UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

9/25/23

In the Matter of: Bottling Group, LLC operating as Pepsi Beverages Company, and CB Manufacturing Company, Inc. 1400 Pontiac Ave. Cranston, Rhode Island 02920 Respondents. Proceeding under Section 113 of the Clean Air Act	Docket No. CAA-01-2023-0034	Received by EPA Region 1 Hearing Clerk

CONSENT AGREEMENT AND FINAL ORDER

1. The United States Environmental Protection Agency, Region 1 ("EPA" or "Complainant") and Bottling Group, LLC operating as Pepsi Beverages Company, and CB Manufacturing Company, Inc. ("Respondents") 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/Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). This CAFO resolves Respondents' liability for alleged violations of Sections 112(r)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(1).

2. EPA and Respondents hereby 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).

3. EPA and Respondents agree that settlement of this matter is in the public interest, and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

4. Therefore, before taking any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law, it is hereby ordered as follows:

I. PRELIMINARY STATEMENT

5. This CAFO is entered into under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice, 40 C.F.R. Part 22.

6. EPA and the U.S. Department of Justice jointly determined that this matter is appropriate for administrative penalty assessment, pursuant to 42 U.S.C. § 7413(d)(1) and 40 C.F.R. § 19.4.

7. The Regional Judicial Officer is authorized to ratify this CAFO, which memorializes a settlement between Complainant and Respondents. 40 C.F.R. §§ 22.4(b) and 22.18(b).

8. The issuance of this CAFO simultaneously initiates and concludes this proceeding. 40 C.F.R. § 22.13(b).

II. STATUTORY AND REGULATORY AUTHORITY

Clean Air Act

9. The purpose of Section 112(r) of the CAA and its implementing regulations is "to prevent the accidental release and to minimize the consequences of any such release" of an "extremely hazardous substance." 42 U.S.C. § 7412(r)(1).

10. Section 112(r)(1) of the CAA is referred to as the "General Duty Clause" or the "GDC." Pursuant to the GDC, owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to (a) identify hazards that may result from accidental releases of such substances 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 that do occur.

11. The term "have a general duty in the same manner and to the same extent as section 654 of title 29" of the United States Code means owners and operators must comply with the General Duty Clause in the same manner and to the same extent as employers must comply with the Occupational Safety and Health Act administered by the Occupational Safety and Health Administration ("OSHA").

12. 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.[1] 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.[2] 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 355, Appendices A and B, published under Section 302 of EPCRA, 42 U.S.C. § 11002.

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[1] See Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101st Congress, 1st Session at 211 (1989).
[2] Id at 211.

13. The term "accidental release" is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

14. 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.

15. The General Duty Clause is a performance standard with requirements that often can be achieved in a variety of ways, but facility owners and operators would need to implement all feasible means to reduce the threat of death, serious injury or substantial property damage to satisfy the requirements of the General Duty Clause.[3] EPA routinely consults chemical Safety Data Sheets ("SDSs"), codes, standards, and guidance issued by chemical manufacturers, trade associations, and fire prevention associations (collectively, "industry standards") to understand the hazards posed by using various extremely hazardous substances. The industry standards also are evidence of the standard of care that industry itself has found to be appropriate for managing those hazards. These industry standards are consistently relied upon by industry safety and fire prevention experts and are sometimes incorporated into state building, fire, and mechanical codes.

16. Section 112(r)(8), 42 U.S.C. § 7412(r)(8), of the CAA requires EPA to develop and disseminate information on how to conduct hazard assessments. According to EPA's Guidance for Implementation of the GDC CAA Section 112(r)(1) ("EPA GDC Guidance," May 2000), available at https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf, the

[3] Id.

General Duty Clause's duty to identify hazards that may result from hazardous releases includes determining: (a) the intrinsic hazards of the chemicals used in the processes; (b) the risks of accidental releases from the processes through possible release scenarios; and (c) the potential effect of these releases on the public and the environment. The document that contains this analysis is often referred to as a process hazard review ("PHR").

17. Sections 113(a)(3) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (d), provide for the assessment of civil penalties for violations of CAA Section 112(r). Statutory maximum penalties as adjusted for inflation are provided in 40 C.F.R. Part 19.

