

FILED

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**U.S. EPA REGION 7
HEARING CLERK**

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of

CRYSTAL DISTRIBUTION SERVICES,
INC.,

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)

Docket No. CAA-07-2025-0101

Respondent.

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Crystal Distribution Services, Inc. dba Crystal Cold (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) 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. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is Crystal Distribution Services, Inc., a corporation doing business in the state of Iowa, which owns and operates the food storage facility located at 1656 Sycamore Street in Waterloo, Iowa (Respondent's Facility).

Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

6. On June 20, 1996, the EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This rule requires owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and coordination of emergency response activities.

7. The regulations at 40 C.F.R. Part 68, titled Chemical Accident Prevention Provisions, set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a Risk Management Plan ("RMP") that must be submitted to the EPA.

8. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

9. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(l), a covered process is subject to Program 3 requirements if the process does not meet the eligibility requirements of Program 1, as described in 40 C.F.R. § 68.10(j), and it either falls under a specified North American Industry Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

10. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil

Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$59,114 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 8, 2025.

Definitions

11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any 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.

12. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

13. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulations at 40 C.F.R. § 68.3 define “stationary source,” in part, as 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.

14. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

15. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

16. The regulations at 40 C.F.R. § 68.3 define “process” 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. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

General Factual Allegations

17. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

18. Respondent is the owner and operator of a facility that is a “stationary source” pursuant to 40 C.F.R. § 68.3.

19. Anhydrous ammonia is a “regulated substance” pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

20. On or about September 13, 2023, a representative of the EPA conducted an inspection of Respondent's Facility to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68.

21. Information gathered during the EPA inspection revealed that Respondent had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

22. Information gathered during the EPA inspection revealed that Respondent stores and circulates anhydrous ammonia through two refrigeration systems at its facility and therefore is engaged in a process at its facility.

23. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

24. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was subject to Program 3 prevention program requirements because, pursuant to 40 C.F.R. § 68.10(l), the covered process at its facility did not meet the eligibility requirements of Program 1 and was subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

25. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process, Respondent was required under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 requirements provided at 40 C.F.R. § 68.12(d) and detailed in Subpart D.

Allegations of Violation

26. Complainant hereby states and alleges that Respondent has violated the CAA and federal regulations promulgated thereunder as follows:

Count 1 – Hazard Assessment

27. The facts stated in Paragraphs 17 through 25 above are herein incorporated.

28. 40 C.F.R. § 68.12(d)(2) requires the owner or operator of a stationary source subject to the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, with a process subject to Program 3, to conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42.

29. The EPA inspection revealed that Respondent failed to conduct the Program 3 hazard assessment requirements of 40 C.F.R. §§ 60.20 through 68.42. When Respondent was asked during the inspection if it had undertaken a hazard assessment, facility representatives were unable to recall conducting one.

30. Respondent's failures to comply with the hazard assessment requirements of 40 C.F.R. §§ 68.20 through 68.42, as required by 40 C.F.R. § 68.12(d)(2), violate Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

Count 2 – Program 3 Prevention Requirements

31. The facts stated in Paragraphs 17 through 25 above are herein incorporated.

32. 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87.

33. EPA inspection revealed that Respondent failed to implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87. Specifically:

- (a) Respondent failed to evaluate consequences of deviation in its written process safety information, as required by 40 C.F.R. § 68.65(c)(1)(v). Respondent could not locate consequences of deviation documentation.
- (b) Respondent failed to include material and energy balances for processes built after June 21, 1999, in its written process safety information, as required by 40 C.F.R. § 68.65(d)(1)(vii). Respondent could not locate material and energy balance calculation documentation.
- (c) Respondent failed to ensure and document that the process is designed and maintained in compliance with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2), as evidenced by:
 - (i) Numerous examples of excessive ice buildup on piping and equipment and/or frozen equipment.
 - (ii) Numerous examples of deterioration and/or corrosion of piping and equipment, including rust formation.
 - (iii) Numerous examples of deteriorating equipment labels.
 - (iv) Numerous examples of compromised insulation, some of which is held in place with tape.
 - (v) Missing National Fire Protection Association hazard (704) diamonds, which identify and rank the hazards of a material, on a machine room door.

