



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

JUL 26 2016

UNITED PARCEL SERVICE

Mr. Timothy D. Hoffman
Partner
Dinsmore & Shohl LLP
100 Courthouse Plaza, S.W.
Dayton, Ohio 45402

Re: Club Chef, LLC
Consent Agreement and Final Order
CAA-04-2016-8016(b)

Dear Mr. Hoffman:

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-04-2016-8016(b)) involving Club Chef, LLC. 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.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Club Chef, LLC, on notice of its potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4.

Should you or your client have any questions concerning Club Chef's compliance status in the future, please contact Robert Caplan, EPA Senior Attorney, at 404-562-9520, or Mr. Victor Weeks, EPA Region 4, at (404) 562-9189.

Sincerely,

A handwritten signature in blue ink that reads "R. W. Bookman".

Robert W. Bookman
Chief
Chemical Management and Emergency
Planning Section

Enclosures

cc: Mr. Jeff Klare, Club Chef, LLC

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

IN THE MATTER OF:)
)
 Club Chef, LLC)
)
 Respondent.)
 _____)

Docket No.
CAA-04-2016-8016(b)

HEARING CLERK

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REGIONAL OFFICE
OFFICE OF REGIONAL COUNCIL
REGION 4

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 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region 4 (the "EPA"). On the EPA's behalf, 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 Club Chef, LLC, a company doing business in the Commonwealth of Kentucky. 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.

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 C.F.R. Part 22. The alleged violations in this Consent Agreement are pursuant to Section 113(a)(3)(A) of the Act.
6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. On May 5, 2014, the EPA issued to Respondent a notice of potential violation (“NOPV”), providing notice that the EPA found that Respondent potentially committed the alleged violations described in Section E of this Agreement and providing Respondent an opportunity to confer with the EPA. On March 4, 2015, and on July 1, 2015, representatives of Respondent and the EPA discussed the May 5, 2014, NOPV.

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

9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. 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 3776 Lake Park Drive, Covington, Kentucky 41017 (stationary source).

11. 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). 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.

12. 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 C.F.R. 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 C.F.R. § 68.130.

13. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 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 C.F.R. § 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

14. Respondent has submitted and registered an RMPlan to the EPA for its stationary source, and has developed an RMProgram accidental release prevention program for the stationary source.

15. (a) At its stationary source, the Respondent owns and operates a 210,000 square foot fresh fruits and vegetables processing and cold storage facility. The facility includes one RMProgram regulated closed-looped ammonia refrigeration system.

(b) The refrigeration system represents an RMProgram level 3 covered process which currently stores or otherwise uses 27,300 pounds of anhydrous ammonia, in amounts exceeding the applicable threshold of 10,000 pounds.

(c) On May 2, 2013, EPA conducted an onsite inspection of RMProgram related records and equipment for the purpose of assessing the Respondent's compliance with RMProgram requirements and implementing recognized and generally accepted good engineering practices (RAGAGEP) for its covered process operating at its stationary source.

(d) At the time of inspection, the Respondent had not compiled correct process safety information (PSI) for the maximum intended inventory. The Respondent's compiled PSI represented a maximum intended inventory of 19,500 pounds of ammonia. However, a Respondent 2011 ammonia inventory record indicated that the ammonia system operated at a greater capacity, in the amount of 28,348 pounds; and during the inspection, the Respondent stipulated that the actual PSI maximum intended inventory was thought to be 32,000 pounds.

(e) At the time of inspection, the Respondent was operating Unit Cooler AU-11 and Unit Cooler AU-12 ammonia piping that was not compliant with RAGAGEP because it was poorly insulated, damaged at its seals, and poorly supported. The Respondent failed to ensure and could not document that its process equipment was compliant with RAGAGEP.

(f) The Respondent's 2009 PHA did not document closure of recommended actions for several system components (i.e., compressors, evaporative condensers, high pressure receivers, system relief valves, piping, and ammonia pumps). Additionally, the Respondent's April 2011 PHA did not document closure of recommended actions for several recognized process hazards, hazardous operating conditions or system components (i.e., evaporative condenser-facility siting, flooded evaporator, air units & heat exchangers, system controls-instrumentation).

