EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Audrey Zucker (Name of Case Attorney) 3/22/17 (Date)

in the ORC (RAA) (Office & Mail Code) at 918-1113 (Phone number)

Case Docket Number CAA-01-2017 and EPCRA-01-2017-0025

Site-specific Superfund (SF) Acct. Number _____

X This is an original debt ____ This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Ashley Brooks, Esquire
Performance Food Group Company
12500 West Creek Parkway
Richmond, VA 23238

Total Dollar Amount of Receivable $ 184,717.00 Due Date: 4/21/17

SEP due? Yes _____ No X Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st $ _____ on _____

2nd $ _____ on _____

3rd $ _____ on _____

4th $ _____ on _____

5th $ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____ _____
in the Financial Management Office Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I – New England
5 Post Office Square - Suite 100
Boston, Massachusetts 02109-3912

BY HAND

MAR 2 2 2017

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environment Protection Agency, Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

Re: Performance Foodservice, a division of Performance Food Group, Inc.,
Docket Nos. CAA-01-2017-0024 and EPCRA-01-2017-0025

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter, please find the original and one copy of the Consent Agreement and Final Order, with Certificate of Service.

Thank you for your assistance in this matter.

Sincerely,

Audrey Zucker
Enforcement Counsel

Enclosures

cc: Ashley Brooks, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of Performance Foodservice, a division of Performance Food Group, Inc. One Performance Boulevard Springfield, MA 01104 Respondent. Proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d) and Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c)	Docket Nos.: CAA-01-2017-0024 EPCRA-01-2017-0025

CONSENT AGREEMENT AND FINAL ORDER

1. The United States Environmental Protection Agency Region 1 ("EPA" or "Complainant") and Performance Food Group, Inc. ("Performance Food Group" or "Respondent") consent to the entry of this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). This CAFO resolves Respondent's liability for alleged violations of Section 112(r) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7412(r); the Risk Management Program regulations promulgated under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), set forth at 40 C.F.R. Part 68; and Section 312 of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11022 (also known as the Emergency Planning and Community Right-to-Know Act of 1986, hereinafter "EPCRA").

2. EPA and Respondent hereby agree to settle this matter through this CAFO without the filing of an administrative complaint, as authorized under 40 C.F.R. §§ 22.13(b) and 22.18(b).

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

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

I. PRELIMINARY STATEMENT

5. This CAFO both initiates and resolves an administrative action for the assessment of monetary penalties, pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). As more thoroughly discussed in Sections IV and V below, the CAFO resolves the following CAA violations that Complainant alleges occurred in conjunction with Respondent's storage and handling of anhydrous ammonia, and EPCRA violations that Complainant alleges occurred in conjunction with Respondent's storage and handling of anhydrous ammonia, sulfuric acid and lead, at its refrigeration warehouse and food storage facility in Springfield, Massachusetts:

a. failure to identify hazards which may result from accidental releases of extremely hazardous substances, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1);

b. failure to design and maintain a safe facility, taking such steps as are necessary to prevent such releases, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1);

c. failure to minimize the consequences of accidental releases, should they occur, in

violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1);

d. failure to submit a Risk Management Plan for anhydrous ammonia, in violation of Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150; and

e. failure to submit complete Tier 2 hazardous chemical inventory forms to the proper authorities, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370.

II. STATUTORY AND REGULATORY AUTHORITY

CAA Statutory and Regulatory Authority

6. 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."

7. The extremely hazardous substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), include, among others, anhydrous ammonia.

8. 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.

9. The term "have a general duty in the same manner and to the same extent as section 654, title 29 of the United States code" means owners and operators must comply with the General Duty Clause in the same manner and to the same extent as employers much comply with the Occupational Safety Health Act ("OSHA") administered by the Occupational Safety and Health Administration.[1]

10. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), also authorizes EPA to promulgate regulations and programs to prevent and minimize the consequences of the accidental release of certain regulated substances. In particular, Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates that EPA promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5), 42 U.S.C. § 7412(r)(5), requires that EPA establish, for each listed substance, a threshold quantity over which an accidental release is known to cause

---

[1] Section 654 of OSHA 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 [OSHA]." 29 U.S.C. § 654. *See* Durion Company, Inc. v. Secretary of Labor, 750 F.2d 28 (6th Cir. 1984). According to the legislative history of the CAA General Duty Clause, Durion is cited as a guide for EPA's application of the General Duty Clause. Durion 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 (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 employers' 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. U.S. EPA, *Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1)* (May 2000) at 11, footnote 4.

or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement a Risk Management Plan ("RMP").

11. The regulations promulgated pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), are found at 40 C.F.R. §§ 68.1–68.220 ("Part 68").

12. Under Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate a stationary source subject to the regulations promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in violation of such regulations.

13. Forty C.F.R. § 68.130 lists the substances regulated under Part 68 ("RMP chemicals" or "regulated substances") and their associated threshold quantities. This list includes anhydrous ammonia as an RMP chemical and identifies a threshold quantity of 10,000 pounds.

14. A "process" is defined by 40 C.F.R. § 68.3 as any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.

15. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (1) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

16. Each process in which a regulated substance is present in more than a threshold quantity ("covered process") is subject to one of three Risk Management Programs. Program 1

is the least comprehensive, and Program 3 is the most comprehensive. Pursuant to 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is less than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in a specified NAICS code or subject to the OSHA process safety management ("PSM") standard at 29 C.F.R. § 1910.119. Under C.F.R. § 68.10(c), a covered process that meets neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

17. Anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds is subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119.

18. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source implement the chemical accident provisions of Part 68 it is subject to and submit an RMP. The RMP documents compliance with Part 68. For example, the RMP for a Program 3 process documents compliance with the elements of the Program 3 Risk Management Program, including 40 C.F.R. Part 68, Subpart A (including General Requirements and a Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-Site Consequences of a Release); 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

19. Additionally, 40 C.F.R. § 68.190(b) dictates that the owner or operator of a stationary source must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or most recent update.

20. Sections 113(a) and (d) of the CAA, 42 U.S.C. § 7413(a) and (d), as amended by EPA's

Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts of up to $37,500 per day for violations occurring after January 12, 2009. Beginning on August 1, 2016, penalties are further increased for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 2015, Section 701 of Public Law 114-74 (November 2, 2015). See also 81 Fed. Reg. 43091 (July 1, 2016).

21. EPA and the U.S. Department of Justice have jointly determined that this action is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

EPCRA Statutory and Regulatory Authority

22. In accordance with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), the owner or operator of a facility that is required under OSHA to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical must prepare and submit an emergency and hazardous chemical inventory form ("Tier 1" or "Tier 2" form) to the state emergency response commission ("SERC"), the local emergency planning committee ("LEPC"), and the local fire department. Tier 1 or Tier 2 forms must be submitted annually on or before March 1 and are required to contain chemical inventory information with respect to the preceding calendar year. Additionally, Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), authorizes EPA to establish minimum threshold levels of hazardous chemicals for the purposes of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

23. The regulations promulgated pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, are found at 40 C.F.R. Part 370.

24. In accordance with Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), 40 C.F.R. § 370.10(a) establishes minimum threshold levels for hazardous chemicals for the purposes of Part 370. Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level must prepare and submit a Tier 1 or Tier 2 form to the LEPC, SERC, and local fire department. Forty C.F.R. § 370.45 prescribes that Tier 1 or Tier 2 forms must be submitted annually on or before March 1 and are required to contain chemical inventory information with respect to the preceding calendar year. The LEPC, SERC, or local fire department may request that a facility submit the more comprehensive Tier 2 form in lieu of the Tier 1 form. The Commonwealth of Massachusetts has specified that Tier 2 forms should be submitted rather than Tier 1 forms. See SERC Policy Position (updated December 17, 1998), currently available at http://www.mass.gov/eopss/docs/mema/resources/serc/serc-policy-position.pdf. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the DCIA, 31 U.S.C. § 3701, provides for the assessment of civil penalties for violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), in amounts of up to $37,500 per day for violations occurring after January 12, 2009. Beginning on August 1, 2016, penalties are further increased for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 2015, Section 701 of Public Law 114-74 (November 2, 2015). See also 81 Fed. Reg. 43091 (July 1, 2016).

III. GENERAL ALLEGATIONS

25. Respondent Performance Food Group, Inc. is a corporation that owns and/or

operates a facility located at One Performance Boulevard in Springfield, Massachusetts, where its Performance Foodservice division provides food storage and refrigeration services (the "Facility").

26. The Facility consists of a large distribution warehouse, including a cold storage area, over 100 truck loading bays, 80 trucks, a truck maintenance garage, a diesel fueling depot, an administrative office, and an employee cafeteria and locker rooms. There is an approximately 1,500 square foot ammonia refrigeration machinery room (the "Machinery Room") located at the northwest end of the warehouse. The refrigeration equipment in the Machinery Room includes compressors, evaporators, condensers, and other machinery described below. The diesel fueling depot located on the west end of the truck maintenance garage contains a 10,000-gallon aboveground storage tank ("AST") and a 5,000 gallon AST that each contain diesel fuel.

27. The Facility is located in an industrial park, with a high school and a large residential community located less than one-quarter mile away.

28. As a corporation, Respondent is a "person" within the meaning of: (a) Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e); and (b) Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.

29. The Facility is 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). The Facility is also a "facility," as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.

30. At all times relevant to the violations alleged herein, the Facility's ammonia refrigeration system used approximately 10,000 pounds of anhydrous ammonia. A sign on the control panel outside the machinery room stated that the system was charged with 9,995 pounds of ammonia, a charge that is within 0.05% of the threshold amount of 10,000 and therefore likely

to sometimes exceed the 10,000 pound threshold. Accordingly, Respondent "stored" and "handled" anhydrous ammonia.

31. At the time of the violations alleged herein, Respondent was the "owner or operator" of the Facility, including as that term is defined at Section 112(a)(9).

32. The Facility's ammonia refrigeration system was installed at the time that the Facility Facility was built in about 2010. However, on the roof of the Facility, the Respondent's surge drum has a pressure relief valve with a tag stating that the valve was manufactured on 1/12/1988.

33. Anhydrous ammonia is a clear, colorless gas at atmospheric conditions of temperature and pressure, 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. Ammonia vapors may be fatal if inhaled. Exposure to 300 parts per million by volume is immediately dangerous to life and health. Ammonia gas is generally regarded as nonflammable but does burn 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.

34. Anhydrous ammonia is an "extremely hazardous substance" subject to the General Duty Clause. It is also a "hazardous chemical" subject to reporting under EPCRA Section 312, 42 U.S.C. § 11022.

