

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Christine Foot 6/24/16
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number AA-01-2016-0021 E EPORA-01-2016-0024

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Rachael Polep Kramer, President
Rachael's Food Corporation
705 Meadow Street
Chicopee, MA 01013

Total Dollar Amount of Receivable \$ 65,000 Due Date: 7/24/16

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1ST \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

_____ Phone Number

Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before taking any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

I. PRELIMINARY STATEMENT

1. This CAFO both initiates and resolves an administrative action for the assessment of monetary penalties, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d) and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). As more thoroughly discussed in Sections III and IV below, the CAFO resolves the following CAA and EPCRA violations, which Complainant alleges occurred in conjunction with Respondent's handling of ammonia at its meat processing facility in Bloomfield, Connecticut:

- (a) Failure to identify hazards that may result from accidental releases of anhydrous ammonia, which is an extremely hazardous substance, using appropriate hazard assessment techniques, in violation Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1);
- (b) Failure to design and maintain a safe facility taking such steps as are necessary to prevent releases of ammonia, in violation Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1);
- (c) Failure to minimize the consequences of accidental releases of ammonia that do occur, in violation Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1); and

- (d) Failure to timely submit a “Tier Two” hazardous chemical inventory form to the proper authorities in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. Part 370.

II. APPLICABLE STATUTES AND REGULATIONS

CAA Statutory Authority

2. 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, 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.”

3. The extremely hazardous substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), include, among others, anhydrous ammonia.

4. 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.

5. The term “stationary source” is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, 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.

6. 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 (“OSH Act”) administered by the Occupational Safety and Health Administration (“OSHA”).¹

7. 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).

EPCRA Statutory and Regulatory Authority

8. Pursuant to Sections 312 and 328 of EPCRA, 42 U.S.C. §§ 11022 and 11048, EPA promulgated the Hazardous Chemical Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 370.

9. Under Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44, and 370.45, any facility that is required to prepare, or have

¹ Section 654 of the OSH Act provides, in pertinent part, that “[e]ach employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees” and “shall comply with occupational safety and health standards promulgated under this act.” 29 U.S.C. § 654. See Duriron Co. v. Sec’y of Labor, 750 F.2d 28 (6th Cir. 1984). The legislative history of the CAA General Duty Clause explains that the Duriron standard is an appropriate guide for EPA’s application of the General Duty Clause. Sen. Rpt. 101-228 (1989), 1990 CAA Leg. Hist. 8338, 8548–50 (LEXIS). Duriron criteria are those established earlier in National Realty & Construction Co. v. OSHRC, 489 F.2d 1257 (D.C. Cir. 1973), namely, that OSHA must prove that: (1) the employer failed to render the workplace free of a hazard; (2) the hazard was recognized either by the cited employer or generally within the employer’s industry; (3) the hazard was causing or was likely to cause death or serious physical harm; and (4) there was a feasible means by which the employer could have eliminated or materially reduced the hazard.

For purposes of complying with the CAA General Duty Clause, owners and operators must maintain a facility that is free of a hazard, the hazard must be recognized by the owner/operator or recognized by the owner/operator’s industry, the hazard from an accidental release must be likely to cause harm, and the owner/operator must be able to eliminate or reduce the hazard. U.S. Evtl. Prot. Agency, Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1) (May 2000) at 11, n4.

available, a material safety data sheet (“MSDS”) for a hazardous chemical under the OSH Act and regulations promulgated thereunder must prepare and submit an emergency and hazardous chemical inventory form (“Inventory Form”) to the local emergency planning committee (“LEPC”), the state emergency response commission (“SERC”), and the local fire department. Pursuant to 40 C.F.R. §§ 370.40 and 370.45, the Inventory Form must be submitted annually on or before March 1st and is required to contain information with respect to the preceding calendar year.

10. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides for the assessment of penalties for each violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

III. GENERAL ALLEGATIONS

11. Rachael’s Food is a corporation organized under the laws of Massachusetts, with its principal office located in Chicopee, Massachusetts. As a corporation, Respondent is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.

12. Rachael’s Food operates a meat processing facility at 76 Granby Street in Bloomfield, Connecticut (the “Facility”).

13. The Facility is across the street from a large shopping mall complex and is bordered by residences to the east and other commercial businesses to the north and south. The Facility is also within one mile of several schools, a nursing home, a university, and gathering areas such as a Boys and Girls club, playgrounds, ball fields, a pool, a community center, and a sports arena.