III. GENERAL FACTUAL ALLEGATIONS

18. Respondent Bottling Group, LLC is a limited liability company formed under the laws of Delaware, and CB Manufacturing Company, Inc. is incorporated under the laws of Delaware. Respondents' corporate headquarters are located at 700 Anderson Hill Rd., Purchase, New York, 10577.

19. Respondents' facility in Cranston, Rhode Island ("Facility") includes two buildings having a combined square footage of 220,000. The Facility is located in a mixed use area of Cranston. Within a mile of the Facility are numerous residences, a hospital, a prison, several state office buildings, and a number of commercial operations including a yoga studio, floral distributor, and a plumbing distributor.

20. Respondents conduct beverage manufacturing, bottling, warehousing, transport, and sales operations at the Facility.

21. Respondents employ approximately 260 full time employees at the Facility (180 in manufacturing and the warehouse and 80 in sales). The manufacturing and warehousing operations run 24 hours a day, six days a week.

22. As a limited liability company and a corporation, each Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), against whom an administrative penalty order may be issued under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

23. 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).

24. Respondent Bottling Group, LLC, as the owner of the Facility, is an "owner[] … of a stationary source[]" within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1). Respondent CB Manufacturing Company, Inc., as the operator of the Facility, is an "operator[] … of a stationary source" within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. §7412(r)(1).

25. Anhydrous ammonia is an extremely hazardous substance listed in Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and in 40 C.F.R. § 68.130.

26. The unanticipated emission of anhydrous ammonia into the ambient air from the facility would constitute an "accidental release," as that term is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

27. The Facility includes an ammonia machinery room ("AMR") which houses equipment needed to provide refrigeration for the Facility's refrigeration system (the "System"). The AMR houses seven reciprocating compressors, a suction accumulator, a glycol chiller unit, air compressor and condenser water treatment tanks. Two evaporative condensers and a high-pressure receiver ("HPR") are located outside of the building and adjacent to the AMR.

Respondents use approximately 5,800 pounds of anhydrous ammonia in the Facility's refrigeration system.

28. 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. 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.

29. On January 23, 2020, EPA inspected the Facility to assess its compliance with federal chemical accident prevention, planning, and response laws, including Section 112(r) of the CAA and Sections 302–312 of the Emergency Planning and Community Right-to-Know Act ("EPCRA").

30. The inspection and EPA's subsequent review of information provided by Respondents revealed several potentially dangerous conditions relating to the System, which were explained (1) in EPA's out-brief meeting with Respondents at the conclusion of the Inspection; and (2) in EPA's Inspection Report, which was provided to Respondents.

31. Some of the potentially dangerous conditions identified by EPA are listed in the chart attached hereto and made a part of this CAFO as Appendix A. Appendix A also explains how each of the conditions could lead to a release or inhibit the Facility's ability to minimize the consequences of any release that might occur and provides examples of industry standards of care to minimize such consequences.

a. Neither the designated primary entrance to the AMR nor the door entering the AMR from the electrical switchgear room included an ammonia alarm outside each entrance to warn individuals in the event of a release.

b. There were no emergency ventilation override switches located outside of and adjacent to the primary AMR door.

c. Pressure release valve ("PRV") headers from the System's high-pressure receiver, condensers, and fill lines 1, 2, and 3 discharge horizontally or downwards, and condenser 1 PRV discharges less than 7.25 feet above a working surface.

d. There was no eyewash/safety shower unit outside the primary entrance door to the AMR.

e. There was no audible or visual alarm inside the AMR for the ammonia detection system.

32. By letter dated May 12, 2021, Respondents stated that they had completed the planned actions to correct the conditions of concern that EPA identified during the January 2020 inspection.

IV. ALLEGED VIOLATION

Failure to Minimize the Consequences of Accidental Releases that Might Occur

33. Complainant realleges and incorporates by reference Paragraphs 1 through 32.

34. Pursuant to the General Duty Clause in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty, in the same manner and to the same extent as Section 654 of Title 29, to among other things, take such steps as are necessary to prevent releases identify hazards that may result from accidental releases of such substances.

