

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

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BEFORE THE ADMINISTRATOR

In the Matter of:

Lincoln Cold Storage, Incorporated,

Respondent.

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Docket No. CAA-07-2019-0159

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Lincoln Cold Storage, Incorporated (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties 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, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated the General Duty Clause set forth in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and that Respondent is therefore in violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these violations.

### Parties

3. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.
4. Respondent is Lincoln Cold Storage, Incorporated, a corporation in good standing under the laws of the state of Nebraska and doing business in the state of Nebraska, which owned and operated the facility located at 1700 Folsom Street, Lincoln, Nebraska 68522 (the Facility). The Lincoln Cold Storage facility is a refrigerated warehousing and storage business.

### Statutory and Regulatory Background

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990, which added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The stated objective of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), is to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.
6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), commonly referred to as the General Duty Clause, the 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 the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 *et seq.*, to identify hazards which may result from accidental releases using appropriate hazard assessment techniques, to design and maintain a safe facility, taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.
7. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$47,367 for violations that occur after November 2, 2015, and are assessed after January 15, 2019.

### Definitions

8. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.
9. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.
10. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C) defines “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.
11. Pursuant to 40 C.F.R. § 68.3, anhydrous ammonia is a “regulated substance” listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and 40 C.F.R. § 68.130. Additionally, anhydrous ammonia is an “Extremely hazardous substance” or “EHS,” as defined pursuant to Section 302 of the Emergency Planning and Community Right-to-Know Act (EPCRA), and 40 C.F.R. part 355, Appendices A and B.

### General Factual Allegations

12. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
13. Respondent was, at all times referred to herein, the owner or operator of the Facility.
14. Accidental ammonia releases can cause injuries and death to employees, emergency response personnel, and people in surrounding communities.
15. The Facility was, at all times referred to herein, a “stationary source” pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).
16. The Lincoln Cold Storage Facility experienced a release of anhydrous ammonia on March 29, 2017 that resulted in a response from Lincoln Fire and Rescue, the city fire department. Following this event, Lincoln Cold Storage was requested to provide answers to a Chemical Release Questionnaire (CRQ) by EPA, pursuant to CERCLA § 104(e). Respondent’s answers to the questionnaire stated that the March 29, 2017 release was 1,865 pounds of anhydrous ammonia.
17. During the March 29, 2017 release, traffic on nearby streets was shut down. The Facility’s alarm and ventilation system failed to operate in the “machine room” where the ammonia system was located, although the machine room’s sprinkler system had

improperly activated. The Facility's refrigeration process and ventilation system were only manually operated from inside the machine room (where the release occurred), and Respondent and the Fire Department were unable to shut down the system or ventilate the machine room. "Level A" personal protective equipment was ultimately required to make entry to activate ventilation. The release continued for at least four hours. The cause of the ammonia release was found to be a failed pressure relief valve. Respondent's CRQ response stated that 1,265 pounds of anhydrous ammonia were released to the air, and 600 pounds drained to the sewer system.

18. On or about October 3, 2017, the EPA conducted an inspection of the Facility to determine Respondent's compliance with Section 112(r) of the CAA (the EPA inspection).
19. Information gathered from Respondent's answers to the CRQ and during the EPA inspection revealed that the Respondent processed, handled, and/or stored the anhydrous ammonia at the Facility.
20. From the time Respondent first stored and used onsite anhydrous ammonia at the Facility, Respondent was subject to the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), because it was the owner and operator of a stationary source that was producing, processing, handling or storing a regulated substance listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3).
21. Individual engineering standards exist for the safe management and maintenance of anhydrous ammonia systems in refrigeration operations. These standards include but are not limited to the American National Standard Institute (ANSI) and the International Institute of Ammonia Refrigeration (IIAR) standards (2-2014 version), which state in pertinent part:
  - a) Section 1.1 states: "**Purpose.** This standard specifies minimum requirements for the safe design of closed-circuit ammonia refrigeration systems."
  - b) Section 5.9.3 states: "**Oil Removal.** Oil removal shall be accomplished by one or more of the following:
    1. A rigid-piped oil return or transfer system.
    2. A vessel equipped with a shut-off valve in series with a self-closing shut-off valve.
    3. A valve and piping assembly at the draining point where oil is removed from the system. At a minimum, a shut-off valve in series with a self-closing shut-off valve is required."
  - c) Section 6.7.1 (**Eyewash/Safety Shower**) states: "**General.** Each machinery room shall have access to a minimum of two eyewash/safety shower units, one located inside the machinery room and one located outside of the machinery room, each meeting the requirements in Section 6.7.3 Additional eyewash/safety shower units shall be installed such that the path of travel in the machinery room is no more than 55 ft to an eyewash/safety shower unit."

