

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

U.S. EPA-REGION 3-RHC
FILED-10MAR2020PM12:55

In the Matter of:	:
	:
Conagra Brands, Inc.	:
222 W. Merchandise Mart Plaza	:
Suite 1300	:
Chicago, Illinois 60654,	:
Respondent.	:
	:
1200 Frederick Street	:
Hagerstown, Maryland 21740,	:
	:
Facility.	:
	:

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Conagra Brands, Inc. (“Respondent”) (collectively the “Parties”), pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d) (“CAA” or “Act”), as amended, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under the CAA for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Administrator and the Attorney General, each through their respective delegates, have jointly determined that this administrative penalty action is appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source,” as “any buildings, structures, equipment, installations, or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.”
14. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” as including an individual, corporation, partnership, association, State, municipality, political subdivision of a State and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.
15. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances. The list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.
16. On June 20, 1996, EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7) (“Regulations”). The Regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program is described in a risk management plan (“RMP”) for the facility that must be submitted to EPA. The RMP must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in the event of an accidental release of a regulated substance, to protect human health and the environment.
17. The Regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.
18. The Regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA in 40 C.F.R. § 68.130.
19. The term “process” is defined at 40 C.F.R. § 68.3 to mean, in relevant part, “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances or combination of these activities.”
20. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996, and the subsequent Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, in relevant part, authorize EPA to commence an

- administrative action to assess civil penalties of up to \$47,357 per day per violation for violations occurring after November 2, 2015.
21. Respondent is a Delaware corporation with corporate headquarters located at 222 W. Merchandise Mart Plaza, Suite 1300, Chicago, Illinois 60654.
 22. Respondent is a person within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
 23. Respondent is the owner and operator of a frozen foods manufacturing facility located 1200 Frederick Street, Hagerstown, Maryland, 21740 (the "Facility").
 24. On October 26, 2018, Respondent became the owner and operator of the Facility upon the completion of a merger with Pinnacle Foods, Inc. (the "Merger").
 25. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).
 26. According to Respondent's RMP, Respondent handles approximately 22,477 pounds of anhydrous ammonia at the Facility.
 27. Anhydrous ammonia, Chemical Abstracts Service ("CAS") Number 7664-41-7, is an extremely hazardous substance. Anhydrous ammonia is an irritant and is corrosive to the skin, eyes, respiratory tract and mucous membranes. Exposure to liquid ammonia or rapidly expanding gases may cause severe chemical burns and frostbite to the eyes, lungs and skin. Skin and respiratory diseases could be aggravated by exposure.
 28. Anhydrous ammonia is a "regulated substance" for purposes of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), because it is listed pursuant to Section 112(r)(3) of the CAA, at 40 C.F.R. § 68.130.
 29. The threshold quantity for anhydrous ammonia is 10,000 pounds, pursuant to 40 C.F.R. § 68.130, Table 1.
 30. More than a threshold quantity of a regulated substance is present in a process at the Facility.
 31. Respondent is subject to the requirements of Section 112(r)(7) of the CAA, 40 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68, at the Facility because Respondent is the owner and operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.
 32. EPA conducted an inspection of the Facility on April 18, 2018 to evaluate the Facility's compliance with CAA Section 112(r), 42 U.S.C. § 7412(r), and the Regulations (the "Inspection"). On May 24, 2018, EPA sent a post-inspection letter to Respondent's

predecessor, Pinnacle Foods, Inc., summarizing the deficiencies identified by EPA during the Inspection and subsequent investigation.

Count I

Failure to Establish a System to Promptly Address Findings and Recommendations gathered in the Process Hazard Analysis

33. The allegations of Paragraphs 1 through 32 of this Consent Agreement are incorporated herein by reference.
34. 40 C.F.R. § 68.67(e) requires, in relevant part, owners or operators to establish a system to promptly address the findings and recommendations made in the process hazard analysis (the “PHA”); assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; and develop a written schedule of when these actions are to be completed.
35. Facility documents provided to EPA by Respondent subsequent to the Inspection show that several significant findings and recommendations gathered during the Facility’s 2016 PHA had not been implemented as of the date of EPA’s Inspection on April 18, 2018. The PHA findings that were not promptly corrected included (1) preventative maintenance and inspection items added to daily and annual inspections, (2) replacement of an auto-purger, (3) installation of a relief vent ammonia detector and loading dock detectors, and (4) installation of a glycol temperature and pressure transmitter on the control panel. Items (1) and (3) were completed prior to the Merger. Respondent has represented to EPA that Item (2) was completed during the summer of 2019; however, Respondent did not complete work on Item (4) until on or about November 28, 2019, approximately 13 months following the Merger.
36. By not completing work on the final outstanding 2016 PHA recommendation until approximately 13 months following the Merger, Complainant alleges that Respondent did not promptly address the PHA recommended actions in a timely manner, and therefore failed to comply with the requirements of 40 C.F.R. § 68.67(e).
37. By failing to comply with 40 C.F.R. § 68.67(e), Respondent is subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

CIVIL PENALTY

38. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **SEVENTEEN THOUSAND DOLLARS (\$17,000)**, which Respondent shall be liable to pay in accordance with the terms set forth below.

39. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), including, the following: the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012), which reflects the statutory penalty criteria and factors set forth at Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
40. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, CAA-03-2020-0065;
 - b. All checks shall be made payable to the **United States Treasury**;
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
 - d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>
 - e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Mark Bolender
Sr. Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

bolender.mark@epa.gov

41. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
42. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
43. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
44. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
45. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
46. If Respondent fails to make a full and complete payment of the civil penalty in accordance with this CAFO, the entire unpaid balance of the penalty shall become immediately due and owing. Failure by Respondent to pay the CAA civil penalty assessed by the Final Order in full in accordance with this CAFO may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

47. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

48. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
49. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

50. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

51. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CAA or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

52. This CAFO resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the

Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION /PARTIES BOUND

53. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

EFFECTIVE DATE

54. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

55. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

For Respondent:

Conagra Brands, Inc.


Date: 1/30/2020

By: Thomas J. Culross
Thomas J. Culross
Vice President
Environment, Health & Safety

For the Complainant:

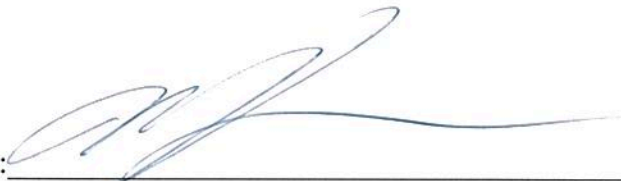
After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 3/5/20

By: 
for Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 2/27/20

By: 
Mark Bolender
Sr. Assistant Regional Counsel
U.S. EPA – Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

U.S. EPA-REGION 3-RHC
FILED-10MAR2020PM12:55

In the Matter of:	:	
	:	
Conagra Brands, Inc. 222 W. Merchandise Mart Plaza Suite 1300 Chicago, Illinois 60654,	:	U.S. EPA Docket No. CAA-03-2020-0065
	:	
Respondent.	:	Proceeding under Sections 112(r) and 113 of the Clean Air Act, 42 U.S.C. §§ 7412, 7413, and 40 C.F.R. § 22.13(b) and 22.18(b)
	:	
1200 Frederick Street Hagerstown, Maryland 21740,	:	
	:	
Facility.	:	
	:	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Conagra Brands, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.


Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (June 2012), and the statutory factors set forth in Section 113(e) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(e).

NOW, THEREFORE, PURSUANT TO Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **SEVENTEEN THOUSAND DOLLARS (\$17,000)**, in accordance with the payment provisions set forth in the Consent Agreement and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

March 10, 2020
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

In the Matter of:

**Conagra Brands, Inc.
222 W. Merchandise Mart Plaza
Suite 1300
Chicago, Illinois 60654,**

Respondent.

**1200 Frederick Street
Hagerstown, Maryland 21740,**

Facility.

:
:
: **U.S. EPA Docket No. CAA-03-2020-0065**
:
: **Proceeding under Sections 112(r) and 113 of**
: **the Clean Air Act, 42 U.S.C. §§ 7412, 7413, and**
: **40 C.F.R. § 22.13(b) and 22.18(b)**
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CERTIFICATE OF SERVICE

I certify that on MAR 10 2020, the original and one (1) copy of the foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via Certified Mail, Return Receipt Requested, to:

René L. Rimelspach, Esq.
Legal & Government Affairs
Conagra Brands, Inc.
222 W. Merchandise Mart Plaza, Suite 1300
Chicago, IL 60654

Copies served via Hand Delivery or Inter-Office Mail to:

Mark Bolender
Sr. Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

Dated: MAR 10 2020

Bevin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBERS: 7015 0640 0005 6529 3148