

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Catherine Smith
Name of Case Attorney

12/23/15
Date

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

Case Docket Number CAA-01-2016-0020

Site-specific Superfund (SF) Acct. Number _____

This is an original debt _____ This is a modification

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

Michael M. Miller, VP of Envir, Health + Safety
Garelick Farms, LLC
2711 North Haskell Ave, Suite 3400 140N 304
DALLAS, TEXAS 75204

Total Dollar Amount of Receivable \$ 255,000.00 Due Date: _____

SEP due? Yes No _____ 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 _____

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (“Consent Agreement” or “Agreement”) and the attached final order (“Final Order” or “Order”) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order. The Consent Agreement and Final Order resolves Respondent’s liability for alleged violations of the chemical accident prevention provisions of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and implementing regulations at 40 C.F.R. Part 68 with regard to Respondent’s operation of an ammonia-based refrigeration system at its Lynn, Massachusetts facility. As further delineated below, the settlement requires:

- a. payment of a civil penalty of \$255,000;
- b. performance of a third-party audit to confirm that Respondent’s Franklin, Massachusetts facility is in compliance with 40 C.F.R. Part 68;
- c. perform three supplemental environmental projects to (i) minimize ammonia releases from Respondent’s Lynn facility; (ii) improve the Lynn Fire Department’s ability to respond to incidents involving hazardous materials; and (iii) protect Lynn school children by improving chemical management in their schools.

A separate administrative compliance order on consent, dated September 28, 2015, requires Respondent to complete correcting violations of 40 C.F.R. Part 68 that EPA identified in 2012, work that has been ongoing since that time.

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.

6. The EPA and the United States Department of Justice jointly determined that this matter is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(b) and 22.18(b).

8. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

9. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. In particular, Section 112(r)(3) of the CAA, 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) of the CAA, 42 U.S.C. § 7412(r)(5), requires that EPA establish, for each listed substance, the threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, 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 an RMP.

10. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. In particular, Section 112(r)(3) of the CAA, 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) of the CAA, 42 U.S.C. § 7412(r)(5), requires that EPA establish, for each listed substance, the threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, 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 an 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. Part 68.

12. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), renders it unlawful for any person to operate a stationary source subject to the regulations promulgated under the authority of 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, in accordance with the requirements of Sections 112(r)(3) and (7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and (7). 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: (a) 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 Occupational Safety and Health Administration (“OSHA”) process safety management

("PSM") standard at 29 C.F.R. § 1910.119. Under 40 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 subject to the requirements of Part 68 submit an RMP to EPA, as provided in 40 C.F.R. § 68.150. The RMP documents compliance with Part 68 in a summary format. For example, the RMP for a Program 3 process documents compliance with the elements of a 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) also requires 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. Other aspects of the prevention program must also be periodically updated.

20. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 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 up to \$37,500 per day for violations occurring after January 12, 2009.

D. GENERAL ALLEGATIONS

21. Respondent Garelick Farms owns and operates a controlled temperature production plant for milk and fruit juices at 626 Lynnway in Lynn, Massachusetts (the “Facility”).

22. The Facility is located in a predominantly industrial and commercial area on Highway 1A, across the street from the Lynn wastewater treatment plant, which also is an RMP facility. The Facility is within a quarter mile of a church, restaurants, other businesses, and freight and passenger rail lines. The Facility is within a half mile of residences, playgrounds and Broad Sound, and is less than one mile from the towns of Saugus, Revere, and Nahant.

23. Garelick Farms is a corporation organized under the laws of Delaware, with its principal office located in Dallas, Texas.

24. As a corporation, Respondent is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), against whom an administrative order may be issued under Section 113(a)(3) of the Act, 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 defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

26. At all times relevant to the violations alleged herein, Respondent was the “owner or operator” of the Facility, as defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

27. Garelick Farms uses anhydrous ammonia in a refrigeration “process,” as defined by 40 C.F.R. § 68.3, in a series of interconnected pipes and vessels at the Facility (the “Process”). The Process is located in and outside of the main production plant building, which was constructed in 1937, and expanded in 1992. According to information provided by Garelick Farms, Process equipment has been installed over the last 35 years, including some of the compressors in 1983, condensers in 2009, and chillers in 2010.

28. In 2004, Respondent filed a Program 3 RMP for the Process and reported that it used 39,000 pounds of anhydrous ammonia. In its 2009 RMP, Respondent again reported that it used 39,000 pounds of anhydrous ammonia.

