

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX



IN THE MATTER OF:)
)
Smithfield Packaged)
Meats Corp. and Clougherty)
Packing, LLC)
)
3049 E. Vernon Ave.)
Vernon, CA 90058)
)
Respondents.)
_____)

Docket No.
CAA(112R)-09-2022-0016

**CONSENT AGREEMENT
AND FINAL ORDER
40 C.F.R. §§ 22.13 and 22.18**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Sections 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”).
3. The Respondents are Smithfield Packaged Meats Corp. (“Smithfield Respondent”) and Clougherty Packing, LLC (“Clougherty Packing Respondent”).
4. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority to the Director of the Enforcement and Compliance Assurance Division. Regional Delegation R9-7-6-A, dated February 11, 2013. On EPA’s behalf, the Director

of the Enforcement and Compliance Assurance Division is therefore delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

5. This Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondents violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations.

6. EPA and Respondents, having agreed that settlement of this action is in the public interest, consent to the entry of this CA/FO. Respondents agree to comply with the terms of this CA/FO.

B. GENERAL ALLEGATIONS

7. The Facility is located at 3049 E. Vernon Avenue in Vernon, California (the “Facility”). The Facility is nearly ninety years old and has operated as an animal slaughtering and meatpacking plant where pork products are processed and prepared for sale since the 1930s.

8. Clougherty Packing Respondent currently owns the Facility and, at the time of EPA’s inspection, owned and operated the Facility. Prior to the inspection, on January 3, 2017, Smithfield Foods, Inc. acquired Clougherty Packing Respondent, which became an indirect, wholly owned subsidiary of Smithfield Foods, Inc. On March 5, 2018, Clougherty Packing Respondent leased the Facility to Smithfield Respondent, a different wholly owned subsidiary of Smithfield Foods, Inc., to operate. Smithfield Respondent is the sole member of Clougherty Packing Respondent. Smithfield Respondent is the current operator of the Facility.

9. On September 21, 2017, EPA performed an inspection of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), and Section 103 of the Comprehensive

Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603(a). EPA provided its inspection report, and a summary of areas of concern, to Respondents on June 2, 2020. Based upon the information gathered during this inspection and subsequent investigation, EPA asserts that Respondents violated certain provisions of the CAA.

10. The Respondents represent that upon Smithfield Food Inc.'s acquisition of Clougherty Packing Respondent and its Facility in January 2017, an effort was undertaken to assess the integrity of the ammonia refrigeration system and other infrastructure, as well as overall compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the risk management plan ("RMP") program. Respondents represent that before EPA's September 2017 inspection, among other work related to the ammonia refrigeration system, a third-party consultant was retained to audit RMP compliance in March 2017 and bids were solicited to complete a new set of piping and instrumentation diagrams for the system, commence a five-year mechanical integrity inspection, and install new signage on all system piping, components, and valves at the Facility. Respondents further represent that, beginning shortly after the acquisition of the Facility in January 2017 with the work identified in this paragraph, and continuing in the period following EPA's inspection, Respondents invested resources and updated compliance programs to resolve all of the areas of concern identified by EPA in its June 2, 2020 inspection report.

11. At all times relevant to this CA/FO, Respondents have each been a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

12. At all times relevant to this CA/FO, the Facility has been a "stationary source" as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

13. Respondents are subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.

14. At all times relevant to this CA/FO, Clougherty Packing Respondent was the “owner or operator” of the Facility as defined by Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9). At all times relevant to this CA/FO beginning on, and continuing after, March 5, 2018, Smithfield Respondent has been the “owner or operator” of the Facility as defined by Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9).

15. A stationary source that has a regulated substance in an amount equal to or in excess of the applicable threshold quantity (“TQ”) in a “process” as defined by 40 C.F.R. § 68.3, is subject to the Program 3 RMP requirements. Program 3 imposes the Occupational Safety and Health Administration’s process safety management standard and requires owners or operators to develop a management system to oversee the implementation of the RMP elements.

16. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations, owners, and operators of stationary sources at which a regulated substance is present in more than a TQ must prepare and implement a RMP to detect and prevent or minimize accidental releases of such substances from the stationary sources in order to protect human health and the environment.

17. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each “regulated substance” at or above which a facility using such a substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as “regulated toxic substances,” the TQs are specified at 40 C.F.R. § 68.130, Table 1.

18. Ammonia (anhydrous) is a “regulated toxic substance” listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds. 42 C.F.R. § 68.130, Table 1.

19. At all times relevant to this CA/FO until March 5, 2018, Clougherty Packing Respondent was the “owner or operator” of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable TQ in a “process” as defined by 40 C.F.R. § 68.3, and is subject to the Program 3 RMP requirements. At all times relevant to this CA/FO beginning on, and continuing after, March 5, 2018, Smithfield Respondent has been the “owner or operator” of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable TQ in a “process” as defined by 40 C.F.R. § 68.3, and is subject to the Program 3 RMP requirements.

20. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

C. ALLEGED VIOLATIONS

COUNT I

(Failure to document compliance of an outdoor system with design codes and standards.)

21. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

22. 40 C.F.R. § 68.65(d)(2) requires owners or operators to document that their equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).

23. 40 C.F.R. § 68.65(d)(3) requires owners and operators to determine and document that any equipment that deviates from RAGAGEP because it was designed or constructed in accordance with standards that are no longer in general use, is designed, maintained, inspected, tested, and operating in a safe manner.

24. The RAGAGEP for outdoor systems is specified in Section 4.2.2 of the American National Standards Institute/International Institute of Ammonia Refrigeration (“ANSI/IIAR”) 2-2014

(Addendum A), which outlines requirements for outdoor systems related to location, access, physical protection, environmental compatibility, illumination of equipment areas, and service provisions.

25. On September 21, 2017, the day of EPA's inspection, Clougherty Packing Respondent did not provide EPA with documentation demonstrating that the equipment in the North 40 ammonia refrigeration room ("AMR") satisfied the RAGAGEP for an "outdoor system" nor did it provide EPA with documentation demonstrating that the equipment in the North 40 AMR is designed, maintained, inspected, tested, and operated in a safe manner.

26. On May 21, 2021, in response to a March 23, 2021 request from EPA, Smithfield Respondent provided EPA with documentation demonstrating that the equipment in the North 40 AMR satisfied the RAGAGEP for an "outdoor system."

27. By failing to have documentation readily available during the inspection that demonstrated that the equipment in the North 40 AMR complies with the RAGAGEP for outdoor systems outlined in Section 4.2.2 of ANSI/IIAR 2-2014 (Addendum A), or is otherwise designed, maintained, inspected, tested, and operating in a safe manner, Respondents violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), 40 C.F.R. § 68.65(d)(2), and 40 C.F.R. § 68.65(d)(3).

COUNT II

(Failure to document compliance of process equipment with design codes and standards.)

28. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

29. 40 C.F.R. § 68.65(d)(2) requires owners or operators to document that their equipment complies with RAGAGEP.

30. 40 C.F.R. § 68.65(d)(3) requires owners and operators to determine and document that any equipment that deviates from RAGAGEP because it was designed or constructed in accordance with standards that are no longer in general use, is designed, maintained, inspected, tested, and operating in a safe manner.

31. Based on EPA's inspection and information gathered during EPA's investigation, EPA determined that Respondents had not adequately documented that various equipment at the Facility – including ammonia piping, valves, doors, vent headers, ammonia-containing pressure vessels, ammonia detection alarms, a water pump, condenser, compressor, and related support equipment – complied with the corresponding RAGAGEP, as outlined in multiple sections of American National Standards Institute/American Society of Mechanical Engineers ("ANSI/ASME") 13.1-2007, ANSI/IIAR 2-2014, American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ANSI/ASHRAE") 14-2016, ANSI/ASHRAE 15-2016, and International Institute of Ammonia Refrigeration ("IIAR") Bulletins, or were otherwise designed, maintained, inspected, tested, and operating in a safe manner.

