denies the factual allegations stated above;
 - (c) consents to the assessment of a civil penalty as stated below;
 - (d) consents to the issuance of any specified compliance or corrective action order;
 - (e) consents to the conditions specified in this Agreement;
 - (f) consents to any Permit Action;
 - (g) waives any rights to contest the alleged violations of law set forth in Section E of this Consent Agreement; and
 - (h) waives its rights to appeal the Order accompanying this Agreement.
17. For the purpose of this Agreement, Respondent:
- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
 - (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);
 - (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Middle District of Tennessee;
 - (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and
 - (f) certifies that as of its execution of this Agreement, it is in compliance with all relevant requirements of 40 CFR Part 68.

18. Penalty Payment. Respondent agrees to:

- (a) pay the civil penalty of **EIGHTEEN THOUSAND ONE HUNDRED NINETY-FIVE DOLLARS (18,195)** (EPA Penalty) within 30 calendar days of the Effective Date of this Agreement;
- (b) pay the EPA Penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," or by electronic transfer to one of the following addresses:

For payment sent via electronic transfer

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, New York 10045

Beneficiary: "U.S. Environmental Protection Agency";

For payment sent via standard delivery

U.S. Environmental Protection Agency

Cincinnati Finance Center Box 979077

St. Louis, MO 63197-9000; or

For payment sent for signed receipt confirmation (FedEx, DSL, UPS, USPS Certified)

U.S. Environmental Protection Agency

Cincinnati Finance Center Box 979077

1005 Convention Plaza

SL-MO-C2-GL

St. Louis, MO 63101 (Delivery Location Phone Number: 314-425-1819).

The check shall reference on its face the name and the Docket Number of the CAFO. Within 24 hours of payment of the EPA Penalty, Respondent shall send a separate copy of the check or confirmation of electronic transfer, and a written statement that payment has been made in accordance with this Agreement, to the following persons at the following addresses:

Regional Hearing Clerk

U.S. EPA Region 4

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

Om Devkota

U.S. EPA, Region 4

Air, Pesticides and Toxics Management Division

61 Forsyth Street, S.W.

Atlanta, Georgia 30303

19. If Respondent fails to timely pay any portion of the EPA Penalty assessed under this Agreement, the EPA may:

- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 CFR §§ 13.13, 13.14, and 13.33;
- (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 CFR Part 13, Subparts C and H; and,
- (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 CFR § 13.17.

20. Supplemental Environmental Project.

- (a) Respondent shall undertake and complete the following Emergency Planning and Preparedness Supplemental Environmental Project (SEP) within 45 days of the effective date of this CAFO. Respondent shall expend no less than **SIXTY-EIGHT THOUSAND TWO HUNDRED THIRTY DOLLARS, (\$68,230)** for the purchase of (22) sets of turn out gear, (1) battery over hydraulic ram with extension kit, and (1) ram extension kit for the Goodlettsville Fire Department located in 105 Long Hollow Pike, Goodlettsville, Tennessee, 37072.
- (b) Respondent agrees, in the event that Respondent's actual purchase of equipment deviates from the equipment specified above, Respondent shall provide information to the EPA explaining the reason(s) for any such deviation. So long as the amount that Respondent spends equals or exceeds \$68,230, and the explanation for the deviation is acceptable to the EPA, this provision shall be deemed to be satisfied. This CAFO shall not be construed to constitute EPA endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.
- (c) Respondent certifies the truth and accuracy of each of the following:
 - (1) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$68,230;

