



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

APR 22 2009

REPLY TO THE ATTENTION OF:

SC-6J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Jack L. Dewitt  
Registered Agent  
Request Foods, Inc.  
P.O. Box 2577  
Holland, Michigan 49424

Re: **Request Foods, Inc., Holland, Michigan** Consent Agreement and Final Order.  
Docket No. **CAA-05-2009-0016**

Dear Mr. Dewitt:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on APR 22 2009. Please pay the civil penalty in the amount of \$22,315 in the manner prescribed in paragraphs 39-44 and reference your check with the number BD 2750903A017 and docket number. In addition, please perform the Supplemental Environmental Project (SEP) in the manner prescribed in paragraphs 45-61.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Mary McAuliffe, Associate Regional Counsel, at (312) 886-6237. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief  
Chemical Emergency  
Preparedness & Prevention Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:** )  
)  
**Request Foods, Inc.** )  
**3460 John F. Donnelly Drive** )  
**Holland, Michigan 49424** )  
)  
**EPA ID: 100000195656** )  
)  
**Respondent** )  
\_\_\_\_\_ )

**Proceeding to Assess a Civil Penalty  
Under Section 113(d) of the Clean Air  
Act, 42 U.S.C. § 7413(d)**

**Docket No. CAA-05-2009-0016**

RECEIVED  
REGIONAL HEARING CLERK  
US EPA REGION V  
APR 22 AM 10:17

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations.

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. Respondent is Request Foods, Inc. (Respondent), a corporation, doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the

adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1) provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

15. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated "Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)" 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68 – Chemical Accident Prevention Provisions.

16. "Stationary source" is defined to mean "any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of

the same person (or persons under common control), and from which an accidental release may occur.” 40 C.F.R. § 68.3.

17. “Process” is defined to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.” 40 C.F.R. § 68.3.

18. Section 113(d) of the Act 42 U.S.C. §7413(d) and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for each violation of Section 112(r) of the Act that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for each violation of Section 112(r) of the Act that occurred after March 15, 2004.

19. Section 113(d)(1) of the Act limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

20. On April 9, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), the Administrator and U.S. Attorney General jointly determined that administrative penalty actions were an appropriate remedy for all violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), not otherwise precluded by any statute of limitations.

### **Factual Allegations and Alleged Violations**

21. Respondent is a “person,” as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

22. Respondent owns and operates a facility, located at 3460 John F. Donnelly Drive, Holland, Michigan, 49424, which consists of buildings and operating equipment (Facility).

23. On June 23, 2006, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations, 40 C.F.R. Part 68, Respondent submitted to U.S. EPA a Risk Management Plan.

24. The Risk Management Plan submitted to U.S. EPA by Respondent includes the following:

a. the Facility falls within NAICS Code 311412, as Frozen Specialty Food Manufacturing;

b. it used "Ammonia (anhydrous)," CAS No. 7664-41-7, as a process chemical during its operations; and

c. at the time it submitted its Risk Management Plan, it held at its facility 110,000 lbs. of Ammonia (anhydrous), CAS No. 7664-41-7.

25. On October 4, 2007, an authorized representative of U.S. EPA conducted an inspection at the Facility to determine its compliance with 40 C.F.R. Part 68.

26. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed ammonia (anhydrous), CAS No. 7664-41-7, as a substance regulated under Section 112(r) of the Act, 42 U.S.C. § 7412(r), identifying a threshold quantity of 10,000 lbs. of ammonia (anhydrous) (CAS No. 7664-41) as causing regulations promulgated there under to be applicable. 40 C.F.R. § 68.130, Table 1.

27. The Facility, identified at Paragraph 22, is a "stationary source" as defined at 40 C.F.R. § 68.3.

28. 40 C.F.R. § 68.115 provides that a "threshold quantity of a regulated substance listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance

contained in a process exceeds the threshold.”

29. In October 2002, having held for use in its operations at the Facility 10,000 lbs. or more of ammonia (anhydrous) (CAS No. 7664-41-7), see Paragraph 17, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and was governed by 40 C.F.R. Part 68.

30. Under the compliance schedule identified at 40 C.F.R. § 68.10, Respondent was required to comply with the requirements of 40 C.F.R. Part 68 by no later than October 9, 2002.

31. For purposes of compliance with 40 C.F.R. Part 68, in its Risk Management Plan, identified at Paragraph 23, Respondent acknowledged that it was required to meet Program 3 eligibility requirements.