35. 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. In collaboration with the American National Standards Institute, the International Institute of Ammonia Refrigeration ("IIAR") has issued (and updates) "Standard 2: Equipment,

Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems," 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); IIAR Bulletin No. 110, Guidelines for Start-Up, Inspection, and Maintenance of Ammonia Mechanical Refrigerating Systems (rev. 2002); IIAR Bulletin No. 114, Guidelines for Identification of Ammonia Refrigeration Piping and System Components (1991 and 2014 editions); and the 2005 Ammonia Refrigeration Management Program ("IIAR ARM Program"), which is intended for systems containing 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 sometimes incorporated by reference into state building, mechanical, and fire codes. Other industry standards include fire codes. See e.g., National Fire Protection Association ("NFPA") 1, 2012.

36. A duly authorized EPA inspector (the "EPA Inspector") visited the Facility on August 12, 2014 (the "August 12, 2014 Inspection") to assess whether Respondent was complying with Section 112(r) of the CAA and Section 302-312 of EPCRA.

37. At the time of the inspection, the EPA Inspector observed some potentially dangerous conditions relating to Respondent's ammonia refrigeration system ("System"), including that Respondent:

a. Had no documentation showing that it had performed any hazard analysis or review in order to identify all of the hazards associated with its System.

b. Had no warning signs identifying ammonia hazards on the two outside doors to the Machinery Room, and on the double-doors to the Machinery Room.

c. Had vent pipes along the west wall in the Machinery Room that were not labeled to show the direction of the flow or the contents in the pipes.

d. Had no "confined space" warning signs on the hatchway on the top of the water dispersion tank for the ammonia venting control system, and on both entry ports into the condenser.

e. Had several sections of exposed ammonia piping and fitting on the roof of the Facility with signs of corrosion.

f. Had no audio/visual alarms next to the double-doors entering the Machinery Room or on the north wall door to the Machinery Room.

g. Had no visual alarm on the outside door on the west wall of the Machinery Room, but had an audible alarm in this location that was not labeled as to its purpose.

h. Had a windsock that was not easily visible to emergency responders.

i. Had a main shut-off valve for the System ("King Valve") that was not identified with a prominent sign and did not contain a handle allowing for manual operation. In addition, the King Valve was located eight to ten feet off the ground behind the high pressure receiver and was inaccessible.

j. Had no emergency eyewash or safety shower stations located inside or outside of the Machinery Room.

k. Had two sets of doors to the Machinery Room that opened inward rather than outward.

l. Had a one-inch gap at the bottom of the double-doors to the Machinery Room from which ammonia vapors could escape to other parts of the building in the event of an emergency.

m. Had a steel support girder located between the Machinery Room and the fire water public room that was not tightly sealed to the cinderblock wall.

n. Had an open viewing port, or peephole, into the Machinery Room, from which ammonia could leak or from which ammonia fumes could burn an employee's eyes.

o. Had a water dispersion tank vent discharge that was located less than 7.25 feet above the adjacent roof line.

38. At the time of the Inspection, EPA reviewed Respondent's emergency and hazardous chemical inventory form Tier 2 reports. For calendar years 2011, 2012, and 2013, Respondent stored over 500 pounds of ammonia, 1,000 pounds of sulfuric acid at the Facility, and over 10,000 pounds of lead in lead-acid batteries at the Facility.

39. At the conclusion of the Inspection, the EPA Inspector advised Respondent of the potential violations at the Facility.

40. Respondent was responsive to the concerns raised by the EPA Inspector and thereafter began addressing the deficiencies at the Facility, including filing a risk management plan for the refrigeration system.

41. On April 4, 2016, EPA obtained a waiver from the Department of Justice pursuant to the CAA, 42 U.S.C. § 7413(d)(1), to address the penalty stage of this action administratively.

42. As a result of EPA's inspection and review of information provided by Respondent, EPA alleges that the following violations occurred at the Facility:

IV. VIOLATIONS

COUNT I – FAILURE TO IDENTIFY HAZARDS IN VIOLATION OF THE CAA'S GENERAL DUTY CLAUSE

43. The allegations in paragraphs 1 through 42 are hereby realleged and incorporate herein by reference.

44. 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, identify hazards which may result from accidental releases of such substances, using appropriate hazard assessment techniques.

45. As alleged in paragraphs 25 through 35, Respondent owns or operates a stationary source that handled and stored anhydrous ammonia, an extremely hazardous substance. Accordingly, at the time of the violations alleged herein, Respondent was subject to the General Duty Clause.

46. Industry standards and guidelines with respect to ammonia refrigeration systems are found in, among other places, IIAR Standard 2, ASHRAE Standard 15, IIAR bulletins, the IIAR ARM Program, and other materials consistently relied upon in the refrigeration industry.

47. The recommended industry practice and standard of care for identifying, analyzing, and evaluating potential hazards associated with ammonia refrigeration systems of the same size and type as Respondent's System is to use, among other things, standard, industry-developed hazard identification checklists, a "What If" analysis, or a Hazard and Operability (a/k/a "HAZOP") study. IIAR has developed checklists for this purpose. See, e.g., IIAR ARM Program, Section 10 and Appendix 10.1. See also IIAR's Bulletin No. 110, Startup, Inspection, and Maintenance of Ammonia Mechanical Refrigeration Systems, Section 5.2.1; and U.S. Environmental

Protection Agency, Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1), May 2000 ("EPA's GDC Guidance"), Section 2.3.1, currently available at http://www.epa.gov/emergencies/docs/chem/gdcregionalguidance.pdf.

