



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. CAA-05-2024-0017  
)  
Ice Cream Specialties, Inc. ) Proceeding to Assess a Civil Penalty  
Lafayette, Indiana, ) Under Section 113(d) of the Clean Air Act,  
) 42 U.S.C. § 7413(d)  
Respondent. )  
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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 Ice Cream Specialties, Inc. (ICS), a corporation 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 CAA, 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 CAA, 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 CAA, 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 CAA, 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 CAA, 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 CAA, 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 CAA, 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).<sup>1</sup>

16. Section 112(r)(7)(E) of the CAA, 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 CAA, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

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<sup>1</sup> 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 CAA 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 C.F.R. § 1910.119.

22. Section 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 Hazard Analysis**

23. 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; 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.

**II. Operating Procedures**

24. Section 68.69(c) of the CAPP provides that the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary

sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

### **III. Mechanical Integrity**

25. Section 68.73(e) of the CAPP provides that the owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

### **IV. Compliance Audit**

26. Section 68.79(d) of the CAPP provides that the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

### **V. Emergency Response**

27. Section 68.90(b) of the CAPP provides that the owner or operator of a stationary source whose employees will not respond to accidental releases of regulated substances need not comply with § 68.95 of this part provided, in relevant part, that the owner or operator performs the annual emergency response coordination activities required under § 68.93.

28. Section 68.93 of the CAPP provides that the owner or operator of a stationary source shall coordinate response needs with local emergency planning and response organizations to determine how the stationary source is addressed in the community emergency response plan and to ensure that local response organizations are aware of the regulated substances at the stationary source, their quantities, the risks presented by covered processes, and the resources and capabilities at the stationary source to respond to an accidental release of a regulated substance.

29. Section 68.93(a) of the CAPP provides that coordination shall occur at least annually, and more frequently, if necessary, to address changes: At the stationary source; in the stationary source's emergency response and/or emergency action plan; and/or in the community emergency response plan.

30. Section 68.93(b) of the CAPP provides that coordination shall include providing to the local emergency planning and response organizations: The stationary source's emergency response plan if one exists; emergency action plan; updated emergency contact information; and other information necessary for developing and implementing the local emergency response plan. For responding stationary sources, coordination shall also include consulting with local emergency response officials to establish appropriate schedules and plans for field and tabletop exercises required under § 68.96(b). The owner or operator shall request an opportunity to meet with the local emergency planning committee (or equivalent) and/or local fire department as appropriate to review and discuss those materials.

31. Section 68.93(c) of the CAPP provides that the owner or operator shall document coordination with local authorities, including: The names of individuals involved and their contact information (phone number, email address, and organizational affiliations); dates of coordination activities; and nature of coordination activities.

### **Administrative Authority**

32. 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.

33. 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.

34. 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**

35. ICS owns and operates an ammonia refrigeration system at its ice cream novelty manufacturing facility at 2600 Concord Road, Lafayette, Indiana 47909 (Facility).

36. ICS 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.

37. At the Facility, ICS operates 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.

38. Since at least 1999, ICS'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.

39. ICS's ammonia refrigeration system at the Facility services 3 freezer rooms and consists of 12 compressors (including compressor BC-02), 46 vessels, 23 evaporators, 1 purger, 32 heat exchangers, 2 condensers, 8 ammonia pumps, and 3 water pumps (the Covered Process).



40. ICS's Covered Process at the Facility has had a regulated substance present in more than a threshold quantity as determined under § 68.115, since at least 1999.

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

42. 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 C.F.R. 1910.119(b).

43. ICS's Covered Process at the Facility does not meet the Program 1 requirements at 40 C.F.R. § 68.10(g).

44. 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**

45. On July 12, 2022, EPA conducted an announced inspection of ICS's Facility (the Inspection).

46. During the Inspection, EPA inspectors reviewed documents provided by ICS (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 Hazard Analysis**

47. During the Inspection, EPA reviewed Process Hazard Analyses (PHA) documentation from 2014 (2014 PHA) and 2019 (2019 PHA).

48. The 2014 PHA had three recommendations that had not been resolved by the time of the Inspection and six were completed between 2019 and 2022.

49. The 2019 PHA had four recommendations that had not been resolved by the time of the Inspection and six recommendations that took greater than a year from the scheduled completion date to be resolved.

