

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

FILED

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**U.S. EPA REGION 1
HEARING CLERK**

In the Matter of:)

NSD Seafood Inc. d/b/a Atlantic Fish)
& Seafood,)
Gloucester Cold Storage Inc.,)

and)

NSDJ Real Estate, LLC)

Respondents.)

Proceeding under Section 113(d) of the)
Clean Air Act, 42 U.S.C. § 7413(d))
_____)

Docket No. CAA-01-2024-0036

**CONSENT AGREEMENT
AND FINAL ORDER**

I. CONSENT AGREEMENT

1. The issuance of this Consent Agreement (“Consent Agreement”) and attached Final Order (“Final Order”), in accordance with 40 C.F.R. § 22.13(b), simultaneously commences and concludes an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 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 United States Environmental Protection Agency, Region 1 (“EPA”).

3. Respondents are NSDJ Real Estate, LLC, NSD Seafood Inc. d/b/a Atlantic Fish & Seafood, and Gloucester Cold Storage Inc. ("Respondents").

4. Complainant and Respondents, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement and the attached final order without adjudication of any issues of law or fact herein, and Respondents agree to comply with the terms of this Consent Agreement and Final Order ("CAFO").

II. PRELIMINARY STATEMENT

5. This Consent Agreement and Final Order is entered into under Sections 113(a)(3)(A) and 113(d) of the CAA, 42 U.S.C. §§ 7413(a)(3)(A) and 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.

6. EPA and the U.S. Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for administrative penalty assessment. 42 U.S.C. § 7413(d)(1); 40 C.F.R. § 19.4 (containing the inflation adjustment for the administrative penalty cap set out in 42 U.S.C. § 7413(d)(1)).

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 an administrative proceeding for the assessment of monetary penalties, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d). As discussed below, the CAFO resolves the following violations that Complainant alleges occurred in connection with Respondents' storage and handling of

anhydrous ammonia at its seafood processing and cold storage warehouse facility in Gloucester, Massachusetts:

- a. Failure to design and maintain a safe facility, taking such steps as are necessary to prevent such releases, in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1); and
- b. Failure to minimize the consequences of a release should one occur, in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

III. STATUTORY AND REGULATORY AUTHORITY

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

10. Pursuant to 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 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 which 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 which do occur. This section of the CAA is referred to as the “General Duty Clause.”

11. The extremely hazardous substances listed pursuant to Section 112(r)(3) include, among others, anhydrous ammonia.

12. 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.

13. 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.

14. The term “have a general duty in the same manner and to the same extent as section 654 of title 29 [of the U. S. 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”).¹

15. The intent of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), is for facility owners and operators to implement all feasible means to reduce the threat of death, serious

¹ Section 654 of the Occupational Safety and Health Act provides, in pertinent part, that “[e]ach employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees” and “shall comply with occupational safety and health standards promulgated under this act.” 29 U.S.C. § 654. See Duriron Co., Inc. v. Sec’y of Labor, 750 F.2d 28 (6th Cir. 1984). The legislative history for the CAA General Duty Clause points to Duriron as a guide for EPA’s application of the GDC. Duriron criteria are those established earlier in National Realty & Construction Co. v. OSHRC, 489 F.2d 1257 (D.C. Cir. 1973), namely, that OSHA must prove that: (1) the employer failed to render the workplace free of a hazard; (2) the hazard was recognized either by the cited employer or generally within the employer’s industry; (3) the hazard was causing or was likely to cause death or serious physical harm; and (4) there was a feasible means by which the employer could have eliminated or materially reduced the hazard. For purposes of complying with the CAA General Duty Clause, owners and operators must maintain a facility that is free of a hazard, the hazard must be recognized by the owner/operator or recognized by the owner/operator’s industry, the hazard from an accidental release must be likely to cause harm, and the owner/operator must be able to eliminate or reduce the hazard. See EPA’s May 2000 Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1) at 11, n.4, available at <https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf>.

injury, or substantial property damage to satisfy the requirements of the General Duty Clause.

S. Rep. 101-228, 1990 U.S.C.C.A.N. 3385, 3595 (1989).

16. EPA routinely consults 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 recognized 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.

17. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), allow EPA to assess civil penalties for violations of the General Duty Clause. The maximum penalty amount for these violations have been adjusted for inflation over the years pursuant to the following statutes and regulations: the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended through 2016 (“FCPIAA”), 28 U.S.C. § 2461 note; the Debt Collection Improvements Act of 1996 (“DCIA”), 31 U.S.C. § 3701; and EPA’s Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which was promulgated pursuant to the DCIA and FCPIAA and last updated at 88 Fed. Reg. 89,309, 89,312 (Dec. 27, 2023). The current inflation-adjusted penalty maximum is \$57,617 per day per violation.

IV. GENERAL ALLEGATIONS

18. At all times relevant to the violations alleged herein, Respondents owned and operated a seafood processing and cold storage warehouse facility located at 159 East Main

Street in Gloucester, Massachusetts (the "Facility"). The Facility is one building that consists of two separate spaces on either side of a dividing wall.

19. NSDJ Real Estate, LLC is the owner of the Facility.

20. One side of the Facility is used for seafood processing and packaging and is operated by NSD Seafood Inc., doing business as "Atlantic Fish & Seafood."

21. The other side of the Facility is a cold storage warehouse used to store the packaged seafood and is operated by Gloucester Cold Storage Inc.

22. The Facility is located alongside Gloucester's Inner Harbor in a large and densely populated residential area. It is within a half of a mile of hundreds of homes, restaurants, and other businesses, and within a quarter of a mile of an elementary school and at least two houses of worship.

23. Respondent NSDJ Real Estate, LLC is a limited liability company, while both NSD Seafood Inc. and Gloucester Cold Storage Inc. are corporations. Respondents have common ownership and all are organized under the laws of the Commonwealth of Massachusetts.

24. 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).

