

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

FILED

11/18/2024

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U.S. EPA REGION 8  
HEARING CLERK

<p>IN THE MATTER OF:</p> <p>Steven-Roberts Originals, LLC (dba Steven Charles-A- Dessert Company) 2780 North Tower Road Aurora, Colorado 80011</p> <p>Respondent</p>	<p>CAA-08-2025-0001</p> <p><b>ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT</b></p>
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**PRELIMINARY STATEMENT**

This Administrative Compliance Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency and Steven-Roberts Originals, LLC (Respondent). The Consent Order is issued under the authority vested in the Administrator of the EPA by section 113(a)(3) and (4) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3) and (4), regarding compliance with the general duty clause provisions of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. part 68.

1. The manager of the EPA Region 8's Air and Toxics Enforcement Branch, Environmental Compliance and Assurance Division, is delegated the authority to issue this Consent Order under section 113(a) of the Act, 42 U.S.C. § 7413(a). EPA Delegation 7-6-A (August 4, 1994); Region 8 Regional Administrator Redesignation (August 16, 2019); Air Enforcement Branch Redesignation 7-6-A (October 5, 2020).
2. By entering into this Consent Order, Respondent (1) consents and agrees not to contest the EPA's authority or jurisdiction to issue or enforce this Consent Order, (2) agrees to undertake all actions required by the terms and conditions of this Consent Order, and (3) consents to be bound by the requirements set forth herein.

**STATUTORY AND REGULATORY BACKGROUND**

3. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The amendments added section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the EPA, among other things, to promulgate regulations to prevent accidental releases of certain regulated substances.
4. The objective of the regulations and programs authorized under section 112(r) shall be to prevent the accidental release of any substance listed pursuant to paragraph

(3) or any other extremely hazardous substance, pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and to minimize the consequences of any such release that does occur. Sections 112(r)(1) and (3) of the CAA, 42 U.S.C. §§ 7412(r)(1) and (3).

5. On November 15, 1990, Congress amended the CAA and added section 112(r)(1), commonly known as the General Duty Clause. Pursuant to section 112(r)(1), the owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as section 654, title 29 of the United States Code, to identify hazards which may result from such releases 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.
6. As used herein, the term “day” shall mean calendar day.
7. The term “extremely hazardous substance” means an extremely hazardous substance within the meaning of section 112(r)(1) of the CAA, including any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability or corrosivity. The term includes, but is not limited to, regulated substances listed in CAA section 112(r)(3) and in 40 C.F.R. § 68.130. In addition, the release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion, or other reaction would create a presumption that such substance is extremely hazardous. Under section 112(r)(3) of the CAA, the term “extremely hazardous substances” also includes, without limitation and in addition to substances listed in 40 C.F.R. § 68.130, those substances listed in 40 C.F.R. part 55, appendices A and B, published under section 302 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11002.
8. The term “owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).

9. The term “person” is defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e), 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.
10. The term “regulated substance” is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to section 112(r)(3) of the CAA as amended, in 40 C.F.R. § 68.130.
11. The term “stationary source” is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations, or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

12. Respondent is a corporation and is authorized to do business in the state of Colorado and is therefore a “person” as that term is defined under section 302e of the CAA, 42 U.S.C. § 7602(e).
13. Respondent is the owner and/or operator of the Steven Charles-A-Dessert Company, a dessert manufacturing facility, located at 2780 North Tower Road, Aurora, Colorado 80011 (Facility).
14. The Facility is a "stationary source" pursuant to section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3.
15. Anhydrous ammonia is used in refrigeration systems at the Facility.
16. The Respondent has not conducted an offsite consequence analysis. Satellite imagery shows the Facility is only about 1000 feet from the nearest residence and within 1500 feet of numerous residential homes, all of which would likely be impacted due to an ammonia release.
17. Respondent handles and stores anhydrous ammonia, an extremely hazardous substance regulated pursuant to sections 112(r)(2) and (3) of the CAA, which is listed at 40 C.F.R. § 68.130.
18. Anhydrous ammonia presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. Exposure to 300 parts per million is immediately

dangerous to life and health. Anhydrous ammonia is also flammable at concentrations of about 15 to 28 percent by volume in air. It can explode if it is released in an enclosed space with a source of ignition present, or if a vessel containing anhydrous ammonia is exposed to fire.

