

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Catherine Smith 9/18/14  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number CRA-01-2014-0051

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Bozzuto's Inc.  
275 Schoolhouse Road  
Cheshire, CT 06410  
c/o David Falt

Total Dollar Amount of Receivable \$ 124,181 Due Date: 10/17/14

SEP due? Yes \_\_\_\_\_ No \_\_\_\_\_ Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:  
1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office Phone Number \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I

5 POST OFFICE SQUARE, SUITE 100, BOSTON, MA 02109-3912

September 17, 2014

RECEIVED

SEP 17 2014

EPA ORC  
Office of Regional Hearing Clerk

VIA HAND-DELIVERY

Ms. Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region I  
Mailcode ORA18-1  
5 Post Office Square, Suite 100, Boston, MA 02109-3912

**Re: *In the Matter of Bozzuto's, Inc.*, CAA Section 112(r) Consent Agreement and  
Final Order, Docket No. CAA-01-2014-0051**

Dear Ms. Santiago:

Enclosed for filing please find the original and one copy of a Consent Agreement and Final Order for the above-captioned matter.

Sincerely,

Catherine Smith  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region I

Enclosure

cc: David Falt, Bozzuto's Inc.

In Re: Bozzuto's, Inc..  
EPA Docket Number: CAA-01-2014-0051

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Consent Agreement and Final Order has been sent to the following persons on the date noted below:


Original and one copy,  
hand-delivered:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
5 Post Office Square  
Suite 100 (ORA18-1)  
Boston, MA 02109-3912

Two copies of Consent Agreement  
via certified mail, return receipt  
requested

David Falt  
Bozzuto's Inc.  
275 Schoolhouse Road  
Cheshire, CT 06410

Dated: 9/17/14

  
\_\_\_\_\_  
Catherine S. Smith  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 (OES04-4)  
Boston, MA 02109-3912  
Tel: (617) 918-1777  
FAX: (617) 918-0777  
Email: smith.catherine@epa.gov

In Re: Bozzuto's, Inc..  
EPA Docket Number: CAA-01-2014-0051

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and one copy,  
hand-delivered:

Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
5 Post Office Square  
Suite 100 (ORA18-1)  
Boston, MA 02109-3912

Two copies of Consent Agreement  
via certified mail, return receipt  
requested

David Falt  
Bozzuto's Inc.  
275 Schoolhouse Road  
Cheshire, CT 06410

Dated: 9/17/14



Catherine S. Smith  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 (OES04-4)  
Boston, MA 02109-3912  
Tel: (617) 918-1777  
FAX: (617) 918-0777  
Email: smith.catherine@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

_____	)	
IN THE MATTER OF	)	
	)	Docket No. CAA-01-2014-0051
<b>Bozzuto's, Inc.</b>	)	
400 North Frontage Road	)	<b>CONSENT AGREEMENT</b>
North Haven, CT 06473	)	<b>AND FINAL ORDER</b>
	)	
Proceeding under Section 113	)	
of the Clean Air Act	)	
_____	)	

CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA” or “Complainant”) and Bozzuto’s, Inc. (“Respondent”), consent to the entry of this Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination, or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice”). This CAFO resolves Respondent’s liability for alleged violations of the chemical accident prevention provisions of Section 112(r)(7) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r)(7), and implementing federal regulations found at 40 C.F.R. Part 68.

EPA and Respondent agree to settle this matter through this CAFO without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b) and 22.18(b). EPA recognizes that Respondent took actions prior to the initiation of this administrative action in order to bring its North Haven, Connecticut cold storage warehouse into compliance. Among other things, Respondent installed an ammonia detection system with more detection points than required and installed a computerized automatic shut-down control system. EPA and

Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before taking any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

### **I. PRELIMINARY STATEMENT**

1. This CAFO both initiates and resolves an administrative action for the assessment of monetary penalties, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d). As more thoroughly discussed in Sections III and IV below, the CAFO resolves the following CAA violations that Complainant alleges occurred in conjunction with Respondent's handling of ammonia at its North Haven, Connecticut cold storage warehouse:

- (a) *Failure to adequately address hazards*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and at 40 C.F.R. § 68.67(c);
- (b) *Failure to comply with Program 3 operating procedures requirements*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. 68.69;
- (c) *Failure to comply with Program 3 training requirements*, in violation of Section 112(r) of the CAA, § 7412(r), and 40 C.F.R. § 68.71;
- (d) *Failure to comply with Program 3 mechanical integrity requirements*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.73;
- (e) *Failure to comply with safety information requirements*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.65;
- (f) *Failure to comply with Program 3 compliance audit requirements*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.79;

(g) *Failure to have an adequate emergency response program*, in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. § 68.95.

