

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

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EPA

IN THE MATTER OF:)
)
The Ziegenfelder Company) **EPA Docket Nos. CAA-03-2016-0198**
87 18th Street))
Wheeling, West Virginia 26003,))
))
 Respondent.))
) **Proceedings Pursuant to Sections 112(r) and**
) **113 of the Clean Air Act, 42 U.S.C.**
87 18th Street) **§§ 7412, 7413, and 40 C.F.R. § 22.13(b)**
Wheeling, West Virginia 26003,) **and 22.18(b)**
))
 Facility.))

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7413(d), and 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 (“Part 22”). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III (“Complainant”).

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 “CA/FO”) as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).
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, The Ziegenfelder Company (“Respondent”) admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA’s jurisdiction with respect to the execution or enforcement of this Consent Agreement.
4. With the exception of Paragraph 3, above, for the purpose of this proceeding, Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in this Consent Agreement, but expressly waives its right to contest said allegations.

FINDINGS OF FACT

5. The Ziegenfelder Company is a corporation incorporated in the State of West Virginia in 1922, with its principal place of business located at 87 18th Street in Wheeling, West Virginia.
6. Respondent has owned and operated the frozen dessert manufacturing facility, located at 87 18th Street in Wheeling, West Virginia (the “Facility”), since 1973.
7. Respondent uses anhydrous ammonia at the Facility for process equipment and space cooling applications.

CAA LEGISLATIVE AND REGULATORY HISTORY AND DEFINITIONS

8. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).
9. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires the Administrator to set threshold quantities for listed regulated substances. The list of regulated substances and threshold levels can be found in 40 C.F.R. § 68.130.
10. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the 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 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances

using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. Section 112(r)(1) is hereinafter referred to herein as the “General Duty Clause.”

11. The General Duty Clause applies to any stationary source producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, or other extremely hazardous substances. Extremely hazardous substances include, but are not limited to, regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, and chemicals on the list of extremely hazardous substances published pursuant to the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11011 *et seq.*, at 40 C.F.R. Part 355, Appendices A and B.

12. 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.”

13. 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.

14. As used herein, the term “day” shall mean calendar day.

15. All terms not defined herein shall have the meanings set forth in the CAA.

16. Section 113(d)(1)(B), 42 U.S.C. § 7413(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$37,500 per day for each violation of Section 112(r) of the CAA that occurs after January 12, 2009.

FINDINGS OF FACT RELATED TO VIOLATION OF SECTION 112(r)(1) OF THE CLEAN AIR ACT

17. The factual allegations contained in Paragraphs 5 through 16 of this CA/FO are incorporated by reference herein as though fully set forth at length.

18. On November 18, 2015, EPA conducted an inspection of the Facility pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, to determine Respondent’s compliance with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), in response to a report of a release of 142 pounds of anhydrous ammonia from the Facility on October 28, 2015.

19. At the time of the inspection, EPA inspectors observed that Respondent stored anhydrous ammonia in a closed-loop two-stage ammonia refrigeration system with an anhydrous ammonia capacity of 9,300 pounds.

20. The substance anhydrous ammonia (Chemical Abstract Service No. 7664-41-7), is listed on the List of Regulated Flammable Substances, at 40 C.F.R. § 68.130, Table 1, as a toxic substance.

21. Applicable industry codes relevant to the safe design of ammonia refrigeration systems include the American National Standards Institute (“ANSI”)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”) Standard 15-2010: *Safety Standard for Refrigeration Systems* (“ANSI/ASHRAE Standard 15”).

22. During the inspection, EPA inspectors identified inconsistencies between the conditions at the Facility and the applicable industry standards in the following areas: (a) doors; (b) alarms; (c) separate circuit for emergency ventilation fans; (d) engineering controls to prevent hydrostatic expansion; and (e) maintenance of ammonia detector, as set forth below.

Doors.

23. Subsection 8.12.b of ANSI/ASHRAE Standard 15, entitled “Machinery Room, Special Requirements,” states that “Doors communicating with the building shall be approved, self-locking, tight-fitting fire doors.”

24. During the inspection, EPA inspectors determined that the doors to the machinery room were not tight-fitting fire doors. A large louver opening existed on a double door, which comprised almost one third of the door area. The opening would allow escaping refrigerant to migrate to a nearby residential area, the homes located directly across the street.

Alarms.