## **II. Operating Procedures**

50. During the Inspection, EPA reviewed the Facility's written operating procedures.

51. EPA reviewed the written operating procedure for the inspection of compressor BC-02 during the Inspection and compared it to the daily inspection log utilized by operators while inspecting the compressors. EPA noted a discrepancy between the operating procedure and the inspection log.

52. EPA asked ICS personnel about the discrepancy between the compressor BC-02 operating procedure and the inspection log and ICS personnel informed EPA that the operating procedure was written incorrectly.

## **III. Mechanical Integrity**

53. During the Inspection, EPA reviewed mechanical integrity documentation.

54. ICS's mechanical integrity program includes annual ammonia system inspections and an in-depth mechanical integrity inspection every five years.

55. EPA reviewed a Mechanical Integrity inspection report (MI Report) from 2021 and recommendation documentation from the 2016 MI Report. EPA also reviewed annual ammonia system inspection reports for 2019 (2019 AAI Report) and 2020 (2020 AAI Report).

56. ICS took longer than a year from the scheduled completion date to resolve six recommendations from the 2016 MI Report and one finding was not resolved by the time of the Inspection.

57. ICS took greater than a year from the scheduled completion date to resolve 14 recommendations from the 2019 AAI and 203 recommendations were not addressed by the time of the Inspection.

#### **IV. Compliance Audits**

58. During the Inspection, EPA reviewed ICS's two most recent compliance audits, which were completed in April 2017 and April 2020.

59. ICS completed three recommendations from the April 2017 compliance audit after 2020 and 15 recommendations did not have a date of completion recorded.

#### **V. Emergency Response**

60. During the Inspection, EPA reviewed documents related to emergency response at the Facility and interviewed ICS personnel about emergency response at the Facility.

61. ICS held no annual coordination activities with Local Emergency Planning Committees (LEPC) nor the local fire department.

62. At the time of the Inspection, ICS was not aware of whether the Facility was addressed in the community emergency response plan.

#### **CAPP Violations**

63. A finding of violation was issued to ICS on January 9, 2023 (January FOV), alleging violations of the CAPP.

64. On February 13, 2023, EPA and representatives from ICS met to discuss the allegations presented in the January FOV (113 Conference) that are detailed in paragraphs 67 through 71.

65. During the 113 Conference, representatives detailed corrective actions that have been taken and corrective actions that are planned to be taken (Corrective Actions) to bring the Facility into compliance.

66. On March 10, 2023, ICS sent an email with attachments that corroborate the Corrective Actions shared during the 113 Conference.

#### **I. Process Hazard Analysis**

67. In violation of 40 C.F.R. § 68.67(e), ICS failed to establish a system to promptly address PHA findings and recommendations, assure that the recommendations are resolved in a timely manner, and complete actions as soon as possible.

#### **II. Operating Procedures**

68. In violation of 40 C.F.R. § 68.69(c), ICS failed to assure that their operating procedures reflect current operating practices.

#### **III. Mechanical Integrity**

69. In violation of 40 C.F.R. § 68.73(e), ICS failed to correct deficiencies in equipment in a safe and timely manner.

#### **IV. Compliance Audits**

70. In violation of 40 C.F.R. § 68.79(d), ICS 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.

#### **V. Emergency Response**

71. In violation of 40 C.F.R. § 68.93(a-c), ICS failed to coordinate annually with the LEPC and local fire department, ensure that the Facility is addressed in the community emergency response plan, and document the annual coordination activity.

**Civil Penalty**

72. 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 \$176,708.

73. Penalty Payment. Respondent agrees to:

- a. pay the civil penalty of \$176,708 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 <a href="https://pay.gov">Pay.gov</a></p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express &amp; Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> <li>• Go to <a href="https://pay.gov">Pay.gov</a> and enter “SFO 1.1” in the form search box on the top left side of the screen.</li> <li>• Open the form and follow the on-screen instructions.</li> <li>• Select your type of payment from the "Type of Payment" drop down menu.</li> <li>• Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field</li> </ul>
<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 <b>standard delivery</b>:</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 <b>signed receipt confirmation</b> (FedEx, UPS, Certified Mail, etc):</p> <p>U.S. Environmental Protection Agency            Government Lockbox 979078            3180 Rider Trail S.            Earth City, MO 63045</p>

74. 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](mailto:R5airenforcement@epa.gov)

Susan Prout  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
Prout.susan@epa.gov

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

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

76. 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.

77. 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).