35. Industry standards and guidelines for minimizing the consequence of an accidental release from ammonia refrigeration systems are found, among other places, in the industry standards referenced in Appendix A. They include emergency planning and preparedness

measures, as well as design and maintenance measures to minimize the severity and duration of releases that do occur.

36. The instances in which EPA alleges that Respondents failed in their general duty to minimize the consequences of a release should one occur are listed in Appendix A. They include, for example, the failure to provide adequate audible/visual alarms in the AMR area, no emergency ventilation override switches located outside of and adjacent to the primary AMR door, there was no eyewash/safety shower unit outside of the primary entrance door to the AMR, and PRV headers were not directed properly.

37. Accordingly, from at least May 15, 2018, through February 19, 2021, EPA alleges that Respondents failed to minimize the consequences of an accidental release should one occur, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

V. TERMS OF SETTLEMENT

38. The provisions of this CAFO shall apply to and be binding on EPA, and on Respondents and their officers, directors, agents, successors, and assigns.

39. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in this CAFO and that this CAFO states a claim, upon which relief may be granted, against Respondents. Respondents hereby waive any defenses they might have as to jurisdiction and venue relating to the violation alleged in this CAFO.

40. Respondents neither admit nor deny the specific factual allegations contained in Section III of this CAFO or the violation alleged in Section IV of this CAFO. Respondents consent to the assessment of the penalty stated herein.

41. Respondents hereby waive their rights to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waive their right to appeal the Final Order.

42. Respondents certify that they are currently operating the Facility in compliance with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

43. Respondents agree to:

a. The issuance of this CAFO;

b. Pay the civil penalty identified in Paragraph 44 below; and

c. Conduct a third-party expert review of their GDC-covered facilities as specified in Paragraphs 48 through 51, below.

Penalty Payment

44. 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 $96,852 for the violations alleged in this matter.

45. Within thirty (30) days of the effective date of this CAFO, Respondents shall pay the total penalty amount of $96,852 using any method or combination of methods, provided on the website http://www2.epa.gov/financial/additional-instructions-making-payments-epa, and identifying the payment with "Docket Number (CAA-01-2023-0034)." **Please do not pay the penalty until receiving a copy of the fully executed CAFO.** In addition, Respondents shall within 24 hours of payment of the penalty, send notice of proof of payment[4] to Mary Jane O'Donnell, U.S. EPA, Region 1, by e-mail to odonnell.maryjane@epa.gov and to Wanda I. Santiago, Regional Hearing Clerk, U.S. EPA, Region 1, by email to r1_hearing_clerk_filings@epa.gov.

[4] Proof of payment means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with Docket No. CAA-01-2023-0034.

46. In the event that any portion of the civil penalty amount described in Paragraph 44 is not paid by the required due date, the total penalty amount of $96,852, plus all accrued interest shall become due immediately to the United States upon such failure. In that event, interest, as calculated in Paragraph 47, shall continue to accrue on any unpaid amounts until the total amount due has been received by the United States. Respondents shall be liable for such amount regardless of whether EPA has notified Respondents of their failure to pay the penalty amount by the due date or made a demand for payment. All payments to the United States under this paragraph shall be made as described in Paragraph 45.

47. In the event that any portion of the civil penalty amount relating to the alleged CAA violations is not paid when due without demand, pursuant to Section 113(d)(5) of the CAA, Respondents 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 when due. In that event, interest will accrue from the due date 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 attorney's fees and collection costs. In addition, 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 Respondents' outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

Non-Penalty Conditions

48. As a condition of settlement, Respondents agree to retain at least one third-party expert to lead a minimum system safety evaluation in accordance with the International Institute of Ammonia Refrigeration's Standard 9, 2020 edition ("IIAR 9 audit") at each facility in the Pepsi Beverages Company unincorporated division that uses anhydrous ammonia as a refrigerant, including the Facility (which Respondents plan to audit by December 31, 2023).

49. The third-party expert ("Expert") shall meet the following competency and expertise requirements:

a. The Expert has experience conducting process hazard analyses and audits under Section 112(r) of the CAA;
b. The Expert is knowledgeable about the industry codes, standards, and bulletins that apply to ammonia refrigeration facilities; and
c. The Expert has experience designing refrigeration systems to meet such codes, standards, and bulletins (or has access to someone who does have such design experience).