25. Section 8.11.2.1 of ANSI/ASHRAE Standard 15 states, in relevant part:

Each refrigerating machinery room shall contain a detector, located in an area where refrigerant from a leak will concentrate, that actuates an alarm and mechanical ventilation in accordance with Section 8.11.4 at a value not greater than the corresponding [threshold limit value time-weighted average (“TLV-TWA”)] (or toxicity measure consistent therewith). The alarm shall annunciate visual and audible alarms inside the refrigerating machinery room and outside each entrance to the refrigerating machinery room.

26. During the inspection, EPA inspectors determined that Respondent had ammonia detectors in the machinery room that properly activated alarms inside the room. However, Respondent had no visual alarms or annunciators outside the main door to the machinery room.

Separate Circuit for Emergency Ventilation Fans.

27. Section 8.12(i) of ANSI/ASHRAE Standard 15 states: “Ventilation fans shall be on separate electrical circuit and have a control switch located immediately outside the machinery room door.”

28. During the inspection, EPA inspectors observed that Respondent’s emergency ventilation fan was not on a separate electrical circuit from the mechanical equipment and lacked a control switch located outside the compressor room to activate the fans.

Engineering Controls to Prevent Hydrostatic Expansion.

29. Subsection 9.4.3.2 of ANSI/ASHRAE Standard 15 states: “If trapping of liquid with subsequent expansion can occur only during maintenance – i.e. when personnel are performing maintenance task – either engineering or administrative controls shall be used to relieve or prevent the hydrostatic overpressure.”

30. During the inspection, EPA inspectors determined that Respondent had no engineering controls in place to ensure that liquid was not trapped during maintenance of the suction line to the compressor. It was this failure that led to the release of anhydrous ammonia on October 28, 2015. Anhydrous ammonia was trapped between two valves in the piping system during maintenance activities, causing anhydrous ammonia to expand, rupturing the pipe.

Maintenance of Ammonia Detector.

31. According to the instruction and installation manual for the ammonia detector, to ensure proper operation it is essential that the test and calibration schedule be followed, which requires:

- Calibration be performed with certified calibration gas every six months or after major exposure to a leak.
- Response tests be conducted once between calibrations, *i.e.* at three month intervals; and
- All tests and calibrations must be logged.

See Honeywell, Ammonia-Specific Electrochemical Gas Sensor/Transmitter, Manning EC-F9-NH₃ Instruction and Installation Manual (dated 04/13), Section 3 Operation, Subsection D Maintenance.

32. During the inspection, EPA inspectors determined that there was an ammonia detector located in the machinery room. According to information provided by Respondent during the inspection, the ammonia detector had been installed approximately 8 years previous, but the system had never been tested or calibrated, and no logs were kept.

33. Based on information provided by Respondent to EPA during and after the inspection, EPA notified Respondent by letter dated March 15, 2016, that Respondent had not ensured that the process was designed to provide protection consistent with industry standards.

34. Based on information provided by Respondent to EPA on March 17, 2016 and April 11, 2016, Respondent has, since the inspection, made the following improvements to the design and maintenance of the anhydrous ammonia system at the Facility:

- a. *Doors.* Respondent sealed louvers on the doors at the entrance to the machinery room on or before March 31, 2016.
- b. *Alarms.* Respondent installed audio and visual alarms outside the entrance to the machinery room on or before March 17, 2016.
- c. *Circuit for Emergency Ventilation Fan.* Respondent installed a control switch for the emergency ventilation on or before March 17, 2016. The control switch is located outside of the machinery room door and is on a separate circuit.
- d. *Engineering Controls to Prevent Hydrostatic Expansion.* On or before March 17, 2016, Respondent installed lock-out/tag-out controls in ammonia piping areas where liquid ammonia could be trapped and has conducted personnel training on hydrostatic expansion.
- e. *Maintenance of Ammonia Detector.* On or before March 17, 2016, Respondent installed a new ammonia-specific gas sensor and transmitter, has calibrated it, and has instituted protocols to maintain it in accordance with manufacturer's specifications.

35. From the time of the inspection on November 18, 2015 until the work described in the preceding Paragraph was completed on March 31, 2016, EPA determined that Respondent had failed to design and maintain a safe facility taking such steps as are necessary to prevent releases, because Respondent had failed to provide safety protection consistent with that provided by applicable industry codes and standards, and manufacturers' specifications.

**CONCLUSIONS OF LAW RELATED TO THE
ALLEGED VIOLATION OF SECTION 112(r)(1) OF THE CLEAN AIR ACT**

36. Respondent is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

37. At all times relevant to this CA/FO, Respondent has been an owner of the Facility.

38. The Facility is a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

39. The anhydrous ammonia at the Facility is an "extremely hazardous substance" for purposes of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), because it is listed pursuant to Section 112(r)(3) of the CAA, at 40 C.F.R. § 68.130, Table 3, as a regulated toxic substance.