19. Because of the potential hazards posed by the mishandling of anhydrous ammonia, industry trade associations have issued standards outlining the recognized and generally accepted good engineering practices in the ammonia refrigeration industry. In collaboration with the American National Standards Institute, the International Institute of Ammonia Refrigeration has issued (and updates) the "Standard 2: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems," along with other applicable standards and guidance. Also, in collaboration with the American National Standards Institute, the American Society of Heating, Refrigerating and Air-Conditioning Engineers has issued (and updates) the "Standard 15: Safety Standard for Refrigeration Systems." The American Society of Mechanical Engineers has issued (and updates) the "Boiler and Pressure Vessel Code" and the "Refrigeration Piping and Heat Transfer Components Standard." These standards are consistently relied upon by refrigeration experts and are sometimes incorporated into state building and mechanical codes.
20. By performing the activities described in paragraph 17, Respondent produces, processes, handles, or stores an extremely hazardous substance and is therefore subject to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).
21. On June 13-15, 2023, an authorized representative of the EPA conducted an inspection of the Facility to evaluate compliance with section 112(r) of the CAA (Inspection).
22. During the Inspection, the EPA representative observed alleged violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r). The findings were summarized in an inspection report and the EPA provided a copy of that report to Respondent on or about February 2, 2024.
23. The inspection report detailed several findings related to the CAA General Duty

Clause and the cover letter instructed the Respondent take immediate action to evaluate the findings and undertake corrective measures.

24. Based on the documents reviewed during the inspection, the Facility is, but not limited to, utilizing the following standards:
  - a. American National Standards Institute / International Institute of Ammonia Refrigeration (IIAR),
  - b. IIAR 2-2014 American National Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems (note that IIAR 2-2014 has been replaced by IIAR 2-2021),
  - c. IIAR 6-2019 Inspecting, Testing, and Maintenance of Safe Closed-Circuit Ammonia Refrigeration Systems,
  - d. IIAR 9-2020 Standard for Minimum System Safety Requirements for Existing Closed-Circuit Ammonia Refrigeration Systems.
25. During the Inspection, the EPA observed safety concerns including, but not limited to, the following: no hazard analysis; had not identified potential release scenarios; had not identified the consequences of the release; had not identified hazards associated with storage of flammable chemicals and combustible materials stored in the machinery room; lacked labeling on piping and equipment; lacked appropriate machinery room doors; exhaust system appeared to be inadequate; condenser fans' electric motors had excessive vibration; piping on compressor #5 was not protected from traffic hazards; storage racks in freezers appeared to be too close to ammonia piping; anhydrous ammonia equipment located outside was not protected from impacts from moving vehicles; pipes were observed to be subject to excessive ice buildup; pipes did not have the protective coating of paint that is needed to prevent rust and corrosion; outdated pressure relief valves (PRVs) on the equipment located outside (recirculator and chiller); inoperable dispersion tank; broken gauge on the NH<sub>3</sub>-5/S5 Compressor; failed to conduct semi-annual inspections; roof vent was allowing water to drip on floor and electric motor; missing electrical cover on junction box on ammonia compressor pump labeled NH<sub>3</sub>-5 / CPR-005; failed to

provide adequate ammonia awareness training to employees; and lacked adequate number of eyewash stations.

26. On February 2, 2024, the EPA provided the Respondent with an inspection finding tracking document and requested updates at the end of each month until all findings were addressed. On June 21, 2024, Respondent provided the EPA with their first written response to the inspection findings.
27. Between June 21, 2024, to September 24, 2024, the EPA engaged in compliance communications with Respondent's representatives, and received submittals evidencing the following corrective measures: completed a process hazard analysis including identifying release scenarios and consequences; identified combustibles materials in the mechanical room and removed them; replaced missing labeling on piping, installed panic bars on machinery room doors, reinforced motor mounts to eliminate excessive vibration for the condenser fans' electric motors; created a standard operating procedure to prevent collision with the piping on compressor #5; installed bollard/poles to protect equipment outside; painted piping where paint was missing; replaced outdated pressure relief valves; repaired dispersion tank; replaced broken gauge on the NH<sub>3</sub>-5/S5 Compressor; initiated semi-annual inspections; replaced missing electrical cover on ammonia compressor pump labeled NH<sub>3</sub>-5 / CPR-005; and provided ammonia awareness training to employees.
28. Pursuant to section 112(r)(1) of CAA, Respondent has a general duty, in the same manner and to the same extent as 29 U.S.C § 654, to (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases which do occur.
29. Respondent failed to comply with the general duty referred to in paragraph 28, because, among other things, Respondent has not designed and maintained a safe facility by taking the necessary steps to prevent releases of a regulated substance and minimize the consequences of accidental releases that do occur. Therefore,

Respondent has violated and continues to violate the provisions of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

