



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:

US EPA Docket No.: EPCRA-03-2017-0045

Freshpet, Inc.
400 Plaza Drive, Suite 107
Secaucus, NJ 07094

Respondent.

Freshpet, Inc.
176 North Commerce Way
Bethlehem, PA 18017

Facility.

Proceedings Pursuant to Sections 311, 312,
and 325 of the Emergency Planning and
Community Right-to-Know Act,
42 U.S.C. §§ 11021, 11022, and 11045

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EPA REGION III

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045. The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency (“EPA”), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has re-delegated this authority to the Director of the Hazardous Site Cleanup Division, EPA Region III (“Complainant”). Further, this Consent Agreement is proposed and entered into under the authority provided by 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.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as “CAFO”) as prescribed by the Consolidated Rules of Practice, pursuant to 40 C.F.R. § 22.1(a)(8), 22.13(b), and 22.18(b)(2) and (3), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.



JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. § 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement or the Final Order, or enforcement of this CAFO.
4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

FACTUAL ALLEGATIONS

5. Freshpet, Inc. ("Respondent") is a Delaware corporation with its headquarters located at 400 Plaza Drive, Suite 107, Secaucus, New Jersey, 07094.
6. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.
7. Respondent is the owner and operator of a facility located at 176 North Commerce Way in Bethlehem, Pennsylvania ("the Facility"), which is utilized for the Respondent's fresh pet food manufacturing business.
8. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.
9. At all times relevant to this CAFO, Respondent has been the "owner or operator" of the Facility within the meaning of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, and 40 C.F.R. § 370.2.
10. Respondent is engaged in a business at the Facility where chemicals are either used, distributed, or are produced for use or distribution.
11. Respondent is an "employer" at the Facility as that term is defined at 29 C.F.R. § 1910.1200(c).
12. On July 20, 2015, EPA conducted an inspection of the Facility to ascertain Respondent's compliance with the emergency response requirements of Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004, and the emergency planning and community right-to-know requirements of Sections 302, 303, 311 and 312 of EPCRA, 42 U.S.C. §§ 11002, 11003, 11021, 11022, ("the Inspection") in response to a release of anhydrous ammonia that was reported to have been

discovered by Respondent at the Facility on February 22, 2015. During the Inspection, Respondent submitted information to EPA regarding its compliance with CERCLA and EPCRA.

COUNT I
FINDINGS OF FACT RELATING TO THE
VIOLATION OF SECTION 311 OF EPCRA

13. The factual allegations contained in Paragraphs 5 through 10 of this CAFO are incorporated by reference herein as though fully set forth at length.

14. Section 311 of EPCRA, 42 U.S.C. § 11021, as implemented by 40 C.F.R. Part 370, requires an owner or operator of a facility required to prepare or have available a Material Safety Data Sheet (“MSDS”) or Safety Data Sheet (“SDS) for a hazardous chemical in accordance with the Occupational Safety and Health Administration (“OSHA”) Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility is present at any one time a hazardous chemical, including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous substance (“EHS”), in a quantity equal to or greater than its applicable minimum threshold level for reporting (“MTL”) or threshold planning quantity (“TPQ”) established by 40 C.F.R. § 370.10, to submit either MSDSs or SDSs for, or a list identifying, those hazardous chemicals to the appropriate Local Emergency Planning Committee (“LEPC”), State Emergency Response Commission (“SERC”), and local fire department with jurisdiction over the facility within three months after meeting the MTL or TPQ.

15. The SERC for complying with the emergency planning and community right-to-know reporting requirements of Sections 311 and 312 of EPCRA at the Facility is, and at all times relevant to this CAFO has been, the Pennsylvania Department of Labor & Industry, Bureau of Occupational and Industrial Safety, Pennsafe Program (“Pennsafe”), located at 651 Boas Street, Harrisburg, PA 17121.

16. Anhydrous ammonia is a “hazardous chemical” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66. Anhydrous ammonia is also an EHS as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.

