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**U.S. EPA REGION 5
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2024-0013
)	
Penske Logistics LLC)	Proceeding to Assess a Civil Penalty
Shelbyville, Indiana,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Penske Logistics LLC (Penske or Respondent), a limited liability company doing business in Indiana.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

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

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

Statutory and Regulatory Background

Clean Air Act, Subsection 112(r)

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

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

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

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate

guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

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

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

40 C.F.R. Part 68: Chemical Accident Prevention Provisions

15. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which is codified at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (CAPP or Part 68). See 84 Fed. Reg. 69834 (Dec. 19, 2019).¹

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

¹ See also 87 Fed. Reg. 53556 (Aug. 31, 2022) (currently proposed amendment).

Applicability

17. Section 68.10(a) of CAPP provides, in pertinent part, that the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 C.F.R. § 68.115, shall comply with the requirements of CAPP no later than the date on which a regulated substance is first present above a threshold quantity in a process.

18. Section 68.3 of CAPP provides that “regulated substance” means any substance listed pursuant to Section 112(r)(3) of the Act at 40 C.F.R. § 68.130.

19. Table 1 at Section 68.130(a) of CAPP lists anhydrous ammonia as a regulated toxic substance with a threshold quantity of 10,000 pounds.

20. Section 68.3 of CAPP provides that “process” means “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 purposes of this definition, a single process includes “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” A “covered process” means “a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.”

21. Section 68.10(i) of CAPP provides, in pertinent part, that a covered process is subject to Program 3 requirements if the process does not meet the requirements of 40 C.F.R. § 68.10(g) and if either of the following conditions is met: the process is in North American Industry Code System code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or the process is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 CFR § 1910.119.

22. Sections 68.12(a) and (d) of CAPP identify CAPP requirements that the owner or operator of a stationary source with a process subject to Program 3 shall meet, which include, among other provisions, to develop and implement a management system as provided in § 68.15; conduct a hazard assessment as provided in §§ 68.20 through 68.42; implement the prevention requirements of §§ 68.65 through 68.87; coordinate response actions with local emergency planning and response agencies as provided in § 68.93; develop and implement an emergency response program, as provided in §§ 68.90 through 68.96; submit a single RMP, as provided in §§ 68.150 to 68.185, that includes a registration that reflects all covered processes; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in § 68.175.

I. Process Safety Information

23. Section 68.65 of the CAPP requires the owner or operator of a stationary source with a process subject to Program 3 to complete a compilation of written process safety information before conducting any process hazard analysis required by the rule. It says that process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information on the technology of the process, and information pertaining to the equipment in the process.

24. Section 68.65(d)(1)(iii) of CAPP requires information pertaining to the equipment in the process to include electrical classification.

25. Section 68.65(d)(1)(v) of CAPP requires information pertaining to the equipment in the process to include ventilation system design.

II. Process Hazard Analysis

26. Section 68.67(c)(3) of the CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall perform a process hazard analysis which shall address engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases.

27. Section 68.67(c)(7) of the CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall perform a process hazard analysis which shall address a qualitative evaluation of a range of the possible safety and health effects of failure of controls.

28. Section 68.67(d) of the CAPP states that the process hazard analysis shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.

29. Section 68.67(e) of the CAPP provides that the owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

III. Compliance Audit

30. Section 68.79(a) of the CAPP provides that the owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

Administrative Authority

31. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 for violations that occurred after November 2, 2015, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

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

33. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

Applicability

34. Penske formerly operated an ammonia refrigeration process at a distribution center and warehouse at 4301 County Rd 125 W, Shelbyville, IN 46176 (Facility).

35. Penske maintained a maximum inventory of the regulated toxic substance anhydrous ammonia at the Facility which exceeds the threshold quantity of 10,000 pounds of anhydrous ammonia

as set forth in Table 1 at 40 C.F.R. § 68.130 and, therefore, has had a regulated substance present in more than a threshold quantity as determined under § 68.115, since at least 1999.

36. At the Facility, Penske operated a process, as defined in 40 C.F.R. § 68.3, that includes the use, storage, handling, and on-site movement of anhydrous ammonia, which is a regulated substance.

37. Penske's ammonia refrigeration system at the Facility was and is a "Covered Process," as that term is defined at 40 C.F.R. § 68.3.

38. The Covered Process at the Facility includes seven compressors, three storage vessels, one high pressure storage vessel, three condensers, 27 ammonia detection sensors, piping, and 100 evaporators (Covered Process).

39. The Facility is subject to the requirements of the CAPP in accordance with 40 C.F.R. § 68.1 et seq.

40. The Covered Process at the Facility is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard because it contains greater than the threshold quantity of 10,000 pounds of anhydrous ammonia that is a highly hazardous chemical as defined in 29 CFR 1910.119(b).

41. There are public receptors within the distance of an endpoint for a worst-case release assessment, therefore the Covered Process at the Facility does not meet the Program 1 requirements at 40 C.F.R. § 68.10(g).

42. The Facility is subject to Program 3 because the Covered Process does not meet the Program 1 eligibility requirements at 40 C.F.R. § 68.10(g) and it is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119, in accordance with 40 C.F.R. § 68.10(i).

