



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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2018 SEP 27 AM 9:53

FILED
EPA REGION VIII
CLERK

DOCKET NO.: CAA-08-2018-0012

IN THE MATTER OF:

CLOVERDALE FOODS COMPANY

FINAL ORDER

RESPONDENT

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 27th DAY OF September, 2018.

Katherin E. Hall
Katherin E. Hall
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2018 SEP 27 AM 9:53

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
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)
Cloverdale Foods Company)
3015 34th Street NW)
Mandan, North Dakota 58554)
)
Respondent)
_____)

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Docket No.: CAA-08-2018-0012

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the 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 8 (EPA). On the EPA's behalf, Suzanne J. Bohan, Assistant Regional Administrator for the Office of Enforcement, Compliance and Environmental Justice, is delegated the authority to settle civil administrative penalty proceedings under section 113(d) of the Act.
3. Respondent is Cloverdale Foods Company, a corporation doing business in and organized under the laws of the State of North Dakota.
4. Respondent is a "person" as defined in section 302(e) of the Act, 42 U.S.C. § 7602(e).
5. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this combined complaint and consent agreement (CCCA or Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CCCA. As further described below, the CCCA resolves

Respondent's civil penalty liability for alleged violations of the chemical accident prevention provisions of 40 C.F.R. part 68 regarding Respondent's operation of an ammonia based refrigeration system at its facility in Mandan, North Dakota. The settlement requires: (a) the payment of a civil penalty; and (b) performance of supplemental environmental projects to prevent ammonia releases at Respondent's facility and other similar facilities in the area, as well as, improve local fire department's ability to respond to incidents involving hazardous materials.

B. JURISDICTION

6. This CCCA is entered 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 CCCA are pursuant to section 113(a)(3)(A), 42 U.S.C. § 7413(a)(3)(a).
7. The EPA and the United States Department of Justice (DOJ) jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.
8. The Regional Judicial Officer (RJO) is authorized to ratify this CCCA which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(a) and 22.18(b).
9. This CCCA and approval in a final order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. The Administrator is authorized to promulgate regulations regarding the prevention and detection of accidental releases of certain regulated substances under section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). The Administrator is required to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan (RMP) to prevent or minimize risks of accidental releases of those regulated substances under section 112(r)(7)(B) of the CAA,

42 U.S.C. § 7412(r)(7)(B). The regulations, promulgated by the EPA pursuant to CAA section 112(r)(7), are set forth in 40 C.F.R. part 68.

11. The following definitions apply under 40 C.F.R. § 68.3:

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

(b) “Regulated substance” means “any substance (listed pursuant to section 112(r)(3) of the CAA) in 40 C.F.R. § 68.130.” Threshold quantities for the regulated substances are included in 40 C.F.R. § 68.130.

D. STIPULATED FACTS

12. Respondent is a corporation, and therefore a person, and thus subject to regulation under section 112 of the CAA, 42 U.S.C. § 7412.

13. Respondent is the owner and/or operator of a meat processing facility, a stationary source, located at 3015 34th Street NW, Mandan, North Dakota 58554 (Facility).

14. The Facility uses, handles, and/or stores more than a threshold quantity of anhydrous ammonia, which is a regulated substance, listed under 40 C.F.R. § 68.130.

15. Respondent is required to prepare and implement a RMP to detect and prevent or minimize accidental releases of such substances under section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

16. Respondent meets the Program 3 eligibility requirements under 40 C.F.R. § 68.10.

17. Ammonia presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. In light of the potential hazards posed by the mishandling of anhydrous ammonia, industry trade associations have issued standards outlining the recognized and generally accepted good engineering practices (RAGAGEP) in the ammonia refrigeration industry. In collaboration with

the American National Standards Institute, the International Institute of Ammonia Refrigeration (IIAR) has issued (and updates) applicable standards and guidance. These standards are consistently relied upon by refrigeration experts and are often incorporated into state building and mechanical codes.

