



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

EXPEDITED SETTLEMENT AGREEMENT

DOCKET NO: CAA-01-2020-0052

This ESA is issued to:

United Natural Foods, Inc.
71 Stow Drive
Chesterfield, NH 03443

for violating Section 112(r)(1) of the Clean Air Act.

This Expedited Settlement Agreement (“ESA”) is being entered into by the United States Environmental Protection Agency (“EPA”), Region 1, and by Respondent, United Natural Foods, Inc. (“Respondent”), pursuant to Sections 113(a)(3) and (d) of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7413(a)(3) and (d), and 40 C.F.R. § 22.13(b). EPA and the U.S. Department of Justice have jointly determined that this type of action is an appropriate administrative penalty action under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

ALLEGED VIOLATIONS

Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as section 654, title 29 of the United States code, 29 U.S.C. § 654, to (a) identify hazards that may result from accidental releases of such substances, using appropriate hazard assessment techniques; (b) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the CAA is referred to as the “General Duty Clause.” Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

The term “accidental release” is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source. 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, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur. The term “have a general duty in the same manner and to the same extent as section 654, title 29 of the United States code” means owners and operators must comply with the General Duty Clause in the same manner and to the same extent as employers must comply with

the Occupational Safety and Health Act administered by the Occupational Safety and Health Administration.

Respondent operates a facility that uses an ammonia refrigeration system (“System”) at 71 Stow Drive in Chesterfield, New Hampshire (“Facility”). The Facility is a building or structure from which an accidental release may occur and is therefore a “stationary source,” as defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C). The System uses or used anhydrous ammonia, a chemical that is listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), as an “extremely hazardous substance,” and that is subject to the General Duty Clause.

On April 14, 2020, Respondent responded to an Information Request issued by EPA by indicating that Respondent had failed to conduct an adequate hazard review of the System, using appropriate hazard assessment techniques (“Process Hazard Review”). The recommended industry practice and standard of care for identifying, analyzing, and evaluating potential hazards associated with ammonia refrigeration systems of this size is to use standard, industry-developed checklists or other methods such as a “What If” analysis. By failing to conduct an adequate hazard review of the System using appropriate hazard assessment techniques, Respondent failed to identify hazards that may result from accidental releases, in violation of the first requirement of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). This ESA neither alleges nor resolves any violations of the other two requirements of the General Duty Clause.

SETTLEMENT TERMS

Respondent and EPA agree to the following terms of settlement, which include compliance measures and a penalty. CAA Section 113(d)(2)(B) authorizes EPA to impose the following conditions on any administrative penalty imposed under this subsection:

1) Process Hazard Review Conducted by Third Party Expert:

Respondent certifies that:

- a. Respondent retained an independent third-party ammonia refrigeration system consultant (“Refrigeration Consultant”) to perform an adequate Process Hazard Review of the System in accordance with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), using appropriate hazard assessment techniques.
- b. The Refrigeration Consultant performed the Process Hazard Review of the System, thereby correcting its failure to identify hazards pursuant to Section 112(r)(1) of the CAA.
- c. *Competency Criteria:* The Refrigeration Consultant met the following competency requirements:
 - i. The Refrigeration Consultant had experience conducting process hazard analyses and reviews under Section 112(r) of the CAA;
 - ii. The Refrigeration Consultant was knowledgeable about the industry codes, standards, and bulletins that apply to ammonia refrigeration facilities; and
 - iii. Had experience designing refrigeration systems to meet such codes, standards, and bulletins (or have access to someone who does have such design experience).

- 2) **Coordinate with Emergency Responders:** Respondent certifies that it coordinated with the relevant off-site emergency responders to plan for responding to a potential release of anhydrous ammonia from the System.
- 3) **File Tier II forms:** Respondent also certifies that it has complied with EPCRA Section 312, 42 U.S.C. § 11022, by filing chemical inventory (“Tier II”) forms with the local fire department, Local Emergency Planning Committee, and State Emergency Response Commission.
- 4) **Resume and Plans for Safety Improvements:**
 - a. With this agreement, Respondent is submitting the resume of the Refrigeration Consultant (“Resume”). Respondent need not submit the Process Hazard Review or its contract with the Refrigeration Consultant unless requested. If so requested, Respondent agrees to submit the Process Hazard Review and contract to EPA within 10 days of the request.
 - b. Respondent has attached a short statement about what actions Respondent is taking at the Facility to improve safety as a result of conducting the Process Hazard Review (“Safety Plan Statement”).
- 5) **Civil Penalty to be Paid within 30 Days of Receiving Fully Executed Copy of ESA:** In consideration of the facts alleged above, the statutory penalty factors listed in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), EPA’s right to compromise penalties as provided by 42 U.S.C. § 7413(d)(2)(b), Respondent’s timely submission of its response to the Information Request, its willingness to resolve this violation quickly, its agreement to the settlement terms, and such other circumstances as justice may require, Respondent agrees to pay a total penalty amount of **\$5,000**. Respondent shall pay the penalty within 30 days of receiving a fully executed copy of this ESA, according to the enclosed “Penalty Payment Instructions,” which are hereby incorporated by reference.