29. The chemical inventory reports submitted by Respondent for 2010, 2011, and 2012 indicated a range from 10,000 to 99,999 pounds of anhydrous ammonia at the Facility. The chemical inventory report for 2014 indicates a specific amount of 38,539 pounds of anhydrous ammonia and a range of 25,000 to 49,999 pounds.

30. Accordingly, the anhydrous ammonia Process at the Facility is a “covered process” subject to the RMP provisions of Part 68 because Respondent “uses,” “stores,” and “handles” the RMP chemical anhydrous ammonia in the Process in an amount greater than 10,000 pounds.

31. According to the Facility’s 2009 RMP, the endpoint for a worst-case release of the amount of anhydrous ammonia used in the Process is *greater* than the distance to a public receptor. Likewise, modeling performed by the EPA RMPcomp model indicates that the endpoint for a worst case release from the Process is greater than the distance to a public receptor.

32. Additionally, the Process is subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119 because it uses anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds.

33. Therefore, in accordance with 40 C.F.R. § 68.10(a)–(d), Respondent's use, storage, and handling of anhydrous ammonia in the Process is subject to the requirements of RMP Program 3.

33. On December 12, 2012, EPA inspectors visited the Facility (the "Inspection") to assess Respondent's compliance with Section 112(r) of the CAA and with Sections 302–312 of the Emergency Planning and Community Right-to-Know Act.

34. Ammonia presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. Exposure to 300 parts per million is immediately dangerous to life and health. Ammonia is also flammable at concentrations of approximately 16% to 25% by volume in air. 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. In light of the potential hazards posed by the mishandling of anhydrous ammonia, industry trade associations have issued standards outlining the recognized and generally accepted good engineering practices ("RAGAGEP") in the ammonia refrigeration industry. 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. 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 into state building and mechanical codes.¹

35. The Process is a “closed-loop” refrigeration system, with components and piping in interconnected areas both inside and outside of the main building. The Process includes: two adjacent machinery rooms (referred to by Respondent as “Compressor Rooms 1 and 2”), where most of the refrigeration components are located; areas on the roof above each Compressor Room, where the condensers and some of the piping are located; the food product cooler areas used for storage, where the evaporators and associated piping are located; the loading docks, which have additional evaporators and associated piping; and the outside storage tanks that have associated piping. Compressor Room 1 has two access doors, one which leads to an interior hallway, and the other to the Boiler Room. Neither door opens to the outdoors. Compressor Room 2 has only one access door that opens inwards from the hallway. It, too, does not open to the outdoors.

36. During the Inspection of the Facility, EPA requested and received certain documentation pertaining to the Process, including a document titled “Emergency Planning & Response Guidelines” (Revision 0), dated December 1, 2012, which purports to be the Facility’s emergency action plan (“EAP”), and an RMP compliance audit, conducted in May of 2012 (“May 2012 Compliance Audit”).

¹ For example, the Massachusetts State Building Code, Sixth Edition, Base Volume, is based on the 1993 edition of the Building Officials and Code Administrators (“BOCA”) National Building Code, with certain amendments. 780 C.M.R. Forward at 1 (1997). Both the BOCA National Building Code, and the Massachusetts State Building Code that is based on it, state that “[a]ll mechanical equipment and systems shall be constructed, installed and maintained in accordance with the BOCA National Mechanical Code....” Id. § 2801.2; BOCA Nat’l Bldg. Code § 2801.2 (1993). The BOCA National Mechanical Code, in turn, specified that systems are limited to twenty pounds of refrigerant except that those using ammonia “shall not be limited in capacity where the system is designed and installed in accordance with ASHRAE 15 and IIAR 2.” BOCA Nat’l Mech. Code § M-1303.2 & .2.1 (1993).

37. During the Inspection of the Facility, EPA requested and received certain documentation pertaining to the Process, including a document titled “Emergency Planning & Response Guidelines” (Revision 0), dated December 1, 2012, which purports to be the Facility’s emergency action plan (“EAP”), and an RMP compliance audit, conducted in May of 2012 (“May 2012 Compliance Audit”). Respondent provided additional information to EPA in a letter dated December 21, 2012.

38. On June 15, 2015, EPA sent a CAA Section 114(a)(1), 42 U.S.C. § 7414(a)(1), information request and a draft Notice of Violation and Administrative Order on Consent (NOV/AOC) to Respondent. Respondent provided its response to the EPA to the information request and draft NOV/AOC on July 14, 2015.

