UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 24 2017

REPLY TO THE ATTENTION OF:

ELECTRONIC SERVICE
VIA EMAIL

Mr. Alex King
Plant Manager
Stratas Foods LLC
2731 Refinery Road
Quincy, Illinois 62305
Alex.King@stratasfoods.com

Re: Stratas Foods LLC, Consent Agreement and Final Order
Docket No. **CAA-05-2017-0016**

Dear Mr. King:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on March 24, 2017. Please pay the civil penalty in the amount of **$43,500** in the manner prescribed in paragraph(s) 62 thru 64 and reference your check with the number BD **CAA-05-2017-0016** and the docket number.

Please feel free to contact Silvia Palomo at (312) 353-2172 if you have any questions regarding the enclosed documents. Please direct any legal questions to Cynthia Kawakami, Associate Regional Counsel at (312) 886-0564. Thank you for your assistance in resolving this matter.

Sincerely,

for James Entzminger
Michael E. Harris, Chief
Chemical Emergency
Preparedness and Prevention Section

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

IN THE MATTER OF:	)	
	)	
Stratas Foods LLC	)	**Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)**
	)	
2731 Refinery Road	)	
Quincy, Illinois 62305	)	
Respondent.	)	
	)	**Docket No. CAA-05-2017-0016**

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules"), as codified at 40 C.F.R. Part 22, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations at 40 C.F.R. Part 68.

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency ("EPA"), Region 5, Chicago, Illinois.

3. Respondent is Stratas Foods LLC (Stratas or Respondent), a company doing business in the state of Illinois, and that manufactures and distributes packaged oil products in the United States and Canada.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Stratas admits the jurisdictional allegations in this CAFO, but neither admits nor denies the factual allegations in this CAFO.

8. Stratas waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which has since been codified, as amended, at 40 C.F.R. § 68.130.

15. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated "Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)," 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and

amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (Risk Management Program Regulations).

16. The Risk Management Program Regulations, at 40 C.F.R. § 68.3, define "stationary source" as "any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur."

17. The Risk Management Program Regulations, at 40 C.F.R. § 68.3, define "process" 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."

18. The Risk Management Program Regulations, at Tables 1 and 2 referenced in 40 C.F.R. § 68.130, list ammonia (CAS #7664-41-7), as a regulated toxic substance with a threshold quantity of 10,000 pounds (lbs.).

19. The Risk Management Program Regulations, at 40 C.F.R. § 68.115(a), provide that a "threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold."

20. The Risk Management Program Regulations, at 40 C.F.R. § 68.12(a), require that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided in 40 C.F.R. §§ 68.150 through 68.185.

21. The Risk Management Program Regulations, at 40 C.F.R. § 68.12(c), require that, in addition to meeting the general requirements of 40 C.F.R. § 68.12(a), the owner or operator of

a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

22. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $37,500 per day of violation up to a total of $295,000 for CAA violations that occurred after January 12, 2009 through December 6, 2013 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 and Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43091 (July 1, 2016) (to be codified at 40 C.F.R. Part 19).

23. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

24. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

Factual Allegations and Alleged Violations

25. Respondent owns and operates a food oil products manufacturing and distribution facility located at 2731 Refinery Road, Quincy, Illinois 62305 (the Facility). At the Facility, Respondent is engaged in packaging margarine, liquid oil and shortenings

26. Respondent is a "person," as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

27. The Facility is or was at all times relevant to this CAFO a "stationary source" as that term is defined at 40 C.F.R. § 68.3.

28. For purposes of the requirements at 40 C.F.R. Part 68, Respondent is or was at all times relevant to this CAFO the "owner or operator" of the Facility as that term is defined at Section 112(a)(9) of the Act.

29. At all times relevant to this CAFO, Respondent owns and/or operates a closed-loop refrigeration system which utilizes or utilized anhydrous ammonia at the Facility.

30. Respondent uses and stores, or used and stored at all times relevant to this CAFO, 13,800 lbs. of anhydrous ammonia in the refrigeration system at the Facility.

31. Anhydrous ammonia is a "regulated substance" under § 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3).

32. The Facility is subject to the "Program 3" eligibility requirements because the process: a) does not meet the requirements of 40 C.F.R. § 68.10(b) because the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under Subpart B and 40 C.F.R. § 68.25 is greater than the distance to any public receptor; and b) is subject to the OSHA process safety management standard set forth at 29 C.F.R. § 1910.119 and 40 C.F.R. § 68.10(d) because the process involves anhydrous ammonia above the threshold quantity of 10,000 pounds.