50. By March 31, 2025, Respondents shall submit to EPA written confirmation that the IIAR 9 audits have been completed at each facility in the Pepsi Beverages Company unincorporated division that uses anhydrous ammonia as a refrigerant.

51. Notifications

a. Submissions required by this CAFO shall be in writing and shall be mailed to the following addresses with a copy also sent by electronic mail:

Mary Jane O'Donnell
U.S. Environmental Protection Agency, Region 1
Enforcement and Compliance Assurance Division
5 Post Office Square, Suite 100
Mail Code: 05-4
Boston, Massachusetts 02109-3912
odonnell.maryjane@epa.gov

and

Kathleen E. Woodward
U.S. Environmental Protection Agency, Region 1
Office of Regional Counsel
5 Post Office Square, Suite 100
Mail Code: 04-2
Boston, Massachusetts 02109-3912
Woodward.kathleen@epa.gov

b. EPA will send all written communications to the following representative(s) for Respondents:

Erica Edwards
Senior Vice President Manufacturing
PepsiCo Beverages North America
700 Anderson Hill Road
Purchase, New York 10577
erica.edwards@pepsico.com

and

David H. Patrick, Esquire
Taft Stettinius & Hollister LLP
2200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
dpatrick@taftlaw.com

Stipulated Penalties

52. In the event that Respondents fail to satisfactorily complete the work described above in Paragraphs 48 through 51 ("the Non-Penalty Conditions"), Respondents shall be liable for stipulated penalties in the following amounts:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$2,500	15th through 30th day
$3,000	31st day and beyond

53. Respondents shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 45, above. Interest and late charges shall be paid as stated in Paragraph 54, below.

54. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that Respondents fail to timely pay any portion of the stipulated penalty relating to the performance of the Non-Penalty Conditions, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

55. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

56. The civil penalty under this CAFO and any interest, nonpayment penalties, and other charges described herein shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondents agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 C.F.R § 1.162-21, 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. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162 (f)(2)(A)(ii), the actions referred to in Paragraphs 48-51 are restitution or required to come into compliance with the law.

VI. ADDITIONAL PROVISIONS

57. Schedules and deadlines for the compliance conditions in Paragraphs 48 through 51 may be extended by the Manager of the EPA Region 1 Enforcement and Compliance Assurance Division, Waste and Chemical Compliance Section, at their discretion, without further amendment of this CAFO. The EPA will provide Respondents with written confirmation and documentation of any such extensions of time.

58. Respondents agree that the time period from the Effective Date of this CAFO until all of the conditions specified in Paragraphs 48 through 51 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Section V of this CAFO. Respondents shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

59. The provisions of this CAFO shall apply to and be binding upon Respondents and their officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this CAFO until the end of the Tolling Period, as set out in Paragraph 58, above, Respondents must give written notice and a copy of this CAFO 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, Respondents shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondents shall not be released from the obligations or liabilities of this CAFO unless the EPA has provided written approval of the release of said obligations or liabilities.

60. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA for the violations alleged herein. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondents to comply with all applicable provisions of federal, state, or local law.

61. This CAFO in no way relieves Respondents or their employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondents in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

62. This CAFO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state, or local law; nor shall it be construed to be a ruling on, or determination of any issue related to any federal, state, or local permit.

63. Except as provided by Paragraph 57, the terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

VI. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

64. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondents' liability for federal civil penalties for the violations specifically alleged above. This release from civil penalty liability does not extend to the Non-Penalty Conditions, as outlined in Paragraphs 48 through 51, above.

65. By signing this CAFO, Respondents acknowledge that this document will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

66. By signing this CAFO, the undersigned representative of Complainant and the undersigned representatives of Respondents each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

67. By signing this CAFO, Respondents certify that the information they have supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondents acknowledge that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

68. Except as qualified by Paragraphs 47 and 54 (collection of unpaid penalties and collection of unpaid stipulated penalties), each party shall bear its own costs and fees in this proceeding including attorney's fees. Respondents specifically waive any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

69. Complainant and Respondents, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondents further consent to accept electronic service of the fully executed CAFO, by e-mail, at: **dpatrick@taftlaw.com.** Respondents understand that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