(g) At the time of inspection, the Respondent had not developed and implemented written operating procedures for the following equipment: Frick AU-8 Air Unit, Screw Compressor C-1, Screw Compressor C-2, Recirculator Vessel V-2, Recirculator Vessel V-3, and Line A Chiller CH-7.

(h) At the time of inspection, in the year 2012, the Respondent had not annually certified that its operating procedures were accurate and had been reviewed as often as necessary for the following equipment: Frick AU-8 Air Unit, Screw Compressor C-1, Screw Compressor C-2, Recirculator Vessel V-2, Recirculator Vessel V-3, and Line A Chiller CH-7.

(i) At the time of inspection, the Respondent had not documented the means it used to verify that its employees involved in operating the ammonia process understood the annual refrigeration system refresher training provided to such employees.

(j) At the time of inspection, the Respondent had not maintained inspection and test records that in every instance included all of the following: date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed and the result of inspection or test. Also, the Respondent had not maintained records for ammonia system vacuum and pressure tests, and had not performed mechanical integrity testing on the ammonia system every five years in accordance with RAGAGEP.

(k) At the time of inspection, the Respondent had not corrected or replaced unacceptable insulation and seals, or added necessary supports for Unit Cooler AU-11 and Unit Cooler AU-12 process piping.

(l) The Respondent's Management of Change (MOC) documentation for its July 2011 system expansion in which nine air units, one pre-chiller, two Frick compressors, one condenser, one recirculator package, an air drier, and a chiller for the new "Line G" were added to the ammonia system was not signed/approved by Respondent's authorized personnel, as required by the Respondent's MOC procedure.

(m) The Respondent did not provide evidence that it performed a pre-startup safety review when it expanded and significantly modified its ammonia refrigeration system in 2011 by adding the following equipment: nine air units, one pre-chiller, two Frick compressors, one condenser, one recirculator package, an air drier, and a chiller for the new "Line G".

(n) At the time of inspection, the Respondent had not documented that it had implemented corrective actions needed to address the following deficiencies noted in its October 2012, RMP program compliance audit: (1) install self-closing gates around the air compressors and backup generator to ensure safety; (2) create a work order/PM program to ensure that all aspects of mechanical integrity inspections are performed on a timely basis of within one year; (3) perform safety checks on the compressor cutouts and high level floats, break glass stations, and ammonia detectors; (4) close out open action items from the PHAs completed in 2009 and 2011; (5) develop or obtain the ammonia safety design documents (ventilation and relief systems, design codes); and (6) install equipment labels with pressure bands on all refrigeration equipment.

(o) During the Respondent's 2011 ammonia system expansion, the Respondent did not periodically evaluate the performance of its contract owners or operators in fulfilling their obligations during the Respondent's expansion.

(p) The Respondent's RMP plan registration form of record prior to the Respondent receiving EPA's notice of inspection, indicated that the covered refrigeration process contained an inventory of 19,500 pounds of ammonia, when the actual inventory of ammonia at the time of inspection, as stipulated by Respondent, was thought to be 32,000 pounds.

(q) At the time of inspection, the Respondent had not submitted correct information for its RMP program emergency contact.

E. ALLEGED VIOLATIONS OF LAW

16. Based on the facts stipulated in Section D above, the EPA alleges that the Respondent violated the codified rules of 40 C.F.R. Part 68, governing the Act's Chemical Accident Prevention Provisions when it:

Failed to compile the correct maximum intended inventory pertaining to the technology of the process as required by 40 C.F.R. § 68.65(c)(1)(iii);

Failed to document that the ammonia process complies with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.65(d)(2);

Failed to established a system to promptly address process hazard analysis findings and recommendations as required by 40 C.F.R. § 68.67(e);

Failed to develop and implement written operating procedures as required by 40 C.F.R. § 68.69(a);

Failed to certify annually that the operating procedures had been reviewed, and that such operating procedures were current and accurate as required by 40 C.F.R. § 68.69(c);

Failed to document the means used to verify that each employee involved in operating the covered process understood the annual ammonia refrigeration system training as required by 40 C.F.R. § 68.71(c);