48. According to EPA's GDC Guidance, the General Duty Clause's duty to identify hazards that may result from hazardous releases requires determining (a) the intrinsic hazards of the chemicals used in the processes, (b) the risks of accidental releases from the processes through possible release scenarios, and (c) the potential effect of these releases on the public and the environment. The document that contains this analysis is often referred to as a process hazard analysis or process hazard review ("Process Hazard Review").

49. As described in paragraphs 37(a) through 37(o) above, an EPA Inspector observed potentially dangerous conditions at the Facility that indicated a failure to identify hazards associated with the System.

50. Moreover, Respondent was not able to produce any Process Hazard Review while the EPA Inspector was at the Facility.

51. Accordingly, Respondent violated the General Duty Clause's requirement to identify hazards associated with the refrigeration system using industry-recognized hazard assessment techniques, in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

COUNT II – FAILURE TO DESIGN AND MAINTAIN A SAFE FACILITY IN VIOLATION OF THE CAA'S GENERAL DUTY CLAUSE

52. The allegations in paragraphs 1 through 51 are hereby realleged and incorporated herein by reference.

53. 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 second general duty –- to, in the same manner

and to the same extent as Section 654 of Title 29, design and maintain a safe facility, taking such steps as are necessary to prevent releases.

54. The recommended industry practice and standard of care for designing and maintaining a safe facility with an ammonia refrigeration system of the same size and type as Respondent's System 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. IIAR, ASHRAE and others have developed standards and guidelines for this purpose, such as the IIAR Bulletins, IIAR Standard 2, the IIAR ARM Program, and ASHRAE Standard 15. See also EPA's GDC Guidance, Section 2.3.2. and National Fire Protection Association ("NFPA") 1, Fire Code, Section 53.

55. As described above in paragraph 37(a) to 37(j), Respondent failed in its general duty to design and maintain the Facility as a safe facility, taking such steps as were necessary to prevent a release of an extremely hazardous substance, in at least the respects listed below. The industry standards of care illustrate how the ammonia refrigeration industry has recognized hazards associated with designing and maintaining an ammonia refrigeration system and developed measures to reduce such hazards. Some of the hazards listed in the paragraphs below also have resulted in violations of the General Duty Clause's third duty, as further discussed in Count III.

Inadequate Signage and Labeling

56. As described above in paragraph 37(b), at the time of the Inspection, Respondent had no warning signs identifying ammonia hazards on the two outside doors to the Machinery Room, and on the double-doors to the Machinery Room. The recommended industry practice and

standard of care is to post signs warning of the presence of ammonia and restricting entry to authorized personnel at each entrance to the machinery room. E.g., NFPA 1 (2012), § 53.2.4.1 (refrigeration systems shall be provided with approved hazardous identification signs); ASHRAE-15 (2010), § 8.11.8 (doors to the machinery room shall have signs posted at each entrance restricting access to authorized personnel); IIAR 2-2008 (Add. A), § 13.1.2.4 (access doors to the machinery room shall have signs posted at each entrance restricting access to authorized personnel).

57. As described in paragraph 37(c), Respondent had vent pipes along the west wall in the Machinery Room that were not labeled to show the direction of the flow or the contents in the pipes, although they were labeled with the name of the vessel they were servicing. The recommended industry practice and standard of care is to label all system pipes and valve systems. E.g., ASME, § 13.1-2007 (this "Scheme for the Identification of Piping Systems" establishes a common system to assist in the identification of hazardous materials conveyed in piping systems); ASHRAE-15 (2010), § 11.2.2 (systems containing more than 110 pounds of refrigerant shall label the kind of refrigerant or secondary coolant contained in exposed piping outside the machinery room); IIAR 2-2008 (Add. A), § 10.5 (all piping mains, headers and branches shall be identified as to, among other things, the direction of the flow); IIAR Bull. 109 (1997), § 4.7.6 (all ammonia piping shall have appropriate pipe markers attached to indicate the use of the pipe, and arrows to indicate the direction of the flow). See generally IIAR Bull. 114 (2014), Guideline for Identification of Ammonia Refrigeration Piping and System Components.

Inadequate Maintenance

58. As described in paragraph 37(e), Respondent's Facility had several sections of exposed

ammonia piping and fitting on the roof of the facility with visible signs of corrosion. The recommended industry practice and standard of care is to prevent corrosion on ammonia piping and insulate designated piping to prevent condensation and corrosion. E.g., IIAR 2-2008 (Add. A), Appendix H, § H.6 and H.7 (describing methods to take to minimize corrosion). IIAR Bull. 110 (1993), § 6.7 (requiring inspection, repair, and replacement of piping).

Inadequate Basic Safety Practices

59. As described above in paragraphs 37(f) and 37(g), Respondent had no audio/visual alarms, to notify workers in the event of an ammonia release, at the entries to the Machinery Room or next the double-doors to the Machinery Room. In addition, Respondent had no visual alarm on the outside door on the west wall of the Machinery Room, but had an audible alarm in this location that was not labeled as to its purpose. Adequate alarms provide early warning that a release is taking place, enabling quick responses and protective workers, emergency responders and the public from a larger release. The recommended industry practice and standard of care is to equip detectors to activate visual and audible alarms inside the machinery room and at each of its entrances, including clearly marked signage to explain the meaning of each alarm. E.g., NFPA 1 (2012), §§ 53.2.3.1.2 ("Audible and visual alarm signaling devices shall be located inside the refrigeration machinery room and outside the room at each entrance to the room.") and 53.2.3.1.3 (requiring a prescribed level of audibility for alarms); ASHRAE 15-2010, § 8.11.2.1 (". . . [the alarm required by this Section] shall annunciate visual and audible alarms inside the refrigerating machinery room and outside each entrance to the refrigerating machinery room."); IIAR 2-2008 (Add. A), §§ 13.2.1.2 ("The detectors shall activate visual and audible alarms inside the refrigerating machinery room and outside each entrance to the refrigerating machinery

room.") and 13.2.4.1 ("The meaning of each alarm shall be clearly marked by signage near the visual and audible alarms.").

