

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

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IN THE MATTER OF )  
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YORK COLD STORAGE I, LLC )  
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Docket No. CAA-07-2015-0035

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile/electronic filing of page 10 of the Consent Agreement/Final Order is authorized in this proceeding.

Dated: Sept. 21, 2015

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

2015 SEP 21 PM 2:38

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CAA-07-2015-0035
YORK COLD STORAGE I, LLC	)	
402 Commerce Street	)	
York, Nebraska 68467	)	
	)	
	)	CONSENT AGREEMENT
	)	AND FINAL ORDER
Respondent,	)	
	)	
Proceeding under Section 113(d) of the	)	
Clean Air Act, 42 U.S.C. § 7413(d)	)	

**PRELIMINARY STATEMENT**

The United States Environmental Protection Agency, Region 7 (“EPA”) and York Cold Storage, LLC (“Respondent”) have agreed to a settlement of this action before 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**ALLEGATIONS**

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted 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, where 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 (“CAFO”) serves as notice that 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 CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for these violations.

#### Parties

3. The Complainant, by delegation from the Administrator of EPA and from the Regional Administrator of EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

4. The Respondent, York Cold Storage I, LLC, is a privately held company, which is incorporated under the laws of the state of Nebraska. It was established in 2008 and has an approximate annual sales of \$5.5 million. Respondent owns and operates one facility which is located at 402 Commerce Street, York, Nebraska. At this facility, Respondent receives, re-packages, freezes, and stores meat and meat by-products used for human and animal consumption. Its refrigeration system holds 17,609 pounds of anhydrous ammonia and is a *Program 3* facility under 40 C.F.R. § 68.10(d). Respondent employs between 40 and 60 employees and operates two shifts per day.

#### Statutory and Regulatory Requirements

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 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 the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the 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, 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." The Risk Management Program must include a management system, a hazard assessment, a prevention program, an emergency response program and a Risk Management Plan.

7. The regulations at 40 C.F.R. § 68.150 require that the information necessary for a Risk Management Program be described in the Risk Management Plan ("RMP") which must be submitted to 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, the 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 provision regulations apply to covered processes. A covered process is eligible for Program 3 if the process does not meet the requirements of Program 1 and if either the process falls under a specified North American Industry Classification System (“NAICS”) code or the process 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 the CAA referenced therein, including Section 112(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004, and \$32,500 per day for each violation that occurs after March 15, 2004. For each violation of Section 112(r) of the CAA that occurs after January 12, 2009, penalties of up to \$37,500 per day are now authorized.

#### Definitions

11. 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.

12. 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, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

13. 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.

14. 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

15. Respondent is, and at all times referred to herein has been, a “person” as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

16. Respondent’s facility located at 402 Commerce Street in York, Nebraska, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

17. 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, Table 1, is 10,000 pounds.

18. On or about May 7, 2013, EPA conducted an inspection of Respondent’s facility to determine compliance with Section 112(r) of the Clean Air Act and 40 C.F.R. Part 68.

19. Information gathered during the EPA inspection revealed that, at the time of the inspection and at all other times relevant to this CAFO, Respondent had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

20. Presently and at all times relevant to this CAFO, Respondent has been subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68. This is because Respondent was an owner and operator of a stationary source that had more than 10,000 pounds of anhydrous ammonia, which is a threshold quantity of a regulated substance in a process.

21. Respondent currently has, and at all times relevant to this CAFO continuously has had, greater than 10,000 pounds of anhydrous ammonia being used in a process onsite. Respondent was subject to Program 3 of the risk management program requirements because, pursuant to 40 C.F.R. § 68.10(d), the covered processes did not meet the requirements of Program 1 and were subject to the OSHA process safety management standard.

22. Respondent is, and at all times relevant to this CAFO has been, required under Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.12, to develop and implement a risk management program that included a management system, a hazard assessment, a prevention program, and an emergency response program, and to submit an RMP.

23. On October 27, 2009, Respondent completed a Process Hazard Analysis (PHA) pursuant to 40 CFR § 68.67.

**Violations**

24. EPA alleges that Respondent has violated the CAA and federal regulations promulgated pursuant to the CAA, as follows:

25. Respondent is 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 is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

26. Although Respondent is subject to Program 3 of the risk management program requirements and the covered processes at its York, Nebraska facility, Respondent did not comply with the requirements of a Program 3 facility.

27. Respondent was required under Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. 68.12, to develop and implement a risk management program for each stationary source that includes a management system, a hazard assessment, a prevention program and an emergency response program, and to submit an RMP.