40. From the date of the inspection, November 18, 2015, until Respondent completed the work described in Paragraph 34, above, Respondent was in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

41. Complainant further alleges that Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

SETTLEMENT

42. In accordance with 40 C.F.R. § 22.18(c), and 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, the Respondent consents to the assessment of a civil penalty for the violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), in the amount of **\$8,910**.

43. 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 and to performance of the Supplemental Environmental Project, as set forth below.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

44. The following Supplemental Environmental Project (“SEP”) is consistent with applicable EPA policy and guidelines, specifically EPA’s Supplemental Environmental Projects Policy, 2015 Update.

45. Respondent agrees to purchase and install four ammonia detectors at the exit doors for manufacturing area of the Facility, as detailed in the SEP Proposal attached as Exhibit A, and incorporated into this Consent Agreement. The detectors will have two separate set levels, a 25 parts per million (“ppm”) notification level and a 100 ppm Facility evacuation level. If the notification level is triggered, the area in the vicinity of the alarm will be evacuated and Facility personnel will conduct an investigation of the area. If the 100 ppm level is triggered, the detector will automatically alert the alarm contractor and the entire Facility will be evacuated. The completion date for the SEP is sixty (60) days from the Effective Date of this Consent Agreement (“SEP Completion Deadline”).

46. Respondent’s total expenditure for installation of the SEP shall not be less than \$20,854, in accordance with the specifications set forth in the SEP Proposal. The SEP has been valued at \$20,780 under EPA’s PROJECT model and has a mitigation value of \$14,546. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 50, below.

47. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulations; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not

received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

48. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

49. Respondent shall notify EPA Risk Management Coordinator Mary Hunt, P.E., at the address noted in Paragraph 50, below, when such implementation is complete. EPA may grant Respondent an extension of time to fulfill its SEP obligations if EPA determines, in its sole discretion, that, through no fault of Respondent, Respondent is unable to complete the SEP obligations within the time frames required by Paragraph 45 and, if extensions are granted, by this Paragraph. Requests for any extension must be made in writing within 48 hours of Respondent's knowledge of any event, such as an unanticipated delay in obtaining governmental approvals, the occurrence of which renders the Respondent unable to complete either the SEP within the required time frame ("force majeure event"), and prior to the expiration of the applicable SEP Completion Deadline. Any such requests should be directed to Mary Hunt at the mail and email addresses noted in Paragraph 50, below.

50. SEP Completion Report

- a. Respondent shall submit to EPA a SEP Completion Report via first class mail to Mary Hunt, P.E., U.S. EPA Region III, 1650 Arch Street (Mailcode 3HS61), Philadelphia, PA 19103, and via email, hunt.mary@epa.gov, within thirty (30) days of completing the SEP, as set forth in Paragraph 45. The SEP Completion Report shall contain the following information:
 - (i) detailed description of the SEP as implemented, including photographs of completed work;
 - (ii) a description of any problems encountered and the solution thereto; and
 - (iii) itemized costs.
- b. Respondent shall sign the report required by this Paragraph and certify under penalty of law that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fines and imprisonment.

- c. Respondent agrees that failure to submit the report required by this Paragraph 50 shall be deemed a violation of this CA/FO and, in such an event, Respondent will be liable for stipulated penalties pursuant to Paragraph 53 below.
- d. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

51. Respondent agrees that EPA may inspect the locations at which the SEP is implemented at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein and as required by this CA/FO.

52. EPA Acceptance of SEP Completion Report

- a. Upon receipt of the SEP Completion Report, EPA may exercise one of the following options:
 - (i) notify the Respondent in writing that the SEP Completion Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional thirty (30) days to correct those deficiencies;
 - (ii) notify the Respondent in writing that EPA has concluded that the project has been satisfactorily completed; or
 - (iii) notify the Respondent in writing that EPA has concluded that the project has not been satisfactorily completed, and seek stipulated penalties in accordance with Paragraph 53 herein.
- b. If EPA elects to exercise option (i) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached within this thirty (30) day period, EPA shall provide to the Respondent a written statement of its decision on the adequacy of the completion of the SEP, which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO. In the event either the SEP is not completed

as required herein or the SEP Completion Report is not submitted to EPA, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 53 herein.