32. By failing to document compliance of equipment with design codes and standards, Respondents violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), 40 C.F.R. § 68.65(d)(2), and 40 C.F.R. § 68.65(d)(3).

COUNT III

(Failure to promptly determine and document responses to compliance audit findings.)

33. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

34. 40 C.F.R. § 68.79(d) requires owners or operators to promptly determine and document appropriate responses to findings of compliance audits and document that deficiencies have been corrected.

35. Based on EPA's inspection and information gathered during EPA's investigation, Respondents did not promptly address compliance audit recommendations from a 2011 compliance audit and document that deficiencies had been corrected.

36. By failing to promptly address compliance audit recommendations, Respondents violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.79(d).

COUNT IV

(Failure to correct mechanical integrity deficiencies in equipment before further use.)

37. Paragraphs 1 through 20, above, are incorporated herein by this reference as if they were set forth here in their entirety.

38. 40 C.F.R. § 68.73(e) requires owners or operators to correct deficiencies in equipment that are outside acceptable limits, as defined by the process safety information in 40 C.F.R. § 68.65, before further use or in a safe and timely manner to assure safe operation.

39. Based on EPA's inspection and information gathered during EPA's investigation, EPA identified mechanical integrity deficiencies outside of acceptable limits for several pieces of equipment that should have been corrected prior to continued use.

40. By failing to comply with the mechanical integrity requirements for correcting deficiencies in equipment, Respondents violated CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.73(e).

D. CIVIL ADMINISTRATIVE PENALTY

41. EPA proposes that Respondents be assessed, and Respondents agree to pay **TWO HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED THIRTY-SEVEN DOLLARS (\$237,537.00)**, as the civil administrative penalty for the violations alleged herein.

42. The proposed penalty was calculated in accordance with the “Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68” dated June 2012, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVER OF RIGHTS

43. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondents: (i) admit that EPA has jurisdiction over the subject matter of this CA/FO and over the Respondents; (ii) neither admit nor deny the specific factual allegations contained in the CA/FO; (iii) consent to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section G of this CA/FO; (iv) waive any right to contest the allegations contained in Section C of the CA/FO; and (v) waive the right to appeal the proposed final order contained in this CA/FO.

F. PARTIES BOUND

44. This CA/FO shall apply to and be binding upon Respondents, and their successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section H) have been paid, and any delays in performance and/or stipulated penalties have been resolved.

45. No change in ownership or legal status relating to the Facility will in any way alter Respondents’ obligations and responsibilities under this CA/FO.

46. Until all the requirements of this CA/FO are satisfied, Respondents shall give notice of this CA/FO to any successors in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

47. The undersigned representatives hereby certify that they are fully authorized by each of the Respondents, respectively, to enter into and execute this CA/FO, and to legally bind Respondents to it.

G. PAYMENT OF CIVIL PENALTY

48. Respondents consent to the assessment of and agree to pay a civil administrative penalty of **TWO HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED THIRTY-SEVEN DOLLARS (\$237,537.00)** in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for the violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), alleged in Section C above.

49. Respondents shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO, as established in Section L of this CA/FO.

50. All payments shall indicate the name of the Facility, EPA identification number of the Facility, Respondents' names and addresses, and the appropriate EPA docket number of this action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

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

Overnight Mail:

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

Contact: Craig Steffen, (513) 487-2091, steffen.craig@epa.gov

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent through the Federal Reserve Bank of New York using the following information:

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

Automated Clearinghouse:

Automated Clearinghouse payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of the US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

Online Payment through Pay.gov:

Credit or debit cards, as well as checking accounts, can be used to make payments using the information below:

Visit www.pay.gov.

Enter “SFO 1.1” in the search box on the top left side of the screen.
Open the form and follow the on-screen instructions.