25. The Facility is a building or structure from which an accidental release may occur and is therefore a "stationary source" as that term is defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

26. At all times relevant to the violations alleged herein, Respondents were the “owner[s] or operator[s]” of the Facility, within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

27. At the times relevant to the violations alleged herein, Respondents used anhydrous ammonia in two refrigeration systems at the Facility. The ammonia refrigeration system on the Atlantic Fish & Seafood side of the Facility uses approximately 1,543 pounds of anhydrous ammonia. The ammonia refrigeration system on the Gloucester Cold Storage side of the Facility uses approximately 7,075 pounds of anhydrous ammonia. Accordingly, Respondents “stored” and “handled” anhydrous ammonia, which, as indicated in Paragraphs 10 and 11 above, is subject to the General Duty Clause.

28. Accordingly, at the time of the violations alleged herein, Respondents operated a stationary source that handled and stored anhydrous ammonia and thus was subject to the General Duty Clause found in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

29. Anhydrous ammonia is a clear, colorless gas at atmospheric pressure and temperature with a strong odor. It is often stored and shipped under pressure as a liquid. It presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. Inhalation of ammonia may cause irritation and burns of the respiratory tract, laryngitis, shortness of breath, high-pitched respirations, chest pain, pulmonary edema, and pneumonia. Ammonia vapors may be fatal if inhaled. Ingestion of ammonia may cause nausea, vomiting, and oral, esophageal, and stomach burns. If ammonia has contacted the eyes, irritation, pain, conjunctivitis, tearing, and corneal erosion may occur, and loss of vision is possible. Dermal

exposure may result in severe burns and pain. Exposure to 300 parts per million of ammonia by volume is immediately dangerous to life and health.

30. Ammonia gas is generally regarded as nonflammable but burns at concentrations of approximately 15.5% to 27% by volume in air with strong ignition. 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. The fire hazard increases in the presence of oil or other combustible materials.

31. Due to the dangers associated with anhydrous ammonia, the ammonia refrigeration industry has developed industry standards to control the risks associated with the use of ammonia, specified in Appendix A. These standards are consistently relied upon by refrigeration experts and are sometimes incorporated by reference into state building and mechanical codes.

32. On September 15, 2022, EPA conducted an inspection at the Facility (the "Inspection"). The purpose of the Inspection was to determine whether Respondents were complying with Section 112(r) of the CAA and the Emergency Planning and Community Right-to-Know Act.

33. The EPA inspectors toured the Facility's perimeter, roof, the ammonia machinery room ("AMR") for each refrigeration system, cold storage spaces on the first and third floors, and the chemical storage area.

34. The Inspection and EPA's review of information provided by Respondents revealed several potentially dangerous conditions relating to the Atlantic Fish & Seafood ("AF") refrigeration system and the Gloucester Cold Storage ("GCS") refrigeration system. These were

explained in EPA's out-brief meeting with Respondents at the conclusion of the Inspection and detailed in EPA's Inspection Report, which was later provided to Respondents.

35. The potentially dangerous conditions identified by EPA are listed in the chart attached to 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 includes examples of recognized industry standards of care that could feasibly reduce or eliminate the hazard.

V. VIOLATIONS

COUNT I – FAILURE TO DESIGN AND MAINTAIN A SAFE FACILITY

36. The allegations in Paragraphs 1 through 35 are hereby realleged and incorporated herein by reference.

37. Pursuant to the General Duty Clause, 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, design and maintain a safe facility, taking such steps as are necessary to prevent releases.

38. The recommended industry practice and standard of care for designing and maintaining a safe facility so as to prevent releases of extremely hazardous substances is to base design considerations upon applicable design codes, federal and state regulations, and industry guidelines to prevent releases or minimize their impacts as well as to develop and implement standard operating procedures, maintenance programs, personnel training programs, management of change practices, incident investigation procedures, self-audits, and

preventative maintenance programs. EPA's *Guidance for Implementation of the General Duty Clause: Clean Air Act Section 112(r)(1)* (May 2000) explains broad categories of measures appropriate for preventing releases of extremely hazardous substances, and the International Institute of Ammonia Refrigeration and others have developed more specific standards and guidelines for preventing releases of ammonia, set out in Appendix A.

39. The instances in which EPA alleges that Respondents failed in their general duty to design and maintain the Facility in a safe manner, taking such steps as are necessary to prevent a release of an extremely hazardous substance, are listed under Conditions 1-5 of Appendix A, which is incorporated by reference into this CAFO. They include, for example, the failure to provide impact protection and adequate supports for piping and equipment, to address areas of breached insulation, and to adequately label all ammonia piping.

40. Examples of industry standards associated with each instance in which Respondents failed in their general duty to design and maintain a safe facility (identified in Appendix A) demonstrate that the hazard is recognized by the ammonia refrigeration industry and that the industry has identified a feasible means by which Respondents could have eliminated or reduced the hazard. Further, Appendix A identifies, for each condition, how the failure to address the hazard could lead to or exacerbate a release of anhydrous ammonia and cause harm.

41. Accordingly, from at least June 1, 2019, through September 30, 2023, EPA alleges that Respondents failed to design and maintain a safe facility, taking such steps as were necessary to prevent a release of an extremely hazardous substance, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

**COUNT II – FAILURE TO MINIMIZE THE CONSEQUENCES
OF ACCIDENTAL RELEASES THAT MIGHT OCCUR**

42. The allegations in Paragraphs 1 through 41 are hereby realleged and incorporated herein by reference.

43. Pursuant to the General Duty Clause, 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 (including anhydrous ammonia) have a general duty, in the same manner and to the same extent as Section 654 of Title 29, to, among other things, minimize the consequences of any accidental releases that do occur.

44. Industry standards and guidelines for minimizing the consequences 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.

45. 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 under Conditions 2-10 of Appendix A, which is incorporated by reference into this CAFO. They include, for example, the failure to provide an emergency ventilation switch; readily available emergency shutdown instructions; and adequate signage/labeling on piping, alarms, emergency switches, an eyewash/shower station, a machinery room door, and the emergency stop (King) valve.