- (d) Respondent failed to perform an initial process hazard analysis (hazard evaluation) on processes, as required by 40 C.F.R. § 68.67(a). Facility representatives could not recall conducting a process hazard analysis.
- (e) Respondent failed to address consequences of deviation and steps required to correct or avoid deviation in the development and implementation of written operating procedures, as required by 40 C.F.R. § 68.69(a)(2). Respondent could not locate documentation conveying the consequences of deviating from safe upper and lower operating limits.
- (f) Respondent failed to perform a pre-startup safety review (PSSR) for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information, as required by 40 C.F.R. § 68.77(a). Respondent could not produce an initial PSSR for its 1999 system or a PSSR for the 2017/2018 additions to its 1999 refrigeration system.
- (g) Respondent failed to certify that it evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart D, at least every three years to verify that the procedures and practices developed under Subpart D are adequate and are being followed, as required by 40 C.F.R. § 68.79(a). Respondent stated no compliance audit had occurred.

Count 3 – Emergency Response

34. The facts stated in Paragraphs 17 through 25 above are herein incorporated.

35. 40 C.F.R. § 68.12(d)(5) requires the owner or operator of a stationary source with a process subject to Program 3 to develop and implement an emergency response program, and conduct exercises, as provided in 40 C.F.R. §§ 68.90 through 68.96.

36. The EPA inspection revealed that Respondent failed to implement the emergency response requirements of 40 C.F.R. §§ 68.90 through 68.96. Specifically, Respondent failed to document coordination with local authorities as required by 40 C.F.R. § 68.93(c). Respondent indicated that it conducted an emergency notification exercise, but could not produce any documentation for the exercise, such as a sign-in sheet or email inviting the local fire department.

37. Respondent's failures to comply with the emergency response requirement of 40 C.F.R. §§ 68.20 through 68.42, as required by 40 C.F.R. § 68.12(d)(5), violate Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

38. For the purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

39. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

40. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

41. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

42. The parties consent to service of this Consent Agreement and Final Order electronically at the following e-mail addresses: *vetterick.kate@epa.gov* (for Complainant), and *djzoll@locklaw.com* and *cnnauen@locklaw.com* (for Respondent). Respondent understands that the Consent Agreement and Final Order will become publicly available upon filing.

Penalty Payment

43. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of eighty-five thousand, nine hundred fifty-six dollars (\$85,956).

44. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

45. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Kate Vetterick, Attorney
vetterick.kate@epa.gov.

46. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge on a per year, compounded annually basis will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

47. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Respondent’s failure to provide IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent herein agrees that:

- (a) Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

- (b) Respondent shall certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- (c) Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at *sherrer.dana@epa.gov* within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- (d) In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

Effect of Settlement and Reservation of Rights

48. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

49. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph directly below.

50. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA and its implementing regulations, or to the extent such compliance is not yet fully achieved, with the terms of the Administrative Order for Compliance on Consent issued by EPA on May 7, 2025, EPA Docket No. CAA-07-2025-0048.

51. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.

52. This Consent Agreement and Final Order constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Combined Enforcement Response Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

53. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

54. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and have the legal capacity to bind the party they represent to this Consent Agreement.


55. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

56. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, or local taxes.

57. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT:
CRYSTAL DISTRIBUTION SERVICES, INC.

Date: 7.17.25


Signature

SCOTT THORSON
Name

VICE PRESIDENT OF OPERATIONS
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

David Cozad
Director
Enforcement and Compliance Assurance Division

Date: _____

Kate Vetterick
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

(to be completed by EPA)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via E-mail to Complainant:

Kate Vetterick, *vetterick.kate@epa.gov*,

Diana Chaney, *chaney.diana@epa.gov*,

Dave Hensley, *hensley.dave@epa.gov*,

Carrie Venerable, *venerable.carrie@epa.gov*.

Copy via E-mail to Respondent:

David Zoll, *djzoll@locklaw.com*,

Charles N. Nauen, *cnnauen@locklaw.com*,

Dated this _____ day of _____, _____.

Signed