Failed to document each inspection and test that had been performed on process equipment as required by 40 C.F.R. § 68.73(d)(4);

Failed to correct deficiencies in equipment that were determined to be outside of acceptable limits as required by 40 C.F.R. § 68.73(e);

Failed to implement written procedures to manage changes to process equipment as required by 40 C.F.R. § 68.75(a);

Failed to perform a pre-startup safety review after significantly modifying its stationary source as required by 40 C.F.R. § 68.77(b);

Failed to document that compliance audit deficiencies were corrected as required by 40 C.F.R. § 68.79(d);

Failed to periodically evaluate the performance of its contractors in fulfilling their obligations as required by 40 C.F.R. § 68.87(b)(5);

Failed to include in its single registration form, the maximum quantity of each regulated substance in the process as required by 40 C.F.R. § 68.160(b)(7); and

Failed to submit corrected emergency contact information within 30 days of a change as required by 40 C.F.R. § 68.195(b).

F. TERMS OF CONSENT AGREEMENT

17. For the purpose of this proceeding, as required by 40 C.F.R. § 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 conditions specified in this Agreement;

- (e) waives any rights to contest the alleged violations of law set forth in Section E of this Consent Agreement;
- (f) waives its rights to appeal the Order accompanying this Agreement; and
- (g) certifies that as of its execution of this Agreement, it is in compliance with all relevant requirements of 40 C.F.R. Part 68.

18. For the purpose of this proceeding, 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 Eastern District of Kentucky; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the 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.

19. Penalty Payment. Respondent agrees to:

- (a) pay the civil penalty of **ONE HUNDRED TWENTY-ONE THOUSAND EIGHT HUNDRED DOLLARS (\$121,800)** ("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 PO 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-C2GL
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, 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

Deanne Grant
Chemical Management and Emergency
Planning Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

20. If Respondent fails to timely pay any portion of the 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 C.F.R. §§ 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

- (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 C.F.R. § 13.17.

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

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

23. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

24. By signing this Agreement, 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. 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 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

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

28. This Agreement 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 Agreement 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 Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

31. Nothing in this Agreement 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 Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, 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.

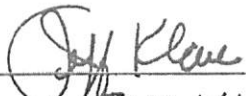
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H. EFFECTIVE DATE

34. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement and Final Order to the Respondent. This Consent Agreement and Final Order 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 Club Chef, LLC, Docket No. CAA-04-2016-8016(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Club Chef, LLC

By:  Date: 6/27/16
Name: JESS KLAKE (Typed or Printed)
Title: Exec V.P. / G.M (Typed or Printed)

FOR COMPLAINANT:

U.S. Environmental Protection Agency

By:  Date: 7/5/16
Carol L. Kemker
Acting Director
Air, Pesticides and Toxics Management Division

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

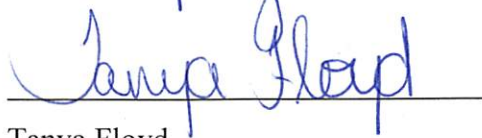
IN THE MATTER OF:)
)
 Club Chef, LLC)
)
 Respondent.)
 _____)

Docket No.
CAA-04-2016-8016(b)

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 22nd day of July, 20 16



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 Club Chef, LLC, CAA-04-2016-8016(b), on the parties listed below in the manner indicated:

Robert W. Bookman
U. S. EPA, Region 4
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Robert Caplan
U. S. EPA, Region 4
Office of Regional Counsel
61 Forsyth Street
Atlanta, GA 30303

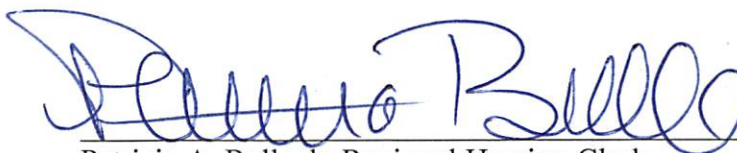
(Via EPA's internal mail)

Timothy D. Hoffman
Partner
Dinsmore & Shohl LLP
100 Courthouse Plaza, S.W.
Dayton, Ohio 45402 Club Chef, LLC

(Via Certified Mail -
Return Receipt Requested)

Date: _____

7-26-16



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