60. As described in paragraph 37(h), Respondent had a King Valve that was not identified with a prominent sign, was missing a handle, and was inaccessible, making it difficult for employees or responders to quickly isolate the high pressure receiver in the event of an incident and prevent a larger release. The recommended industry practice and standard of care is to ensure that critical valves are labeled, directly operable, and easily accessible. E.g., NFPA 1 (2012), § 53.2.4.2 (systems containing more than 110 pounds of refrigerant shall have signs designating the main shutoff valves to each vessel); IIAR 2-2008 (Add. A), § 13.1.2.3 (isolation valves that are part of an emergency shutdown procedure shall be directly operable or chain-operated from a permanent work surface); IIAR Bull. 109, § 4.10.3 (the main shut off valves should be readily accessible and identified with a prominent sign).

61. Accordingly, by failing to have (a) adequate signs and labels; (b) adequate maintenance; and (c) adequate basic safety practices, Respondent failed to design and maintain a safe facility in violation of the General Duty Clause, Section 122(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

COUNT III - FAILURE TO MINIMIZE THE CONSEQUENCES OF ACCIDENTAL RELEASES THAT DO OCCUR IN VIOLATION OF THE CAA'S GENERAL DUTY CLAUSE

62. The allegations in paragraphs 1 through 61 are hereby realleged and incorporated herein by reference.

63. 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 third general duty -- to, in the same manner and

to the same extent as Section 654 of Title 29, minimize the consequences of any accidental releases of anhydrous ammonia which do occur.

64. Industry standards and guidelines for minimizing the consequence of an accidental release from ammonia refrigeration systems are found, among other things, in the IIAR ARM Program, IIAR Standard 2, ASHRAE Standard 15, IIAR bulletins, and other materials (including updates and revisions) consistently relied upon by refrigeration experts. They include design and maintenance measures to minimize the severity and duration of releases that do occur, such as, among other things, standards for vapor detection, alarms, equipment and door labeling, emergency shut-off switches, ventilation, keeping combustible materials and electrical hazards away from ammonia, safe oil drain systems, tight construction of machinery rooms; designing safe pressure relief valves and associated piping; reducing obstructions for responders; and having emergency eye wash stations and showers.

65. As described above in paragraph 37(i), Respondent had no emergency eyewash of safety shower stations located inside or outside of the Machinery Room. The recommended industry practice and standard of care is to locate an emergency eye wash or safety showers immediately outside the machine room exit door. E.g., IIAR 2-2008, § 13.1.6; and IIAR Bull. 109, §§ 4.10.10 ("An emergency eye wash station and deluge body shower shall be located just outside the machine room exit door. An additional emergency eye wash station and deluge body shower should be readily accessible inside the machine room.") and 7, General Safety Checklist Item (v).

66. As described above in paragraph 37(j), both sets of doors to the Machinery Room opened inward rather than outward. The recommended industry practice and standard of care is to provide that each machinery room door opens outward to allow for swift egress in the event of

an emergency. E.g., IIAR 2-2008, § 13.1.10.1 ("Each refrigerating machinery room shall have . . . doors opening outward. . ."); ASHRAE 15 (2010), § 8.11.2 (requiring outward opening doors).

67. As described above in paragraph 37(k), Respondent had double-doors that provided entry to the Machinery Room which were not tight-fitting. Specifically, there was a one-inch gap at the bottom of these doors from which ammonia vapors could escape from the Machinery Room in the event of an emergency. The recommended industry practice and standard of care is to ensure that each machinery room door is tight-fitting. E.g., ASHRAE-15 (2010), §§ 8.11.2 (each machinery room shall have a tight-fitting door); IIAR 2-2008 (Add. A), §§ 13.1.1.6 (access doors to a machinery room shall be tight-fitting), 13.1.10.1 (machinery room shall have a tight-fitting door), and 13.1.10.2 (doors shall be tight-fitting).

68. As described above in paragraph 37(l), Respondent had a steel support girder located between the Machinery Room and the fire water public room that was not tightly sealed to the cinderblock wall. As described above in paragraph 37(mo), Respondent had an open viewing port, or peephole, into the Machinery Room, from which ammonia could lead and from which ammonia fumes could burn an employee's eyes. The recommended industry practice and standard of care is to require walls, floor and ceiling to be tightly sealed. E.g., ASHRAE-15 (2010), § 8.12 (walls, floor and ceiling shall be tightly constructed); IIAR 2-2008 (Add. A), § 13.1.1.3 (walls, floor and ceiling shall be tightly constructed).