14. Respondent purchased the Facility, which included the ammonia refrigeration system (“System”), in 2012. At all times relevant to the violations alleged herein, the System was a

“closed-loop” refrigeration system with components and piping in several connected areas of the Facility: the Boiler Room, which contained the Intercooler and associated piping; the ammonia Machinery Room, where most of the Refrigeration System equipment was located (including the receiver, three compressors, and the recirculator) and which had one Access Door exiting through the Boiler Room; the roof, which supported ammonia and other piping as well as the condenser; the truck loading areas; and the refrigerated production and warehouse spaces (Packaging Room, Smoke House, and Stuffing Room), where the evaporators and associated piping were located.

15. 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 Facility is also a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.

16. At all times relevant to the violations alleged herein, Respondent was the “owner or operator” of the Facility, including as that term is defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

17. At the times relevant to the violations alleged herein, the System used over 500 pounds of anhydrous ammonia. Accordingly, Respondent “stored” and “handled” anhydrous ammonia, which, as indicated in Paragraph 3 above, is an “extremely hazardous substance” subject to the General Duty Clause.

18. Ammonia presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. Exposure to 300 parts per million is immediately dangerous to life and health. Ammonia is also flammable at concentrations of approximately 16% to 25% by volume in air. It can explode if released in an enclosed space with a source of ignition present, or if a vessel

containing anhydrous ammonia is exposed to fire. 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) “Standard 2: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems,” along with other applicable standards and guidance. Also in collaboration with the American National Standards Institute, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”) has issued (and updates) “Standard 15: Safety Standard for Refrigeration Systems.” These standards are consistently relied upon by refrigeration experts and are sometimes incorporated into state building and mechanical codes.²

19. On October 16, 2014, EPA inspectors visited the Facility (“Inspection”) to assess Respondent’s compliance with Section 112(r) of the CAA and with Sections 302–312 of EPCRA.

20. During the Inspection of the Facility, EPA requested certain documentation pertaining to the System, but not did receive any of it at that time. EPA later received copies of EPCRA “Tier II” Inventory Forms, which Respondent had submitted to the relevant emergency response organizations for the first time, covering the year 2014.

21. The Inspection and EPA’s review of subsequently submitted information revealed certain potentially dangerous conditions relating to the System, including that Respondent:

² For example, the Connecticut State Building Code incorporates both the 2003 International Building Code and the 2003 International Mechanical Code, with certain amendments. Conn. Agencies Regs. § 29-252-1d (2005). The 2003 International Building Code states that “[m]echanical appliances, equipment and systems shall be constructed, installed and maintained in accordance with the International Mechanical Code.” Int’l Bldg. Code § 2801.1 (2003). The 2003 International Mechanical Code, in turn, specifies that “refrigerating systems shall comply with this code and, except as modified by this code, ASHRAE 15 and IIAR 2.” Int’l Mech. Code § 1101.6 (2003).

- a. Had not conducted an adequate hazard analysis of the System, using appropriate hazard assessment techniques;
- b. Did not have, or have available for EPA review, critical documents and information about the System that would allow Respondent to adequately identify hazards posed by the System and to maintain and safely operate it. For example, Respondent did not have a Piping and Instrumentation Diagram or an up-to-date floorplan (which would allow Facility personnel, inspectors, or emergency responders to identify the location of key System equipment, piping, and valves), information, diagrams, or calculations concerning the ventilation and pressure-relief capacity of the Machinery Room, information and supporting calculations regarding the maximum ammonia inventory, written standard operating procedures, nor other documentation about the technology and equipment involved in the System;
- c. Had not designed, installed, and operated an adequate ventilation system, ensuring that the Machinery Room had sufficient air sweep to clear it of ammonia fumes in case of emergency. One of the intake vents on the roof was blocked, leaving just one fresh inlet air vent opening, and Respondent had no ventilation calculations indicating that this provided sufficient air sweep. Additionally, the mechanical ventilation in the Machinery Room was not functional at the time of Inspection, leaving the Facility without a functional continuous or emergency exhaust system;
- d. Had not designed and operated an air-tight, isolated Machinery Room, in that pipes passed from the Machinery Room to adjacent Boiler Room and to the outdoors through unsealed holes in the concrete walls and the Machinery Room door was not self-closing;