17. On July 1, 2012, Respondent became the owner of a facility that is required to prepare or have available MSDSs for any hazardous chemicals present at the Facility under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

18. According to information supplied to EPA by Respondent, approximately 4,000 pounds of anhydrous ammonia was present at the Facility on or before July 1, 2012 and approximately 9,800 pounds of anhydrous ammonia was present at the Facility on February 14, 2013.

19. Pursuant to 40 C.F.R. § 370.10(a)(1), the TPQ for anhydrous ammonia is 500 pounds.

20. Respondent was required to submit to the SERC, the LEPC and local fire department an MSDS or SDS for anhydrous ammonia or a list identifying this hazardous chemical or EHS as present at the Facility in a quantity equal to or exceeding its respective MTL or TPQ, no later than three (3) months after the chemical was present at the Facility in an amount equal to or greater than its respective MTL or TPQ.

21. Respondent failed to provide the SERC with an MSDS or SDS for anhydrous ammonia, or a list of hazardous chemicals present at the Facility, including ammonia, until February 2015.

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 311 OF EPCRA**

22. Respondent's failure to timely submit to the SERC an MSDS or SDS, or list, of each hazardous chemical present at the Facility in a quantity equal to or exceeding its respective MTL, no later than three (3) months after the chemical was present at the Facility in an amount equal to or greater than its respective MTL or TPQ, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNT II
**FINDINGS OF FACT RELATING TO THE
VIOLATION OF SECTION 312 OF EPCRA – 2012**

23. The factual allegations contained in Paragraphs 5 through 22 of this CAFO are incorporated by reference herein as though fully set forth at length.

24. Section 312 of EPCRA, 42 U.S.C. §11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility that is required to prepare or have available an MSDS or SDS for a hazardous chemical in accordance with OSHA's Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time during a calendar year in a quantity equal to or greater than its applicable MTL or TPQ to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form ("Chemical Inventory Form") for the previous calendar year identifying the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

25. Anhydrous ammonia is a "hazardous chemical" as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and is subject to Section 312 of EPCRA, 42 U.S.C. § 11022, pursuant to Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

26. According to the information submitted to EPA by Respondent, Respondent had approximately 4,000 pounds of anhydrous ammonia present at the Facility during the 2012 calendar year, an amount that exceeded its MTL or TPQ.

27. Respondent failed to submit to the SERC with jurisdiction over the Facility a Chemical Inventory Form for the Facility for calendar year 2012 by March 1, 2013, identifying anhydrous ammonia as present at the Facility in a quantity equal to or greater than the MTL or TPQ, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – 2012**

28. Respondent's failure to submit to the SERC a Chemical Inventory Form for the Facility for calendar year 2012 constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**COUNT III
FINDINGS OF FACT RELATING TO THE
VIOLATION OF SECTION 312 OF EPCRA – 2013**

29. The factual allegations contained in Paragraphs 5 through 28 of this CAFO are incorporated by reference herein as though fully set forth at length.

30. According to the information submitted to EPA by Respondent, Respondent had approximately 9,800 pounds of anhydrous ammonia present at the Facility during the 2013 calendar year, an amount that exceeded its MTL or TPQ.

31. Respondent failed to submit to the SERC a Chemical Inventory Form for the Facility for calendar year 2013 by March 1, 2014, identifying anhydrous ammonia as present at the Facility in a quantity equal to or greater than the MTL or TPQ, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – 2013**

32. Respondent's failure to submit to the SERC a Chemical Inventory Form for the Facility for calendar year 2013 constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

SETTLEMENT

33. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violation of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, set forth above, in the amount of **\$14,397.00**.

34. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

PAYMENT TERMS

35. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CAFO, Respondent shall pay the EPCRA civil penalty of \$14,397.00 no later than thirty (30) days after the effective date of the Final Order (the "Final Due Date") by either cashier's check, certified check, or electronic wire transfer, as set

forth in the following paragraphs.