69. As described in paragraph 37(n), Respondent had a water dispersion tank vent discharge that was not located more than 7.25 feet above the adjacent roofline. The recommended industry practice and standard of care at the time of the Inspection was to require pressure-relief devices to discharge at a location of 15 feet or more above the adjoining building level, although newer standards reduce that height to 7.25 feet. E.g., NPFA 1-2012, §

53.2.2.1.2(2) (discharge of vapor to the air shall be permitted, provided that the point of discharge is located outside the structure at not less than 15 feet above the adjoining grade level); ASHRAE 15-2010, § 9.7.8 (pressure-relief devices shall discharge to the atmosphere at a location not less than 15 feet above the adjoining ground level); IIAR 2-2008 (Add. A), § 11.3.6.4 (the discharge from pressure relief devices to the atmosphere shall be not less than 15 feet above the adjacent roof level); IIAR 2-2014, § 15.5.1.3 (new standard is not less than 7.25 feet above the height of the adjacent roof).

70. Also, the allegations in paragraphs 56, 57, 60 and 61 describe deficiencies that not only constitute a failure to design and maintain a safe facility, but also reflect a failure to minimize the consequences of any accidental release of ammonia. Each of these shortcoming could exacerbate the negative effects of any release of ammonia that does occur at the Facility.

71. Accordingly, by failing to have adequate emergency design mechanisms for the Facility, adequate signs and labels, and adequate basic safety practices, Respondent violated the requirement to minimize the consequences of any accidental release of anhydrous ammonia which does occur, in violation of General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

COUNT IV: FAILURE TO SUBMIT A RISK MANAGEMENT PLAN

72. The allegations in paragraphs 1 through 71 are hereby realleged and incorporated herein by reference.

73. From at least the date of the Inspection to the date of this CAFO, Respondent stored, handled or used anhydrous ammonia in the refrigeration system at the Facility in an amount that exceeded the 10,000 pound threshold set forth in 40 C.F.R. § 68.130.

74. Such storage, handling, or use of anhydrous ammonia, an RMP chemical, in the

75. Facility's refrigeration system is a "covered process," as that term is defined in 40 C.F.R. § 68.3.

76. Pursuant to 40 C.F.R. §§ 68.10(a), 68.12, and 68.150, Respondent was required to prepare and submit a RMP for anhydrous ammonia documenting such compliance before it began using anhydrous ammonia at the Facility.

77. By failing to submit an RMP for anhydrous ammonia before using it at the Facility in an amount that exceeded the regulatory threshold, from at least August 12, 2014 until April 3, 2015, Respondent violated Section 122(r)(7)(E) of the CAA Act, 42 U.S.C. § 7412(r)(7)(e), and 40 C.F.R. §§ 68.10(a), 68.12, and 68.150.

COUNT V: FAILURE TO SUBMIT ACCURATE CHEMICAL INVENTORY FORMS IN COMPLIANCE WITH EPCRA SECTION 312

78. The allegations in paragraphs 1 through 77 are hereby realleged and incorporated herein by reference.

79. At all times relevant to the violations cited herein, Respondent was storing approximately 10,425 pounds of lead contained in lead-acid batteries, and in excess of 3,791 pounds of sulfuric acid contained in lead-acid batteries and approximately 10,000 pounds of anhydrous ammonia at the Facility.

80. Lead is a "hazardous chemical" as defined in 40 C.F.R. Part 370. Sulfuric acid and ammonia each are "hazardous chemicals," as defined at 40 C.F.R. § 370.66 and 29 C.F.R. § 1910.1200(c) and "extremely hazardous substances," as defined in 40 C.F.R. Part 355.

81. Pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370, commencing on or before the March 1 following the date upon which Respondent was required to prepare or have available an MSDS for lead, sulfuric acid, and anhydrous ammonia at or in connection with the Facility, and on or before the March 1 of each year thereafter, Respondent

was required to submit an "emergency and hazardous chemical inventory form," containing the data regarding lead, sulfuric acid, and anhydrous ammonia at the Facility, required under Section 312, for the preceding calendar year ("Inventory Form"), to the appropriate LEPC, the SERC, and the fire department with jurisdiction over the facility. See also "Lead Acid Battery Responding Under EPCRA Section 311 and 312 – REVISED," EPA April 25, 2007.

82. During the calendar years 2011, 2012 and 2013, Respondent stored lead in the lead-acid batteries of the Facility's 80 trucks in an amount that exceeded the minimum threshold level of 10,000 pounds set forth in 40 C.F.R. Part 370.

83. For the calendar years 2011, 2012, and 2013, Respondent failed to include lead on its Tier 2 Inventory Form.

84. For the calendar years 2011, 2012, and 2013, Respondent reported on its Tier 2 Inventory Form that it was storing 3,791 pounds of sulfuric acid and 9,800 pounds of ammonia at the Facility, which failed to take into account the sulfuric acid stored in lead-acid batteries in the Respondent's 80 trucks, and also under-reported the quantity of anyhydrous ammonia stored at the Facility.

85. By failing to report the storage of lead, and under-reporting the quantity of ammonia and sulfuric acid, on its Inventory Form for the years 2011, 2012 and 2013 by March 1st of the following year to the SERC, LEPC, and the local fire department, Respondent violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, and 370.45.

V. TERMS OF SETTLEMENT

86. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent and its successors and assigns.

87. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this

CAFO and that this CAFO states a claim upon which relief may be granted against Respondent. Respondent hereby waives any defenses it might have as to jurisdiction and venue relating to the violations alleged in this CAFO.

88. Respondent neither admits nor denies the specific factual allegations contained in Sections I through IV of this CAFO. Respondent consents to the assessment of the penalty stated herein.

89. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its right to appeal the Final Order.