- e. Did not have adequate signage posted throughout the Facility, including no ammonia warning signs, signs restriction entry to authorized personnel, or NFPA placards on the access door to the Machinery Room, no sign or label for the audible/visual alarm in the Stuffing Room, no signs displaying a diagram and other information about the System's capacity, operation, alarms, and emergency shutdown process, near the compressor, or outside the Machinery Room door, and no legible, permanent sign displaying information about the System (inventory, installer, lubricant, pressure) in the Machinery Room;
- f. Had not labeled the piping and valves, with the exception of temporary rather than permanent signs on the three main shut-off valves (King Valves), within the Machinery Room and on the roof, to indicate contents, direction of flow, physical state, pressure level, and there were no distinctive component markers for other system equipment;
- g. Had not maintained the paint and insulation on piping and components to prevent corrosion, in that the Intercooler and some of the piping in the Machinery Room were missing paint and insulation, were rusted, and were coated in ice, and some of the piping on the roof had missing or damaged paint or insulation and was corroded;
- h. Had not kept the Machinery Room free of combustible and ignitable material. The Machinery Room stored containers of oil, lubricants, and other unidentified liquids, and had electric panels that were open, exposing wiring and wiring connections that could provide a source of ignition if they were to spark and which were collecting water from ice melting off of piping above it;

- i. Did not provide for safe access to and egress from ammonia-containing areas of the Facility, in that the Machinery Room door opened inward rather than outward and the only means of access to the ammonia piping and condenser on the roof was one portable extension ladder;
- j. Had not installed the main pressure-relief header pipe in a safe manner. The vent pipe opening was installed under an overhang, less than fifteen feet above the roof surface, and less than twenty feet from the air intake openings to the Machinery Room, the entrance to a neighboring workspace (USDA trailer), and the emergency generator;
- k. Had not provided adequate ammonia detectors with associated alarms. The single ammonia detector in the Machinery Room was located at shoulder height, and the display panel for it was located in the Foyer, with no indication available for anyone in the Machinery Room. The detector did not actuate audio and visual alarms inside the Machinery Room and immediately next to its entrance, nor at any other external location, and it was not equipped to activate emergency mechanical ventilation;
- l. Had not provided emergency shutdown or ventilation switches for the System outside the Machinery Room door or anywhere else at the Facility;
- m. Did not have an eyewash and shower station inside or immediately outside of the Machinery Room or Boiler Room;
- n. Did not have windsocks on the roof to assist emergency responders or evacuating personnel in the event of a release at the Facility;

- o. Had a light labeled “Ammonia Detector” on the general alarm and control panel in the Main Office, but representatives were unsure of its functionality and the floorplan it depicted did not reflect current conditions;
- p. Had not provided a “confined space” sign on the condenser’s access door;
- q. Did not have any training program (or documentation thereof) to ensure employees, including those working just outside of the Machinery Room, recognized the dangers posed by the System and knew proper evacuation procedures in case of emergency;
- r. Did not have a mechanical integrity program in place to ensure proper maintenance and safe functioning of the System. Respondent did not have any Facility personnel able or trained to understand, operate, or maintain the System and only used refrigeration contractors to repair the System when an issue arose, but it had no procedures and schedules in place for the inspection, testing, and preventative maintenance (“ITPM”) of the System, or for retaining records thereof, including operational logsheets and ITPM results;
- s. Had not developed an adequate emergency response plan, including failing to have a list of emergency notification numbers and an emergency action plan (including an up-to-date and accurate floorplan) that addressed hazards posed by the System and Facility evacuation in case of an ammonia release.

22. After the Inspection, Respondent retained a consultant to perform a process hazard analysis (“PHA”) for the Facility. On May 22, 2015, EPA received a copy of the written PHA report, which had been conducted in November of 2014.

23. After EPA shared the results of its Inspection with Respondent, Respondent began to address the deficiencies identified in the Inspection and in the PHA performed by Respondent's consultant.

24. On September 16, 2015, Respondent and Complainant entered into an Administrative Order on Consent ("AOC"), which required Rachael's Food to develop and submit to EPA a Work Plan and Schedule for remedying the identified deficiencies by December 16, 2015.

25. On October 6, 2015, Respondent provided EPA with a Work Plan and Schedule for addressing the issues identified in the AOC. As of this time, all of the issues identified by the AOC have been corrected.

IV. VIOLATIONS

Count 1: Failure to Identify Hazards in Violation of the CAA's General Duty Clause

26. Complainant realleges and incorporates by reference Paragraphs 1 through 25 of this document.

27. Pursuant to the General Duty Clause, 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 extremely hazardous substances have a general duty, in the same manner and to the same extent as Section 654 of Title 29, to identify hazards that may result from accidental releases of such substances, using appropriate hazard assessment techniques.