46. Examples of industry standards associated with each instance in which Respondents failed in its general duty to minimize the consequences of a release (identified in

Appendix A) demonstrate that the hazard is recognized by the ammonia refrigeration industry

and that the industry has identified a standard means by which Respondents could have eliminated or reduced the hazard. Further, Appendix A identifies, for each condition, how the failure to address the hazard could lead to or exacerbate a release of anhydrous ammonia and cause harm.

47. Accordingly, from at least June 1, 2019, through September 30, 2023, EPA alleges that Respondents failed to minimize the consequences of an accidental release of an extremely hazardous substance should one occur, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

VI. TERMS OF SETTLEMENT

48. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondents:

- a. Admit that EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. Neither admit nor deny the specific factual allegations contained in this CAFO;
- c. Consent to the assessment of a civil penalty as stated below;
- d. Consent to the issuance of any specified compliance or corrective action order;
- e. Consent to the conditions specified in this CAFO;
- f. Consent to any stated Permit Action;
- g. Waive any right to contest the alleged violations of law set forth in Section V of this CAFO; and
- h. Waive their right to appeal the Final Order accompanying this Consent Agreement.

49. For the purpose of this proceeding, Respondents also:

- a. Agree that this CAFO states a claim upon which relief can be granted against Respondents;
- b. Acknowledge that this CAFO constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement actions;
- c. Waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);
- d. Consent to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Massachusetts; and
- e. Waive any rights they may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

50. Respondents certify that they have corrected the violations alleged in this CAFO, including via completion of the requirements of the AOC, and are currently operating the Facility in compliance with the requirements of the General Duty Clause, with the exception of those violations addressed by the Compliance Measures outlined below in Paragraph 59. This certification includes compliance with the key safety measures for ammonia refrigeration

systems posted by EPA at <https://www.epa.gov/sites/default/files/2018-05/documents/listofkeymeasurements.pdf>.

51. Pursuant to Sections 113(a)(3)(A), (d)(2)(B), and (e) of the CAA, 42 U.S.C. §§ 7413(a)(3)(A), (d)(2)(B), and (e), and taking into account the relevant statutory penalty criteria, the applicable penalty policies, and Respondents' cooperation in agreeing to perform the non-penalty obligations in this CAFO, EPA has determined that it is fair and proper to assess a civil penalty of \$25,000 for the violations alleged in this matter. Respondents consent to the issuance of this CAFO and consent for purposes of settlement to:

- a. pay the penalty cited in Paragraph 52 below;
- b. complete the Compliance Measures as outlined in Paragraphs 59-60; and
- c. perform the Supplemental Environmental Projects ("SEPs"), as described in Paragraphs 62-90 below.

Penalty Payment

52. Respondents agree to pay a civil penalty of \$25,000 ("Assessed Penalty") within thirty (30) calendar days of the Effective Date of the CAFO.

53. Respondents shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of methods, provided on the EPA website <https://www.epa.gov/financial/makepayment>. For additional instructions see: <http://www.epa.gov/financial/additional-instructions-making-payments-epa>.

54. When making a payment, Respondents shall:

- a. Identify every payment with "*In the matter of NSD Seafood Inc. d/b/a Atlantic Fish and Seafood, et al.; Docket No. CAA-01-2024-0036*"; and

- b. Within 24 hours of payment of any payment, serve proof of such payment to the following via email:

Christine M. Foot
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Foot.Christine@epa.gov

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
Santiago.Wanda@epa.gov
and
R1_Hearing_Clerk_Filings@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

“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 the EPA requirements, in the amount due, and identified with *“In the matter of NSD Seafood Inc. d/b/a Atlantic Fish and Seafood, et al.; Docket No. CAA-01-2024-0036.”*

55. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C.

§ 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondents fail to timely pay the full amount of the Assessed Penalty per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Effective Date. If the Assessed Penalty is paid in full within thirty (30) days, accrued interest is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), which is the IRS standard underpayment rate and is equal to the federal short-term rate plus 3 percentage points.
- b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of handling collection.
- c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

56. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondents fail to timely pay any portion of the Assessed Penalty per this CAFO, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

- c. Suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalty and Final Order shall not be subject to review.

57. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

58. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

Non-Penalty Conditions

Compliance Measures

59. Respondents agree to replace the piping and insulation in the cold storage area of the Facility within six (6) months of the Effective Date of this CAFO.

60. Within seven (7) months of the Effective Date of this CAFO, Respondents shall submit to EPA written confirmation of compliance or noncompliance with this required action (accompanied by a copy of appropriate supporting documentation, including documentation

of costs). Any notice of noncompliance shall state the reasons for the noncompliance and when compliance is expected. Notice of noncompliance will in no way excuse the noncompliance unless EPA agrees otherwise in writing or approves a delay.

61. Respondents agree that failure to complete the Compliance Measures of Paragraph 59 or submit the written confirmation of compliance or noncompliance in accordance with Paragraph 60 shall be deemed a violation of this CAFO, and the Respondents shall become liable for stipulated penalties in accordance with Paragraph 92 below.

Supplemental Environmental Projects

62. In response to the alleged violations of the CAA and in settlement of this matter, although not required by the CAA or any other federal, state, or local law, Respondents agree to implement two supplemental environmental projects (“SEPs”), as described below and in Appendix B.

63. Respondents shall satisfactorily complete the SEPs described below and in the Scope of Work attached to this Agreement as Appendix B, which is incorporated herein by reference, and which is enforceable under this CAFO.

64. The Parties agree that the SEPs are consistent with applicable EPA policy and guidance, specifically EPA’s *2015 Update to the 1998 Supplemental Environmental Projects Policy* (March 10, 2015), and advance the objectives of the CAA by (a) enhancing the hazardous materials response capabilities of local emergency responders (“Gloucester Fire Department SEP”); and (b) helping prevent the release of ammonia from, and improve chemical safety at, the Facility (the “Safety Upgrade SEP”). The SEPs are not inconsistent with any provision of the CAA.

65. The parties further agree that the SEPs have nexus to the violations alleged in this CAFO because the SEPs advance the chemical safety and preparedness goals of CAA Section 112(r) and are designed to reduce the overall risk to public health and/or the environment potentially affected by such violations by helping prevent ammonia releases and enhancing local responders' ability to respond to chemical releases.