18. On December 12, 2016, an authorized representative of the EPA conducted an inspection of the Facility, with the consent of Respondent, to determine compliance with CAA section 112(r)(7). During that inspection, the EPA representative observed alleged violations of the CAA section 112(r)(7). The alleged violations are described in Paragraphs 20-38.
19. The EPA and Respondent entered into an Administrative Compliance Order on Consent (AOC) pursuant to CAA Sections 113 and 114, 42 U.S.C. §§ 7413 and 7414, which became effective on September 20, 2017. The AOC summarized RMP deficiencies and potentially dangerous conditions observed by the EPA inspectors; ordered Respondent to comply with RMP requirements at the Facility; and ordered Respondent to certify and document it had corrected the RMP deficiencies outlined in the AOC. The EPA received a notification of completion from Respondent dated March 7, 2018, certifying that Respondent had corrected the RMP deficiencies outlined in the AOC.

E. ALLEGED VIOLATIONS OF LAW

20. 40 C.F.R. § 68.25(b)(1) provides that the worst-case release quantity shall be the greater of the following: For substances in a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity; or for substances in pipes, the greatest amount in a pipe, taking into account administrative controls that limit the maximum quantity. Respondent failed to use the greatest amount of ammonia held in a single vessel for the worst-case scenario submitted in the June 19, 2014 RMP re-submission. Respondent indicated the quantity as 3000 pounds. The largest vessel is the Controlled Pressure Recirculator, which

has a maximum capacity of 12,350 pounds. By under-reporting that amount, Respondent violated 40 C.F.R. § 68.25(b)(1).

21. 40 C.F.R. § 68.39 provides that the owner or operator shall maintain records on the offsite consequence analysis. Respondent failed to maintain the following records on the offsite consequence analysis reviewed and updated for the June 19, 2014 RMP re-submission: a description of the vessel selected as worst-case, assumptions and parameters used, and the rationale for selection; the assumptions and parameters used, and the rationale for the selection of the scenario for the alternate release scenario of transfer hose failure; documentation supporting how the estimated quantity released, release rate and duration of release were determined for the alternate release scenario; and data used to estimate population and environmental receptors potentially affected. By failing to maintain the offsite consequence analysis records identified above, Respondent violated 40 C.F.R. § 68.39.
22. 40 C.F.R. § 68.65(c)(1) provides that the process safety information shall include information pertaining to the technology of the process. Respondent failed to have maximum intended inventory and, prior to December 9, 2016, failed to have a block flow diagram or simplified process flow diagram concerning the technology of the ammonia refrigeration process. By failing to include information pertaining to technology of the process in its process safety information, Respondent violated 40 C.F.R. § 68.65(c)(1).
23. 40 C.F.R. § 68.65(d)(1)(iv) provides that the process safety information shall include information pertaining to the equipment in the process including relief system design and design basis. Respondent failed to have specific information pertaining to the relief system design and design basis. By failing to have specific information pertaining to the relief system design and design basis, Respondent violated 40 C.F.R. § 68.65(d)(1)(iv).
24. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with RAGAGEP. The manual king valve on the Controlled Pressure Receiver was not

labelled in accordance with Section 5.14.3 of IIAR 2 2014, Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems. By failing to properly label the manual king valve and not complying with RAGAGEP, Respondent violated 40 C.F.R. § 68.65(d)(2).

25. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with RAGAGEP. Ammonia piping mains, headers, and branches, including piping connected to compressors C-5 and C-6 and piping in the warehouse cooler, were not adequately identified and marked in accordance with Section 5.14.5 of IIAR 2 2014. By not adequately identifying and marking ammonia piping, Respondent did not comply with RAGAGEP and violated 40 C.F.R. § 68.65(d)(2).
26. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with RAGAGEP. All machinery room entrance doors were not marked with a sign indicating that only authorized personnel are permitted to enter in accordance with Section 6.3.4 of IIAR 2 2014. By not properly marking the machinery room entrance doors with proper signage, Respondent did not comply with RAGAGEP and violated 40 C.F.R. § 68.65(d)(2).
27. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with RAGAGEP. The two doors to the machinery room were not equipped with panic-type hardware in accordance with Section 6.10.2 of IIAR 2 2014. By not equipping the machinery room doors with panic-type hardware, Respondent did not comply with RAGAGEP and violated 40 C.F.R. § 68.65(d)(2).
28. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with RAGAGEP. The Low Pressure Accumulator (LPA) nameplate was not visible above the insulation and could not be inspected in accordance with Section 12.5.2 of IIAR 2 2014. By not making the LPA nameplate visible, Respondent did not comply with RAGAGEP and violated 40 C.F.R. § 68.65(d)(2).