- d) Section 6.9.3 states: “**Control of Ammonia Spills.** A means shall be provided to limit the spread of a liquid ammonia spill into the machinery room drainage system.”
- e) Section 6.10.2 states: “**Door Features.** Machinery room doors shall be self-closing and tight fitting. Doors that are part of the means of egress shall be equipped with panic hardware and shall be side hinged to swing in the direction of egress for occupants leaving the machinery room. Where the machinery room is not provided with fire sprinklers, doors communicating with the building interior shall be 1-hour fire rated. Doors to the outdoors shall be fire rated where required by the Building Code based on the fire rating required for exterior wall openings.”
- f) Section 6.12.1 states: “**Emergency Stop Switch.** A clearly identified emergency shut-off switch with a tamper-resistant cover shall be located outside and adjacent to the designated principal machinery room door. The switch shall provide off-only control of refrigerant compressors, refrigerant pumps, and normally closed automatic refrigerant valves located in the machinery room. The function of the switch shall be clearly marked by signage near the controls.”
- g) Section 6.12.2 states: “**Emergency Ventilation Control Switch.** A clearly identified control switch for emergency ventilation with a tamper-resistant cover shall be located outside the machinery room and adjacent to the designated principal machinery room door. The switch shall provide “ON/ AUTO” override capability for emergency ventilation. The function of the switch shall be clearly marked by signage near the controls.”
- h) Section 6.13.2.2 (**Ammonia Detection and Alarm**) states: “Detection of ammonia concentrations equal to or exceeding 25 ppm shall activate visual indicators and audible alarms as specified in Section 6.13.1. The visual indicator and audible alarm shall be permitted to automatically reset if the ammonia concentration drops below 25 ppm.”
- i) Section 6.13.2.3 (**Ammonia Detection and Alarm**) states: “Detection of ammonia concentrations equal to or exceeding 150 ppm (1/2 IDLH) shall activate visual indicators and an audible alarm and shall activate emergency ventilation, where required, in accordance with Section 6.14.7. Once activated, emergency ventilation shall continue to operate until manually reset by a switch located in the machinery room.”
- j) Section 6.14.7.2 (**Emergency Ventilation**) states: “Emergency mechanical ventilation shall be activated by both of the following:
  - 1. Ammonia leak detection complying with Section 6.13.
  - 2. A manual control switch provided in accordance with Section 6.12.2.”

### Allegations of Violation

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

**Count 1**

23. The facts stated in Paragraphs 12 through 22 above are herein incorporated.
24. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling, or storing any substance 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 the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 *et seq.*, *inter alia* to design and maintain a safe facility, taking such steps as are necessary to prevent releases.
25. At least through the date of EPA's inspection, Respondent had failed to design and maintain a safe facility, taking such steps as necessary to prevent releases. Specifically, Respondent had not identified nor implemented the following:
  - a) the facility had no written operating procedures for the ammonia refrigeration system;
  - b) the facility had no maintenance logs or documentation of maintenance for the ammonia refrigeration system;
  - c) the facility had no calibration records for the ammonia refrigeration system;
  - d) the facility had no training records for the ammonia refrigeration system;
  - e) the facility had no incident investigation program;
  - f) the facility had no documentation of self-audits;
  - g) the facility had failed to maintain and operate a safe facility in conformance with current codes/standards (ANSI/IIAR 2-2014), including but not limited to the following:
    - (i) adequate eyewash/safety shower installations (Section 6.7.1).
    - (ii) the facility maintenance person was not aware or trained in the operation procedure for the proper and safe draining of oil from the ammonia refrigeration system although he performed this function (Section 5.9.3).
    - (iii) the drain in the machine room was not designed to prevent releases of ammonia from reaching the sewer system (Section 6.9.3).
    - (iv) the machinery room interior door from the facility was not hinged to swing in the direction of egress (Section 6.10.2). emergency switches did not function; alarm was not installed or did not function.
    - (v) the facility did not have functioning emergency stop or ventilation switches (Sections 6.12.1 and 6.12.2).
    - (vi) the facility did not have a functioning ammonia detection and alarm system, or a manual system, that would activate the machine room ventilation system to address a release (Sections 6.13.2.2, 6.13.2.3 and Section 6.14.7.2).
26. As a result, Respondent failed to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases.

27. Respondent's failure to meet its general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases, is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

**CONSENT AGREEMENT**

28. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- a) admits the jurisdictional allegations set forth herein;
  - b) neither admits nor denies the specific factual allegations stated herein;
  - c) consents to the assessment of a civil penalty, as stated herein;
  - d) consents to the issuance of any specified compliance or corrective action order;
  - e) consents to any conditions specified herein;
  - f) consents to any stated Permit Action;
  - g) waives any right to contest the allegations set forth herein; and
  - h) waives its rights to appeal the Final Order accompanying this Consent Agreement.
29. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.
30. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

**Penalty Payment**

31. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of \$40,400, as set forth below.
32. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000

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

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

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Howard C. Bunch, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

34. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

#### **Effect of Settlement and Reservation of Rights**

35. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA or any other applicable law.
36. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.
37. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with a companion administrative Order for Compliance on Consent (Order) that establishes a schedule for Respondent to address the cited violations (Docket No. CAA-07-2019-0200). Upon completion of the work required by the referenced Order, Respondent believes that it will be in full compliance with the Clean Air Act.
38. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and regulations promulgated thereunder.



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

**General Provisions**

40. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.
41. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
42. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.
43. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT:**  
**LINCOLN COLD STORAGE, INCORPORATED**

Date: 5-13-19

  
Signature

Aaron J Nelson  
Name


Pres  
Title

**COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 6/23/19

  
DeAndre Singletary  
Acting Director  
Enforcement and Compliance Assurance Division

Date: 6/27/19

  
Howard C. Bunch  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 7

**FINAL ORDER**

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

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

IT IS SO ORDERED.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

July 1, 2019  
Date