## **II. APPLICABLE STATUTES AND REGULATIONS**

### **Statutory and Regulatory Authority**

2. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. In particular, Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates that EPA promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires that EPA establish, for each listed substance, the threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement an RMP.

3. The regulations promulgated pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), are found at 40 C.F.R. Part 68.

4. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), renders it unlawful for any person to operate a stationary source subject to the regulations promulgated under the authority of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in violation of such regulations.

5. Forty C.F.R. § 68.130 lists the substances regulated under Part 68 (“RMP chemicals” or “regulated substances”) and their associated threshold quantities, in accordance with the requirements of Sections 112(r)(3) and (7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and (7). This list includes anhydrous ammonia as an RMP chemical and identifies a threshold quantity of 10,000 pounds.

6. A “process” is defined by 40 C.F.R. § 68.3 as any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.

7. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

8. Each process in which a regulated substance is present in more than a threshold quantity (“covered process”) is subject to one of three risk management programs. Program 1 is the least comprehensive, and Program 3 is the most comprehensive. Pursuant to 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in a specified NAICS code or subject to the Occupational Safety and Health Administration (“OSHA”) process safety management (“PSM”) standard at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a



covered process that meets neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

9. Anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds is subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119.

10. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source subject to the requirements of Part 68 submit an RMP to EPA, as provided in 40 C.F.R. § 68.150. The RMP documents compliance with Part 68 in a summary format. For example, the RMP for a Program 3 process documents compliance with the elements of a program 3 Risk Management Program, including 40 C.F.R. § Part 68, Subpart A (including General Requirements and a Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-Site Consequences of a Release); 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

11. Additionally, 40 C.F.R. § 68.190(b) also requires that the owner or operator of a stationary source must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or most recent update. Other aspects of the prevention program must also be periodically updated.

12. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to \$37,500 per day for violations occurring after January 12, 2009.

13. EPA and the U.S. Department of Justice have jointly determined that this action is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

### **III. GENERAL ALLEGATIONS**

14. Respondent Bozzuto's owns and operates a controlled-temperature storage warehouse for food products at 400 North Frontage Road, North Haven, Connecticut (the "Facility").

15. The Facility is located adjacent to Interstate 91 and east of the Quinnipiac River, within a mile of numerous shops and business and approximately 1 mile from several schools.

16. Bozzuto's is a corporation organized under the laws of Connecticut, with its principal office located in Cheshire, Connecticut. As a corporation, Respondent is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), against whom an administrative order assessing a civil penalty may be issued under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

17. The Facility is a building or structure from which an accidental release may occur and is therefore a "stationary source," as defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

18. At all times relevant to the violations alleged herein, Respondent was the "owner or operator" of the Facility, as defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

19. Bozzuto's uses anhydrous ammonia in a refrigeration "process," as defined by 40 C.F.R. § 68.3.

20. In 2009, Respondent filed a Program 3 RMP for the Process and reported that it used 22,600 pounds of anhydrous ammonia. Respondent's most recent RMP re-submission, in 2013, again reported that one Program 3 process uses 22,600 pounds of ammonia.

21. Accordingly, the Process is a "covered process" subject to the provisions of Part 68 because Respondent "uses," "stores," and "handles" the RMP chemical anhydrous ammonia at the Facility in an amount greater than 10,000 pounds.

22. According to Respondent's RMP, there are public receptors within the distance to the endpoint for a worst case release of the amount of anhydrous ammonia used in the Process. Likewise, modeling performed by EPA indicates that the endpoint for a worst case release from each Process is greater than the distance to a public receptor.

23. Additionally, the Process is subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119 because it uses anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds.

24. Therefore, in accordance with 40 C.F.R. § 68.10(a)-(d), Respondent's use, storage, and handling of anhydrous ammonia in its Process is subject to the requirements of RMP Program 3.

25. On October 18, 2012, EPA inspectors visited the Facility ("Inspection") to assess Respondent's compliance with Section 112(r) of the CAA and with Sections 302-312 of the Emergency Planning and Community Right-to-Know Act.

26. 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. Ammonia is also flammable at concentrations of approximately 16% to 25% by volume in air. It can explode if released in an enclosed space with a source of ignition present, or if a vessel

containing anhydrous ammonia is exposed to fire. In light 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 (“RAGAGEP”) in the ammonia refrigeration industry. In collaboration with the American National Standards Institute, the International Institute of Ammonia Refrigeration (“IIAR”) has issued (and updates) “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 (“ASHRAE”) has issued (and updates) “Standard 15: Safety Standard for Refrigeration Systems.” These standards are consistently relied upon by refrigeration experts and are sometimes incorporated into state building, fire, and mechanical codes.

27. The Inspection and EPA’s review of subsequently submitted information, including the Submission, revealed some potentially dangerous conditions relating to the Processes at the time of Inspection, including that Respondent:

- a. Had not developed a process hazard analysis (PHA) that addressed all of the necessary information and documentation to allow Respondent to adequately identify hazards posed by and maintain the Process. For example, issues not addressed in the PHA include the hazards of the process, potential catastrophic consequences, failure of administrative controls, stationary source siting, human factors and safety and health concerns;
- b. Had not developed, drafted, implemented, and certified sufficient written practices and operating procedures for safely conducting various activities for the Process. For

example, while Respondent had a written operating procedure for the Process, it did not include safety and health considerations or a description of available safety systems and their functions. During the inspection, Mr. Shamback stated that he had not certified the operating procedures associated with the process until 2012, although Respondent had operated the covered process since at least 2009;

- c. Did not have documentation showing that Respondent had conducted an adequate training program for Facility employees involved in operating the Process. Although during the Inspection Mr Shamback stated that Respondent has conducted training, there are no records in the Facility's files that document any process-related training;
- d. Had not developed and implemented written mechanical integrity ("MI") procedures to maintain the ongoing integrity of the equipment in the Process. Respondent did not have a formal mechanical integrity program in place. During the Inspection, Mr. Shamback stated that he had not developed written procedures to maintain process equipment. Respondent also had not tested or calibrated ammonia detectors since the process was restarted in 2009. Additionally, some of the vapor barriers on sections of the roof piping had been breached;
- e. Had not equipped the ammonia detectors to actuate visual and audible alarms outside of access doors to the Machinery Room;
- f. Had not labeled or tagged many of the pipes and valves associated with the process;
- g. Had not installed the main pressure-relief valve header in a safe manner. The header discharge point was less than fifteen feet above the roof surface and located almost directly above the primary egress door from the Machinery Room where the remote emergency shutdown switch is located;

- h. Had not installed an emergency ventilation override outside the machinery room. The emergency shutdown switch located outside the principle exterior machinery room door was not clearly identified by label or marking;
- i. Had not addressed all action items identified during the compliance audit for the Process in 2011. Some of the issues identified during the 2011 audit (including testing and calibrating ammonia detectors and addressing breaches in pipe insulation on the roof) had still not been addressed by the time of the Inspection in October 2012;
- j. Had not developed an adequate emergency response program. For example, the Emergency Response Plan (“ERP”) identified security personnel as emergency operators and assigned them multiple tasks. However, security staff had not been trained in the use of the ERP and Facility records indicated that the last training provided to security staff was in 2008. Additionally, several of the items in the ERP applied to Respondent’s Cheshire, CT facility rather than the North Haven facility. For example, the ERP referenced an emergency stop switch that was located in the security shed at the Cheshire facility and the hospital included in the plan was Bradley Memorial Hospital when the appropriate hospital for the North Haven facility is Yale New Haven Hospital. Also, there are several other actions included in the plan, including corporate responders performing fence-line monitoring to support corrective action decision making and personnel protective equipment guidelines for ammonia levels which appear to contradict the referenced MSDS. Finally, the ERP referenced document IIAR 106R, which is obsolete.

#### **IV. VIOLATIONS**

##### **Count 1: Failure to Adequately Identify, Evaluate, and Control Hazards**

28. Complainant realleges and incorporates by reference paragraphs 1 through 27 of this document.

29. Pursuant to 40 C.F.R. § 68.67, the owner or operator of a Program 3 process is required, among other things, to perform an initial PHA on each covered process. The PHA must identify, evaluate and control the hazards involved in the process. The owner or operator must update the PHA every five years and when a major change in the process occurs. Additionally, the owner or operator must establish a system for addressing the recommendations identified in the PHA, including by defining a schedule for completing the action items, taking the actions as soon as possible, and documenting the resolution of the recommendations.

30. As described in Paragraph 27(a), above, Respondent conducted an initial PHA in 2008. However, the 2008 PHA does not address all of the requirements, including the hazards of the process, potential catastrophic consequences, failure of administrative controls, stationary source siting, human factors and safety and health concerns.

31. By failing to adequately identify, evaluate, and control hazards, Respondent violated 40 C.F.R. § 68.67(c) and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least August 19, 2011 to October 18, 2012.

##### **Count 2: Failure to Comply with Program 3 Operating Procedures Requirements**

32. Complainant realleges and incorporates by reference paragraphs 1 through 31 of this document.

33. Pursuant to 40 C.F.R. § 68.69, the owner or operator of a Program 3 process is required to develop and implement written operating procedures that provide instructions or steps for safely conducting activities associated with the covered process. These operating procedures must address steps for each operating phase, operating limits, safety and health considerations, and safety systems. The owner or operator must make these procedures available to employees involved in the process, keep them up-to-date with current practices, and certify annually that they are current.

34. As described in Paragraph 27(b), above, at the time of the Inspection, the Respondent's written operating procedures did not include safety and health considerations or a description of available safety systems and their functions and had not certified that the written operating procedures were current and accurate until 2012, although Respondent had operated the process since at least 2009.

35. By failing to comply with the operating procedures requirements, from at least April 2009 to on or about October 18, 2012, Respondent violated 40 C.F.R. § 68.69 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

**Count 3: Failure to Comply with Program 3 Training Requirements**

36. Complainant realleges and incorporates by reference paragraphs 1 through 35 of this document.

37. Pursuant to 40 C.F.R. § 68.71, the owner or operator of a Program 3 process must train each employee involved in operating the process, provide those employees with refresher training at least every three years, and document such training and the employee's understanding of it. Training documentation must record the date of the training and the means used to verify that employees understood the training.



38. As described in Paragraph 27(c), above, at the time of Inspection, Respondent had not documented adequate training for employees involved in operating the Process, in that there are no records in Respondent's files that document process-related training and security staff, who are identified as emergency operators in Respondent's ERP, had not been trained in their functions as required by the ERP.

39. By failing to adequately train and record compliance with training requirements, Respondent violated 40 C.F.R. § 68.71 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least August 19, 2011 through to October 18, 2012.

**Count 4: Failure to Comply with Program 3 Mechanical Integrity Requirements**

40. Complainant realleges and incorporates by reference paragraphs 1 through 39 of this document.

41. Pursuant to 40 C.F.R. § 68.73, the owner or operator of a Program 3 process must establish and implement written procedures to maintain the ongoing integrity of certain process equipment and train employees accordingly. The owner or operator must inspect and test the equipment either in accordance with the manufacturer's recommendations and good engineering practices, or more frequently if needed based on prior operating experience. The owner or operator must also document the inspections or tests on process equipment, correct deficiencies, assure that any new equipment is installed properly, and assure that maintenance materials and spare parts are suitable for the process application.

42. As described in Paragraph 27(d), above, at the time of Inspection, Respondent had not developed and implemented comprehensive written mechanical integrity schedules and procedures to maintain the on-going integrity of the equipment in the Process, had not performed all the necessary inspections and tests of the equipment in the Process, and had not maintained documentation thereof. Respondent had not tested or calibrated the ammonia detectors since 2009 and had no information on the age of the detectors or when they were last tested. Ammonia detectors should be tested in accordance with the manufacturer's recommendations and good engineering practices, which require annual inspections where no manufacturer recommendations exist. See, e.g., Int'l Inst. Of Ammonia Refrigeration, Standard 2-2008: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems § 13.2.5 (2010) [hereinafter "IIAR 2-2008"].

43. Also, Respondent had not maintained the mechanical integrity of the Process by correcting deficiencies in equipment that are outside acceptable limits before continuing to use the equipment, or in a safe and timely manner when steps have been taken to ensure safe operation. For example, as described in Paragraph 27(d), the vapor barrier on numerous sections of the roof piping had been breached such that sections of piping where insulation was compromised showed signs of visible corrosion. See e.g., IIAR Bulletin 109, IIAR Minimum Safety Criteria for Safe Ammonia Refrigeration Systems §§ 4.7.4 and 4.7.5.

44. By failing to establish and implement a sufficient mechanical integrity program and by not correcting equipment deficiencies before further use or in a safe and timely manner, Respondent violated 40 C.F.R. § 68.73 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least August 19, 2011 to October 18, 2012.

**Count 5: Failure to Comply with Safety Information Requirements**

45. Complainant realleges and incorporates by reference paragraphs 1 through 44 of this document.

46. Pursuant to 40 C.F.R. § 68.65, the owner or operator of a Program 3 process is required, among other things, to compile written process safety information before completing the PHA, in order to perform an adequate PHA and to enable proper maintenance of process equipment. This includes documenting information pertaining to the hazards of the RMP chemical in the process and information pertaining to the technology and equipment of the process. This compilation of process safety information enables appropriate identification and understanding of hazards posed by regulated substances in the process and the technology and equipment of the process. In addition, the owner or operator must document that equipment complies with RAGAGEP, and that the equipment that was designed according to outdated standards is designed, maintained, and inspected, tested, and operated in a safe manner. 40 C.F.R. § 68.65(d)(2) and (3).

47. As described in Paragraphs 27(e) through (h) above, Respondent failed to document that the Process complies with RAGAGEP, as discussed in greater detail below.

48. As described in Paragraph 27(e), Respondent had not equipped the ammonia detectors to activate visual and audible alarms at the entrances to the Machinery Room. See, e.g., Am. Nat'l Standards Inst./Am. Soc'y of Heating, Refrigerating and Air-Conditioning Eng'rs, Standard 15-2010: Safety Standard for Refrigeration Systems § 8.11.2.1 (2010) [hereinafter "ASHRAE 15-2010"]; IIAR 2-2008 § 13.2<sup>1</sup>

---

<sup>1</sup> These items are also found in earlier versions of these industry standards and/or guidelines that were in effect in 2008, which is when Respondent conducted the last PHA before the Inspection. See ASHRAE 15-2007 § 8.11.2.1; IIAR 2-2008 § 13.1.1.2; IIAR Bulletin No. 111 *Guidelines for Ammonia Machinery Room Ventilation* § 3.5.3 (Note

49. Also, as described in Paragraph 27(f), at the time of the Inspection, many of the Process pipes were unlabeled and valves untagged. The recommended industry practice and standard of care is to label all system pipes and valve systems. See, e.g., Am. Nat'l Standards Inst., Standard A13.1-2007: Pipe Labeling Requirements & Standards; See, e.g., IAR 2-2008, supra, § 10.5 (2008 and 2010 editions); IAR Bulletin 109, IAR Minimum Safety Criteria for Safe Ammonia Refrigeration Systems § 4.7.6; IAR Bulletin 114, Guidelines for Identification of Ammonia Refrigeration Piping and System Components.

50. Additionally, as described in Paragraph 27(g), at the time of the Inspection, Respondent had not safely installed the main pressure-relief valve header for the Process. The recommended industry practice and standard of care for ammonia refrigeration systems is to raise the relief header pipe at least fifteen feet above the adjoining surface level and oriented it to avoid spraying of refrigerant on persons in the vicinity. See, e.g., IAR 2-2008, supra, § 11.3.6.4 (2008 and 2010 versions).

51. Also, as described in Paragraph 27(h), at the time of Inspection, Respondent had not adequately provided and labeled emergency shutdown and ventilation switches for the Process immediately outside the Machinery Room door. The recommended industry practice and standard of care for ammonia refrigeration systems is to provide clearly marked emergency shutdown and ventilation switches immediately outside the principle Machinery Room door (and preferably, all access doors). See, e.g., IAR 2-2008, supra, §§ 13.3.11 and 13.1.13<sup>2</sup>; ASHRAE 15-2010 § 8.12.1 (same citation in 2007 edition).

---

that this bulletin is now obsolete, but much of its content was incorporated into the 2010 and 2012 editions of IAR 2-2008).

<sup>2</sup> In the previous version of IAR 2-2008, this requirement is in Section 13.2.1.4 ["Emergency remote controls for the mechanical means of ventilation shall be provided and be located outside the machinery room door."]

52. By failing to document that the process complies with RAGAGEP or that equipment designed to outdated standards is designed, maintained, inspected, tested, and operated in a safe manner, Respondent violated 40 C.F.R. § 68.65 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E) from at least August 19, 2011 to October 18, 2012.

**Count 6: Failure to Comply with Program 3 Compliance Audit Requirements**

53. Complainant realleges and incorporates by reference paragraphs 1 through 52 of this document.

54. Pursuant to 40 C.F.R. § 68.79, the owner or operator of a Program 3 process must evaluate compliance with the provisions of the prevention program at least every three years; document the audit findings; promptly determine and document a response to each of the findings of the audit; document that deficiencies have been corrected; and retain the two most recent compliance reports.

55. As described in Paragraph 27(i), above, Respondent performed a compliance audit in 2011, but did not correct all of the identified deficiencies and/or did not document that all of the deficiencies identified in the audit had been corrected and when.

56. By failing to comply with the audit requirements, Respondent violated 40 C.F.R. § 68.79 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least August 19, 2011 to October 18, 2012.

**Count 7: Failure to Have an Adequate Emergency Response Program**

57. Complainant realleges and incorporates by reference paragraphs 1 through 56 of this document.

58. Pursuant to 40 C.F.R. § 68.90, the owner or operator of a Program 3 process must comply with the emergency response program requirements of 40 C.F.R. § 68.95 unless such owner or operator's employees will not be responding to accidental releases and various other requirements are met. Forty C.F.R. §68.95 requires the owner or operator of a Program 3 process to develop and implement an emergency response program by: maintaining an emergency response plan; outlining procedures for using, inspecting, testing and maintaining response equipment; training employees on response procedures; and creating procedures to review and update the emergency response plan to reflect current conditions at the Facility and to inform employees accordingly.

59. Respondent's EAP indicates that its employees will respond to accidental releases at the Facility. Accordingly, 40 C.F.R. §68.95 applies.

60. As described in Paragraph 27(j), above, at the time of Inspection, Respondent did not have an adequate emergency response program in place, in that the Facility's ERP did not accurately reflect current conditions at the Facility, the designated staff had not been trained in its use, and it referenced information and equipment that applied to a different facility.

61. By failing to comply with the emergency response program requirements, Respondent violated 40 C.F.R. § 68.95 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from August 19, 2011 to October 18, 2012.

## V. TERMS OF SETTLEMENT

62. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors, and assigns.

63. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that the CAFO states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying the factual and legal allegations contained herein, consents to the terms of this CAFO.

64. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its right to appeal the Final Order.

65. Respondent certifies that it is currently operating this Facility and its other ammonia refrigeration facilities in New England in compliance with Section 112(r)(7) of CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68.

66. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and taking into account the relevant statutory penalty criteria, the facts alleged in this CAFO, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of **\$124,181** for the violations alleged in this matter.

67. Respondent consents to the issuance of this CAFO and to the payment of the civil penalty cited in paragraph 66.

68. Within thirty (30) days of the effective date of this CAFO, Respondent shall submit a company, bank, cashier's, or certified check in the amount of **\$124,181** payable to the order of the "Treasurer, United States of America," and referencing the EPA Docket Number of this action (CAA-01-2014-0051). The check should be forwarded to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be forwarded to:

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code ORA18-1  
Boston, MA 02109-3912

and

Morgan Rog, Attorney  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code 2249A  
Washington, DC 20460

**69. Collection of Unpaid CAA Civil Penalty:** Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay CAA penalty in full, it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid within thirty (30) calendar days of the effective date of this CAFO. In that event, interest will accrue from the effective date of this CAFO at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United



States' enforcement expenses, including attorneys' fees and collection costs. Moreover, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter.

70. All penalties, interest, and other charges shall represent penalties assessed by EPA, and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.62-21 of the Internal Revenue Code, 26 U.S.C. § 162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

71. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

72. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 113(a) and (d) of the CAA for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

73. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

74. Nothing in this CAFO is intended to resolve any criminal liability of the Respondent, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

75. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, paid any stipulated penalties, and submitted the documentation required by the CAFO.

76. Each party shall bear its own costs and fees in this proceeding including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

77. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

78. Each undersigned representative of the parties certifies that he is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

For Respondent:

Patricia S. Houle, Sec. & Asst. Treas.  
Patricia S. Houle, Officer  
Bozzuto's, Inc.

9-11-14  
Date

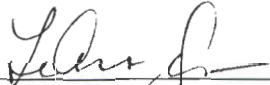
For Complainant:

Susan Studlien  
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region 1 – New England

09/15/14  
Date

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

  
\_\_\_\_\_  
LeAnn Jensen  
Acting Regional Judicial Officer  
U.S. EPA, Region 1

Date: 9/16/14