EFFECTIVE DATE

70. Respondents and Complainant agree to issuance of the attached Final Order. Upon filing, the Regional Hearing Clerk will electronically transmit a copy of the filed CAFO to the Respondents. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

FOR RESPONDENT Bottling Group, LLC:

Signature

9/21/2023
Date

Printed Name: ERICA EDWARDS

Title: SVP of North America Plant Ops

Address: 700 Anderson Hill Rd Purchase NY 10577

FOR RESPONDENT CB Manufacturing Company, Inc.:

Signature

9/21/2023
Date

Printed Name: ERICA EDWARDS

Title: SVP of North America Plant Ops

Address: 700 Anderson Hill Rd Purchase NY 10577

FOR COMPLAINANT:

JAMES CHOW Digitally signed by JAMES CHOW
Date: 2023.09.22 17:21:17 -04'00'

Signature

Dated by electronic signature

James Chow, Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 1 – New England

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

In the Matter of: Bottling Group, LLC operating as Pepsi Beverages Company, and CB Manufacturing Company, Inc. 1400 Pontiac Ave. Cranston, RI 02920 Respondents. Proceeding under Section 113 of the Clean Air Act	Docket Number: CAA-01-2023-0034

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of EPA's Consolidated Rules of Practice, the Consent Agreement is incorporated by reference into this Final Order and is hereby ratified. Respondents Bottling Group, LLC and CB Manufacturing Company, Inc. are ordered to pay the civil penalty of $96,852 in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

SO ORDERED.

LEANN JENSEN

Digitally signed by LEANN JENSEN
Date: 2023.09.25 10:55:03 -04'00'

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

Dated by electronic signature

Attachment A

Recognized and Generally Accepted Good Engineering Practices/Industry Standards of Care

Following inspection of the **PepsiCo, Inc.'s Cranston, Rhode Island facility**, EPA found several conditions that give rise to Section 112(r)(1) of the Clean Air Act ("CAA"), General Duty Clause ("GDC") violations. Significant and representative examples of these are listed in the table below. Many of these conditions indicate that the Facility was not following industry standards of care.

In collaboration with the American National Standards Institute, the International Institute of Ammonia Refrigeration ("IIAR") has issued (and updates) "Standard 2: *Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems ("ANSI/IIAR 2");* Standard 4: *Installation of Closed-Circuit Ammonia Mechanical Refrigeration Systems* ("ANSI/IIAR 4"), Standard 6: *Standard for Testing, Inspection, and Maintenance of Closed-Circuit Ammonia Refrigeration Systems* ("ANSI/IIAR 6"), Standard 7: *Developing Operating Procedures for Closed-Circuit Ammonia Mechanical Refrigerating Systems* ("ANSI/IIAR 7"); and Standard 9: *Standard for Minimum System Safety Requirements for Existing Closed-Circuit Ammonia Refrigeration Systems* ("ANSI/IIAR 9"), *inter alia*, along with other applicable standards and guidance. Bulletins and guidance include, without limitation, IIAR Bulletin No. 109, *Guidelines for IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System* (1997, and in effect until 2019 when ANSI/IIAR 6 replaced it) ("IIAR Bull. 109"); IIAR Bulletin No. 110, *Guidelines for Start-Up, Inspection, and Maintenance of Ammonia Mechanical Refrigerating Systems* (1993, most recently updated in 2007, and in effect until 2019 when ANSI/IIAR 6 replaced it) ("IIAR Bull. 110"); IIAR Bulletin No. 114, *Guidelines for Identification of Ammonia Refrigeration Piping and Components* (1991, most recently updated in 2018) ("IIAR Bull. 114"); IIAR Bulletin No. 116, *Guidelines for Avoiding Component Failure in Industrial Refrigeration Systems Caused by Abnormal Pressure or Shock* (1992) ("IIAR Bull. 116"); and the Ammonia Refrigeration Management Program (2005, most recently updated in 2019) ("IIAR ARM Program"), which is intended to provide streamlined guidance to facilities that have less than 10,000 pounds of ammonia. 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 often incorporated into state building and mechanical codes. Addendum A to ASHRAE Standard 15-2016 (published 2018) modifies ASHRAE Standard 15 to defer regulation of ammonia refrigeration systems to ANSI/IIAR 2. Standard 15 and ANSI/IIAR 2 have historically served as additive standards for regulation of ammonia systems, with ASHRAE addressing general design and IIAR addressing ammonia-specific topics.