78. 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). Failure to comply with providing 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. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and 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 therein 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 [wise.milton@epa.gov](mailto:wise.milton@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 Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

### **Supplemental Environment Project**

79. In response to the alleged violations of the CAPP and in settlement of this matter, although not required by the CAPP or any other federal, state, or local law, Respondent agrees to complete a supplemental environmental project (SEP) with three separate components as described in Attachment A.

80. This SEP is consistent with applicable U.S. EPA policy, specifically the "2015 Update to the 1998 U.S. Environmental Protection Agency Supplemental Environmental Projects Policy," dated March 10, 2015. The SEP advances at least one of the objectives of the CAPP by providing new and upgraded emergency response equipment and training to the local fire department and installing and operating a remote display ammonia detection system. The SEP is not inconsistent with any provision of the CAPP. The SEP relates to the alleged violations and is designed to reduce the overall risk to public health and the environment potentially affected by the alleged violations by increasing the effectiveness of emergency response organizations that serve the Facility and other sources in the region.

81. The area surrounding the Facility has environmental justice concerns and this SEP will serve to prevent or mitigate potential releases of toxic chemicals from the Facility and similar facilities in the area.

82. Respondent shall complete this SEP related to Emergency Planning and Preparedness, consisting of providing emergency response equipment and training to the local fire department, and installing and operating a remote display ammonia detection system. The SEP is more specifically described in Attachment A and incorporated herein by reference.

83. Respondent agrees to spend at least \$84,500 on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. If Respondent's implementation of the SEP as described in Attachment A does not expend the full amount set forth in this paragraph, and if U.S. EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency-response equipment, Respondent will identify, purchase and provide additional emergency-response equipment to the local fire department identified in Attachment A.

84. Respondent shall complete the SEP within 365 days of the effective date of this CAFO.

85. Respondent must publish a technical assistance plan to assist public understanding of the project.

86. Respondent must continuously use or operate the remote display ammonia detection system for 10 year(s) following its installation.

87. Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information it provided to U.S. EPA in connection with U.S. EPA's approval of the SEP is complete and accurate, that it in good faith estimates that the cost to implement the SEP is \$85,927;
- b. That it will not include administrative costs or employee oversight of the implementation of the SEP in its project costs.

- c. That, as of the date it signs this CAFO, it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief awarded in any other action in any forum;
- d. That it has not received, and will not have received credit for the SEP in any other enforcement action;
- e. That it will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That the SEP is not a project that it was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
- g. That, for Federal Income Tax purposes, it will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.
- h. That it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 82.
- i. That it has inquired of the Special Operations Division of the Lafayette Fire Department and Wagner-Meinert, LLC whether either is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the recipient and implementer that neither is a party to such a transaction.

88. Respondent must maintain copies of the underlying research and data for all reports submitted to U.S. EPA pursuant to this CAFO. Respondent must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

89. SEP Reports

- a. Respondent must submit a SEP Completion Report to U.S. EPA by 13 months after the effective date of this CAFO.
- b. This SEP Completion Report must contain the following information, with supporting documentation:
  - i. Detailed description of the SEP as implemented;
  - ii. Description of any operating problems and the actions taken to correct the problems;
  - iii. Itemized costs;
    1. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs.  
  
Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
  - iv. Certification that the SEP has been fully implemented pursuant the provisions of this CAFO; and
  - v. Description of the environmental and public-health benefits resulting from the SEP (with a quantification of the benefits and pollution reductions, if feasible).

- c. Respondent agrees that failure to submit the SEP Completion Report required by subsection (a) above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 91 below.
- d. Respondent must submit all notices and reports required by this CAFO via email to [R5AirEnforcement@epa.gov](mailto:R5AirEnforcement@epa.gov).

90. U.S. EPA acceptance of SEP Report

- a. Following receipt of the SEP Completion Report described in paragraph 89, above, U.S. EPA will notify Respondent, in writing, indicating:
  - i. Any deficiencies in the SEP Completion Report; U.S. EPA will give Respondent 30 days to correct the deficiencies; or
  - ii. That Respondent has achieved satisfactory completion of the SEP;
  - iii. That Respondent has not achieved satisfactory completion of the SEP; U.S. EPA may seek stipulated penalties in accordance with paragraph 91 below.
- b. If U.S. EPA elects to exercise option (i) above, i.e., if U.S. EPA determines the SEP Report to be deficient but U.S. EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. U.S. EPA and Respondent shall have an additional thirty (30) days from the receipt by U.S. EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, U.S. EPA shall provide a written statement of its decision on adequacy of the

completion of the SEP to Respondent, which decision shall be final and binding upon Respondent.