Facility Inspection

43. On September 16, 2021, EPA conducted an announced inspection of the Facility (September 2021 inspection).

44. Prior to and during the September 2021 inspection, Kroger Limited Partnership I (Kroger) owned and Penske operated the ammonia refrigeration system at the Facility. After the September 2021 inspection, Kroger took over operations from Penske.

45. During the September 2021 inspection, EPA inspectors reviewed documents relating to the RMP that Penske provided (RMP Documents). The RMP Documents included aspects of the Facility's RMP involving the management system, process safety information, process hazard analysis, operating procedures, training, mechanical integrity, management of change, pre-startup safety review, compliance audits, hot work permits, employee participation, and contractors.

I. Process Safety Information

46. The RMP Documents included a ventilation system design summarized in the "Ventilation Records 9-9-2021.xlsx" file; the ventilation system design demonstrates that the *current* ventilation system at the Facility did not meet the required design code standards.

47. The Facility machinery room electrical classification provided in the RMP Documents states that the classification is based on the environment being "non-hazardous." The machinery room at the Facility may only be considered "non-hazardous" provided that the ventilation system conforms with the required design code standards.

II. Process Hazard Analysis

48. During the September 2021 inspection, EPA reviewed the most recent Process Hazard Analysis (PHA) for the Facility, which was updated and revalidated in June 2017 (2017 PHA).

49. For the 2017 PHA, Penske followed the “What-If” methodology.

50. There were only two recommendations from the 2017 PHA, as follows:

- a. Replace pipe labels on roof; and
- b. Complete an actual fire drill with the local fire department.

51. During the September 2021 inspection, Penske could not provide EPA with documentation of completing the 2017 PHA recommendations.

52. On November 11, 2021, Penske provided EPA with an updated 2017 PHA that included the dates of completing recommendations. Penske informed EPA that the Facility replaced the pipe labels on August 26, 2020, and completed a fire drill with the local fire department on July 28, 2020.

53. In the 2017 PHA, Penske did not address the following requirements:

- a. Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases; and
- b. A qualitative evaluation of a range of the possible safety and health effects of failure of controls.

54. Penske did not include in the 2017 PHA at least one employee who is knowledgeable in the “What-If” methodology.

III. Compliance Audits

55. During the September 2021 inspection, Penske provided EPA the Facility’s written operating procedures.

56. These written operating procedures did not address steps for emergency shutdown.

CAPP Violations

57. A finding of violation was issued to Penske on December 6, 2022 (December FOV), alleging violations of the CAPP.

58. On January 31, 2023, Penske provided EPA with a written response to the December FOV, which included additional supporting information.

59. On February 6, 2023, EPA and representatives from Penske met to discuss the allegations presented in the December FOV (113 Conference) that are detailed in paragraphs 60 through 66.

I. Process Safety Information

60. In violation of 40 C.F.R. § 68.65(d)(1)(iii), Penske failed to include in its process safety information the correct electrical classification for the Facility's Program 3 process.

61. In violation of 40 C.F.R. § 68.65(d)(1)(v), Penske failed to include in its process safety information a ventilation system design that meets current design code standards for the Facility's Program 3 process.

II. Process Hazard Analysis

62. In violation of 40 C.F.R. § 68.67(c)(3), Penske failed to perform a PHA that addresses engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases.

63. In violation of 40 C.F.R. § 68.67(c)(7), Penske failed to perform a PHA that addresses a qualitative evaluation of a range of the possible safety and health effects of failure of controls.

64. In violation of 40 C.F.R. § 68.67(d), Penske failed to perform the PHA by a team that includes at least one person knowledgeable in the specific process hazard analysis methodology being used.

65. In violation of 40 C.F.R. § 68.67(e), Penske failed to establish a system to promptly address PHA findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

III. Compliance Audits

66. In violation of 40 C.F.R. § 68.79(a), Penske failed to certify that it evaluated compliance with the provisions of the compliance audit recommendations at least every three years to verify that procedures and practices developed are adequate and are being followed.

Civil Penalty

67. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, cooperation, and a prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$161,421.

68. Penalty Payment. Respondent agrees to:

- a. pay the civil penalty within 30 days after the effective date of this CAFO.
- b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
<p>Automated Clearinghouse (ACH) payments made through the US Treasury</p>	<p>US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.</p>
<p>Wire transfers made through Fedwire</p>	<p>Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. • Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery:</p> <p>U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc):</p> <p>U.S. Environmental Protection Agency Government Lockbox 979077 U.S. EPA Fines and Penalties 3180 Rider Trail S. Earth City, Missouri 63045</p>

69. Within 24 hours of the payment of the civil penalty, Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

Andre Daugavietis
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
daugavietis.andre@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

71. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

72. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10

percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

73. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: daugavietis.andre@epa.gov (for Complainant), and mike.costanza@penske.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

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

76. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 74, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

77. Respondent certifies that it no longer operates the Facility.

78. This CAFO constitutes an "enforcement response" as that term is used in EPA's Combined Enforcement 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).

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

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

81. Each party agrees to bear its own costs and attorney's fees in this action.
82. This CAFO constitutes the entire agreement between the parties.

Penske Logistics LLC, Respondent

12/20/2023

Date



Michael Costanza
Director, Environmental Services
Penske Logistics LLC

30-0089372

Tax Identification Number

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: Penske Logistics LLC
Docket No. CAA-05-2024-0013**

Final Order

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

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5