29. 40 C.F.R. § 68.67(c)(2) provides that the process hazard analysis (PHA) shall address the identification of any previous incident which had a likely potential for catastrophic consequences. Respondent failed to address the ammonia incident that occurred on January 5, 2009, when updating and revalidating the PHA in 2014. By failing to address the previous ammonia incident in the 2014 PHA, Respondent violated 40 C.F.R. § 68.67(c)(2).
30. 40 C.F.R. § 68.67(f) provides that at least every five years after the completion of the initial PHA, the PHA shall be updated and revalidated by a team meeting the requirements in paragraph (d) of this section, to assure that the PHA is consistent with the current process. Respondent failed to update and revalidate the PHA at least every five years. The two most recent PHAs occurred on August 6, 2008 and June 14, 2014, five years and 10 months apart. By failing to update and revalidate the PHA within that five-year period, Respondent violated 40 C.F.R. § 68.67(f).
31. 40 C.F.R. § 68.69(a)(1)(iv) provides that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements: Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner. Respondent failed to develop and implement written operating procedures for emergency shutdown. By failing to develop and implement written operating procedures for emergency shutdown, Respondent violated 40 C.F.R. § 68.69(a)(1)(iv).
32. 40 C.F.R. § 68.69(c) provides that the owner or operator shall certify annually that operating procedures are current and accurate. Respondent provided documentation indicating that operating procedures were reviewed in 2010, 2013 and 2016. By failing to certify annually that operating procedures are current and accurate, Respondent violated 40 C.F.R. § 68.69(c).

33. 40 C.F.R. § 68.73(d)(2) provides that inspection and testing procedures shall follow RAGAGEP. Respondent failed to follow RAGAGEP for the inspection of the insulated ammonia piping in the warehouse cooler. One section of insulated piping was breached in the outer jacket and vapor retarder, and two sections of insulated piping had ice formation on the surface. Inspections on the insulated ammonia piping has not been performed in accordance with Section 6.7.2 of IIAR Bulletin 110, Guidelines for Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems. By failing to follow RAGAGEP for inspection of the insulated ammonia piping, Respondent violated 40 C.F.R. § 68.73(d)(2).
34. 40 C.F.R. § 68.73(d)(3) provides that the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices. Respondent failed to provide documentation regarding the frequency of inspections and tests performed on the ammonia refrigeration process equipment. By failing to provide documentation that the frequency and tests of the ammonia refrigeration equipment is consistent with applicable manufacturers' recommendations and good engineering practices, Respondent violated 40 C.F.R. § 68.73(d)(3).
35. 40 C.F.R. § 68.75(a) provides that the owner or operator shall establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process. Respondent failed to implement a management of change (MOC) procedure for the installation of a valve on a roof-top vent for the venting system connected to the four pressure vessels located in the machinery room. The purpose of this venting system is to allow for the isolation of a vessel as needed for maintenance. The installation of this valve is discussed in the Near Miss Report dated 11/23/2014. By failing to implement an MOC procedure for the installation of the valve described above, Respondent violated 40 C.F.R. § 68.75(a).

36. 40 C.F.R. § 68.75(d) provides that if a change covered by this paragraph results in a change in the process safety information required by 40 C.F.R. § 68.65, such information shall be updated accordingly. Respondent failed to update the piping and instrumentation diagrams (P&IDs) related to the removal of evaporators E-503 and E-504 from the Bacon Room. By failing to update the P&IDs related to removal of the evaporators, Respondent violated 40 C.F.R. § 68.75(d).
37. 40 C.F.R. § 68.79(a) provides that the owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed. Respondent did not conduct compliance audits for the entirety of the provisions of this subpart and thus failed to evaluate compliance with the RMP prevention program provisions at least every three years. By failing to evaluate compliance with the RMP prevention program at least every three years, Respondent violated 40 C.F.R. § 68.79(a).
38. 40 C.F.R. § 68.195(b) provides that the owner or operator of a stationary source for which a RMP was submitted shall correct the RMP as follows: Emergency contact information – Beginning June 21, 2004, within one month of any change in the emergency contact information required under 40 C.F.R. § 68.160(b)(6), the owner or operator shall submit a correction of that information. Respondent failed to correct the emergency contact information within one month. A previous emergency contact on the RMP retired on October 14, 2016, and the emergency contact information was corrected on December 21, 2016. By failing to correct the emergency contact information within one month of the personnel change identified above, Respondent violated 40 C.F.R. § 68.195(b).