32. The Respondent is subject to “Program 3” eligibility requirements for its ammonia (anhydrous) process because the process does not meet the requirements of 40 C.F.R. § 68.10(b), since the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. §68.25 is greater than the distance to any public receptor and the process is subject to the OSHA PSM standard set forth at 29 C.F.R. § 1910.119, 40 C.F.R. §68.10(d).

33. 40 C.F.R. § 68.12 requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single Risk Management Plan, as provided in 40 C.F.R. §§ 150 through 185.

34. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirement of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

35. Based on the inspection conducted on June 25, 2008, U.S. EPA identified the following alleged violations of Risk Management Plan (RMP) Requirements:
- a. Failed to file its initial RMP on October 9, 2002, the date on which a regulated substance was first present above a threshold quantity in a process, as provided under 40 C.F.R. § 68.150(b);
  - b. Failed to submit the information requested at 40 C.F.R. § 68.168, § 68.170(j), and § 68.175(l) within six months of the identified accident on July 13, 2007, as provided under 40 C.F.R. § 68.195(a);
  - c. Failed to analyze and report, in the RMP, one worst-case release scenario that is estimated to create the greatest distance in any direction to an end point provided in Appendix A of this part, resulting from an accidental release of a regulated toxic substance from a covered process under worst-case conditions, as provided under 40 C.F.R. § 68.25(a)(2)(i);
  - d. Failed to use the most recent Census data, or other updated information, to estimate the population potentially affected, as provided under 40 C.F.R. § 68.30(c);
  - e. Failed to rely on information provided on local U.S. Geological Survey (U.S.G.S.) maps, or on any data source containing U.S.G.S. data to identify environmental receptors, as provided under 40 C.F.R. § 68.33(b);
  - f. Failed to maintain documentation used to estimate population and environmental receptors potentially affected by a worst-case or alternative case release scenario, as provided under 40 C.F.R. § 68.39(e);
  - g. Failed to include all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage, as provided under 40 C.F.R. § 68.42(a);
  - h. Failed to report the required information for each accidental release, as provided under 40 C.F.R. § 68.42(b);
  - i. Failed to compile and maintain information concerning the technology of the process that included maximum intended inventory as provided under 40 C.F.R. § 8.65(c)(1)(iii);
  - j. Failed to compile and maintain information concerning the technology of the process that included the electrical classification, as provided under 40 C.F.R. § 68.65(d)(1)(iii);
  - k. Failed to compile and maintain information concerning the technology of the process that included the ventilation system design, as provided under 40 C.F.R. § 68.65(d)(1)(v);



- l. Failed to compile and maintain information concerning the technology of the process that included safety systems, as provided under 40 C.F.R. § 68.65(d)(1)(viii);
- m. Failed to document that equipment complies with recognized and generally accepted good engineering practices, as provided under 40 C.F.R. § 68.65(d)(2);
- n. Failed to identify all the hazards involved in the process through its initial Process Hazard Analysis conducted in 2006, as provided under 40 C.F.R. § 68.67(c)(1);
- o. Failed to establish a system to promptly address the team's findings and recommendations made in the 2006 Process Hazard Analysis, did not assure that recommendations were resolved in a timely manner and documented, did not document what actions were to be taken, did not complete actions as soon as possible, did not develop a written schedule of when these actions were to be completed, and did not communicate the actions to employees whose work assignments are in the process and who may be affected by the recommendations, as provided under 40 C.F.R. § 68.67(e);
- p. Failed to develop initial training for each employee presently involved in operating a process and each employee before being involved in operating a newly assigned process, as provided under 40 C.F.R. § 68.71(a)(1);
- q. Failed to provide refresher training at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process, as provided under 40 C.F.R. § 68.71(b);
- r. Failed to ascertain and document in record that each employee involved in operating a process has received and understood the training required, as provided under 40 C.F.R. § 68.71(c);
- s. Failed to train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner, as provided under 40 C.F.R. § 68.73(c);
- t. Failed to perform inspection and tests on all process equipment, as provided under 40 C.F.R. § 68.73(d)(1);
- u. Failed to follow recognized and generally accepted good engineering practices for inspections and testing procedures, as provided under 40 C.F.R. § 68.73(d)(2);
- v. Failed to ensure that the frequency of inspections and tests of process equipment is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience, as provided under 40 C.F.R. § 68.73(d)(3);