90. Respondent certifies that it is currently operating the Facility in compliance with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), 40 C.F.R. Part 68, Section 103(a) of CERCLA, 42 U.S.C.§ 9603(a), and Section 312 of EPCRA, 42 U.S.C. § 11022.

91. Respondent also certifies that it has analyzed ammonia inventories at its other facilities nationwide, following industry standards for ammonia inventory calculations, and has filed RMPs for those facilities that have over 10,000 pounds of ammonia in covered processes. The other facilities are located at the addresses listed on Attachment A. Furthermore, Respondent certifies that it is reviewing its other facilities nationwide to determine whether they have in place the following bare minimum safety measures, and if not, has developed a schedule to put them in place by twelve months after the effective date of this CAFO. It is EPA's position that these measures must be in place, regardless of an ammonia refrigeration system's age or size, for the system to meet the requirements of 40 C.F.R. Part 68 or the General Duty Clause, and that this is not intended to be a complete list of important safety measures.

a) Understanding the Hazards Posed by the System
   - Facility has completed a process hazard review/analysis to identify the hazards posed by the System(s).

b) Operating Activities:
Hazard Addressed: High risk of release from operating or maintenance activity
- System(s) has self-closing/quick closing valves on oil pots.
- Facility has written procedures for System maintenance and operation activities.
- Only authorized persons have access to refrigeration machinery room and the ability to alter safety settings on equipment.

c) Maintenance/Mechanical Integrity:
Hazard Addressed: Leaks/releases from maintenance neglect
- A preventative maintenance program is in place to, among other things, detect and control corrosion, deteriorated vapor barriers, ice buildup, and pipe hammering to inspect the integrity of equipment/pipe supports.
- All piping system openings except the relief header are plugged or capped, or valve is locked.
- Equipment, piping, and valves are labeled for easy identification, and pressure vessels have legible, accessible nameplates.
- All atmospheric pressure relief valves have been replaced in the last five years with visible confirmation of accessible pressure relief valve [note: replacement every five years is the general rule, but there are two other options in IIAR Bulletin 110.6.3.3].

d) Machinery Room
Hazard Addressed: Inability to isolate releases
- The System(s) have emergency shut off and ventilation switches outside machinery room.
- The machinery room(s) have functional, tested, ventilation. Air inlets are positioned to avoid recirculation of exhaust air and ensure sufficient inlet air to replace exhausted air.
- Documentation exists to show that pressure relief valves that have a common discharge header have adequately sized piping to prevent excessive backpressure on relief valves, or if built prior to 2000, have adequate diameter based on the sum of the relief valve cross-sectional areas.

e) Emergency Actions
Hazard Addressed: Inability to regain control and reduce release impact
- Emergency response communication has occurred with the local emergency planning committee and local responders.
- An Emergency Action Plan or Emergency Response Plan-has been developed.
- The System's critical shutoff valves are accessible and identifiable, and a schematic is in place to show responders where to access them.
- If respirators are used, you know where the respirators are located, and the respirators are inspected and maintained per manufacturer or industry standards.
- Eyewash station(s) and safety shower(s) is/are present and functional.
- The facility's EPCRA Tier II reporting is up to date.

92. Pursuant to Sections 113(e) and (d)(B) of the CAA, 42 U.S.C. §§ 7413(e) and (d)(B), and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and taking into account the relevant statutory penalty criteria (particularly the economic impact of the penalty on the business), the facts alleged in this CAFO, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of one hundred eighty-four thousand, seven hundred seventeen dollars ($184,717) for the violations alleged in this matter. The penalty shall be apportioned in the following manner: $172,055 for the alleged CAA violations and $12,662 for the alleged EPCRA violation.

93. Respondent consents to the issuance of this CAFO and to the payment of the civil penalty cited in paragraph 92.

94. Within thirty (30) days of the effective date of this CAFO, Respondent shall pay the total penalty amount of $184,717 according to the following instructions:

95. Respondent shall pay the CAA and EPCRA penalties by submitting a company, bank, cashier's, or certified check, payable to the order of the "Treasurer, United States of America," in the amount of $184,717, to:

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

a. Respondent may make payment by electronic funds transfer instead of check, via:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

b. Respondent shall include the case name and docket numbers ("In re: Performance Food Group, Inc., Docket Nos. CAA-01-2017-0024 and EPCRA-01-2017-0025") on the face of each check or wire transfer confirmation. In addition, at the time of payment, Respondent shall simultaneously send notice of the payment and a copy of each check or electronic wire transfer confirmation to:

Wanda I. Santiago
Regional Hearing Clerk (Mail Code ORA 18-1)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Audrey Zucker
Enforcement Counsel (Mail Code OES 04-02)
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

96. In the event that any portion of the civil penalty amount described in paragraph 94 is not paid by the required due date, the total penalty amount of $184,717, plus all accrued interest shall become due immediately to the United States upon such failure. Then, interest as calculated in paragraphs 97 and 98 shall continue to accrue on any unpaid amounts until the total amount due has been received by the United States. Respondent shall be liable for such amount regardless of whether EPA has notified Respondent of its failure to pay or made a demand for payment. All payments to the United States under this paragraph shall be made by company, bank, cashier's, or certified check, or by electronic funds transfer, as described in paragraph 95.

97. Collection of Unpaid EPCRA Penalty: 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 any portion of the civil penalty

amount relating to the alleged EPCRA violation is not paid when due, 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.