Gloucester Fire Department SEP

66. Respondents shall provide to the Gloucester Fire Department, which Respondents have selected to be the SEP Recipient, a suite of portable gas detectors (twelve in total) and associated equipment, a supply of calibration gases for the detectors, and a three-year maintenance and service contract for the equipment, according to the requirements, specifications, and deadlines described in Appendix B. The purpose of this SEP is to enhance the chemical spill response capabilities, including those for an ammonia release, for local first responders. The Gloucester Fire Department SEP is expected to cost approximately \$20,500.

67. Respondents shall spend no less than \$20,500 on implementing the Gloucester Fire Department SEP. Respondents shall include documentation of the expenditures made in connection with the Gloucester Fire Department SEP as part of the SEP Completion Report described in Paragraph 85 below. If Respondents' implementation of the Gloucester Fire Department SEP as described in Appendix B does not expend the full amount set forth in this Paragraph, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment, Respondents will describe how Respondents could expend the full amount consistent with the Gloucester Fire

Department SEP (e.g., identify, purchase, and provide additional emergency response equipment to the Gloucester Fire Department).

68. "Satisfactory completion" of the Gloucester Fire Department SEP shall mean:

(a) providing the Gloucester Fire Department with portable emergency response detectors and associated equipment, including a three-year maintenance and service contract, according to the requirements, specifications, and deadlines described above and in Appendix B,

(b) confirming that the purchased equipment is functional and that Gloucester Fire Department personnel are trained to use it; and (c) spending approximately \$20,500 to carry out the Gloucester Fire Department SEP.

69. Respondents have selected the Gloucester Fire Department to receive the equipment. EPA had no role in the selection of any SEP recipient, or specific equipment identified in the SEP, nor shall this CAFO be construed to constitute EPA approval or endorsement of any SEP recipient or specific equipment identified in this CAFO.

70. EPA had no role in the selection of any specific equipment identified in the SEP, nor shall this CAFO be construed to constitute EPA approval or endorsement of any specific equipment identified in this CAFO.

71. Respondents shall complete the Gloucester Fire Department SEP within four (4) months of the Effective Date of this CAFO.

72. Respondents shall include documentation of the expenditures made in connection with the Gloucester Fire Department SEP as part of the SEP Completion Report described in Paragraph 85 below.

73. Upon completion of the Gloucester Fire Department SEP, Respondents shall submit a SEP Completion Report for the Gloucester Fire Department SEP, as specified in Paragraph 85 below.

Safety Upgrades SEP

74. Respondents shall improve safety at the Facility in accordance with the requirements and deadlines described in Appendix B. Respondents shall replace two existing ammonia liquid pumps in the Atlantic Fish ammonia machinery room with seal-less ammonia liquid pumps, at an estimated cost of \$108,500.

75. Respondents represent that, to the best of their knowledge after thorough review of the most current industry standards by Respondents or their agent(s), the Safety Upgrade SEP described above and in Appendix B exceeds the applicable requirements of the most current industry standards. Further, Respondents attest that, with routine maintenance and upkeep, the equipment being replaced has a remaining useful life of at least 10 years.

76. Respondents shall spend no less than \$108,500 on implementing the Safety Upgrade SEP. Respondents shall include documentation of the expenditures made in connection with the Safety Upgrade SEP as part of the SEP Completion Report described in Paragraph 85 below.

77. "Satisfactory completion" of the Safety Upgrade SEP shall mean (a) removing the two existing ammonia liquid pumps in the AF AMR, which have mechanical seals, and replacing them with two seal-less ammonia liquid pumps, according to the requirements and deadline described above and in Appendix B; (b) confirming that the installed equipment is operational

and that Respondents' personnel and contractors are trained to use it; and (c) spending approximately \$108,500 to carry out the Safety Upgrade SEP.

78. EPA had no role in the selection of any specific equipment identified in the SEP, nor shall this CAFO be construed to constitute EPA approval or endorsement of any specific equipment identified in this CAFO.

79. Respondents shall complete the Safety Upgrade SEP within nine (9) months of the Effective Date of this CAFO.

80. Upon completion of the Safety Upgrade project, Respondents shall submit a SEP Completion Report for the Safety Upgrade SEP, as specified in Paragraph 85 below.

General SEP Provisions

81. With regard to the Gloucester Fire Department SEP and the Safety Upgrade SEP , Respondents hereby certify the truth and accuracy of each of the following:

- a. that the SEPs were voluntarily proposed by Respondents;
- b. that all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Respondents, in good faith, estimate that the cost to complete the Gloucester Fire Department SEP is approximately \$20,500, and the cost to complete the Safety Upgrade SEP is approximately \$108,500;
- c. that, as of the date of executing this CAFO, Respondents are not required to perform or develop the SEPs by any federal, state, or local law or regulation, and are not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- d. that the SEPs are not projects that Respondents were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO and that any equipment being replaced or upgraded as otherwise intended to remain in use for at least ten years but for this settlement;
- e. that Respondents have not received and will not receive credit for the SEPs in any other enforcement action;
- f. that Respondents will not receive any reimbursement for any portion of the SEPs from any other person;
- g. that for federal income tax purposes, Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs;
- h. that no Respondent is a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEPs; and
- i. that Respondents have inquired of the Gloucester Fire Department whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and have been informed by the Gloucester Fire Department that it is not a party to such a transaction.

82. For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement loan, federally guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

83. Respondents agree that EPA may inspect the Facility at any time to confirm that the Safety Upgrade SEP was undertaken in conformity with the representations made herein.

84. Each Respondent hereby waives any confidentiality rights it has under 26 U.S.C. § 6103 with respect to SEP costs on its tax returns and on the information supporting its tax returns. This waiver of confidentiality is solely as to EPA and the Department of Justice and solely for the purpose of ensuring the accuracy of Respondents' SEP cost certification.