33. On August 11, 2011, a representative from U.S. EPA conducted an inspection at the Facility (the Inspection) under the authority of Section 114(a) of the Act, 42 U.S.C. § 7414(a). The purpose of the Inspection was to determine whether the Respondent was complying with Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the regulations at 40 C.F.R. Part 68, at the Facility.

34. On July 7, 2015, U.S. EPA sent Respondent an information request via certified mail. The purpose of the information request was to determine whether the Respondent was

complying with Section 112(r) of the Act, 42 U.S.C. § 7412(r) and the regulations implementing Section 112(r) at 40 C.F.R. Part 68 at the Facility.

35. Based on the inspection conducted on August 11, 2011, and a review of additional information received by EPA subsequent to that date in response to an information request, EPA determined that the Facility failed to comply with the Risk Management Program regulations at 40 C.F.R. Part 68 for Program 3 requirements as set forth below in Paragraphs 35 through 59.

Worst-case release scenario analysis

36. Respondent reported in its April 27, 2009 and March 27, 2014 Risk Management Plans (RMPs), a worst-case release scenario from the anhydrous ammonia refrigeration system that assumed a release of anhydrous ammonia from the entire system.

37. Respondent's failure to consider the greatest amount of anhydrous ammonia held in a single vessel to determine the worst-case release quantity in its RMPs, was a violation of 40 C.F.R. § 68.25(b).

Process Hazard Analysis

38. Respondent conducted a Process Hazard Analysis (PHA) from April 15 through June 16, 2011. The process hazard analysis failed to address the consequences of failure of engineering and administrative controls; engineering and administrative controls applicable to hazards and interrelationships; stationary source siting; and human factors as required by 40 C.F.R. § 68.67(c).

39. Respondent's 2011 PHAs failed to address the components mentioned in the above paragraph and, thus, violated 40 C.F.R. § 68.67(c).

Mechanical Integrity

40. As of the date of the Inspection on August 11, 2011, Respondent did not have a written mechanical integrity program to maintain the on-going integrity of all the process equipment.

41. Respondent's failure to establish and adequately implement written procedures to maintain the on-going integrity of the process equipment (have a written mechanical integrity program) by the date of the Inspection, violated 40 C.F.R. § 68.73(b).

42. As of the date of the Inspection on August 11, 2011, Respondent failed to demonstrate that it performed inspections and tests on the anhydrous ammonia refrigeration system, as required by 40 C.F.R. § 68.73(d)(1).

43. Respondent's failure to perform inspections and tests on the anhydrous ammonia refrigeration system, by the date of the Inspection, was a violation of 40 C.F.R. § 68.73(d)(1).

44. As of the date of the Inspection on August 11, 2011, Respondent failed to demonstrate that it followed recognized and generally accepted good engineering practices for inspections and testing procedures, as required by 40 C.F.R. § 68.73(d)(2).

45. Respondent's failure to follow recognized and generally accepted good engineering practices for inspections and testing procedures by the date of the Inspection was a violation of 40 C.F.R. § 68.73(d)(2).

46. As of the date of the Inspection on August 11, 2011, Respondent failed to demonstrate that it ensured that the frequency of inspections and tests of the anhydrous ammonia refrigeration system were consistent with applicable good engineering practices, as required by 40 C.F.R. § 68.73(d)(3).

47. Respondent's failure to ensure that the frequency of inspections and tests of the anhydrous ammonia refrigeration system were consistent with applicable good engineering practices by the date of the Inspection was a violation of 40 C.F.R. § 68.73(d)(3).

48. As of the date of the Inspection on August 11, 2011, Respondent failed to document each inspection and test that had been performed on the ammonia refrigeration system, as required by 40 C.F.R. § 68.73(d)(4).

49. Respondent's failure to document each inspection and test that had been performed on the ammonia refrigeration system by the date of the Inspection was a violation of 40 C.F.R. § 68.73(d)(4).

Compliance Audit

50. On August 22, 2011, Respondent conducted a compliance audit.

51. On August 18 through August 22, 2014, Respondent conducted another compliance audit.

52. Respondent failed to *promptly* determine and document an appropriate response to each of the findings of the August 22, 2011 compliance audit, and document that the deficiencies found during the August 22, 2011 compliance audit had been corrected, as required 40 C.F.R. § 68.79(d).

53. Respondent's failure to *promptly* determine and document an appropriate response to each of the findings of the August 22, 2011 compliance audit, and document that the deficiencies found during that audit had been corrected was a violation of 40 C.F.R. § 68.79(d).

Contractors

54. Respondent was required to obtain and evaluate its contractor's safety performance prior to selecting the contractor to perform maintenance on the system, as required by 40 C.F.R. § 68.87(b)(1).

55. In September 2010, Dual-Temp was hired to performance maintenance on the refrigeration system but Respondent failed to evaluate Dual-Temp's safety performance prior to selecting the contractor for the job, as required by 40 C.F.R. § 68.87(b)(1).

