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REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	§	EPA DOCKET NO.
	§	CAA-06-2020-3328
	§	
SWIFT BEEF COMPANY	§	CONSENT AGREEMENT
GREELEY, COLORADO	§	AND FINAL ORDER
	§	
RESPONDENT	§	
Cactus, Texas	§	

CONSENT AGREEMENT

The Director of the Enforcement and Compliance Assurance Division for the United States Environmental Protection Agency ("EPA"), Region 6 ("Complainant") and Swift Beef Company ("Respondent") in the above-referenced proceeding, hereby agree to simultaneously commence and resolve this matter through the issuance of this Consent Agreement and Final Order ("CAFO").

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Sections 113(a)(3)(A) and 113(d)(1)(B) of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(a)(3)(A) and 7413(d)(1)(B), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.
2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A).
3. For the purposes of this proceeding, Respondent admits the jurisdictional allegations contained of this CAFO; neither admits nor denies specific factual allegations contained in the Consent Agreement; consents to the assessment of any stated civil penalty, to the issuance of any

specified compliance or corrective action order, to any conditions specified in the Consent Agreement, and to any stated Permit Action; and waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

4. Full payment of the penalty shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the CAFO.

5. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it. This CAFO shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns.

II. STATUTORY AND REGULATORY BACKGROUND

6. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

7. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements.

8. Under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA including, but not limited to, a requirement or prohibition of any rule promulgated under the

CAA, the Administrator may issue an administrative order assessing a civil administrative penalty.¹

9. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

10. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines person as an “individual, corporation, partnership, association [. . .] and any officer, agent, or employee thereof.”

11. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source” as:

any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

12. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three “Programs” -- Program 1, Program 2, and Program 3.

13. “Covered process” is defined in 40 C.F.R. § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

14. “Owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

¹ As adjusted by the *Transmittal of the 2019 Annual Civil Monetary Penalty Inflation Adjustment Rule* (84 Fed. Reg. 2056 and corrected by 84 Fed. Reg. 5955), 40 C.F.R. § 19.4 and mandated by the *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018)*, the Administrator may assess a civil penalty of up to \$47,357 per violation per day of violation occurring after November 2, 2015 where penalties are assessed on or after February 6, 2019.

15. "Process" is defined in 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. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

16. "Regulated substance" is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in § 68.130.

17. "Threshold quantity" is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA as amended, listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part.

18. Pursuant to 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process (Covered Process), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68.

19. Pursuant to 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan (RMP) as provided in 40 C.F.R. Part 68, Subpart G (§§ 68.150-68.185) that reflects all covered processes at the stationary source.

20. Pursuant to 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the "Program 3" requirements of the Part 68 regulations, as determined pursuant to 40 C.F.R. § 68.10(d), must comply with the chemical accident prevention requirements of 40 C.F.R. Part 68, Subpart D (§§ 68.65-68.87).

III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

21. Respondent is authorized to conduct business in the state of Texas.

22. Respondent is a "person" as that term is defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

23. Respondent is the owner or operator of the facility located at 5950 Trails End Road in Cactus, Texas, 79013.

24. Respondent's facility is a refrigerated warehousing and storage area and is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

25. Respondent's refrigerated distribution center includes a Program Level 3 covered process, as provided by 40 C.F.R. § 68.10(d).

26. Respondent uses 74,000 pounds of ammonia (anhydrous), a regulated substance in an amount that exceeds the threshold quantity as part of its covered process at its distribution center.

27. Ammonia (anhydrous), CAS No. 7664-41-7, is a regulated toxic substance under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), listed under Table 1 to 40 C.F.R. § 68.130, and has a threshold quantity of 10,000 pounds.

28. On March 29, 2019, at approximately 6:30 a.m. the gasket flange to Pump #1 on the Low Side Accumulator at the Distribution Center Engine Room failed causing a release of liquid anhydrous ammonia.

29. The incident investigation identified the failure of the gasket was due to the bolts used to tighten the flange were not torqued to proper specifications leading to vibration and failure.

30. The incident investigation also identified the failure of the gasket was due to the use of a gasket not specifically designed for the use of anhydrous ammonia.

IV. VIOLATIONS

Violation 1: Mechanical Integrity -Written Procedures

31. 40 C.F.R. § 68.73(b) requires an owner or operator establish and implement written procedures to maintain the ongoing integrity of process equipment.

32. At the time of the March 29, 2019 incident, Respondent did not have written procedures to ensure the flange bolts were tightened to the manufacturer's specifications.

33. At the time of the March 29, 2019 incident, Respondent did not include ensuring adequate torque specifications in its inspection frequencies.

34. Following the March 29, 2019 incident, Respondent developed and implemented a preventative maintenance program to tighten flange bolts on all ammonia pump flanges using a torque wrench to adequate specifications on a bi-annual basis.

35. At the time of the March 29, 2019 incident, EPA finds Respondent did not establish or implement procedures to maintain the ongoing integrity of its process equipment in violation of 40 C.F.R. § 68.73(b).

V. CIVIL PENALTY AND TERMS OF SETTLEMENT

A. Civil Penalty

36. Pursuant to the authority granted in Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and taking into consideration the size of the Respondent's business, the economic impact of the penalty on the Respondent's business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and Respondent's cooperation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is

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\$37,900.00 (Thirty-Seven Thousand and Nine-Hundred dollars).

37. Respondent shall pay the assessed penalty within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of three ways: regular U.S. Postal Service mail (including certified mail); overnight mail; or wire transfer.

For U.S. Postal Service mail, the check should be remitted to:

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

For overnight mail (non-U.S. Postal Service; e.g., FedEx), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency

NOTE: Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

PLEASE NOTE: Docket number CAA-06-2020-3328 shall be clearly typed on the check to ensure proper credit. If payment is made by check, the check shall also be accompanied by a

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transmittal letter and shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter or wire transfer instructions to the following:

Diana Lundelius
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

Lorena Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received in the Region.

38. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

39. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the

period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

40. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

B. Costs

41. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

C. Effective Date

42. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:


FOR THE RESPONDENT:

1-20-20
Date


Swift Beef Company

FOR THE COMPLAINANT:

1-22-2020
Date


Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 1/28/2020



Thomas Rucki
Regional Judicial Officer
U.S. EPA, Region 6

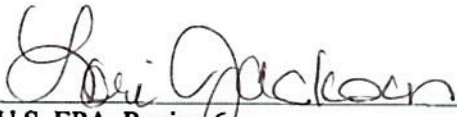
CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of Jan., 2020, the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, U.S. Environmental Protection Agency, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 7014 0150 00002404 8336

Nicholas M. White, General Counsel
Swift Beef Company
1770 Promontory Circle
Greeley, Colorado 80634

Date: 01-28-2020


U.S. EPA, Region 6
Dallas, Texas