39. EPA and Respondent entered into a final Notice of Violation and Administrative Order (“Final NOV/AO”) pursuant to CAA Sections 113 and 114, 42 U.S.C. §§ 7413 and 7414, which became effective on September 28, 2015. The Final NOV/AOC summarized RMP deficiencies and potentially dangerous conditions observed by the EPA inspectors; ordered Respondent to comply with RMP requirements at the Facility; and ordered Respondent to certify and document its compliance with applicable RMP requirements. Respondent had begun to address its compliance deficiencies before and after the Inspection and was likewise cooperative after receiving the Final NOV/AOC.

40. EPA found that the Inspection and EPA’s review of submitted information revealed some potentially dangerous conditions relating to the Process at the time of the Inspection in 2012, including that Respondent:

- a. Had not developed a system to adequately manage RMP compliance, in that the person assigned overall responsibility for RMP development,

- implementation, and integration (the Plant Manager), who accompanied the EPA representatives during the Inspection, did not demonstrate a good understanding of the ammonia refrigeration system and RMP implementation;
- b. Had not determined and documented for Process equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use that the equipment is designed, maintained, inspected, tested, and operating in safe manner;
 - c. Had not developed a schedule for addressing most of the recommendations identified in Respondent's 2009 update to its Process Hazard Analysis ("PHA") until 2012 and did not document that the actions were taken in a timely manner. In addition, the May 2012 "Process Safety Management Compliance Audit" prepared for Respondent by Ammonia Safety Management, Inc. (the "2012 Compliance Audit"), had Compliance Audit Findings that Respondent did not have a system to promptly address the findings and recommendations from the 2009 update to the PHA, and had not documented the resolution of those findings and recommendations;
 - d. Had not identified that the Facility is located in a flood zone, is in a zone of moderate earthquake activity, and is within an area that could have tornados;
 - e. Did not have, or have available for EPA review, all of the necessary process safety information and documentation pertaining to the Process to allow Respondent to adequately identify hazards posed by and to properly maintain the Process;

- f. Had not properly labeled much of the ammonia piping and equipment, such as valves. The Facility also had steam or hot water insulated pipes similar in appearance to those used in the ammonia refrigeration system, which, given the incomplete identification of ammonia piping, could complicate the identification of which pipes were used for ammonia;
- g. Had not properly maintained the ammonia piping and equipment, much of which was corroded, including some that had visible pitting. This included evidence of corrosion where ammonia piping was insulated;
- h. Had not properly maintained the insulation or other coverings on the ammonia piping and equipment, some of which was cracked or otherwise damaged or had rust-colored stains, and which could allow moisture to penetrate the insulation layer;
- i. Had not properly maintained the ammonia piping that had frost or ice on it;
- j. Had not properly installed vents for pressure relief valves for the ammonia piping and equipment, many of which were located or configured inappropriately;
- k. Had not installed audio-visual ammonia warning systems or proper ammonia safety labels outside the doors for Compressor Rooms 1 and 2;
- l. Had not adequately installed and labeled switches controlling emergency ventilation and emergency shutdown immediately outside door Y-4 or the doors for Compressor Rooms 1 and 2;
- m. Had not installed visible wind direction indicators in the Process area. The only wind indicator observed during the Inspection was a tattered wind sock,

not visible from the Process area, located at the Facility's wastewater treatment plant, which was across Circle Avenue from the portion of the plant that contained the Process;

- n. Had not installed doors leading directly to the outdoors from Compressor Rooms 1 and 2;
- o. Had substantial amounts of combustible materials such as wood and cardboard and a cabinet marked "Flammables" in Compressor Room 1, which did not have a sprinkler system;
- p. Had not sealed numerous jagged holes in the walls around ammonia pipes in Compressor Room 1 that went to other parts of the Facility, including the adjacent Boiler Room. Some of the holes were in the area above the drop ceiling in Compressor Room 1. These holes could make it difficult to effectively monitor the ammonia content in the air in Compressor Room 1, prevent releases of ammonia to the Boiler Room or other adjacent areas, and safely vent any releases of ammonia that may occur;
- q. Had not installed any alarms, exit signs, or window on the second door in Compressor Room 1, or any sign that that the door could be used for emergency egress;
- r. Had not sealed the metal panel in the wall in Compressor Room 1;
- s. Had not installed a door that opened outward or a door with a crash bar in Compressor Room 2;
- t. Had not installed a second door in Compressor Room 2;