28. As described in Paragraph 21(a) above, the time of the Inspection, Respondent had not conducted a hazard analysis of the System, using industry-recognized hazard assessment techniques.

29. 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, a “What If” analysis, or a Hazard and Operability study. See, e.g., Int’l Inst. of Ammonia Refrigeration, *Ammonia Refrigeration Management Program* § 10 (2005)³ [hereinafter, “IIAR ARM”]; U.S. Env’tl. Prot. Agency, *Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1) § 2.3.1* (2000) [hereinafter “EPA GDC Guidance”], available at <http://www2.epa.gov/sites/production/files/2013-10/documents/gdcregionalguidance.pdf> (last checked Dec. 29, 2015); Int’l Inst. of Ammonia Refrigeration, *Bulletin No. 110: Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems* § 5.2.1 (1993) [hereinafter “IIAR Bull. 110”].

30. Also, as described in Paragraph 21 above, inspectors observed potentially dangerous conditions and management practices at the Facility, including Respondent’s failure to possess certain documentation and information about the System, its unsafe Facility design (including the lack of emergency ventilation and shutdown switches outside the Machinery Room, and the dangerous positioning of the pressure-relief discharge), the lack of a functioning continuous or emergency ventilation system, and its failure to post critical information on and about the System to facilitate a quick response to releases. These deficiencies indicate a failure to adequately identify hazards associated with the release of ammonia at the Facility.

31. By failing to conduct an adequate hazard analysis of the System using appropriate hazard assessment techniques, Respondent failed to identify hazards that may result from

³ Based on the acquisition of the Facility in 2012, EPA is citing the industry standards and guidance that were in effect at that time, rather than the most current standards.

accidental releases, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 2: Failure to Design and Maintain a Safe Facility in Violation of the CAA's General Duty Clause

32. Complainant realleges and incorporates by reference paragraphs 1 through 31 of this document.

33. Pursuant to the General Duty Clause, 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 extremely hazardous substances also have a second general duty – to, in the same manner and to the same extent as Section 654 of Title 29, design and maintain a safe facility, taking such steps as are necessary to prevent releases.

Lack of Refrigeration System Documentation

34. As described in Paragraph 21(b), above, Respondent did not have, or have available for EPA review, critical information about the System and its operation that would allow Respondent to ensure safe operation of the System.

35. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to maintain this, and more, refrigeration system documentation, to help personnel identify hazards posed by the system and to safely maintain and operate the system. See, e.g., IIAR Bull. 110, supra, § 4 (recommending retention of “[a]ll essential records relevant to the system...” including piping and instrumentation diagrams, other types of engineering diagrams, and refrigeration circuit and ventilation flow diagrams). See also IIAR ARM, supra, §§ 3.4, 3.5, 3.10.

Inadequate Ventilation System

36. As described in Paragraph 21(c), above, Respondent had not designed, installed, and operated an adequate ventilation system, including by failing to have sufficient fresh air intakes and a functioning fan capable of preventing ammonia fumes from building up so as to create danger of fire or explosion and capable of providing sufficient air sweep in the Machinery Room to clear it of ammonia fumes in case of emergency.

37. The recommended industry practice and standard of care for ammonia refrigeration systems of this size includes designing and installing a ventilation system based on calculations and other analysis of the ammonia system and Machinery Room to determine the air sweep necessary for safe operation in normal conditions and to clear ammonia fumes in case of emergency. See, e.g., Am. Nat'l Standards Inst./Int'l Inst. of Ammonia Refrigeration, Standard 2-2008: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems §§ 13.3.8 & .9 (2010 ed.) [hereinafter "IIAR 2-2008 (2010 ed.)"] (normal and emergency ventilation capacities); Am. Nat'l Standards Inst./Am. Soc'y of Heating, Refrigerating and Air-Conditioning Eng'rs, Standard 15-2010: Safety Standard for Refrigeration Systems § 8.11.5 (2010) [hereinafter "ASHRAE 15-2010"]. The openings for inlet air should be near the machinery, and they should be sufficient to allow the inlet air to replace that exhausted. See, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.3.3; ASHRAE 15-2010, supra, § 8.11.4.

38. Also, Respondent failed to ensure that the Machinery Room was designed to be air-tight. As described in Paragraph 21(d), above, pipes passed from the Machinery Room to the Boiler Room and the outdoors through unsealed holes in the walls and the Machinery Room door and was not self-closing.

39. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to ensure that no air can flow from the Machinery Room to other parts of the building, to minimize the spreading of ammonia during any leak, by ensuring any piping that pierces the walls is tightly sealed so as to prevent any leaking refrigerant from entering the airstream, see, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.1.1.6; ASHRAE 15-2010, supra, §§ 8.11.7, 8.12(f), and by ensuring that Machinery Rooms have tight-fitting doors that self-close. See, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.1.10.1; ASHRAE 15-2010, supra, § 8.11.2.

Inadequate Signs and Labels

40. As described above in Paragraph 21(e), at the time of the Inspection, Respondent did not have sufficient signs to adequately identify many aspects of the Facility. Neither the Access Door to the Machinery Room, nor the interior of the Machinery Room, nor the Stuffing Room (location of the Facility's single visual alarm) had any signs notifying of the presence of ammonia inside, restricting entry to authorized personnel, or containing information about the System's operation, alarm, or emergency shutdown process.

41. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to post signs warning of the presence of ammonia and restricting entry to authorized personnel at each entrance to the Machinery Room, see, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.1.2.4; ASHRAE 15-2010, supra, §§ 8.11.8, 11.2.4, and to post other signs with information about the operation of the System, including signs explaining the alarms and the emergency shutdown process, outside the principal Machinery Room door. See, e.g., IIAR 2-2008 (2010 ed.), supra, §§ 13.1.10.4 (systems need "informative signs, emergency signs, charts and labels in accordance with [National Fire Protection Association] 704"), 13.2.4.1 (alarms), App. L (summarizing signage and providing examples); ASHRAE 15-2010, supra, §§ 8.11.2.1

(meaning of alarms at each entrance), 11.2.1 (installer name and address, amount and kind of refrigerant, amount and kind of lubricant, and field test pressure applied), 11.7 (emergency shutdown procedures and precautions in case of a breakdown or leak); Int'l Inst. of Ammonia Refrigeration, Bulletin No. 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System §§ 4.10.4 (1997) [hereinafter "IIAR Bull. 109"] (general system information), 4.10.6 (evacuation plan with activation responsibility clearly indicated).

42. Also, as described above in Paragraph 21(f), at the time of the Inspection, the System components, pipes, and valve systems were unlabeled, with the exception of signs on the three King Valves that were temporary rather than permanent and prominent.

43. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to label all system components, pipes, and valve systems. See, e.g., IIAR 2-2008 (2010 ed.), supra, § 10.5 (pipes need to be marked with physical state of refrigerant, relative pressure level, and direction of flow); ASHRAE 15-2010, supra, §§ 9.12.6 (stop valves), 11.2.2 (piping, valves, and switches for refrigerant flow, ventilation, and compressor); IIAR ARM, supra, § 4.2 (listing the labeling of lines, emergency isolation valves, and safety systems as a part of writing operating procedures); IIAR Bull. 109, supra, §§ 4.1.1 (compressor nameplate information), 4.3.1 (heat exchanger and pressure vessel nameplates), 4.3.7 (same), 4.7.6 (all piping needs attached markers indicating the use of the pipe and direction of flow). See generally, Int'l Inst. of Ammonia Refrigeration, Bulletin No. 114: Guidelines for Identification of Ammonia Refrigeration Piping and System Components (1991) (all piping should be identified with physical state of the refrigerant, the relative pressure level, and the direction of flow; all components of the system should be uniformly identified as to the name of the

equipment and a pressure level designation). See also IIAR Bull. 109, supra, § 4.1.2 (warning against operating a compressor without a nameplate unless its limitations have been verified).

Inadequate Basic Safety Practices

44. Additionally, as described above in Paragraph 21(g), at the time of the Inspection, Respondent had failed to maintain the paint and insulation on piping components to prevent corrosion.

45. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to keep piping painted with a rust preventive paint, to inspect any pipes with damaged insulation, and to repair any damaged insulation. See, e.g., IIAR Bull. 109, supra, §§ 4.7.4, 4.7.5.

46. As described above in Paragraph 21(h), at the time of the Inspection, Respondent had not maintained the Machinery Room to be clear and free of combustible and ignitable material, and had not positioned piping and equipment so as to prevent meltwater from dripping into electrical panels.

47. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to have no combustible material in machine rooms, see, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.1.3.1, and to ensure that piping and machinery are not located so as to allow dripping onto electrical panels. See, e.g., id., § 13.1.5.1

48. Also, at the time of the Inspection, Respondent did not provide for safe access to and egress from ammonia-containing areas of the Facility, in that, as described above in Paragraph 21(i), the Machinery Room door opened inward rather than outward and the only means of accessing of the ammonia piping and condenser on the roof was via a single portable extension ladder.

49. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to ensure that Machinery Room doors open outward, see, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.1.10.1; ASHRAE 15-2010, supra, § 8.11.2, and to ensure that all refrigerating machinery allows for a clear and unobstructed approach. See, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.1.2.2.

Inadequate Emergency Design and Mechanisms

50. Also, as described above in Paragraph 21(j), at the time of the Inspection, the main relief header piping was located under the roof overhang (and so, fewer than fifteen feet above the roof surface) and was located fewer than twenty feet from the fresh air intakes for the Machinery Room, the entrance to the USDA trailer, and the emergency generator.

51. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to raise the relief header pipe at least fifteen feet above the adjoining surface level and to locate it at least twenty feet from any air intakes, exits, or where any people, including personnel responding to an emergency, may be nearby. See, e.g., IIAR 2-2008 (2010 ed.), supra, §§ 11.3.6.3 & .4; ASHRAE 15-2010, supra, § 9.7.8.

52. As described above in Paragraph 21(k), at the time of the Inspection, Respondent had not provided adequate ammonia detectors with associated alarms.

53. At the time of the violations alleged herein, the recommended industry practice and standard of care for ammonia refrigeration systems of this size was to install at least two ammonia detectors in the Machinery Room.⁴ See, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.2. The detectors should be placed where leaked ammonia is likely to concentrate. See, e.g., id.

⁴ One of the newest industry standards allows for just one detector, but it must perform multiple functions. Am. Nat'l Standards Inst./Int'l Inst. of Ammonia Refrigeration, Standard 2-2014 Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems § 17.7 (2014).

§ 13.2.2.1; ASHRAE 15-2010, supra, § 8.11.2.1. The detectors should actuate visual and audible alarms inside the Machinery Room and each of its entrances. See, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.2.1.2; ASHRAE 15-2010, supra, § 8.11.2.1. The detectors should also be equipped to activate mechanical ventilation. See, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.2; ASHRAE 15-2010, supra, § 8.11.2.1.

54. Also, as described above in Paragraph 21(l), at the time of the Inspection, Respondent had not provided emergency shutdown or ventilation switches for the System outside the Machinery Room door.

55. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to provide clearly marked emergency shutdown and ventilation switches at the principal Machinery Room door. See, e.g., IIAR 2-2008 (2010 ed.), supra, §§ 13.1.13.2 (shutdown), 13.3.11 (ventilation); ASHRAE 15-2010, supra, § 8.12(i) (both).

Inadequate Training Program

56. As described above in Paragraph 21(q), Respondent had not developed and implemented an adequate training program.

57. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to train employees on the hazards of the work area, including those posed by ammonia, on procedures applicable to the employees' tasks that pertain to operating or maintaining the integrity of the System, including safe work practices, and on the emergency response plan, to verify that the employee understood the training, and to maintain records of the training given. See, e.g., IIAR ARM, supra, § 9; Bull. No. 110, supra, § 5.2.3.

Inadequate Mechanical Integrity Program

58. As described above in Paragraph 21(r), Respondent had not developed and implemented an adequate mechanical integrity program.

59. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to establish a schedule for testing equipment and systems according to the manufacturer's recommendations, perform the necessary inspections (some of which should occur daily, weekly, monthly, quarterly, semi-annual, yearly, and every five years), and maintain logs and other inspection records. See, e.g., IIAR ARM, supra, § 5 & App. 5.1; Bull. No. 110, supra, § 6. See also IIAR 2-2008 (2010 ed.), supra, § 13.3.12; ASHRAE 15-2010, supra, § 11.6.3; IIAR ARM, supra, § 4.3.

60. Accordingly, by failing to have (a) appropriate refrigeration system documentation; (b) an adequate ventilation system; (c) adequate signs and labels; (d) adequate basic safety practices; (e) adequate emergency design and mechanisms; (f) an adequate training program; and (g) an adequate mechanical integrity program, Respondent failed to design and maintain a safe facility, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 3: Failure to Minimize the Consequences of Accidental Releases That Do Occur in Violation of the CAA's General Duty Clause

61. Complainant realleges and incorporates by reference paragraphs 1 through 60 of this document.

62. Pursuant to the General Duty Clause, 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 extremely hazardous substances have a third general duty to minimize the consequences of any accidental releases of anhydrous ammonia that do occur.