F. TERMS OF CONSENT AGREEMENT

39. 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 alleged violations of law stated above;
- (c) consents to the assessment of a civil penalty;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this CCCA;
- (f) waives any right to contest the alleged violations of law set forth in section E of this CCCA;
and,
- (g) waives its rights to appeal the Final Order which approves this CCCA.

40. For the purpose of this proceeding, Respondent:

- (a) certifies that it has corrected the alleged violations listed in section E of this CCCA and is currently in compliance with 40 C.F.R. Part 68 at the Facility;
- (b) agrees that this CCCA states a claim upon which relief may be granted against Respondent;
- (c) acknowledges that this CCCA constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (d) 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 CCCA, including any right of judicial review under section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);
- (e) consents to personal jurisdiction in any action to enforce this CCCA in the United States District Court for the District of North Dakota or other venue, at the discretion of the case team; and
- (f) 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 this CCCA and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

G. CIVIL PENALTY

41. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty per day of violation for each violation of the implementing regulations associated with the “Prevention of Accidental Releases” requirements of 42 U.S.C. § 7412(r). Pursuant to Sections 113(d)(2)(B) and (e) of the CAA, 42 U.S.C. § 7413(d)(2)(B) and (e), and taking into account the relevant statutory penalty criteria and the applicable penalty policy, the EPA has determined that it is fair and proper to assess the civil penalty stated in Paragraph 42, below, for the violations alleged in this matter. Respondent consents to the issuance of this CCCA and consents for purposes of settlement to pay the civil penalty stated in Paragraph 42, below, and perform the Supplement Environmental Projects (SEPs) described in Paragraphs 45 through 47, below.
42. **Penalty Payment:** Respondent agrees to:
- (a) pay the civil penalty of seventy-two thousand, five-hundred thirty dollars (\$72,530.00) within 30 calendar days of the Effective Date of this Agreement.
 - (b) pay the EPA Penalty using any method, or combination of methods, provided on the website: <https://www.epa.gov/financial/makepayment>, and identifying each and every payment with the Docket No. of this CCCA. Within 24 hours of payment of the EPA Penalty, send proof of payment to Steven A. Ramirez at U.S. Environmental Protection Agency, Region 8, (Mail Code: 8ENF-AT-TP), 1595 Wynkoop St, Denver, Colorado 80202-1129 or to ramirez.stevena@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the Docket No. of this CCCA).

43. **Collection of Unpaid Civil Penalty:** Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay the civil penalty referenced in Paragraph 42 in full, it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid within 30 calendar days of the effective date of this CCCA. In that event, interest will accrue from the effective date of this CCCA at the “underpayment rate” established pursuant to 26 U.S.C. § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorneys’ fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. There are other actions the EPA may take if Respondent fails to timely pay: 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; 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 C.F.R. part 13, subparts C and H; 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.

H. NON-PENALTY CONDITIONS

Supplemental Environmental Projects

44. As a condition of settlement, Respondent agrees to conduct the SEPs, as described below.

45. Respondent shall satisfactorily complete the SEPs described below, and in Attachment A to this Agreement, which is incorporated herein by reference and which is enforceable under this CCCA. The Parties agree that the SEPs are intended to secure significant environmental and public health protection and benefits by enhancing the hazardous material incident response capabilities of first responders in the area by providing equipment and training that is necessary to respond to emergency releases of hazardous chemicals. Respondent has selected the Mandan Fire Department to be the SEP recipient for the emergency response equipment purchase. Respondent has also selected the Mandan Fire Department, Morton County Local Emergency Planning Committee (LEPC), Bismarck Fire Department, local law enforcement agencies, and various private first responders to be the recipients of training paid for by the Respondent and given by an outside contractor with the expertise to conduct a specialized hazardous materials (HAZMAT) training course. This training will have an emphasis on responding to anhydrous ammonia incidents and, in addition to the entities referenced above, will be provided to other regulated entities in the area that store and use anhydrous ammonia in their processes.
46. **Mandan Fire Department SEP:** Within 120 days of the Effective Date of this CCCA, Respondent shall purchase and provide the following new equipment to the Mandan Fire Department: 13 Self-Contained Breathing Apparatuses (SCBA); 13 SCBA Masks; one MultiRae Pro Multi-Gas Monitor; one MultiRae Charger Cradle; 14 Bunker Turnout Pants; 14 Bunker Turnout Coats; 16 Fire Attack Gloves; one ToxicRae NH₃ Single Monitor; one Ammonia NH₃ Calibration Gas; and one 100PPM Isobutylene Calibration Gas. The purpose of this SEP is to enhance the emergency planning and chemical spill response capabilities, including those for anhydrous ammonia, for local first responders. The Mandan Fire Department SEP is expected to cost \$102,987.60.
47. **HAZMAT Response Training SEP:** Within 180 days of the Effective Date of this CCCA, Respondent shall hire a certified contractor to offer and give two specialized HAZMAT response