53. Stipulated Penalties

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in Paragraph 45 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs of the SEP required by Paragraph 45 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - (i) Except as provided in subparagraph (iii) below, if the SEP has not been completed satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to EPA in the amount of \$15,000.
 - (ii) If a SEP is not completed in accordance with Paragraph 45, but the Complainant determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
 - (iii) If the SEP is completed in accordance with Paragraph 45, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of \$1,455.
 - (iv) If the SEP is completed in accordance with Paragraph 45, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
 - (v) For failure to submit the SEP Completion Report required by Paragraph 50, above, Respondent shall pay a stipulated penalty in the amount of \$500.00 for each day after the report was originally due until the report is submitted.
- b. The determination of whether the SEP has been satisfactorily implemented and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties, in accordance

with the provisions of Paragraphs 55 and 56, below. Interest and late charges shall be paid as set forth in Paragraphs 57 through 61, below.

PAYMENT TERMS

54. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, and as required by 40 C.F.R. § 22.18(b)(2), Respondent shall pay the civil penalty of \$8,910 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 paragraph.

55. Payment of the civil penalty shall be made the following matter:

- a. All payments by Respondent shall reference Respondent’s name and address, and the Docket Number of this action, **CAA-03-2016-0198**;
- 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 to:

U.S. Environmental Protection Agency
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

56. Respondent shall submit copies of the checks, or verification of wire transfers or ACH, to the following persons:

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

and

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

57. The civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68 (June 2012).

58. 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 civil penalty by the Final Due Date shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

59. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will waive interest on any amount of the civil penalty that is paid by the Final Due Date. 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).

60. 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 EPA's 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 penalty remains unpaid.

61. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains 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).

GENERAL PROVISIONS

62. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2).

63. The provisions of the CA/FO 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.

64. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

65. By signing this Consent Agreement, the parties agree that each party's obligations under this Consent Agreement and accompanying Final Order constitute sufficient consideration for the other party's obligations.

66. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

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

68. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

69. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA, and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

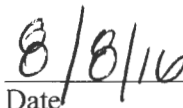
70. Completion of the SEP shall not relieve Respondent of its statutory obligations to report releases of hazardous substances and extremely hazardous substances from the Facility in accordance with Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9603; and Section 304 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11004; or any other law or regulation.

71. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment, nor, in such case, shall this Consent Agreement be construed so as to limit any defense that Respondent may have under the CAA or otherwise.

FOR RESPONDENT THE ZIEGENFELDER COMPANY:

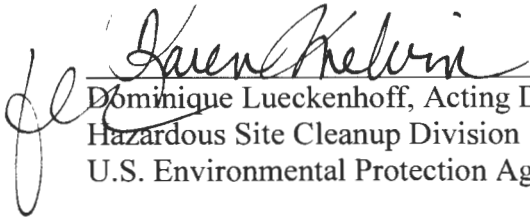


Lisa Allen
President and Chief Executive Officer



Date

FOR COMPLAINANT:



Dominique Lueckenhoff, Acting Director
Hazardous Site Cleanup Division
U.S. Environmental Protection Agency, Region 3

AUG 15 2016
Date

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

IN THE MATTER OF:)	
)	
The Ziegenfelder Company)	EPA Docket Nos. CAA-03-2016-0198
87 18th Street)	
Wheeling, West Virginia 26003,)	
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Respondent.)	
)	Proceedings Pursuant to Sections 112(r) and
)	113 of the Clean Air Act, 42 U.S.C.
87 18th Street)	§§ 7412, 7413, and 40 C.F.R. § 22.13(b)
Wheeling, West Virginia 26003,)	and 22.18(b)
)	
Facility.)	

FINAL ORDER

Complainant, the Acting Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, the Ziegenfelder Company, 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 references to Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2)). 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.

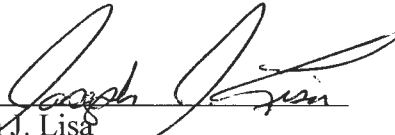
Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to herein is consistent with 40 C.F.R. Part 19, and is based upon consideration of, *inter alia*, EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (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 the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **EIGHT THOUSAND, NINE HUNDRED AND TEN**

DOLLARS (\$8,910.00), plus any applicable interest, and comply with the terms and conditions of the Consent Agreement.

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

Date: Aug. 16, 2016



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

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

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EPA REGION III, PHILA. PA

IN THE MATTER OF:)
)
The Ziegenfelder Company) EPA Docket Nos. CAA-03-2016-0198
87 18th Street)
Wheeling, West Virginia 26003,)
)
Respondent.)
) Certificate of Service
87 18th Street)
Wheeling, West Virginia 26003,)
)
Facility.)


I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via overnight mail

Ms. Leslie Waechter
The Ziegenfelder Company
87 18th Street
Wheeling, West Virginia 26003

AUG 16 2016

Date



Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel