

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

09/19/2022

10:11am

Received by
EPA Region VIII
Hearing Clerk

IN THE MATTER OF:

Mountain Meadows Lamb Corporation
(Doing business as Superior Farms, Inc.)
4900 Clarkson Street
Denver, Colorado 80216

Respondent

**ADMINISTRATIVE COMPLIANCE
ORDER ON CONSENT**

CAA-08-2022-0010

PRELIMINARY STATEMENT

This Administrative Compliance Order on Consent (Consent Order) is entered into voluntarily by the United States Environmental Protection Agency and Mountain Meadows Lamb Corporation (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 Redefinition (August 16, 2019); Air Enforcement Branch Redefinition 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 the section 302e of the CAA, 42 U.S.C. § 7602(e).

13. Respondent is the owner and/or operator of the Superior Farms, Inc., an animal slaughtering facility, located at 4900 Clarkson Street, Denver, Colorado 80216 (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 conducted an offsite consequence analysis in early 2022 showing that the population inside the worst-case scenario radius includes 961 houses and 2,851 people could be exposed to this release. The Respondent also conducted an alternative release scenario where three residents and adjacent commercial properties would be impacted.
17. Respondent handles and stores anhydrous ammonia, an extremely hazardous substance regulated pursuant to section 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 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 January 13, 2020, 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 are summarized in an inspection report and the EPA provided a copy of the report to Respondent on or about March 11, 2020.

23. The inspection report detailed several findings related to the CAA General Duty Clause and the cover letter included a request that Superior Farms, Inc., take immediate action to evaluate the findings and undertake corrective measures.

24. During the Inspection, the EPA observed safety concerns including, but not limited to, the following: no emergency ventilation switch, inadequate emergency ventilation, inadequate machinery labeling, no piping labeling, uninsulated piping and failure to paint piping located on roof, no inspection records of high-pressure receiver, and no ammonia detectors or alarms at the Facility.

25. On September 22, 2020, Respondent provided the EPA a written response to the inspection findings.

26. On March 9, 2022, the EPA sent a Notice of Violation and Opportunity to Confer to Respondent for violations of the General Duty Clause pursuant to 112(r) to the CAA, 42 U.S.C. § 7412(r).

27. Between November 23, 2020, and August 5, 2022, the EPA engaged in compliance discussions with Respondent including, but not limited to, emails with Mr. Mike Wait and Mr. Gustavo Fernandez, general manager, and received submittals evidencing the following corrective measures: the Facility installed a ventilation switch and included inspection records of the high-pressure receiver on or about on or about April 14, 2022.

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. 5 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 September 15, 2023, correct the violations alleged in paragraph 22 and complete the following actions to comply with the General Duty Clause of the CAA.

- a. Install a functional emergency ventilation system in the machinery room that complies with recognized and generally accepted good engineering practices such as the International Institute of Ammonia Refrigeration (IIAR) 2-2014, Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems section 6.14.7.
- b. Label the refrigeration machinery including, but not limited to, the compressors, condenser, pressure vessels, evaporators, and refrigeration pumps as specified by IIAR 2-2014 § 5.14.2.
- c. Label ammonia piping mains, headers and branches with the following information:
“AMMONIA,” physical state of the ammonia, relative pressure level of ammonia, being low or high as applicable, and pipe service, which shall be permitted to be abbreviated and direction of flow. The marking system shall either be one established by a recognized model code or standard or one described and documented by the facility owner. IIAR 2-2014 § 5.14.5.
- d. Paint and insulate ammonia refrigeration piping located on the Facility roof and in the machinery room, which provides a protective finish from external corrosion to protect from

physical and environmental damage including condensation and excessive frost buildup.

IIAR 4-2015 §§ 5.4.7 and 5.10.1.

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

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 so 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 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 Order.

36. Respondent shall preserve all documents and information relating to the activities carried out pursuant to this Order for at least five years after completion of the work required by this Order. At the end of the five-year period Respondent shall notify the EPA at least 30 days before any such document or information is destroyed that such documents and information are available for inspection. 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 \$109,024 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 45, 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

Date: _____

By: _____

Scott Patefield, Branch Manager
Air and Toxics Enforcement Branch
Enforcement and Compliance Assurance Division

Mountain Meadows Lamb Corporation
dba Superior Farms, Inc.

Date: 9/12/2022

By: *[Signature]*

VP of Operations, Superior Farms
Title

**In the Matter of:
Mountain Meadows Lamb Corporation
(Doing business as Superior Farms, Inc.)**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT was filed, pursuant to the Standing Order Designation of EPA Region 8 Part 22 Electronic Filing System (May 8, 2020), with the regional hearing clerk on September 19, 2022, and that a true copy of the same, on this day, via email to

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