63. As described above in Paragraph 21(s), at the time of the Inspection, Respondent did not have an adequate emergency response program, including by failing to have a list of emergency notification numbers and an up-to-date emergency action plan that addressed the hazards posed by the System and the Facility evacuation and response in the event of an ammonia release.

64. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to develop an up-to-date, facility-specific emergency action plan that accurately describes the facility and the potentially affected population. Such a plan should include, among other items: types of evacuation, evacuation procedures and routes, procedures for employees who remain to maintain critical operations, procedures for accounting for evacuated employees, any employee rescue and medical duties, and means for reporting emergencies. See, e.g., IIAR ARM, supra, § 7. An adequate emergency response program should also identify procedures for responding to an ammonia release, including shutting the system down, starting emergency ventilation, and coordinating with all relevant off-site emergency responders. See, e.g., id.

65. Also, as described above in Paragraph 21(m), at the time of the Inspection, Respondent had failed to provide the necessary eyewash and shower stations to protect employees in case of ammonia exposure or other emergency.

66. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to have eyewash and shower stations just outside the exit to the Machinery Room. See, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.1.6; IIAR Bull. 109, supra, § 4.10.10.

67. In addition, the allegations in paragraphs 36 through 43 and 46 through 55 describe deficiencies that not only constitute a failure to design and maintain a safe facility, but also

reflect a failure to minimize the consequences of any accidental release of ammonia. Each of these shortcomings could exacerbate the negative effects of any release of ammonia that does occur at the Facility.

68. Accordingly, by failing to develop and implement an adequate emergency response plan, failing to have adequate ventilation system design and operation, failing to ensure that the Machinery Room was airtight, failing to have adequate signs and labels posted throughout the Facility, failing to have certain basic safety practices in place, and failing to provide adequate emergency design and mechanisms for the Facility, Respondent violated the requirement to minimize the consequences of any accidental release of anhydrous ammonia that does occur, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 4: Failure to Submit Hazardous Chemical Inventory Forms in Violation of Section 312 of EPCRA

69. Complainant realleges and incorporates by reference paragraphs 1 through 68 of this document.

70. At all times relevant to the violations cited herein, Respondent was storing more than 500 pounds of anhydrous ammonia in the System.

71. Anhydrous ammonia is a “hazardous chemical,” as defined at 40 C.F.R. § 370.66 and 29 C.F.R. § 1910.1200(c) and an “extremely hazardous substance,” as defined in 40 C.F.R. Part 355.

72. At all times relevant to the violations cited herein, Respondent was required, pursuant to OSHA, to prepare and have available onsite an MSDS for ammonia.

73. During calendar year 2013, Respondent stored ammonia at the Facility in a quantity that exceeded the minimum threshold level of 500 pounds set forth in 40 C.F.R. § 370.10(a)(1).

74. Respondent was required to prepare and submit an emergency and hazardous chemical Inventory Form (Tier II form) to the SERC, LEPC, and the local fire department with jurisdiction over the Facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), for the 2013 calendar year, on or before March 1st of the following calendar year.

75. Respondent failed to prepare and submit an Inventory Form for the year 2013 by March 1st of the following year to the SERC, LEPC, and the local fire department, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45.

V. TERMS OF SETTLEMENT

76. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

77. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that the CAFO states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying the factual and legal allegations contained herein, consents to the terms of this CAFO.

78. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its right to appeal the Final Order.

79. Respondent certifies that it has corrected the violations alleged in this CAFO and will continue to operate the Facility in compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and with Section 312 of EPCRA, 42 U.S.C. § 11022.

80. Respondent consents to the issuance of this CAFO and consents for purposes of settlement to the payment of the civil penalty cited in paragraph 84 below.

Civil Penalty

81. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 and 2013 Civil Monetary Penalty Inflation Adjustment Rules, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to \$37,500 per day for violations occurring after January 12, 2009.

82. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as adjusted for inflation by the DCIA and 40 C.F.R. Part 19, prescribes a \$295,000 penalty limit and a twelve-month duration limitation on EPA's authority to initiate an Administrative Penalty Order. However, these limitations may be waived where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty or a longer period of violation is appropriate for an administrative penalty action. EPA and the Department of Justice jointly have determined that an administrative penalty action is appropriate in this case.

83. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of Section 312 of EPCRA, 42 U.S.C. § 11022. Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after January 12, 2009 are subject to up to \$37,500 per day of violation.

84. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and taking into account the relevant statutory penalty criteria, the facts alleged above, and such other circumstances as justice may require, EPA has determined that it is appropriate to assess a civil penalty of \$65,000 for the violations alleged in this CAFO, and Respondent consents to payment of this penalty.

85. The penalty shall be due in two (2) installments. The first payment shall be in the amount of \$32,500 and shall be made within thirty (30) days of the effective date of this CAFO. The second payment shall be in the amount of \$33,042 (consisting of \$32,500 in principal plus \$542 in interest) and shall be made within six (6) months of the effective date of this CAFO.

86. Respondent shall make each payment by cashier's or certified check, or by wire transfer and shall include the case name and docket numbers (CAA-01-2016-0021; EPCRA-01-2016-0024) on the face of the check or wire transfer confirmation. A check should be payable to "Treasurer, United States of America." Each payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

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

Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

In addition, at the time of payment, Respondents should also forward notice of payment of the civil penalty as well as copies of the payment check or payment receipt to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

and

Christine Foot, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912

87. If Respondent fails to make any of the payments required by Paragraph 85 by the required due dates, all remaining installments shall become immediately due and payable as of the missed payment date. Interest on such unpaid penalty amounts shall accrue from the missed payment date until the total amount due has been received by the United States. Respondent shall be liable for such amounts regardless of whether EPA has notified Respondent of its failure to pay or made demand for payment. All payments to the United States under this paragraph shall be made as described in Paragraph 86.

88. Collection of Unpaid CAA Civil Penalty: Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay any portion of the civil penalty amount relating to the alleged CAA violations (which shall be deemed to be 94 percent of the total due under paragraph 84, above), 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 thirty (30) calendar days of the effective date of this CAFO. In that event, interest will accrue from the effective date of this CAFO 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.

89. Collection of EPCRA Penalty: Pursuant to 31 U.S.C. § 3717, 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. In the event that any portion of the civil penalty amount relating to the alleged EPCRA violations (which shall be deemed to be 6 percent of the total due under paragraph 84, above) is not paid when due, 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 ninety (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.

90. All penalties, interest, and other charges provided for under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not deductible for purposes of federal, state or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

91. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law.

92. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA and Section 325(c) of EPCRA for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

93. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

94. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

95. This CAFO in no way relieves Respondent or its employees of any criminal liability, and 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.


96. Each party shall bear its own costs and fees in this proceeding including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

97. The terms, conditions, and requirements of this CAFO may not be modified without the written agreement of all Parties and the approval of the Regional Judicial Officer.

98. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

99. Each undersigned representative of the parties certifies that he is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

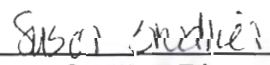
For Respondent:



Rachael Polep Kramer, President
Rachael's Food Corporation

6/01/16
Date

For Complainant:



Susan Studien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England

06/22/2016
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)

Rachael's Food Corporation)
76 Granby Street)
Bloomfield, CT 06002)

Respondent)

Proceeding under Section 113(d))
of the Clean Air Act, 42 U.S.C. § 7413(d))

Docket No. CAA-01-2016-0021,
EPCRA-01-2016-0024

**CONSENT AGREEMENT
AND FINAL ORDER**

FINAL ORDER

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

The Respondent, as specified in the Consent Agreement, is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.



Sharon Wells
Regional Judicial Officer
U.S. EPA, Region 1

Date: 6/23/16

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

IN THE MATTER OF)
)
Rachael's Food Corporation)
76 Granby Street)
Bloomfield, CT 06002)
Respondent)
)
Proceeding under Section 113(d) of the Clean Air)
Act, 42 U.S.C. § 7413(d), and Section 325(c) of)
the Emergency Planning and Community)
Right to Know Act, 42 U.S.C. § 11045(c))
_____)

Docket Nos.: CAA-01-2016-0021,
EPCRA-01-2016-0024

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

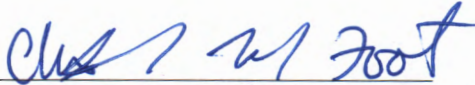
Original and one copy
(hand-delivered):

Ms. Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

Copy (certified mail, return
receipt requested):

Rachael Polep Kramer, President
Rachael's Food Corporation
705 Meadow Street
Chicopee, MA 01013

Dated: 6/23/16


Christine M. Foot, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912