This settlement is also subject to the following terms and conditions:

For purposes of this proceeding, Respondent admits that EPA has jurisdiction over the allegations contained herein, neither admits nor denies the specific factual allegations contained herein, and consents to the terms of settlement as stated above and to the assessment of the stated penalty. Respondent waives its rights to contest jurisdiction and the allegations herein, to a hearing afforded by Section 113(d)(2)(A) of the CAA, 42 U.S.C § 7413(d)(2)(A), and to appeal this ESA and Final Order. Each party to this action shall bear its own costs and fees, if any.

Respondent understands that making a false submission to the United States Government can subject Respondent to civil and criminal penalties.

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

This signed ESA, Resume, and Safety Plan Statement must be **sent by certified mail *and* email** to:

Christine M. Foot
Enforcement Counsel
Office of Regional Counsel (04-2)
U.S. Environmental Protection Agency Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912
foot.christine@epa.gov

EPA will take no further civil penalty action against Respondent for the violation of the Act alleged above, upon Respondent's submission of the signed ESA, submission of the Resume and Safety Plan Statement, signature by EPA, and EPA's filing of the ESA with the Regional Hearing Clerk.

Nothing in this ESA shall 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 ESA shall resolve only the violation alleged herein, and it does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Air Act.

Respondent agrees to submit payment in full of the \$5,000 within 30 days of EPA's filing of a fully executed copy of this ESA with the Regional Hearing Clerk. Payment instructions are included on the enclosed "Payment Instructions," which is hereby incorporated by reference.

Failure to pay the penalty when due may subject Respondent to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the penalty, including accrued interest, attorney's fees, collection costs, and nonpayment penalties.

This ESA is binding on the parties signing below.

The Parties each consent to the use of digital signatures on this document, and Respondent further consents to receipt of service of the ESA, once filed, by electronic mail.

This ESA is effective upon filing with the Regional Hearing Clerk.

FOR RESPONDENT:

Signature: 

Date: 6-5-2020

Name (print): Michael C. Zender

Title (print): Vice President

FOR COMPLAINANT:

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 1 – New England

Date: _____

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, the foregoing Expedited Settlement Agreement resolving *In the Matter of United Natural Foods, Inc.*, Docket Number CAA-01-2020-0052 is incorporated by reference into this Final Order and is hereby ratified. The Respondent, United Natural Foods, Inc., is ordered to pay the civil penalty amount specified in the Expedited Settlement Agreement in the manner indicated in the attached Penalty Payment Instructions. The terms of the Expedited Settlement Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

It is so ORDERED.

LeAnn Jensen
Regional Judicial Officer
U.S. EPA Region I

Date: _____

PENALTY PAYMENT INSTRUCTIONS

Respondent may pay the penalty by check (mail or overnight delivery), wire transfer, ACH, or online payment. Additional payment instructions are available at:

<http://www2.epa.gov/financial/makepayment>.

If paid by check, the docket number of the ESA must be included on the check. (The docket number is located at the top of this ESA.) Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America."

If remitted by regular U.S. mail, payment should be sent to:

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

If remitted by any overnight commercial carrier, payment should be sent to:

U.S. Bank
Government Lockbox No. 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

If paid by wire transfer, include the docket number in Field Tag 6000 and D 68010727 Environmental Protection Agency" in Field Tag 4200. The wire transfer account is:

Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045
ABA: 021030004
Account: 68010727
SWIFT address: FRNYUS33

Concurrently with payment, Respondent must **mail and email** photocopies of the check, or proof of other payment method to the following:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1, Mail Code 04-6
Boston, MA 02109-3912
santiago.wanda@epa.gov

Christine Foot, Enforcement Counsel
U.S. Environmental Protection Agency
Region 1, Mail Code 04-2
Boston, MA 02109-3912
foot.christine@epa.gov