56. Respondent's failure to evaluate Dual-Temp's safety performance prior to selecting the contractor for the job was a violation of 40 C.F.R. § 68.87(b)(1).

Emergency Response Plan

57. Respondent failed to include procedures in its Emergency Response Plan for the use of the emergency response equipment and for its inspection, testing and maintenance, as required 40 C.F.R. § 68.95(a)(2).

58. Respondent's failure to include procedures in its Emergency Response Plan for the use of the emergency response equipment and for its inspection, testing and maintenance was a violation of 40 C.F.R. § 68.95(a)(2).

Required Corrections

59. Respondent's employee, Kevin Caudle, was identified during the Inspection as Plant Manager of the facility, and as the emergency contact for Risk Management Plan (RMP) purposes. Respondent represented during the Inspection that Mr. Caudle became Plant Manager on June 1, 2010. As of the date of the Inspection on August 11, 2011, Mr. Caudle was not listed in the RMP as emergency contact. Respondent's failure to correct the emergency contact information (listing Kevin Caudle as the emergency contact) in its RMP within one month of any change in the emergency contact information, was a violation of 40 C.F.R. § 68.195(b).

60. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

Civil Penalty

61. Based on an analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation and prompt compliance, Complainant has determined that an appropriate civil penalty to settle this action is $43,500.

62. Within 30 days after the effective date of this CAFO, Respondent shall pay the $43,500 civil penalty by sending a company or personal check, by regular U.S. Postal Service mail, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "Stratas Foods LLC" and the docket number of this CAFO.

63. A transmittal letter stating Respondent's name, complete address, and the docket number of this CAFO must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Silvia Palomo (SC-5J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division

U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Cynthia Kawakami (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

65. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

66. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

67. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail

at the following valid e-mail addresses: kawakami.cynthia@epa.gov (for Complainant), and Thor.Ketzback@bryancave.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

68. This CAFO resolves only Stratas Food's liability for federal civil penalties for the violations alleged in this CAFO.

69. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

70. This CAFO does not affect Stratas Food's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in Paragraph 68, above, compliance with this CAFO will not be a defense to any actions subsequently commenced by Complainant pursuant to federal laws administered by it.

71. Respondent certifies that, to the best of its knowledge and belief, it is complying fully with 40 C.F.R. Part 68.

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

73. The terms of this CAFO bind Stratas Foods, its successors, and assigns.

74. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

75. Each party agrees to bear its own costs and attorneys' fees incurred in this action.

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

77. This CAFO is effective when filed with the Regional Hearing Clerk.

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Stratas Foods LLC
Docket No. CAA-05-2017-0016

Stratas Foods LLC, Respondent

Date: 3/16/17 By:
Tedd Kruse
Chief Executive Officer

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Stratas Foods LLC
Docket No. CAA-05-2017-0016

United States Environmental Protection Agency, Complainant

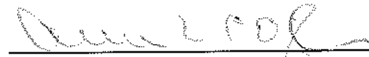
Date: 3/22/17 By: Lawrence Schmitt
for Margaret Guerriero, Acting Director
Superfund Division

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Stratas Foods LLC
Docket No. CAA-05-2017-0016

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date: March 24, 2017

By: 

Ann L. Coyle
Regional Hearing Officer
U.S. Environmental Protection Agency
Region 5

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of Stratas Foods LLC
Docket No. CAA-05-2017-0016

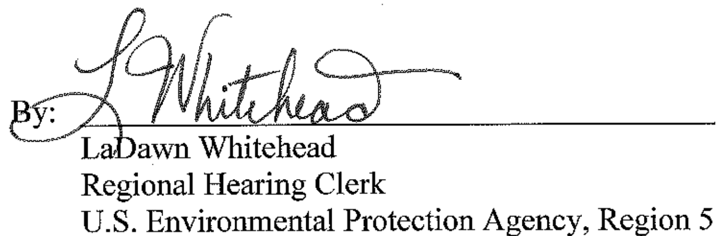
CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, docket number **CAA-05-2017-0016**, which was filed on March 24, 2017,

in the following manner to the addressees:

Copy of Certified Mail Return Receipt:	Alex King Stratas Foods LLC Alex.King@stratasfoods.com
Copy be E-Mail to Attorney for Respondent:	Thor Ketzback, Esq. Thor.Ketzback@bryancave.com
Copy by E-Mail to Attorney for Complainant:	Cynthia Kawakami kawakami.cynthia@epa.gov
Copy by E-Mail to Regional Judicial Officer:	Ann L. Coyle coyle.ann@epa.gov

Date: March 24, 2017

By: 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5