85. As described in Paragraphs 73 and 80, above, Respondents shall submit SEP Completion Reports to EPA within thirty (30) days of completing each SEP. The SEP Completion Reports shall contain the following information:

- a. A detailed description of the SEP as implemented, including, for the Safety Upgrade SEP, photographs of the newly installed equipment; and for the Gloucester Fire Department SEP, a list of the equipment and maintenance contract purchased and/or provided to the Gloucester Fire Department;
- b. A description of any implementation problems encountered and the solutions thereto;
- c. Itemized costs, documented by copies of invoices, purchase orders, receipts, canceled checks, or wire transfer records that specifically identify and itemize the individual costs associated with each SEP (with any costs not eligible for SEP credit clearly identified as such);
- d. Certification that each SEP has been fully completed;
- e. A description of the environmental and public health benefits resulting from the implementation of the SEP;

- f. A statement that no tax returns filed or to be filed by Respondents will contain deductions or depreciations for any expense associated with the SEPs;
- g. A statement that Respondents have provided to the Cincinnati Finance Center W-9 forms, as required by Paragraph 97 below; and
- h. The following statement, signed by an officer for each Respondent, under penalty of law, attesting that the information contained in the SEP Completion Report is true, accurate, and not misleading:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

86. Respondents shall maintain, for a period of three (3) years from the date of submission of each SEP Completion Report, legible copies of all research, data, and other information upon which the Respondents relied to write the SEP Completion Reports, as well as a copy of each SEP Completion Report, and shall provide such documentation within fourteen (14) days of a request from EPA.

87. Respondents agree that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO, and the Respondents shall become liable for stipulated penalties in accordance with Paragraph 92 below.

88. After receipt of each SEP Completion Report described in Paragraph 85 above, EPA will notify Respondents in writing: (i) indicating that the project has been completed satisfactorily; (ii) identifying any deficiencies in the SEP Completion Report itself and granting

Respondents an additional thirty (30) days to correct any deficiencies; or (iii) determining that the project has not been completed satisfactorily and seeking stipulated penalties in accordance with Paragraph 92 below.

89. If EPA elects to exercise options (ii) or (iii) in Paragraph 88 above, Respondents may object in writing to the notice of deficiency given pursuant to this Paragraph within ten (10) days of receipt of such notice, except that this right to object shall not be available if EPA found that the project was not completed satisfactorily because Respondents failed to implement or abandoned the project. EPA and Respondents shall have an additional thirty (30) days from the receipt by EPA of Respondents' objection to reach agreement on changes necessary to the SEP or SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period as may be extended by the written agreement of both EPA and Respondents, EPA shall provide a written statement of its decision on the adequacy of the completion of the SEP to Respondents, which decision shall be final and binding upon Respondents. Respondents agree to comply with any reasonable requirements imposed by EPA that are consistent with this CAFO as a result of any failure to comply with the terms of this CAFO. In the event that a SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondents in accordance with Paragraph 92 below.

90. Respondents agree that any public statement, oral or written, in print, film, or other media, made by Respondents, their contractors, or third-party implementers referring to a SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, *In the matter of NSD Seafood Inc. d/b/a Atlantic Fish and*

Seafood, et al., taken by the U.S. Environmental Protection Agency to enforce federal environmental laws.”

91. Notifications.

- a. Submissions required by this Agreement shall be in writing and shall be sent to the following recipients by electronic mail:

Drew Meyer
Waste and Chemical Compliance Unit Inspector
U.S. Environmental Protection Agency, Region 1
meyer.drew@epa.gov

and

Christine M. Foot
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
foot.christine@epa.gov

- b. EPA will send all written communications to the following representative for

Respondent:

Nicholas Osgood
President & CEO
NSD Seafood Inc. d/b/a Atlantic Fish and Seafood
Gloucester Cold Storage Inc.
NSDJ Real Estate, LLC
Nick@afs159.com

- c. All documents submitted to EPA in the course of implementing this Agreement shall be available to the public unless identified as confidential by Respondents pursuant to 40 C.F.R. Part 2 Subpart B and determined by EPA to merit treatment as confidential business information, in accordance with applicable law.

Stipulated Penalties

92. Respondents' failure to comply with any of the provisions in Paragraphs 59 through 60 and 62 through 80 above shall become liable for stipulated penalties as set forth in Paragraphs 93 through 96 below.

93. In the event that Respondents fail to satisfactorily complete the Compliance Measures outlined in Paragraph 59 through 60 or the SEPs as outlined above in Paragraphs 62 through 80 and in Appendix B, Respondents shall be liable for stipulated penalties in accordance with the provisions set forth below. The determination of whether the Compliance Measures or SEPs have been satisfactorily completed shall be in the sole discretion of EPA.

- a. If EPA determines that Respondents failed to complete the Compliance Measures in accordance with this CAFO, Respondents shall be liable for stipulated penalties in the following amounts: \$500 per day for the first fifteen (15) days of such violation; \$1,000 per day for the sixteenth (16th) through 30th days of such violation; and \$1,500 per day for each day of violation thereafter. The determination of whether the compliance requirements have been satisfactorily completed shall be in the sole discretion of EPA.
- b. If EPA determines that Respondents completely or substantially failed to implement the Gloucester Fire Department SEP in accordance with this Agreement, Respondents shall pay a stipulated penalty in the amount of 110% of the estimated cost for the Gloucester Fire Department SEP, as outlined in Appendix B; and

- c. If EPA determines that Respondents completely or substantially failed to implement the Safety Upgrade SEP in accordance with this Agreement, Respondents shall pay a stipulated penalty in the amount of 110% of the estimated cost for the Safety Upgrade SEP, as outlined in Appendix B;
- d. After giving effect to any extensions of time granted by EPA, Respondents shall pay a stipulated penalty in the amount of \$200 for each day the written confirmation of compliance or noncompliance with the Compliance Measures required by Paragraph 60 or the SEP Completion Reports required by Paragraphs 73 and 80 are late.

94. 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 52 above. Interest and late charges shall be paid as stated in Paragraph 53.