training sessions with a focus on ammonia systems. This training will be made available to the Mandan Fire Department, Mandan Rural Fire Department, Morton County LEPC associated entities, Mandan Fire's emergency response partners including Bismarck Fire and local law enforcement agencies, as well as any facilities within the region who handle anhydrous ammonia and employ their own first response teams. The purpose of this SEP is to go beyond the advanced hazardous materials training that all first responders are required to go through. This specialized training, with a focus on ammonia, goes beyond the level of training currently maintained by local first responders. The Mandan Fire Department has noted that there is an increased number of ammonia refrigeration facilities in the area and this specialized training will allow for local first responders to be aware of the intricacies involved in that type of a response. The specialized HAZMAT Response Training SEP is expected to cost \$11,400.

48. "Satisfactory completion" of the Mandan Fire Department SEP shall mean: (a) providing the Mandan Fire Department with emergency response equipment according to the requirements, and specifications described in Attachment A, (b) confirming that the purchased equipment is functional; (c) contracting for and providing the training as described in Attachment A; and (d) spending approximately \$114,387.60 to carry out the Mandan Fire Department SEP and HAZMAT Response Training SEP.
49. Respondent shall include documentation of the expenditures made relating to the SEPs as part of the SEP Completion Reports described in Paragraph 54, below.
50. Within seven days of completing each SEP, Respondent shall send an electronic mail message to ramirez.stevana@epa.gov to confirm that the new equipment has been purchased and delivered to the Mandan Fire Department and that the HAZMAT response training has been completed. Upon completion of both SEPs, Respondent shall submit a SEP Completion Report, as specified in Paragraph 54, below.

General SEP Provisions

51. Regarding the SEPs, Respondent hereby certifies the truth and accuracy of each of the following:
- (a) that all cost information provided to the EPA relating to the EPA's approval of the SEPs is complete and accurate and that Respondent, in good faith, estimates that the cost to complete the SEPs to be \$114,387.60;
 - (b) that, as of the date of executing this CCCA, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation, and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;
 - (c) that the SEPs are not projects that Respondent was planning or intending to perform, or implement other than in settlement of the claims resolved in this CCCA;
 - (d) that Respondent has not received and will not receive credit for the SEPs in any other enforcement action;
 - (e) that Respondent will not receive any reimbursement for any portion of the SEPs from any other person;
 - (f) that for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs;
 - (g) that Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEPs; and,
 - (h) that Respondent has inquired of the Mandan Fire Department whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Mandan Fire Department that it is not a party to such a transaction.
52. For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement loan, federally-guaranteed loan guarantee, or other

mechanism for providing federal financial assistance whose performance period has not yet expired.

53. Respondent hereby waives any confidentiality rights it has under 26 U.S.C. § 6103 with respect to SEP costs on its tax returns and on the information supporting its tax returns. This waiver of confidentiality is solely as to the EPA and the DOJ and solely for ensuring the accuracy of Respondent's SEP cost certification.

54. Respondent shall submit SEP Completion Reports to the EPA within 30 days of completing each SEP. The SEP Completion Reports shall contain the following information:

- (a) A detailed list of the equipment purchased and provided to the Mandan Fire Department and detailed summary of the training provided to the entities described in Attachment A.
- (b) A description of any implementation problems encountered and the solutions thereto;
- (c) Itemized costs, documented by copies of invoices, purchase orders, receipts, canceled checks, or wire transfer records that specifically identify and itemize the individual costs associated with each SEP. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such;
- (d) Certification that each SEP has been fully completed;
- (e) A description of the environmental and public health benefits resulting from the implementation of the SEP;
- (f) A statement that no tax returns filed or to be filed by Respondent will contain deductions or depreciations for any expense associated with the SEPs; and,
- (g) The following statement, signed by Respondent's officer, under penalty of law, attesting that the information contained in the SEP Completion Report is true, accurate, and not misleading:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the

information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

55. Respondent shall maintain, for a period of three years from the date of submission of each SEP Completion Report, legible copies of all research, data, and other information upon which the Respondent relied to write the SEP Completion Reports and shall provide such documentation within 14 days of a request from the EPA.
56. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CCCA, and the Respondent shall become liable for stipulated penalties in accordance with Paragraph 65, below.
57. After receipt of each SEP Completion Report described in Paragraph 54, above, the EPA will notify Respondent in writing: (i) indicating that the project has been completed satisfactorily; (ii) identifying any deficiencies in the SEP Completion Report itself and granting Respondent an additional 30 days to correct any deficiencies; or (iii) determining that the project has not been completed satisfactorily and seeking stipulated penalties in accordance with the stipulated penalty section below.
58. If the EPA elects to exercise options (ii) or (iii) in Paragraph 57 above, Respondent may object in writing to the notice of deficiency given pursuant to this paragraph within 10 days of receipt of such notice, except that this right to object shall not be available if the EPA found that the project was not completed satisfactorily because Respondent failed to implement or abandoned the project. The EPA and Respondent shall have an additional 30 days from the receipt by EPA of Respondent's objection to reach agreement on changes necessary to the SEP or SEP Completion Report. If agreement cannot be reached on any such issue within this 30-day period as may be extended by the written agreement of both the EPA and Respondent, the EPA shall provide a written statement of its decision on the adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with

any reasonable requirements imposed by the EPA that are consistent with this CCCA because of any failure to comply with the terms of this CCCA. If the SEP is not completed as contemplated herein, as determined by the EPA, stipulated penalties shall be due and payable by Respondent in accordance with the stipulated penalty section, below.

59. Respondent agrees that any public statement, oral or written, in print, film, or other media, made by Respondent, its contractors, or third-party implementers referring to a SEP shall include the following language: *“This project was undertaken in connection with the settlement of an enforcement action, In the Matter of Cloverdale Foods Company taken by the U.S. Environmental Protection Agency to enforce federal environmental laws.”*

Notifications

60. Submissions required by this Agreement shall be in writing and shall be mailed to the following addresses with a copy also sent by electronic mail:

- (a) For EPA:

U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street, Denver CO 80202
Attn: Steven A. Ramirez (Mail Code: (8ENF-AT-TP)
Email: ramirez.stevena@epa.gov

- (b) For Respondent:

Cloverdale Foods Company
Attn: Scott J. Staudinger
3015 34th Street, NW
Mandan, ND 58554
Email: scotts@cloverdalefoods.com

- (c) All documents submitted to the EPA during implementation of this CCCA shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. part 2 subpart B, and determined by the EPA to merit treatment as confidential business information in accordance with applicable law.

Stipulated Penalties

61. If Respondent fails to comply with the Non-Penalty Conditions of this CCCA, it shall become liable for stipulated penalties as set forth below.
62. If Respondent fails to satisfactorily complete the SEPs as outlined above in Paragraphs 44 through 50 and in Attachment A, Respondent shall be liable for stipulated penalties in accordance with the provisions set forth below. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of the EPA.
63. If the EPA determines that Respondent completely or substantially fails to implement the SEPS in accordance with this CCCA, Respondent shall pay a stipulated penalty in the amount of 120% of the estimated cost for each separate equipment purchase that was not made as well as 120% of the cost of training if it was not given or if it was not given as proposed in a timely and adequate manner;
64. If Respondent spends less than \$114,387.60 on the SEPs, but the EPA determines that Respondent otherwise satisfactorily completes each SEP, Respondent shall only be required to pay a stipulated penalty in the amount equal to the difference between \$114,387.60 and the actual amount spent on the SEPs, plus interest from the effective date of this CCCA;
65. After giving effect to any extensions of time granted by the EPA, Respondent shall pay a stipulated penalty in the amount of \$200 for each day the following submissions are late: (a) each electronic mail message required by Paragraph 50; and (b) the SEP Completion Report required by Paragraph 54, above;
66. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by the EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 42, above. Interest and late charges shall be paid as stated in Paragraph 67.