98. Collection of Unpaid CAA Civil Penalty: In the event that any portion of the civil penalty amount relating to the alleged CAA violations is not paid when due without demand, pursuant to Section 113(d)(5) of the CAA, Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid when due. In that event, interest will accrue from the due date at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorney's fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

99. The civil penalty under this CAFO and any interest, nonpayment penalties, and other

charges described herein shall represent penalties assessed by EPA, and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.62-21 of the Internal Revenue Code, 26 U.S.C. § 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.

100. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in 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 law. Accordingly, Respondents agree to treat all payments to the EPA made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 162(f), and further agree not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

101. This CAFO in no way relieves Respondent or its 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 Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

102. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which the Complaint and this CAFO is based, or for Respondent's violation of any applicable provision of law.

103. This CAFO shall not relieve Respondent of its obligation to comply with all applicable

provisions of federal, state, or local law; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

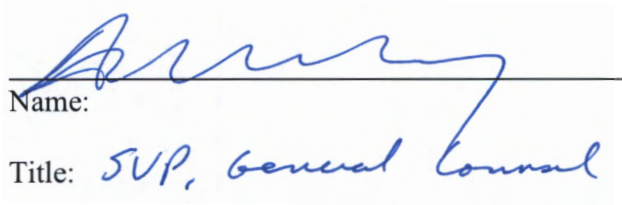
104. The parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other parties pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

105. The terms, conditions, and requirements of this CAFO may not be modified without the written agreement of all parties and approval of the Regional Judicial Officer.

106. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

107. Each undersigned representative of the parties certifies that he is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR RESPONDENT PERFORMANCE FOOD GROUP, INC.:



Date: 3-1-17

Name:

Title: SVP, General Counsel

Performance Food Group, Inc.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Susan Studlien Date: 03/15/2017

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Attachment A

List of Respondent's other facilities:

Address	City	State
625 Division St. N.	Rice	MN
9310 S. McKenny St.	Tempe	AZ
506 Hwy 35 North	Batesville	MS
5225 Investment Drive	Dallas	TX
3501 Old Oakwood Rd.	Oakwood	GA
150 N. Gallagher Rd.	Dover	FL
401 Maddox Simpson Pkwy	Lebanon	TN
2324 Bayou Blue Rd.	Houma	LA
5262 Air Park Blvd.	Morristown	TN

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of Performance Foodservice, a division of Performance Food Group, Inc. One Performance Boulevard Springfield, MA 01104 Respondent. Proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d) and Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c)	Docket Nos.: CAA-01-2017-0024 EPCRA-01-2017-0025

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will be effective on the date is filed with the Regional Hearing Clerk.

Date: March 21, 2017

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

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, In the Matter of Performance Food Group, Inc., Docket Nos. CAA-01-2017-0024 and EPCRA-01-2017-0025, was sent to the following persons, in the manner specified on the date below:

Original and one copy, hand-delivered:	Wanda I. Santiago, Regional Hearing Clerk U.S. Environment Protection Agency, Region I 5 Post Office Square, Suite 100 (ORA18-1) Boston, MA 02109-3912
One copy by electronic mail:	Ashley Brooks, Esq. Performance Food Group Company 12500 West Creek Parkway Richmond, VA 23238 Ashley.Brooks@pfgc.com

Date: 3/22/17

Heather L. Thompson

Heather Thompson
Paralegal Specialist
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (OES04-4)
Boston, MA 02109-3912
(617) 918-1320

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – New England
5 Post Office Square - Suite 100
Boston, Massachusetts 02109-3912

BY HAND

MAR 2 0 2017

LeAnn W. Jensen, Acting Regional Judicial Officer
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, Massachusetts 02109-3912

Re: Request for Approval of Consent Agreement and Final Order for Pre-Filing Settlement
In Re: Performance Foodservice, a division of Performance Food Group, Inc., Docket Nos. CAA-01-2017-0024 and EPCRA-01-2017-0025

Dear Ms. Jensen:

Enclosed for your approval you will find a Consent Agreement and Final Order ("CAFO") entered into voluntarily between EPA Region 1 and the Respondent, Performance Foodservice, a division of Performance Food Group, Inc. If signed by you, the CAFO will formally initiate and resolve EPA allegations of civil administrative penalty liability against the Respondent under Section 112(r) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r), and Section 312 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c).

The CAFO arises out of pre-filing discussions between EPA and the Respondent. The violations alleged therein are based on EPA's findings that Respondent violated the General Duty Clause and the risk management planning requirements of the CAA, in its handling of anhydrous ammonia at its facility in Springfield, MA, and violated EPCRA by under-reporting ammonia and failing to report lead contained in lead-acid batteries on its Tier 2 Inventory Forms. Under the terms of the CAFO, without admitting or denying the violations, Respondent must pay a civil penalty of $187,717 to settle EPA's penalty claims.

This settlement and the agreed-upon penalty amount are consistent with the statutory penalty factors as set forth in EPA calculated the penalty pursuant to 1) the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" (Jun. 2012) and the statutory penalty factors listed in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e); 2) CAA Section 113(d)(2)(B), which authorizes EPA to compromise CAA penalties, with or without conditions; and 3) the "Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act" (Sept. 30, 1999).

Once the Final Order has been signed, I will file the fully executed CAFO with the Regional Hearing Clerk, thereby effectively resolving this case.

I appreciate your consideration of this request for approval and signature of the enclosed CAFO.

Respectfully submitted,

Audrey Zucker
Enforcement Counsel

Enclosure

ecc: Ashley Brook, Counsel for Respondent