95. *Collection of Unpaid Stipulated Penalty for Failure to Perform Non-Penalty*

Conditions: 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 SEPs, 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.

96. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

Additional Provisions

97. 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 Respondents 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 each 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 chalifoux.jessica@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.

98. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all parties and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements between the parties modifying the SEP schedules described in Appendix B. The Manager of EPA Region 1’s Waste and Chemical Compliance Section shall have the authority to extend the deadlines in Appendix B for good cause.

99. Respondents agree that the time period from the Effective Date of this CAFO until the Compliance Measures specified in Paragraphs 59 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 E 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.

100. The provisions of this CAFO shall apply to and be binding upon Respondents and its 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 99, 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.

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

102. 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.

103. By signing this CAFO, the parties agree that each party's obligations under this CAFO and EPA's compromise of statutory maximum penalties constitute sufficient consideration for the other party's obligations.

104. By signing this CAFO, Respondents certify that the information it has 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.

105. Complainant and Respondents, by entering into this CAFO, each consent to accept digital signatures hereupon. Respondents further consent to accept electronic service of the fully executed CAFO, by email, at Nick@afs159.com. Respondents understand that this email address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

VII. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

106. 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.

107. 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.

108. The civil penalty under this CAFO, and any interest, nonpayment penalties, and charges described in or paid pursuant to any penalty collection action arising from this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state or local taxes. 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), performance of the Compliance Measures in Paragraph 59 is restitution or required to come into compliance with the law. Accordingly, Respondents agree to treat all payments made pursuant to this CAFO as penalties within the meaning of 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.

109. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

110. Nothing in this CAFO shall relieve Respondents of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, or be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

111. EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondents was materially false or inaccurate at the time such information was provided to EPA, and EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondents notice of its intent to revoke, which shall not be effective until received by Respondents in writing.

112. 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.

113. Except as qualified by Paragraph 55 (overdue penalty), 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.

VIII. EFFECTIVE DATE

114. Respondents and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will electronically transmit a copy of the filed CAFO to 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 U.S. ENVIRONMENTAL PROTECTION AGENCY:

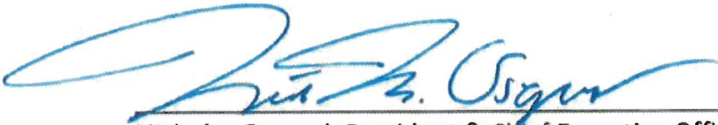


5/7/24

JAMES
CHOW

Carol Tucker, Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 1

FOR RESPONDENT:



Date:

4/29/24

Nicholas Osgood, President & Chief Executive Officer
NSD Seafood Inc. d/b/a Atlantic Fish and Seafood
Gloucester Cold Storage Inc.
NSDJ Real Estate, LLC

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of EPA's Consolidated Rules of Practice and Sections 113(d)(1) and (d)(2)(B) of the Clean Air Act, 42 U.S.C. §§ 7413(d)(1) and (d)(2)(B), the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondents are ordered to pay the civil penalty amount specified in the Consent Agreement, in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

Date: _____

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

Appendix A

Recognized and Generally Accepted Good Engineering Practices

In collaboration with the American National Standards Institute, the International Institute of Ammonia Refrigeration (“IIAR”) has issued and updates, among others, 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 5: *Start-up and Commissioning of Closed Circuit Ammonia Refrigeration Systems* (“ANSI/IIAR 5”); 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 systems 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. The chart cites to the standards of care that were in effect in 2021, when the last Process Hazard Review for the Facility was performed.

Alleged Hazards/Dangerous Condition	GDC 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
<p><u>Condition 1</u></p> <p>Ammonia piping was not provided with adequate protection from accidental physical impact (including elevated ammonia piping in the first-floor cold storage room). Additionally, drip/drain lines off of oil pots in the GCS Ammonia Machinery Room ("AMR") lacked support.</p>	<p>Failure to design and maintain a safe facility taking such steps as are necessary to prevent releases.</p>	<p>Unprotected piping risks ammonia release from accidental damage to system components and piping, especially where stacked product is beneath piping, necessitating use of forklifts to move.</p> <p>Unsupported piping can lead to inadvertent breakage of these pipes by external sources.</p>	<p>The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to adequately safeguard ammonia system piping and components to minimize possible accidental damage or rupture due to external sources. <i>See, e.g.,</i> ANSI/IIAR 2-2014 (Add. A), §§ 5.17.1 (Where ammonia-containing equipment is installed in a location subject to physical damage, guarding or barricading shall be provided.), 7.2.4 (Equipment shall be protected where a risk of physical damage exists. Where equipment containing ammonia is located in an area with heavy vehicular traffic during normal operations and a risk of impact exists, vehicle barriers or alternative protection shall be provided in accordance with the Fire Code.), 13.4.2 (Refrigerant piping shall be isolated and supported to prevent damage from vibration, stress, corrosion, and physical impact.); ANSI/IIAR 9-2020, § 7.2.12.1 (Where ammonia-containing equipment is installed in a location subject to physical damage, guarding or barricading shall be provided.).</p>

Alleged Hazards/Dangerous Condition	GDC 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
<p><u>Condition 2</u></p> <p>A significant amount of ammonia piping throughout the Facility (including in the cold storage rooms, both AMRs, and the roof) was not consistently color-coded and labeled to indicate the contents, direction of flow, pipe service, physical state (<i>i.e.</i>, liquid or vapor), and pressure level (<i>i.e.</i>, high or low).</p>	<p>Failure to design and maintain a safe facility taking such steps as are necessary to prevent releases.</p> <p>Failure to minimize the consequences of releases which do occur.</p>	<p>The lack of proper pipe labeling makes it more difficult to properly maintain system, increases chance of accidental release of ammonia, and could frustrate efforts to respond quickly in the event of a release.</p>	<p>The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to label all piping with the identity, physical state, and relative pressure of the contents, as well as direction of flow. <i>See, e.g.</i>, ANSI/IIAR 2-2014 (Add. A), § 5.14.6 (piping shall be labeled with the identity, physical state, and relative pressure of the contents, along with the pipe service and direction of flow; ANSI/IIAR 9-2020 § 7.2.9.4 (same); ASME A13.1-2015 (specifying conventions for labeling piping).</p>