- u. Had not installed an emergency eyewash or shower in or immediately outside of Compressor Room 2;
- v. Had an unlabeled small-bore pipe at the bottom of the upright cylindrical ammonia accumulator tank with an illegible (corroded) tag on its shut-off valve in Compressor Room 1. In addition, the signs for the accumulator tank's "King Valve, Compressor Liquid Injection" and "King Valve, Plant Liquid Supply" were loosely attached to the accumulator tank. Lastly, the two king valves were on the bottom of the accumulator tank, partially obstructed by pipes and other equipment, and would be difficult to access in an emergency;
- w. Had exposed high voltage electrical wires in Compressor Room 2 that had not been covered and had no evidence of any Lock Out/Tag Out system;
- x. Had not tagged all Process control valves;
- y. Had not protected all of the components and piping of the Process from forklift traffic or other potential impact, as evidenced by the damage done to the base and side of the ceiling-mounted chiller unit AU-7 in the loading dock;
- z. Had not labeled the blue-capped sensor located below the ammonia relief pipe in the Inner Truck Yard;
- aa. Had not labeled the red light high above door Y-4;
- bb. Had not labeled the silver-colored shed with an orange pipe coming from it (indicative of liquid ammonia) to the right of door Y-4;
- cc. Had not identified as a "near miss" the damage done to the base and side of the ceiling-mounted chiller unit AU-7 in the loading dock area. In addition, during the opening meeting before the Inspection, Facility representatives told

the EPA inspectors that the facility had not had any near misses in the previous five years;

- dd. Had not labeled the eight capped vent headers on the roof above Compressor Rooms 1 and 2 to indicate whether they were still in service or connected to any pressure source;
- ee. Had not labeled the orange PRV vent header on the roof above Compressor Rooms 1 and 2 that had been severed from the Process pipes and was no longer in service even though it had an attached wired ammonia detector;
- ff. Had not labeled the air intakes and exhausts for Compressor Rooms 1 and 2 located on the roof above those rooms. In addition, the air intakes were not located at least 20 feet from the exhausts, and Respondent had not tested the intakes and exhausts to ensure exhaust air was not recirculated into the intake vent;
- gg. Had not properly maintained the ammonia leak detectors, in that, in 2010, results of testing just prior to the calibration procedure indicated that 7 of the 12 ammonia detectors failed to give a mV signal that would have indicated detection of the 250 parts per million action level for ammonia, and thus, presumably, would not have triggered an alarm or initiated ventilation if the action level had been exceeded. The lack of an effective detector system to provide early warning of ammonia leaks may present a particular danger for employees at this facility, given that Compressor Rooms 1 and 2 lack exit doors to the outdoors;

- hh. Had not placed air ventilation inlets near the lower portions of the two floor-mounted compressors in Compressor Room 1, and Compressor Room 2 did not have an air ventilation inlet;
- ii. According to the May 2012 Compliance Audit Findings, had not ensured that the operating procedures for the Process were being implemented, reflected current practice, addressed temporary or emergency operations, included limits to outline consequences of process deviation and steps to correct or avoid deviations, included safety and health considerations, were being reviewed as often as necessary to ensure that they reflected current practice, were certified annually that they were current and accurate, and failed to develop and implement safe work practices for employees and contractors;
- jj. According to the May 2012 Compliance Audit Findings, had not developed a written mechanical integrity program that included relief and vent systems and devices, emergency shutdown systems, or controls, including monitoring devices, sensors, and interlocks;
- kk. According to the May 2012 Compliance Audit Findings, had not trained each employee involved in maintaining the ongoing integrity of the Process equipment in an overview of the Process and its hazards;
- ll. According to the May 2012 Compliance Audit Findings, did not have an inspection and testing procedures that followed good engineering practices;
- mm. According to the May 2012 Compliance Audit Findings, did not conduct inspections and tests of Process equipment that were consistent with the manufacturer's recommendations and good engineering practice;

- mn. According to the May 2012 Compliance Audit Findings, did not document for each inspection and test of process equipment the serial number or other identifier for each piece of equipment or describe the inspection or test performed;
- oo. Failed to have operational ventilation fan overrides outside of Compressor Rooms 1 and 2;
- pp. According to the May 2012 Compliance Audit Findings, failed to correct deficiencies in Process equipment before further use, or in a safe and timely manner when necessary means are taken to assure safe operation;
- qq. According to the May 2012 Compliance Audit Findings, failed to implement appropriate management of change documents when there were changes to the Process chemicals, technology, equipment or procedures, and incomplete management of change documents for Process safety information and operating procedures and practices;
- rr. According to the 2010 Compliance Audit Certification and the May 2012 Compliance Audit Findings, failed to correct the deficiencies related to inspections for mechanical integrity noted in the Facility's 2010 Compliance Audit Certification (did not follow good engineering practices for inspections of Process equipment; inspection frequencies were not consistent with manufacturer's recommendations and good engineering practice; and, lack of required documentation for each inspection) that also were noted in the Facility's 2012 Compliance Audit Certification;