67. *Collection of Unpaid Stipulated Penalty for Failure to Perform Non-Penalty Conditions:*

Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. If Respondent fails to timely pay any portion of the stipulated penalty relating to the performance of the Non-Penalty Conditions, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than 90 days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

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

I. ADDITIONAL PROVISIONS

69. The terms, conditions, and compliance requirements of this CCCA may not be modified or amended except upon the written agreement of both parties, and approval of the RJO.

70. The provisions of this CCCA shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

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

72. By signing this CCCA, 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 CCCA and has the legal capacity to bind the party he or she represents to this CCCA.

73. By signing this CCCA, both parties agree that each party's obligations under this CCCA and the EPA's compromise of statutory maximum penalties constitute sufficient consideration for the other party's obligations.
74. By signing this CCCA, 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.

J. EFFECT OF CCCA

75. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CCCA resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
76. Penalties paid pursuant to this CCCA shall not be deductible for purposes of federal taxes.
77. This CCCA 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 except for the AOC issued on September 20, 2017.
78. Any violation of this CCCA 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), as well as criminal sanctions as provided in section 113(c) of the Act, 42 U.S.C. § 7413(c) and inflationary adjustments as provided in 40 C.F.R. § 19.4. The EPA may use any information submitted under this CCCA in an administrative, civil judicial, or criminal action.
79. Nothing in this CCCA 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.

80. 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.
81. The EPA reserves the right to revoke this CCCA 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.
82. This CCCA in no way relieves Respondent or its employees of any criminal liability, and the EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.
83. Except as qualified by Paragraph 43, each party shall bear its own costs and fees in this proceeding including attorney's fees. Respondent specifically waives any right to recover such costs from the EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

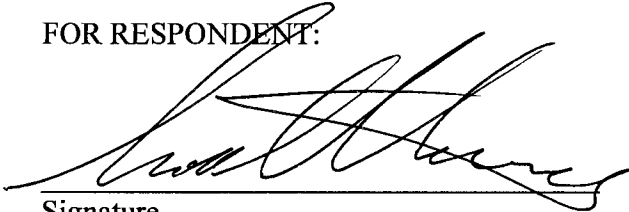
K. EFFECTIVE DATE

84. Respondent and Complainant agree to issuance of a final order. Upon filing, the EPA will transmit a copy of the filed CCCA to the Respondent. This CCCA and subsequently issued Final

Order shall become effective after execution of the Final Order by the RJO on the date of filing with the Regional Hearing Clerk.

The foregoing Combined Complaint and Consent Agreement In the Matter of Cloverdale Foods Company, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Signature

Date

9-20-2018

Printed Name:

SCOTT STAUDINGER

Title:

VP HR

Address:

3015 34th ST NW, Mandan, ND 58554.

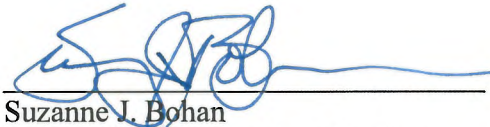
Respondent's Federal Tax Identification Number:

45-0124010

FOR COMPLAINANT:

9/24/18

DATE



Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

in accordance with manufacturer specification and instructions, at the time of its delivery to the SEP Recipient.

List of Emergency Response Equipment

Quantity	Product Description	Unit Price	Total	Recipient
13	SCBA Units	\$4,570.00	\$59,410.00	Mandan FD
13	SCBA Masks	\$270.00	\$3,510.00	Mandan FD
1	MultiRae Pro Multi-Gas Monitor	\$5,500.00	\$5,500.00	Mandan FD
1	MultiRae Charger Cradle	\$1,364.00	\$1,364.00	Mandan FD
14	Bunker Turnout Pants	\$855.00	\$11,970.00	Mandan FD
14	Bunker Turnout Coats	\$1,339.00	\$18,746.00	Mandan FD
16	Cestus FireAttack Gloves	\$105.00	\$1,680.00	Mandan FD
1	ToxicRae NH3 Single Monitor	\$457.60	\$457.60	Mandan FD
1	Gasco Ammonia NH3 Cal. Gas	\$190.00	\$190.00	Mandan FD
1	Gasco 100PPM Isobutylene Cal.	\$160.00	\$160.00	Mandan FD
1	Hazmat IQ Specialty Ammonia Training	\$11,400.00	\$11,400.00	Mandan FD/LEPC/Private employed first responders in the region/Bismarck FD/ Local law enforcement agencies
	TOTAL		\$114,387.60	

The equipment described above will help equip emergency response personnel to more effectively respond to accidental releases of hazardous chemicals, including ammonia releases, and reduce risks to public health and safety, and the environment. The equipment to be purchased will help facilitate responses to emergency releases of chemicals regulated under the Clean Air Act, EPCRA, and CERCLA.