91. Stipulated Penalties: If Respondent violates any requirement of this CAFO relating to the SEP, upon demand by U.S. EPA, Respondent must pay stipulated penalties to the United States as follows:

- a. Late SEP completion: Except as provided in subparagraphs (b) and (c), below, if Respondent did not achieve satisfactory completion of the SEP specified in Paragraph 82 by the agreed-upon deadline according to the requirements of this CAFO including the schedule in paragraph 84, Respondent agrees to pay, in addition to the assessed civil penalty in paragraph 73, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement, not to exceed the amount specified in Paragraph 91(c):
  - i. \$250 per day for days 1–30
  - ii. \$300 per day for days 31–60
  - iii. \$500 per day for days 61 or greater
- b. Late SEP reports: If Respondent did not timely submit the SEP report as required by paragraph 88 in accordance with the timelines set forth in this CAFO, Respondent agrees to pay the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety, not to exceed the amount specified in Paragraph 90(c):
  - i. \$100 per day for days 1–30
  - ii. \$150 per day for days 31–60

iii. \$250 per day for days 61 or greater

U.S. EPA, at its sole discretion, will determine whether Respondent timely submitted the SEP report.

- c. Failure to achieve satisfactory completion of the SEP: If Respondent does not achieve satisfactory completion of the SEP, including spending the minimum amount on the SEP set forth in Paragraph 83 above, Respondent shall pay a stipulated penalty to the United States in the amount of \$100,000. "Satisfactory completion" of the SEP means Respondent spent no less than \$84,500 to provide emergency response equipment and training to the local fire department and installing and operating a remote display ammonia detection system within 365 days of the effective date of this CAFO. U.S. EPA, at its sole discretion, will determine whether Respondent has achieved satisfactory completion of the SEP.
- d. U.S. EPA, at its sole discretion, may waive or reduce a stipulated penalty under Paragraph 91.
- e. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by U.S. EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 73 above. Interest and late charges shall be paid as stated in Paragraph 77.

92. Any public statement, oral or written, in print, film, or other media, that Respondent or a representative of Respondent makes in reference to the SEP under this CAFO from the date of its execution of this CAFO shall include the following language, "Ice Cream Specialties undertook this project under the settlement of the United States Environmental Protection Agency's enforcement

action against Ice Cream Specialties for alleged violations of the Chemical Accident Prevention Provisions at 40 C.F.R. Part 68.”

93. Use of SEP Implementer and Identification of SEP Recipient:

a. SEP Implementer

- i. Respondent has selected Wagner-Meinert, LLC as a contractor to assist with implementation of the SEP.

b. SEP Recipient

- i. Respondent has selected the Special Operations Division of the Lafayette Fire Department to receive emergency response equipment and training.

- c. U.S. EPA had no role in the selection of any SEP implementer, SEP recipient, or specific equipment identified in the SEP, nor shall this CAFO be construed to constitute U.S. EPA approval or endorsement of any SEP implementer, SEP recipient, or specific equipment identified in this CAFO.

94. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within ten days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent’s past, current, and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this subparagraph, Respondent will not receive an extension of time to complete the SEP.



- b. If the parties agree that unforeseeable circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If U.S. EPA does not agree that unforeseeable circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delay in completing the SEP will not be excused.
- d. Respondent has the burden of proving that unforeseeable circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

95. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under this CAFO. Respondent shall be responsible for obtaining any necessary permits associated with the SEP.

#### **General Provisions**

96. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Prout.Susan@epa.gov (for Complainant), and [rkemper@thompsoncoburn.com](mailto:rkemper@thompsoncoburn.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

98. 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.

99. 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 97, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

100. Respondent certifies that it is complying fully with the CAPP.

101. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

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

103. 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.

104. Each party agrees to bear its own costs and attorney's fees in this action.

105. This CAFO constitutes the entire agreement between the parties.

Ice Cream Specialties, Respondent

3/8/2024  
Date

  
John FitzSimons  
General Manager  
Ice Cream Specialties

43-0727618  
Tax Identification Number

**United States Environmental Protection Agency, Complainant**

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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: Ice Cream Specialties  
Docket No. CAA-05-2024-0017**

**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