Alleged Hazards/Dangerous Condition	GDC 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
<p><u>Condition 3</u></p> <p>The Atlantic Fish ("AF") AMR door lacked an NFPA diamond.</p>	<p>Failure to design and maintain a safe facility taking such steps as are necessary to prevent releases.</p> <p>Failure to minimize the consequences of releases which do occur.</p>	<p>A lack of signs about the hazards posed by chemicals in a space increases the chance of inadvertent exposure to ammonia releases and could frustrate effort to react quickly and properly during an ammonia release.</p>	<p>The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to display NFPA 704 diamonds for ammonia hazard identification on each door to the machinery room. See, e.g., ANSI/IIAR 2-2014 (Add. A), § 6.15.1 (A NFPA 704 placard shall be provided...on or next to all doors through which a person can enter the machinery room.); ANSI/IIAR 9-2020, §§ 7.2.9.1 (Buildings and facilities with refrigeration systems shall be provided with placards in accordance with NFPA 704.); NFPA 1-2018, § 53.2.4.1 (Refrigeration units or systems shall be provided with approved hazard identification signs in accordance with NFPA 704, among other information.); NFPA 704 (2017), §§ 4.3 and 9.1.</p>

<p><u>Condition 4</u></p> <p>There was compromised insulation and ice buildup on the ammonia piping and valves in several locations within the first and third floors cold storage rooms and the GCS AMR.</p>	<p>Failure to design and maintain a safe facility taking such steps as are necessary to prevent releases.</p> <p>Failure to minimize the consequences of releases which do occur.</p>	<p>Insulation vapor barrier protects pipes and vessels from moisture, which causes corrosion. Breached insulation can hold moisture against the external pipe surface, furthering corrosion. Corroded pipes and vessels can break or succumb to pressure, causing an ammonia release. Ice buildup can impact the functionality of shutoff valves.</p>	<p>The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to regularly inspect the condition of insulation and vapor barrier on piping, valves, and equipment, remove any sections of insulation or vapor barrier that are in poor condition, and replace the vapor barrier and insulation after any underlying corrosion has been addressed. <i>See, e.g.</i>, ANSI/IIAR 2-2014 (Add. A), § 5.10.1 (piping and equipment surfaces not intended for heat exchange shall be insulated, treated, or otherwise protected to mitigate condensation and excessive frost buildup); ANSI/IIAR 9-2020 §§ 5.1 (all equipment and system components shall be inspected, tested, and maintained in accordance with ANSI/IIAR 6-2019), 7.2.6.1 (Piping and equipment surfaces not intended for heat exchange shall be insulated, treated, or otherwise protected to mitigate condensation and excessive frost buildup where the surface temperature is below the dew point of the surrounding air during normal operation and in an area where condensation and frost could develop and become a hazard to occupants or cause damage to the structure, electrical equipment, or refrigeration system.); ANSI/IIAR 6-2019 §§ 11.1.2 (For insulated piping, where insulation is removed, partly or completely, for visual inspection or remaining wall thickness measurement(s), a protective coating shall be applied to the exposed metal surface and insulation shall be replaced in accordance with the manufacturer’s installation instructions after arresting any identified exposed piping metal surface corrosion), Table 11.1 (piping), Inspection items (b) and (j) and Testing item (c) (calling for regular inspection of insulation and vapor barrier, and testing underneath areas of observed degraded insulation), and Table 11.1.6 (valves), Inspection items (b) and (f) and Testing items (a) and (b) (same).</p>
<p><u>Condition 5</u></p>	<p>Failure to design and</p>	<p>Obstructions in the machinery room</p>	<p>The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to provide a clear and unobstructed</p>

Alleged Hazards/Dangerous Condition	GDC 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
<p>The GCS AMR was being used to store auxiliary materials that obstructed access with adequate clearance to refrigeration machinery for inspection, maintenance, service, and emergency shutdown.</p>	<p>maintain a safe facility taking such steps as are necessary to prevent releases.</p> <p>Failure to minimize the consequences of releases which do occur.</p>	<p>make it difficult to access machinery for proper preventative maintenance, risking an ammonia release from improperly maintained equipment.</p>	<p>approach to and egress from refrigeration machinery. ANSI/IIAR 2-2014 (App. A), § 6.3.1 (Machinery room equipment shall be located so as to allow egress from any part of the room in the event of an emergency and provide clearances required for maintenance, operation, and inspection according to manufacturer's instructions.); ANSI/IIAR 9-2020, § 7.3.3.1 (same).</p>

Alleged Hazards/Dangerous Condition	GDC 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
<p><u>Condition 6</u></p> <p>The Facility did not have an emergency ventilation switch outside the AF AMR door, with a tamper-resistant cover. Additionally, the emergency stop switch outside the AF AMR door and the emergency stop and ventilation switches outside the GCS AMR were not adequately labeled to identify the purpose of the controls.</p>	<p>Failure to minimize the consequences of releases which do occur.</p>	<p>In the event of a release, workers and emergency responders need to be able to quickly identify and access emergency control switches without entering the room, which could contain dangerous levels of vapors. Timely use of these switches can reduce the duration and severity of an accidental release.</p>	<p>The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to provide and label emergency stop and emergency ventilation switches immediately outside the machinery room. <i>See, e.g.,</i> ANSI/IIAR 2-2014 (Add. A), §§ 6.12.1 (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.), 6.12.2 (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.); ANSI/IIAR 9-2020, §§ 7.3.11.1 (same re emergency stop switch), 7.3.11.2 (same re emergency ventilation switch); NFPA 1-2018, §§ 53.2.3.3.1 (requiring emergency ventilation switch right outside machinery room door), 53.2.3.4.5 (clearly identified shutoff with tamper-resistant cover for refrigeration machinery).</p>