### **COMPLIANCE ORDER**

30. Based upon the foregoing Findings of Fact and Conclusions of Law, and other information available to the EPA, and pursuant to section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), Respondent is hereby ordered and agrees as set forth below. All activities specified and ordered below shall be initiated and completed as soon as possible even though maximum time periods or specific dates for their completion may be detailed herein. Except for extension or deadlines for submittals or performance, the terms of this Consent Order shall not be modified except by a subsequent written agreement between the EPA and Respondent.
- a. Respondent shall comply with the requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. part 68; and
  - b. Respondent shall comply with the requirements of this Consent Order.
31. Respondent shall, as expeditiously as possible, but in no event later than May 31, 2025, correct the violations alleged and outlined in paragraph 22 and 25 and complete the following actions to comply with the General Duty Clause of the CAA.
- a. Repair exhaust system to eliminate short circuiting and comply with applicable codes and standards, such as those found at IIAR 9-2020 § 7.3.13.2 Exhaust Ventilation and § 7.3.13.3 Inlet Air, 2) Short Circuiting.
  - b. Identify a permanent solution to protect ammonia piping above storage rack from impacts from forklifts. Ensure the permanent solution complies with codes and standards such as those found at IIAR-2-2021 Chapter 7 Requirements for Non-machinery room spaces, 7.2.4 Protection of Equipment from physical damage.
  - c. Repair damaged insulation on piping and equipment to prevent excessive ice buildup or corrosion and comply with codes and standards, such as those found at IIAR 6-2019, Chapter 10 Pressure Vessels, Inspection, Testing and Maintenance Tasks, IIAR 6-2019, Chapter 11 Piping, Inspection, Testing and

Maintenance Tasks, and IIAR 9-2020 §7.2.6 Insulation, and §7.6.2.1  
Condensation and Frost Control.

32. Within 30 days of completion of the repairs and other activities required and conducted pursuant to paragraph 31, Respondent shall submit a report to the EPA detailing the actions conducted at the Facility pursuant to this Order and provide documentation regarding these actions. The report shall include an estimate of Respondent's costs of complying with this Order. The report shall include the following certification, signed by a duly authorized officer of Respondent:

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 upon my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

33. All submissions and correspondence shall be emailed to the following address:

U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129  
Attn: Daniel Webster, 8ENF-AT-TP  
Email address: [webster.daniel@epa.gov](mailto:webster.daniel@epa.gov)

34. The EPA will review the documentation submitted pursuant to paragraph 32. If the EPA determines that the actions taken or documentation submitted are insufficient, the EPA shall notify Respondent in writing. Respondent shall undertake all actions directed by the EPA in its written notice within 30 days of Respondent's receipt of the EPA's comments, unless an extension is granted by the EPA in writing in its sole discretion.
35. Respondent shall provide the EPA and its representatives with access to the Facility for the purpose of assessing Respondent's compliance with this Consent

Order and with the CAA. Respondent shall also provide the EPA and its representatives with access to all records relating to Respondent's implementation of this Consent Order.

36. Respondent shall preserve all documents and information relating to the activities carried out pursuant to this Consent Order for at least five years after completion of the work required by this Consent Order. Upon request, Respondent shall provide the EPA with the originals or copies of such documents and information.
37. To the extent this Consent Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. part 2, subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. part 2, subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

#### **GENERAL PROVISIONS**

38. Any violation of this Consent Order may result in a civil judicial action for an injunction or civil penalties of up to \$121,275 per day per violation, or both, as provided in section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), and 40 C.F.R. part 19, as well as criminal sanctions as provided in section 113(c) of the CAA at 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Consent Order in an administrative, civil judicial, or criminal action.
39. Nothing in this Consent Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or 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.
40. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present imminent and substantial endangerment to the public health, welfare, or the environment.

41. The provisions of this Consent Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the effective date of this Consent Order until the termination date as set out in paragraph 43, Respondent must give written notice and a copy of this Consent Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Consent Order unless the EPA has provided written approval of the release of said obligations or liabilities.
42. Each undersigned representative certifies that he or she is authorized to enter the terms and conditions of this Consent Order to execute and bind legally Respondent and Complainant to this document.

#### **EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE**

43. This Consent Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. 42 U.S.C. § 7413(a)(4). By signing this Consent Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Consent Order. Accordingly, this Consent Order will take effect immediately upon signature by the later of Respondent or the EPA.

#### **JUDICIAL REVIEW**

44. Respondent waives all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review under section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

#### **TERMINATION**

45. This Consent Order shall terminate on the date of a determination by the EPA that Respondent has achieved compliance with all terms of this Consent Order.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant

11/18/24  
Date: \_\_\_\_\_

**SCOTT  
PATEFIELD** Digitally signed by  
SCOTT PATEFIELD  
Date: 2024.11.18  
07:56:55 -07'00'

By: \_\_\_\_\_  
Scott Patefield, Branch Manager  
Air and Toxics Enforcement Branch  
Enforcement and Compliance Assurance  
Division

Steven-Roberts Originals, LLC.  
dba Steven Charles-A-Dessert Company,  
Respondent.

11/15/24  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Eddie Zendejas,  
Site Director