Mandan Fire Department's Self-Contained Breathing Apparatuses ("SCBA") are over 15 years old and no longer meet National Fire Protection Associations updated standards. The Multi-Gas monitor, NH3 Single monitor, and calibration gas cylinders will increase the Mandan Fire Department's capability for monitoring and detecting hazardous and otherwise unsafe conditions when responding to an emergency situation. The turnout gear will be an update to Mandan Fire Department's current gear and will provide the necessary personal protection equipment required in order to respond to emergency situations.

In addition to the equipment to be provided to SEP Recipients, Cloverdale, in consultation with the Mandan Fire Department will offer specialized HAZMAT response training, with a focus on ammonia systems, to the Mandan Fire Department, Mandan Rural Fire Department, Morton County LEPC associated entities, as well Mandan Fire's emergency response partners including Bismarck Fire and local law enforcement agencies as well as any facilities within the region who handle anhydrous ammonia and employ their own first response teams.

After consultation with the Mandan Fire Department, it was determined that all first responders are required to go through advanced hazardous materials training and maintain a HAZMAT operations

level capability. As such, the SEP Recipients are looking for specialized training, with a focus on ammonia, that goes beyond the level of training currently maintained by local first responders. The Mandan Fire Department has recognized an increased amount of ammonia refrigeration facilities in the area and wishes to add ammonia training to its requirements to keep its staff aware of the intricacies involved in that type of a response.

The Mandan Fire Department identified Hazmat IQ by Federal Resources ("Hazmat IQ") as its training administrator of choice. The training provided by Hazmat IQ will broadly cover a systems overview of each facility utilizing ammonia, including the amount kept on site, facility emergency plans, and facility layout. This will be done through a combination of walk through exercises and site plan reviews. Furthermore, Hazmat IQ will offer recipients ammonia specific response training which will also involve air monitoring training utilizing new metering equipment, mass decontamination training in the event of a release, as well as training on mitigation techniques for reducing ammonia vapor impact on surrounding areas where possible. Hazmat IQ provided Mandan Fire a quote on the cost of this advanced training in the amount of \$11,400.00. This training will consist of two eight-hour days and will be completed within 180 days of the effective date of the Settlement.

Furthermore, the Morton County LEPC asked Cloverdale to present at the Morton County LEPC September 20, 2018 meeting and offer these specialized training sessions to those members present. Cloverdale is committed to attending this meeting and/or a subsequent meeting if the September 20th meeting does not come to fruition in order to invite attendees to the Hazmat IQ training session. This presentation and subsequent training sessions will ensure the local fire department and other first responder entities have the training needed to respond to emergency releases of ammonia in industrial settings. By equipping the local fire department with the gear and equipment it needs and offering specialized ammonia training, this SEP will reduce the adverse impacts and overall risk to public health and the environment.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **CLOVERDALE FOODS COMPANY; DOCKET NO.: CAA-08-2018-0012** was filed with the Regional Hearing Clerk on September 27, 2018.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on September 27, 2018, to:

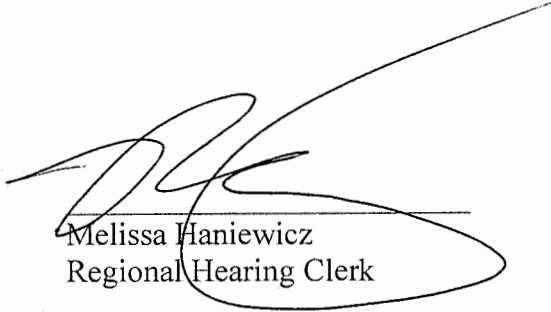
Respondent

Scott J. Staudinger
Cloverdale Foods Company
3015 34th Street, NW
Mandan, North Dakota 58554

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

September 27, 2018


Melissa Haniewicz
Regional Hearing Clerk