Alleged Hazards/Dangerous Condition	GDC 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
<p><u>Condition 7</u></p> <p>The Facility's audible/visual ammonia alarms (including in the cold storage areas, outside the GCS AMR entrance, and in the production area adjacent to the AF AMR) were not identified by signage to indicate their purpose.</p>	<p>Failure to minimize the consequences of releases which do occur.</p>	<p>Properly identifying ammonia alarms allows employees and responders the ability to determine what chemical is being released and helps distinguish between an ammonia release and a fire. Enabling a quick response protects workers, emergency responders, and the public from a larger release.</p>	<p>The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to provide well-labeled audible and visual alarms inside and immediately outside each entrance to the machinery room. <i>See, e.g.,</i> ANSI/IIAR 2-2014 (Add. A), §§ 6.15.2 (For machinery room: alarm signage shall be provided in accordance with Section 17.6), 7.2.3 (For other spaces: detection and alarm system shall be provided and shall comply with ch. 17), 17.6 (Ammonia leak detection alarms shall be identified by signage adjacent to visual and audible alarm devices.); NFPA 1-2012 § 53.2.3.1.2 (audible and visual alarms shall be located inside the machinery room and outside each entrance to the room); ANSI/IIAR 9-2020 §§ 7.2.9.1.2 (The meaning of each alarm shall be clearly marked by signage near the visual and audible alarms.), 7.3.12.6 (Ammonia leak detection alarms shall be identified by signage adjacent to visual and audible alarm devices.).</p>

Alleged Hazards/Dangerous Condition	GDC 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
<p><u>Condition 8</u></p> <p>The eyewash and shower station outside the GCS AMR lacked adequate signage.</p>	<p>Failure to minimize the consequences of releases which do occur.</p>	<p>An inadequately labeled eyewash and shower station delays emergency responders and workers in washing off this corrosive, toxic chemical in the event of exposure.</p>	<p>The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to provide a highly visible sign identifying emergency eyewash and shower stations. <i>See, e.g.,</i> ANSI/IIAR 2-2014 (Add. A), § 6.7.3 (Emergency eyewash/safety shower unit installations shall comply with ANSI/ISEA Z358.1); ANSI/IIAR 9-2020, § 7.3.7.1 (same); ANSI/ISEA Z358.1-2014, § 4.5.3 (An emergency shower should be located in an area with a highly visible sign positioned so the sign shall be visible within the area served by it).</p>

Alleged Hazards/Dangerous Condition	GDC 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
<p><u>Condition 9</u></p> <p>There were no schematic drawings and/or ammonia system emergency shutdown documentation posted outside the AF AMR (or at another readily accessible location to trained refrigeration system staff and emergency responders).</p>	<p>Failure to minimize the consequences of releases which do occur.</p>	<p>Lack of immediately accessible shutdown information creates a risk of harm to workers and emergency responders who cannot quickly shut down the system, as the delay could contribute to a longer ammonia release time, increasing risks to workers, emergency responders, and people off-site.</p>	<p>The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to provide emergency shutdown instructions in a location that is readily accessible to staff and responders. <i>See, e.g.</i>, ANSI/IIAR 2-2014 (Add. A), § 5.15 (It shall be the duty of the person in charge of the premises at which the refrigeration system is installed to provide directions for the emergency shutdown of the system at a location that is readily accessible to trained refrigeration staff and trained emergency responders. Schematic drawings or signage shall include the following: (1) instructions with details and steps for shutting down the system in an emergency. . . .); ANSI/IIAR 9-2020 § 7.2.10 (same).</p>

Alleged Hazards/Dangerous Condition	GDC 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
<p><u>Condition 10</u></p> <p>The king valve in the AF AMR was not labeled.</p>	<p>Failure to minimize the consequences of releases which do occur.</p>	<p>The king valve can be used to quickly shut off flow of ammonia from the ammonia receiver to the rest of the system. Any impediment to its use can lengthen the time of a release, endangering workers, emergency responders, and people off-site.</p>	<p>The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to clearly identify critical valves at the valve itself. See, e.g., ANSI/IIAR 2-2014 (Add. A), § 5.14.4 (Valves required for emergency shutdown of the system shall be clearly and uniquely identified at the valve itself); ANSI/IIAR 9-2020, § 7.2.9.3 (same); ANSI/IIAR, § 6-2019, Table 11.1.6, item h (calling for regular inspection to ensure that system emergency shut-off valves are clearly and uniquely identified at each valve).</p>

Appendix B

Scope of Work for Supplemental Environmental Projects

1. Safety Upgrade SEP

Required Action: Respondents or their contractors shall replace two existing mechanically sealed ammonia liquid pumps in the Atlantic Fish machinery room at the Facility, located at 159 East Main Street in Gloucester, Massachusetts with two seal-less pumps.

This project shall be completed no later than nine (9) months after the effective date of this CAFO. The cost of this project including equipment, other materials, labor, shipping, and other related expenses has been quoted at \$108,500.

Benefit: This pollution prevention project goes beyond the industry standard (as defined by applicable RAGAGEP) to enhance public safety by eliminating a potential point of failure that can lead to an ammonia release.

2. Gloucester Fire Department SEP

Required Action: Respondents shall provide the following suite of portable detectors and associated equipment to the Gloucester Fire Department:

- Six (6) portable four-gas detectors (each of which includes sensors for carbon monoxide, oxygen, and hydrogen sulfide);
- Three (3) portable ammonia detectors;
- Six (6) portable oxygen detector replacement kits;
- Six (6) combustible lower explosion limit (LEL) detector replacement kits;
- Three (3) solo hydrogen cyanide detectors;
- One (1) docking station;
- One (1) enabler kit of power cords, cables, filters, tubing, and fittings;
- One (1) multi-inlet key;
- Two (2) sets of calibration gases; and
- A three-year maintenance and service contract for the equipment.

Respondents shall provide the above items by no later than four (4) months after the effective date of this CAFO. The cost of this project is approximately \$20,500.

Benefit: This emergency planning and preparedness project will improve the Gloucester Fire Department's ability to detect and safely respond to releases of ammonia and other toxic substances at the Facility and around the Gloucester community.