- ss. Failed to investigate the near miss incident(s) that damaged the base and side of the ceiling-mounted chiller unit AU-7 in the loading dock area, described above in Paragraph 31(cc), and more generally, according to the May 2012 Compliance Audit Findings, did not have all required information in the investigation reports it did prepare (lack of date of incident and date investigation began), did not have a system to promptly address findings and recommendations in the investigation reports, and did not review the report with affected employees or contractors; and,
- tt. According to the May 2012 Compliance Audit Findings, failed to evaluate contractor safety performance and programs before selecting a contractor to work on or adjacent to the Process, did not inform contractor employees about the facility's emergency response program, and did not do a periodic evaluation of its contractors to ensure the contractors complied with their obligations under 40 C.F.R. § 68.87(c), including providing safety training for contractor employees.

41. Accordingly, Complainant alleges the following violations of 40 C.F.R. Part 68. Respondent neither admits nor denies the allegations. The examples of industry standards of care cited below are those that were in effect in 2009 when Respondent completed its latest Process Hazard Analysis before the 2012 Inspection.

Count 1: Failure to Comply with RMP Management Requirements

42. Complainant realleges and incorporates by reference Paragraphs 1 through 41 of this document.

43. Pursuant to 40 C.F.R. § 68.15, the owner or operator of a Program 3 process is required, among other things, to assign a qualified person or position responsible for development, implementation, and integration of the RMP elements. If any of the individual requirements are assigned to anyone other than the person or position just described, those names or positions and lines of authority shall be documented.

44. As described above in Paragraph 40(a), at the time of Inspection, Respondent had not developed a system to adequately manage RMP compliance, in that the Plant Manager was responsible for overall RMP implementation but he did not have a good understanding of all of the program elements. For example, he was not able to document that he was trained in RMP implementation or ammonia refrigeration systems. In addition, Respondent did not identify, in an organization chart or similar document, others who were responsible for RMP implementation or how they were qualified to so, by training or other experience.

45. By failing to comply with RMP management requirements, Respondent violated 40 C.F.R. § 68.15 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 2: Failure to Comply with Safety Information Requirements

46. Complainant realleges and incorporates by reference Paragraphs 1 through 45 of this document.

47. Pursuant to 40 C.F.R. § 68.65, the owner or operator of a Program 3 process is required, among other things, to compile written process safety information before completing the PHA, in order to perform an adequate PHA and to enable proper maintenance of process equipment. This includes documenting information pertaining to

the hazards of the RMP chemical in the process; information pertaining to the technology and equipment of the process, including that the equipment complies with recognized and generally accepted good engineering practices; and information showing that any equipment that was designed according to outdated standards is designed, maintained, inspected, tested, and operated in a safe manner. This compilation enables appropriate identification and understanding of hazards posed by regulated substances in the process and the technology and equipment of the process.

48. As described in Paragraph 40(e), above, at the time of Inspection, Respondent had not compiled all of the necessary process safety information pertaining to the technology and equipment of the Process.

49. Additionally, as described in Paragraphs 40(b) and (e), above, and as further described in Paragraphs 50-62, below, Respondent also failed to document that the Process complied with recognized and generally accepted good engineering practices and that equipment designed according to outdated standards was designed, maintained, inspected, tested, and operated in a safe manner.

50. As described in Paragraphs 40(k) and (q), Respondent had not installed visual and audible alarms for ammonia outside the doors to Compressor Rooms 1 and 2. The recommended industry practice and standard of care is to equip the detectors to activate visual and audible alarms inside a machinery room (i.e., Compressor Rooms 1 and 2) and at each of its entrances. In addition, as described in Paragraph 40(gg), in 2010, results of testing that occurred just prior to adjustment during the calibration procedure indicated that 7 of the 12 ammonia detectors failed to give a mV signal that would have indicated detection of the 250 parts per million action level for ammonia, and thus

presumably would not have activated an alarm or initiated ventilation if the action level had been exceeded. See, e.g., Am. Nat'l Standards Inst./Am. Soc'y of Heating, Refrigerating and Air-Conditioning Eng'rs, Standard 15-2007: Safety Standard for Refrigeration Systems §§ 8.11.2.1 and 8.12(h) (2007) [hereinafter "ASHRAE 15-2007"];² Int'l Inst. of Ammonia Refrigeration, Standard 2-2008: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems (2008) [hereinafter "IIAR 2-2008"] § 13.2.3.1 (activate alarm and normal machinery room ventilation at TLV-TWA for ammonia).