w. Failed to correct deficiencies in equipment that were outside acceptable limits before further use or in a safe and timely manner when necessary means were taken to assure safe operation, as provided under 40 C.F.R. § 68.73(e);

x. Failed to certify that the stationary source has evaluated compliance with the provisions of the prevention program at least every three years to verify that the developed procedures and practices are adequate and being followed, as provided under 40 C.F.R. § 68.79(a);

y. Failed to promptly determine and document an appropriate response to each of the findings of the compliance audit and failed to document that deficiencies have been corrected, as provided under 40 C.F.R. § 68.79(d);

z. Failed to initiate incident investigations within 48 hours following the incident, as provided under 40 C.F.R. § 68.81(b);

aa. Failed to include in its incident report, the date the incident investigation began, as provided under 40 C.F.R. § 68.81(d)(2);

bb. Failed to develop and implement procedures for the use of emergency response equipment and for its inspection, testing, and maintenance, as provided under 40 C.F.R. § 68.95(a)(2); and

cc. Failed to have procedures to review and update the emergency response plan to reflect changes at the stationary source, as provided under 40 C.F.R. § 68.95(a)(4).

36. The above-described violations of the RMP regulations are violations of Section 112(r)(7)(E) of the Act.

37. Section 112 (r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

38. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

**Civil Penalty**

39. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation, prompt return to compliance, and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$22,315.

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$22,315 civil penalty by sending a cashier's or certified check, by regular U.S. Postal Service mail, payable to the "Treasurer, United States of America," to:

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

The check must note "Request Foods, Inc.", docket number of this CAFO and the billing document number.

41. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Monika Chrzaszcz, (SC-6J)  
Chemical Emergency Preparedness and Prevention Section  
Superfund Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Mary McAuliffe, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

42. This civil penalty is not deductible for federal tax purposes.

43. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 56, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

44. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **Supplemental Environmental Project**

45. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by preventing and potentially eliminating ammonia releases to the atmosphere.

46. At its Holland, Michigan facility, Respondent must complete the SEP as follows: by November 30, 2009, Respondent will install rupture discs on all of the internal relief valves in Request Foods engine rooms, as set forth in Attachment A. Attachment A is incorporated into and is part of this CAFO.

47. Respondent must spend at least \$35,000 for parts, material and services of third parties by May 30, 2009, and at least an additional \$35,000 for parts, material and services of third parties by November 30, 2009.

48. Respondent must continuously use or operate rupture discs on internal relief valves following installation.

49. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

50. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

51. Respondent must submit a SEP completion report to U.S. EPA by December 31, 2009. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and

e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

52. Respondent must submit all notices and reports required by this CAFO by first class mail to:

Attn: Monika Chrzaszcz (SC-6J)  
Chemical Emergency Preparedness and Prevention Section  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

53. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

54. Following receipt of the SEP completion report described in paragraph 51, above, U.S. EPA must notify Respondent in writing that:

a. It has satisfactorily completed the SEP and the SEP report;  
b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 56.

55. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach

an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 56, below.

56. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. If Respondent spent less on the SEP than the amount set forth in paragraph 47, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 47.

b. If Respondent has completed the SEP but the SEP is not satisfactory, Respondent must pay \$5,000 in addition to any penalty required under subparagraph 56.a, above.

c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$2,500 in addition to any penalty required under subparagraph 56.a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.

d. If Respondent fails to comply with the schedule in Attachment A to this CAFO for implementing the SEP, or fails to submit timely the SEP completion report required by paragraph 51, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 <sup>st</sup> through 14 <sup>th</sup> day
\$200	15 <sup>th</sup> through 30 <sup>th</sup> day
\$500	31 <sup>st</sup> day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

57. U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

58. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 40, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

59. Any public statement that Respondent makes referring to the SEP must include the following language, "Request Foods, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Request Foods, Inc. for violations of Section 112(r) of the Clean Air Act."