The standards of care cited below were in effect or generally recognized (or both) at the time of EPA's inspection in 2020. The chart also includes citations to ANSI/IIAR 9-2020, which was approved by ANSI for publication on March 3, 2020, *after* EPA's 2020

inspection. ANSI/IIAR 9-2020 is cited for informational purposes, as it contains IIAR's latest pronouncement on bare minimum safety standards for ammonia refrigeration systems, regardless of size or age.

Condition	Count(s)/Violation	How Condition Could Lead to or Exacerbate the Consequences of a Release, Causing Harm	Examples of Industry Standards of Care Showing that (1) Hazard is Recognized by Owner/Operator's Industry, and (2) There are Way(s) to Eliminate or Reduce the Hazard
Condition 1 **Duration:** 5/15/18 – 2/9/21 **Description:** The designated primary entrance to the AMR and the door entering the AMR from the electrical switchgear room do not include an ammonia alarm outside the door to warn individuals in the event of a release.	Count 1 – GDC Failure to Minimize the Consequences of Accidental Releases that Might Occur	Properly functioning ammonia detectors and alarms provide early warning that a release is taking place. Alarms outside of an AMR can alert employees that they should not enter the room unprepared, they also facilitate a quick response for employees and emergency responders.	ANSI/IIAR 2-2014, § 7.2 Where an ammonia refrigeration system or equipment is installed outside of a machinery room, the area containing the system or equipment shall comply with this section. ANSI/IIAR 2-2014, § 7.2.3 Level 1 detection and alarm shall be provided in accordance with Section 17.7.1. The detection and alarm system shall comply with Chapter 17. ANSI/IIAR 2-2014, § 6.13.1.3 (requiring A/V alarm within AMR and additional A/V alarms located outside each AMR entrance) + § 6.13.1.2 (setting to enable corrective action to be taken at 25 ppm or higher); ANSI/ASHRAE 15-2013, Section 8.11.2.1; NFPA 1-2012, §§ 53.2.3.1, 53.2.3.1.2. ANSI/IIAR 2-2014, §§ 6.15.2 and 17.6 (requiring ammonia leak detection alarms to be identified by signage adjacent to the A/V alarm devices); ANSI/ASHRAE 15-2013, § 8.11.2.1. ANSI/IIAR 2-2014, §§ 6.13.2 and 17.6 (requiring set detection limits and schedule for calibration of detectors). ANSI/IIAR 9 – 2020, § 7.3.12.1.3 Audible and visual alarms shall be provided inside the AMR. Additional audible and visual alarms shall be provided outside of each entrance to the AMR.
Condition 2 **Duration:** 5/15/18-2/9/21	Count 1 – GDC	In the event of a release, emergency responders need access to clearly labeled emergency control	ANSI/IIAR 2-2014, Sections 6.12.1 and 6.12.2 (requiring emergency shutoff and ventilation control, both to be located outside AMR and adjacent to designated principal