51. Also, as described above in Paragraphs 40(l) and (oo), at the time of the Inspection, Respondent had not adequately provided and labeled emergency shutdown and ventilation switches for the Process immediately outside the doors to Compressor Rooms 1 and 2 and door Y-4. The recommended industry practice and standard of care for ammonia refrigeration systems is to provide clearly marked emergency shutdown and ventilation switches immediately outside the principal machinery room door (and, preferably, all access doors). See, e.g., IIAR 2-2008 § 13.3.11.1 (provide remote controls for emergency ventilation immediately outside door); ASHRAE 15-2007, supra, §§ 8.12(i) (provide switches immediately outside door), 11.2.2.a (identify switches). The switches should have tamper-resistant covers, and the ventilation switch should have "on/auto" settings. See, e.g., IIAR 2-2008, supra, § 13.3.11.3 (provide on/auto ventilation override switch immediately outside door) and App. L, Figure 5 (label for emergency shutdown button).

² This CAFO cites the industry standards in effect at the time of the Facility's 2009 PHA, which was the most recent PHA done prior to the Inspection in 2012.

52. Also, as described above in Paragraph 40(k), at the time of the Inspection, Respondent did not have sufficient signs on the doors to Compressor Rooms 1 and 2. The recommended industry practice and standard of care for ammonia refrigeration systems is to post signs warning of the presence of ammonia and restricting entry to authorized personnel at each entrance to a machinery room, see, e.g., ASHRAE 15-2007, supra, §§ 8.11.8, 11.2.4, and to post other signs with information about the operation of the process, including about the alarms and the emergency shutdown procedures, outside the principal machinery room door. See, e.g., id., supra, §§ 8.11.2.1 (meaning of alarms), 11.7 (emergency shutdown procedures and precautions); and IIAR 2-2008, supra, at App. L (additional information and examples of proper signage for machinery rooms).

53. Also, as described above in Paragraphs 40(f), (v) and (x), at the time of the Inspection, many of the Process pipes were unlabeled or improperly labeled (lacking information on whether the ammonia was liquid or a gas, the pressure, and/or direction of flow) and valves were untagged, and the labels for the king valves on the accumulator tank in Compressor Room 1 were not durable. The recommended industry practice and standard of care is to label all system pipes and valve systems with durable labels. See, e.g., IIAR 2-2008, supra, § 10.5 (pipes need to be marked with physical state of refrigerant, relative pressure level, and direction of flow); ASHRAE 15-2007, supra, §§ 9.12.6 (stop valves) and 11.2.2 (piping, valves, and switches for refrigerant flow, ventilation, and compressor); Int'l Inst. of Ammonia Refrigeration, Bulletin No. 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, supra, §§ 4.7.6 (1997) [hereinafter "IIAR Bull. 109"] (all piping needs attached markers indicating the use of the pipe and direction of flow) and § 4.10.3 (regarding signage on shut-off valves).

See generally, Int'l Inst. of Ammonia Refrigeration, Bulletin No. 114: Guidelines for Identification of Ammonia Refrigeration Piping and System Components (1991)

[hereinafter "IIAR Bull. 114"] (all piping should be identified with physical state of the refrigerant, the relative pressure level, and the direction of flow; all components of the system should be uniformly identified as to the name of the equipment and a pressure level designation).

54. Also, as described above in Paragraph 40(y), at the time of the Inspection, Respondent had not protected all of the components and piping of the Process from forklift traffic or other potential impact, as evidenced by the damage done to the base and side of the ceiling-mounted chiller unit AU-7 in the loading dock area. The recommended industry practice and standard of care for ammonia refrigeration systems is to safeguard piping, controls, and other refrigeration equipment to minimize the chance of accidental damage by external sources such as forklifts. See, e.g., ASHRAE 15-2007, supra, § 11.1; IIAR Bull. 109, supra, §§ 4.4.2, 4.7.3.