- (2) That, as of the effective date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation, permit, order or agreement and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;
 - (3) That the SEP is not a project the Respondent was planning or intending to construct, perform or implement other than in settlement of the claims resolved in this CAFO;
 - (4) That Respondent has not received and will not receive credit for the SEP in any other enforcement action of any kind;
 - (5) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
 - (6) That for federal income tax purposes, Respondent agrees it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
 - (7) That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and
 - (8) That Respondent has inquired of the agency listed in Paragraph 20(a) whether they are 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 agency listed in Paragraph 20(a) that they are not a party to such a transaction.
- (d) Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 20(a). If Respondent does not fully and timely complete the SEP, it shall be required to pay stipulated penalties pursuant to Paragraph 20(h).
 - (e) Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
 - (f) Respondent shall submit to EPA a SEP Completion Report, no later than sixty (60) calendar days after the Effective Date of this CAFO. The Report shall be sent to the Chemical Management and Emergency Planning Section, to the attention of Om Devkota at the address provided above. The Report shall include the following:
 - (1) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
 - (2) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than \$68,230, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 20(a).

Upon request, Respondent shall send EPA any additional documentation requested by the EPA.

- (g) In making any reference to the SEP, any public statement, oral or written, Respondent 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 Section 112(r)(7) of the Clean Air Act (CAA).”

- (h) Respondent shall pay to the United States a stipulated penalty of the difference between \$54,584 and the actual SEP expenditure if Respondent fails to timely and fully complete the activities described in Paragraph 20(a), including failure to spend the minimum amount of **SIXTY-EIGHT THOUSAND TWO HUNDRED THIRTY DOLLARS, (\$68,230)**.
- (i) For purposes of Paragraph 20(h), whether Respondent has fully and timely completed the SEP shall be in the sole discretion of the EPA.
- (j) Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late if Respondent fails to timely submit a SEP Completion Report as required by this CAFO.

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

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

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

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

25. Except as qualified by Paragraph 19, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

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

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

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

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

30. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and pursuant to 40 CFR Part 19, as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

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

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

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

The remainder of this page is intentionally blank.

H. EFFECTIVE DATE

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

The foregoing Consent Agreement in the Matter of Tyson Fresh Meats, Inc. Docket No. CAA-04-2019-8005(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Tyson Fresh Meats, Inc.

By: Kevin J. Igli Date: 2/25/2019

Name: Kevin J. Igli (Typed or Printed)

Title: SVP & Chief Environmental Officer (Typed or Printed)

FOR COMPLAINANT:

U.S. Environmental Protection Agency

By: Beverly H. Banister Date: 2/27/19

Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:)
)
Tyson Fresh Meats, Inc.)
)
)
Respondent.)
_____)

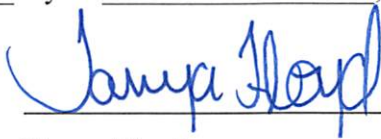
Docket No.
CAA-04-2019-8005(b)

FINAL ORDER

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

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective on the date that the Consent Agreement and Final Order are filed by the Regional Hearing Clerk.

SO ORDERED this 5th day of March, 2019.



Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of Tyson Fresh Meats, Inc., CAA-04-2019-8005(b) on the parties listed below in the manner indicated:

Om P. Devkota
U. S. EPA, Region 4
Air, Pesticides and Toxics
Management Division

(Via EPA's internal mail)

Ellen Rouch
U. S. EPA, Region 4
Office of Regional Counsel

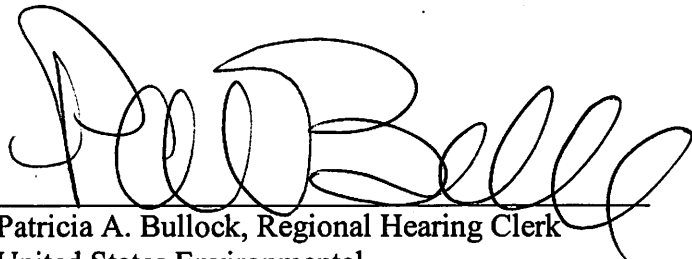
(Via EPA's internal mail)

Mr. Doug Griffin
Plant Manager
Tyson Fresh Meats, Inc.
201 Cartwright Street
Goodlettsville, Tennessee 37072

(Via Certified Mail - Return Receipt Requested)

Date: _____

3-5-19



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511