28. Information collected during the inspection of Respondent's York, Nebraska facility revealed that Respondent failed to develop and implement a Risk Management Program that complied with all the requirements of 40 C.F.R. Part 68. Specifically:

**COUNT I**

29. Respondent failed to develop and implement a management system as provided in 40 CFR 68.15.

**COUNT II**

30. Respondent failed to update and revalidate its process hazard analysis within five (5) years of the October 2009 PHA, referred to in paragraph 23 above, per 40 CFR 68.67(f), and failed to retain process hazard analyses and updates or revalidations for each process for the life of the process per 40 CFR 68.67(g).

**COUNT III**

31. Respondent failed to provide clear instructions of the assignment of shutdown responsibility to qualified operators in the emergency shutdown portion of the Operating Procedure to ensure that emergency shutdown is executed in a safe and timely manner per 40 CFR § 68.69(a)(1)(iv). Further, Respondent failed to provide clear instructions of the control measures to be taken if physical contact or airborne exposure occurs per 40 CFR §68.69(a)(3)(iii).

**COUNT IV**

32. Respondent failed to establish and implement written procedures to maintain the ongoing mechanical integrity of process equipment per 40 CFR § 68.73(b). Further, Respondent failed to correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation per 40 CFR § 68.73(e).

**COUNT V**

33. Respondent failed to perform and certify a compliance audit at least every three (3) years per 40 CFR § 68.79(a). Additionally, Respondent failed to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected per 40 CFR § 68.79(d).

**COUNT VI**

34. Regarding its Risk Management Plan (RMP), Respondent failed to address all six elements in the RMP Executive Summary per 40 CFR § 68.155(a)(d)(e)&(f); Respondent failed to correct its RMP to include new accident history information within six (6) months of the release or by the time the RMP is updated, whichever is earlier per 40 CFR § 68.195(a); and Respondent failed to correct its RMP within one (1) month of any change in the emergency contact information per 40 CFR § 68.195(b).

35. Each of Respondent's failures to comply with the requirements of 40 C.F.R. Part 68, as set forth in Counts I-VI above, is a violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

**CONSENT AGREEMENT**

36. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

37. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or in any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

38. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

39. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the proposed Final Order portion of the CAFO.

40. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this action.

41. This CAFO addresses all civil and administrative claims for the CAA violations identified above. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA or other applicable law.

42. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

43. Respondent certifies by signing this CAFO that, to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

44. The effect of settlement described in Paragraph 41 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 43 of this CAFO.

45. Respondent shall submit all notices and reports required by this CAFO by first class mail to the following:

Patricia Reitz  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

46. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment as set forth in the Final Order.

47. Late Payment Provisions. Respondent understands that its failure to timely pay any portion of the amount described in Paragraph 1 of the Final Order below 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 accrue thereon at the applicable statutory rate on the unpaid balance until such amount and any accrued interest are paid in full.

48. The deductibility for income tax purposes of any amount paid by Respondent hereunder shall comply with any and all applicable IRS, state and local income tax regulations.

49. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to legally bind Respondent to it.



**FINAL ORDER**

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401 *et seq.*, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Ninety-Eight Thousand, One Hundred Fifty-Three Dollars (\$98,153) within thirty days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to "United States Treasury," and shall be remitted to:

United State Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000.

This payment shall reference docket number CAA-07-2015-0035.

2. Copies of the check should be sent to:

Regional Hearing Clerk  
United States Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and to:

Raymond Bosch  
Assistant Regional Counsel  
United States Environmental Protection Agency - Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

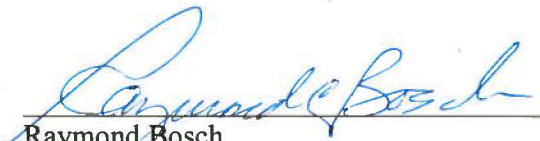
4. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the EPA Regional Hearing Clerk.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 9/18/15

  
Becky Weber  
Director, Air and Waste Management Division  
U.S. Environmental Protection Agency  
Region 7

Date September 16, 2015

  
Raymond Bosch  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7

RESPONDENT:  
YORK COLD STORAGE I, LLC

Date 9-15-15

DOUGLAS R. HAYCOCK  
Name

Douglas R. Haycock  
Signature

MANAGING DIRECTOR  
Title

IT IS SO ORDERED. This Final Order shall become effective immediately.

Date Sept. 21, 2015

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 7

IN THE MATTER OF York Cold Storage, LLC, Respondent  
Docket No. CAA-07-2015-0035

CERTIFICATE OF SERVICE

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

Copy by email to Attorney for Complainant:

bosch.raymond@epa.gov

Copy by First Class Mail and email to:

Scott D. Kumpf, Esq.

Kumpf, Charsley and Hansen LLC

9635 Maroon Circle Suite 230

Englewood, Colorado 80112

scott@kch-law.com

9/21/15



Kathy Robinson  
Hearing Clerk, Region 7