Condition	Count(s)/Violation	How Condition Could Lead to or Exacerbate the Consequences of a Release, Causing Harm	Examples of Industry Standards of Care Showing that (1) Hazard is Recognized by Owner/Operator's Industry, and (2) There are Way(s) to Eliminate or Reduce the Hazard
Description: There were no emergency ventilation override switches located outside primary AMR door.	Failure to Minimize the Consequences of Accidental Releases that Might Occur	switches and they need to be labeled for proper use.	AMR door); ANSI/ASHRAE 15-2013, Section 8.12(i); NFPA 1-2012, Sections 53.2.3.3.1 through 53.2.3.3.11. ANSI/IIAR 9 – 2020, § 7.3.11.2 Emergency ventilation control switches shall be provided outside of the primary entrance to the AMR. Emergency ventilation switch shall have override capabilities of "ON/AUTO."
Condition 3 **Duration**: 5/15/18-2/9/21 **Description:** Pressure release valve ("PRV") headers from the HPR, condensers, and fill lines 1, 2, and 3 discharge horizontally or downwards, and condenser 1 PRV discharges less than 7.25 feet above a working surface.	Count 1 – GDC Failure to Minimize the Consequences of Accidental Releases that Might Occur	PRV headers should not be vented below a roofline or other potential working space. In the event of a release personnel working on the roof or higher level spaces can be exposed to ammonia being evacuated from the system.	ANSI/IIAR 2(2014), Sections 15.5.1.3 and 15.5.1.4 - The discharge termination from pressure relief devices relieving to atmosphere shall not be less than 7.25 ft (2.2 m) above a roof that is occupied solely during service and inspection. Where a higher adjacent roof level is within 20 ft (6.1 m) horizontal distance from the relief discharge, the discharge termination shall not be less than 7.25 ft (2.2 m) above the height of the higher adjacent roof; Discharge piping shall be permitted to terminate not less than 7.25 ft (2.2 m) above platform surfaces, such as upper condenser catwalks, that are occupied solely during service and inspection. ANSI/IIAR 9 – 2020, §§ 7.4.2.2 (The discharge termination from pressure relief devices relieving to atmosphere shall not be less than 7.25 ft [2.2 m] above a roof that is occupied solely during service and inspection; where a higher adjacent roof level is within 20 ft [6.1 m] horizontal distance from the relief discharge, the discharge termination shall not be less) and 7.4.2.3 (Discharge piping shall be permitted to terminate not less than 7.25 ft [2.2 m] above platform surfaces, such as upper condenser catwalks, that are occupied solely during service and inspection).
Condition 4	Count 1- GDC	In the event of an exposure during a release it is important that exposed individuals have an eyewash/safety shower available to try and	ANSI/IIAR 2-2014, Section 6.7.1 Each machinery room shall have access to a minimum of two eyewash/safety shower

Condition	Count(s)/Violation	How Condition Could Lead to or Exacerbate the Consequences of a Release, Causing Harm	Examples of Industry Standards of Care Showing that (1) Hazard is Recognized by Owner/Operator's Industry, and (2) There are Way(s) to Eliminate or Reduce the Hazard
Duration: 5/15/18-2/9/21 **Description**: There was no safety shower outside the primary entrance door to the AMR.	Failure to Minimize the Consequences of Accidental Releases that Might Occur	minimize the potential damage caused by an exposure to anhydrous ammonia. Makes it difficult for emergency responders and workers to safely respond to releases and wash off this corrosive, toxic chemical in the event of exposure.	units, one located inside the machinery room and one located outside of the machinery room. ANSI/IIAR 9 – 2020, § 7.3.7.1 Each AMR shall have at least one eyewash/safety shower located inside the AMR and one eyewash/safety shower located outside the AMR. Each eyewash/safety shower shall meet the requirements detailed in Section 7.3.7.3 (design, installation, and use of eyewash/safety shower equipment shall meet the standards as specified in ANSI/ISEA Z358.1).
Condition 5 **Duration**: 5/15/18-2/9/21 **Description**: There was no audible or visual alarm inside the AMR for the ammonia detection system.	Count 1 – GDC Failure to Minimize the Consequences of Accidental Releases that Might Occur		ANSI/IIAR 2-2014, § 6.13.1.3 Audible and visual alarms shall be provided inside the room to warn that access to the room is restricted to authorized personnel and emergency responders when the alarm has activated. Additional audible and visual alarms shall be located outside of each entrance to the machinery room. § 6.13.1.2 (setting to enable corrective action to be taken at 25 ppm or higher); ANSI/ASHRAE 15-2013, Section 8.11.2.1; NFPA 1-2012, §§ 53.2.3.1, 53.2.3.1.2. ANSI/IIAR 2-2014, §§ 6.15.2 and 17.6 (requiring ammonia leak detection alarms to be identified by signage adjacent to the A/V alarm devices); ANSI/ASHRAE 15-2013, § 8.11.2.1. ANSI/IIAR 2-2014, §§ 6.13.2 and 17.6 (requiring set detection limits and schedule for calibration of detectors). ANSI/IIAR 9 – 2020, § 7.3.12.1.3 Audible and visual alarms shall be provided inside the AMR. Additional audible and visual alarms shall be provided outside of each entrance to the AMR.