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter via email, indicating Respondents' names, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
R9HearingClerk@epa.gov

And

Rick Sakow
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
Sakow.Rick@epa.gov

51. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to pay the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. § 13.11. In addition, a six percent (6 %) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

52. The penalties specified in this CA/FO shall represent civil administrative penalties assessed by EPA and shall not be deducted by Respondents or any other person or entity for federal, state, or local taxation purposes.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

53. In the event that Respondents fail to meet any requirement set forth in this CA/FO, Respondents shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter. Compliance by Respondents shall include completion of any activity under

this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

54. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondents shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section G of the CA/FO.

55. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. EPA reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

56. The payment of stipulated penalties specified in this Section shall not be deducted by Respondents or any other person or entity for federal, state, or local taxation purposes.

57. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

I. CERTIFICATION OF COMPLIANCE

58. In executing this CA/FO, Respondents certify that, to their knowledge, they are currently in compliance with any Section 112(r) of the CAA, 42 U.S.C. § 7412(r), requirements that may apply to their ongoing operations.

J. RESERVATION OF RIGHTS

59. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require

that Respondents perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory, or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA, or any other statutory, regulatory, or common law enforcement authority in the United States.

60. Compliance by Respondents with the terms of this CA/FO shall not relieve Respondents of their obligations to comply with the CAA, or any other applicable local, state, tribal, or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondents of any obligation to obtain and comply with any local, state, tribal, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state, or local permit.

61. The entry of this CA/FO and Respondents' consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Respondents' full compliance with this CA/FO shall only resolve Respondents' liability for federal civil penalties for the violations and facts alleged in this CA/FO.

62. EPA reserves its right to seek reimbursement from Respondents for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

K. MISCELLANEOUS

63. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondents.

64. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

65. Each party to this action shall bear its own costs and attorneys' fees.

66. Respondents consent to entry of this CA/FO without further notice.

L. EFFECTIVE DATE

67. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

United States Environmental Protection Agency, Region 9


BY: **AMY MILLER-BOWEN** Digitally signed by AMY MILLER-BOWEN
Date: 2022.04.25
08:43:44 -07'00'

Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance
Division

In the Matter of Smithfield Packaged Meats Corp. and Clougherty Packing, LLC
Consent Agreement and Final Order


Respondent Smithfield Packaged Meats Corp.

DATE: 4/5/2022

BY: 
David Coleman, Secretary
Smithfield Packaged Meats Corp.

Respondent Clougherty Packing, LLC

DATE: 4/4/2022

BY: 
Glenn Nunziata, President
Clougherty Packing, LLC

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) in the Matter of Smithfield Packaged Meats Corp. and Clougherty Packing, LLC (Docket No. CAA (112r) 09-2022-0016) be entered and that Respondents shall pay a civil penalty in the amount of TWO HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED THIRTY-SEVEN DOLLARS (\$237,537.00) in accordance with the terms of this CA/FO.

**STEVEN
JAWGIEL**

Digitally signed by
STEVEN JAWGIEL
Date: 2022.05.11
12:54:28 -07'00'

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify the attached Consent Agreement and Final Order in the Matter of Smithfield Packaged Meats Corp. and Clougherty Packing, LLC, Docket Number CAA (112R)-09-2022-0016 has been filed by the Regional Hearing Clerk, and was served on the following parties, via electronic mail, as indicated below:

Respondents:

David Coleman, Secretary
Smithfield Packaged Meats Corp
dlcoleman@smithfield.com

Glenn Nunziata, President
Clougherty Packing, LLC
gnunziata@smithfield.com

Complainants:

Stephanie Oehler
Assistant Regional Counsel
U.S. EPA, Region IX
Oehler.Stephanie@epa.gov

Rick Sakow
Enforcement and Compliance Assurance Division
U.S. EPA, Region IX
Sakow.Rick@epa.gov

Ponly Tu
Regional Hearing Clerk
U.S. EPA, Region IX