60. Force Majeure. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Respondent must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the reasonable control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the reasonable control of Respondent caused or may delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.



d. Respondent has the burden of proving that circumstances beyond its reasonable control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

61. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

### **General Provisions**

62. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

63. The CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

64. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 62, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

65. Respondent certifies that it is complying fully with 40 C.F.R. Part 68.

66. The terms of this CAFO bind Respondent, its successors, and assigns.

67. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

68. Each party agrees to bear its own costs and attorneys' fees in this action.

69. This CAFO constitutes the entire agreement between the parties.

70. The effective date of this CAFO is the date when this CAFO is filed with the Regional Hearing Clerk's office.

**ATTACHMENT A**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT TO INSTALL RUPTURE DISCS**

By November 30, 2009, and in accordance with paragraphs 46 and 47 of the CAFO, Respondent will install rupture discs on all of the internal relief valves on compressors and oil pots that are connected directly to the main relief header in Respondent's engine rooms. Upon installation, Respondent will begin operating this system. This project will help Respondent to prevent and potentially eliminate ammonia releases to the atmosphere. Upon completion of the installation described below, this SEP will be deemed satisfactorily completed.

The rupture discs will be installed on relief valves on compressors and oil pots located in one of three engine rooms, as specified below. The relief valves are connected directly to the main relief header in the respective engine room. The rupture discs and associated gauges and switches will be installed on equipment, as follows:

<b>Engine room #1</b>	
<b>Equipment</b>	<b>Relief size and style</b>
250 Sullair/Vilter	1/2" dual
	3/4" Single
450 Sullair	2" Single
Vilter Booster	1/2" Dual
	3/4" Single
Vilter High Stage	1/2" Dual
	3/4" Single
-40 Vessel	To the roof
Oil Pot	1/2" Dual
+15 vessel	To the roof
Oil Pot	1/2" Dual
-25 Vessel	To the roof
Oil Pot	1/2" Dual
<b>Engine room #2</b>	
<b>Equipment</b>	<b>Relief size and style</b>
VSS-1051	1/2" Dual

VSS-1051	1/2" Dual
VSS-1051	1/2" Dual
	3/4" Single
VSS-1051	1/2" Dual
	3/4" Single
VSS-1051	1/2" Dual
i	3/4" Single
VSS-1051	1/2" Dual
	3/4" Single
VRS-2200	1/2" Dual
	3/4" Single
VRS-2200	1/2" Dual
	3/4" Single
VRS-2700	1/2" Dual
	3/4" Single
-40 Vessel	N/A
Oil Pot	1/2" Single
	1/2" dual valve
+15 vessel	N/A
Oil Pot	1/2" Single
	1/2" dual valve

**Engine room #3**

Equipment	Relief size and style
VSS-1051	1/2" Dual
VSS-1051	1/2" Dual
VSS-1051	1/2" Dual
VSS-1051	1/2" Dual
VRS-2200	1/2" Dual
VRS-2200	1/2" Dual
VRS-2700	1/2" Dual
-40 Vessel	1 1/4" Dual
Oil Pot	1/2" Dual
+15 vessel	1 1/4" Dual
Oil Pot	1/2" Dual

**Engine room #2&3 New compressors**

Equipment	Relief size and style
VSS-1051	1/2" Dual
VSS-1051	1/2" Dual
VRSH-3700	1/2" Dual
VRSH-3700	1/2" Dual

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The rupture discs will be connected to a pressure gauge and central monitoring system, and will alert maintenance personnel to ammonia releases from individual relief valves into the main relief header.

Following installation and operation of the rupture discs and associated gauges and switches, Respondent's personnel will be able to precisely locate any relief valve that experiences a release as well as be better able to monitor the frequency of relief valve releases to identify the development of issues that can be addressed at an early stage.

**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of Request Foods, Inc.**  
**Docket No. CAA-05-2009-0016**

**Request Foods, Inc., Respondent**

Date: Nov. 24, 2008

By: Jack L. Dewitt  
Jack L. Dewitt  
Request Foods, Inc.

**United States Environmental Protection Agency, Complainant**

4-16-09  
Date

Richard C. Karl  
Richard C. Karl, Director  
Superfund Division (SC-6J)  
U.S. EPA, Region 5 (SC-6J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

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**CONSENT AGREEMENT AND FINAL ORDER**  
**In the Matter of Request Foods, Inc.**  
**Docket No.**

**CAA-05-2009-0016**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4/16/09  
Date

Walter W. Kovalich  
for  
Bharat Mathur, Acting  
Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5

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**Certificate of Service**

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

Jack L. Dewitt  
Registered Agent  
Request Foods, Inc.  
P.O. Box 2577  
Holland, Michigan 49424

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 22 date of April, 2009.

  
\_\_\_\_\_  
Monika Chrzaszcz  
U.S. Environmental Protection Agency  
Region 5