36. Payment of the EPCRA civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, **EPCRA-03-2017-0045**;
- b. All checks shall be made payable to **United States Treasury**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell (513-487-2044)

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

U.S. EPA
Cincinnati Finance Center
26 W. Martin Luther King Drive, MS-002
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX /Cashlink ACH Receiver
 ABA = 051036706
 Account No.: 310006, Environmental Protection Agency
 CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
 5700 Rivertech Court
 Riverdale, MD 20737
 Contact: Randolph Maxwell 202-874-3720
 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

37. Respondent shall submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

Lydia Guy (3RC00)
 Regional Hearing Clerk
 U.S. EPA, Region III
 1650 Arch Street
 Philadelphia, PA 19103-2029

and

Suzanne Parent (3RC42)
 Assistant Regional Counsel
 U.S. EPA, Region III
 1650 Arch Street
 Philadelphia, PA 19103-2029

38. The EPCRA civil penalty stated herein is based upon Complainant’s consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C): the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. The penalty is also consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

39. 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 by the final due date or to comply with the conditions in this CAFO

shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

40. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this fully executed 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).

41. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of Resources Management Directives - Cash 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 Final Due Date and an additional \$15.00 for each subsequent thirty (30) day period the penalties remain unpaid.

42. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain delinquent more than ninety (90) calendar days in accordance with 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, in accordance with 31 C.F.R. § 901.9(d).

43. Failure by Respondent to pay the EPCRA civil penalty assessed by the Final Order in full by the Final Due Date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

44. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 325 of EPCRA, 42 U.S.C. § 11045.

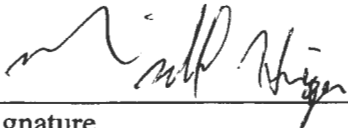
45. The provisions of the CAFO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

46. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. 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. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order

following its filing with the Regional Hearing Clerk.

47. Each party to this action shall bear its own costs and attorney's fees.

FOR FRESHPET, INC.



Signature

11/28/16
DATE

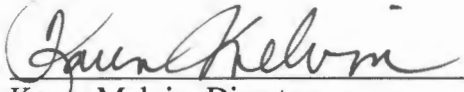
Michael Heizer

Print Name

SVP Operations

Title

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Karen Melvin, Director
Hazardous Site Cleanup Division

DEC 15 2016

DATE

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

REGION III

| | | |
|-----------------------------------|---|---|
| In the Matter of: |) | US EPA Docket No.: EPCRA-03-2017-0045 |
| |) | |
| |) | |
| Freshpet, Inc. |) | |
| 400 Plaza Drive, Suite 107 |) | |
| Secaucus, NJ 07094 |) | |
| |) | |
| Respondent. |) | Proceedings Pursuant to Sections 311, 312, |
| |) | and 325 of the Emergency Planning and |
| |) | Community Right-to-Know Act, |
| Freshpet, Inc. |) | 42 U.S.C. §§ 11021, 11022, and 11045 |
| 176 North Commerce Way |) | |
| Bethlehem, PA 18017 |) | |
| |) | |
| |) | |
| Facility. |) | |
| |) | |

FINAL ORDER

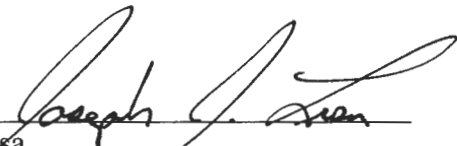
Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Freshpet, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice 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 *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999), and Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c).

NOW, THEREFORE, PURSUANT TO Section 325 of EPCRA, 42 U.S.C. § 11045, 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 ***FOURTEEN THOUSAND THREE HUNDRED NINETY SEVEN DOLLARS (\$14,397)*** in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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.

Jan. 5, 2017
Date



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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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Freshpet, Inc.)
400 Plaza Drive, Suite 107)
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) Respondent.) Proceedings Pursuant to Sections 311, 312
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176 North Commerce Way)
Bethlehem, PA 18017)
) Facility.)
)
)

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CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order (“CAFO”) in the above-captioned matter has been filed with the EPA Region III Regional Hearing Clerk and that a copy of the CAFO was sent by UPS overnight mail to:

Michael Hieger, Sr. Vice President of Operations
Freshpet, Inc.
176 N. Commerce Way
Bethlehem, PA 18014

I further certify that I have sent a pdf copy of the CAFO by electronic mail to Michael Hieger at mhieger@freshpet.com, on this day.

1/10/17
Date

Suzanne M. Parent
Suzanne M. Parent
Associate Regional Counsel