55. Also, as described above in Paragraph 40(j), at the time of the Inspection, Respondent had not safely installed the pressure-relief vent pipes for the Process. The recommended industry practice and standard of care for ammonia refrigeration systems is to raise the relief header pipe at least fifteen feet above grade, orient it to point up and away from where any people may be nearby, and locate it at least twenty feet from any window, ventilation intake, or building exit. See, e.g., IIAR 2-2008, supra, §§ 11.3.6.3 and .4; ASHRAE 15-2007, supra, § 9.7.8.

56. Also, as described above in Paragraph 40(n), Compressor Rooms 1 and 2 did not have doors leading directly outside or through a vestibule equipped with self-

closing, tight-fitting doors. The recommended industry practice and standard of care for ammonia refrigeration systems at the time of the Inspection was to have a door from a machinery room that leads to the outdoors or to a vestibule equipped with self-closing, tight-fitting doors. See, e.g., ASHRAE 15-2007, supra, § 8.12(d). In addition, machinery room doors that lead to another area inside the building shall be equipped with panic hardware. See, e.g., IIAR 2-2008, supra, § 13.1.10.2.

57. Also, as described above in Paragraphs 40(s) and (t), the only door in Compressor Room 2 opened inwards into the room, and there was only one door in that room. The recommended industry practice and standard of care for ammonia refrigeration systems is to have doors from machinery rooms that open outwards, and to have an adequate number of doors for people to escape in an emergency. See, e.g., ASHRAE 15-2007, supra, § 8.11.2.

58. Also, as described above in Paragraph 40(o), wood, cardboard, and a flammable materials cabinet were located in Compressor Room 1. The recommended industry practice and standard of care for ammonia refrigeration systems is to prohibit combustible materials from being stored in machinery rooms. See, e.g., IIAR 2-2008, supra, § 13.1.3.1.

59. Also, as described above in Paragraphs 40(p) and (r), there were many unsealed holes in the walls in Compressor Room 1 where pipes went through, and the metal panel on the wall in that room had not been sealed. The recommended industry practice and standard of care for ammonia refrigeration systems is to have no openings in a machinery room that could allow passage of refrigerant (the anhydrous ammonia) to other parts of the building, and to tightly seal any openings where pipes go through walls.

See, e.g., ASHRAE 15-2007, supra, at §§ 8.11.2 and 8.12(f); IIAR 2-2008, supra, at 13.1.5.2.

60. Also, as described above in Paragraph 40(u), there was no eyewash or emergency shower in Compressor Room 2 or immediately outside it. The recommended industry practice and standard of care for ammonia refrigeration systems is to have readily accessible eyewash and emergency showers. See, e.g., IIAR Bull. 109, supra, § 4.10.10.

61. Also, as described above in Paragraph 40(hh), the ventilation air inlets in Compressor Room 1 were not located near the lower portions of the two floor-mounted compressors in Compressor Room 1, and Compressor Room 2 did not have any ventilation air inlets. The recommended industry practice and standard of care for ammonia refrigeration systems is to position air inlets for machinery rooms so as to avoid recirculation of exhaust air, to ensure there is sufficient inlet air to replace exhausted air, and to ensure that any leaked ammonia refrigerant is exhausted to the outdoors at a rate calculated to protect safety. See, e.g., IIAAR 2-2008, supra, §§ 13.3.1, 13.3.2, 13.3.3, and 13.3.3.2; ASHRAE 15-2007, supra, §§ 8.11.4 and 8.11.5.

62. Accordingly, by failing to compile the necessary information about the technology and equipment of the Process, including by documenting that the Process complied with recognized and generally accepted good engineering practices, Respondent violated 40 C.F.R. § 68.65 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 3: Failure to Adequately Identify, Evaluate, and Control Hazards

63. Complainant realleges and incorporates by reference Paragraphs 1 through 62 of this document.

64. Pursuant to 40 C.F.R. § 68.67, the owner or operator of a Program 3 process is required, among other things, to perform an initial PHA on each covered process. The PHA must identify, evaluate, and control the hazards involved in the process. The owner or operator must update the PHA every five years and when a major change in the process occurs. Additionally, pursuant to 40 C.F.R. § 68.67(e), the owner or operator must establish a system to promptly address the recommendations identified in the PHA, including by defining a schedule for completing the action items, taking the actions as soon as possible, and documenting the resolution of the recommendations.

65. As described in Paragraph 40(c), above, Respondent performed an updated PHA in 2009 and identified recommended action items. However, Respondent did not establish a schedule for addressing most of those items until 2012 and, as of the date of the Inspection, did not document that all of them were completed.

66. Accordingly, Respondent violated the PHA requirements of 40 C.F.R. § 68.67(e) and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), for the Process.

Count 4: Failure to Comply with Program 3 Operating Procedures Requirements

67. Complainant realleges and incorporates by reference Paragraphs 1 through 66 of this document.

68. Pursuant to 40 C.F.R. § 68.69, the owner or operator of a Program 3 process is required to develop and implement written operating procedures that provide instructions or steps for safely conducting activities associated with the covered process.

These operating procedures must address steps for each operating phase, operating limits, safety and health considerations, and safety systems. The owner or operator must make these procedures available to employees involved in the process, keep them up-to-date with current practices, and certify annually that they are current. The owner or operator must also develop and implement safe work practices to control hazards during specific operations, including by developing a “lockout/tagout” program for handling equipment during maintenance or bringing equipment in or out of service.

69. As described in Paragraph 40(ii), above, the May 2012 Compliance Audit found that Respondent did not ensure that the operating procedures for the Process were being implemented, or that they reflected current practice, addressed temporary or emergency operations, included limits to outline consequences of process deviation and step to correct or avoid deviations, included safety and health considerations, were being reviewed as often as necessary to ensure that they reflected current practice, were certified annually that they were current and accurate, and that they developed and implemented safe work practices for employees and contractors.

70. By failing to comply with the operating procedures requirements, Respondent violated 40 C.F.R. § 68.69 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), for the Process.

Count 5: Failure to Comply with Program 3 Mechanical Integrity

Requirements

71. Complainant realleges and incorporates by reference Paragraphs 1 through 70 of this document.

72. Pursuant to 40 C.F.R. § 68.73, the owner or operator of a Program 3 process must establish and implement written procedures to maintain the ongoing integrity of certain process equipment and train employees accordingly. The owner or operator must train each employee involved in maintaining the ongoing integrity of process equipment in the procedures applicable to the employee's job task. The owner or operator must inspect and test the equipment either in accordance with the manufacturer's recommendations and good engineering practices, or more frequently if needed based on prior operating experience. The owner or operator must also document the inspections or tests on process equipment, correct deficiencies, assure that any new equipment is suitable for the process application, perform checks to ensure that equipment is installed properly, and assure that maintenance materials and spare parts are suitable for the process application.

73. As described in Paragraph 40(jj), above, the May 2012 Compliance Audit found that Respondent did not have written mechanical integrity procedures to maintain the ongoing integrity of Process equipment.

74. As described in Paragraph 40(kk), above, the May 2012 Compliance Audit found that Respondent had not trained each employee involved in maintaining the ongoing integrity of the Process equipment in an overview of the Process and its hazards, and the procedures applicable to that employees tasks to ensure the employee can perform the tasks in a safe manner.

75. As described in Paragraphs 40(ll) through (nn), above, the May 2012 Compliance Audit found that, Respondent had not performed all the necessary inspections and tests of the equipment in the Process, and had not maintained documentation thereof. Inspections and testing of Process equipment shall be done in

accordance with the manufacturer's recommendations and good engineering practices, which require annual inspections where no manufacturer recommendations exist. See, e.g., Int'l. Inst. of Ammonia Refrigeration, Bulletin No. 110: Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems (1993) [hereinafter "IIAR Bull. 110"], §6.1 (inspection schedules shall be based upon supplier's recommendations for the equipment and other relevant information, such as the age of the equipment); IIAR 2-2008, supra, § 13.3.12.1 and .2 (follow manufacture's recommendations for testing of alarms and ventilation system, and if there are no recommendations, test annually).

76. Respondent had not maintained the mechanical integrity of the Process equipment by correcting deficiencies that are outside of acceptable bounds before continuing to use the equipment, or in a safe and timely manner when steps have been taken to ensure safe operation, as described above in:

a. Paragraph 40(g) (corrosion on pipes and valves) - The recommended industry practice and standard of care for ammonia system piping is to scrape the rust off the pipe down to bare metal and to paint it with a rust preventive paint, and to replace badly corroded pipes. See, e.g., IIAR Bull. 109, supra, §4.7.4; IIAR Bulletin 110, *Startup, Inspection, and Maintenance of Ammonia Mechanical Refrigerating Systems*, Section 6.7.

b. Paragraph 40(h) (damaged pipe insulation and covers) - The recommended industry practice and standard of care for ammonia refrigeration systems is to remove the damaged insulation or covers and inspect the pipe for corrosion, and then to scrape the rust off the pipe down to bare metal and to paint it with a rust preventive paint, and to replace badly corroded pipes. See, e.g., IIAR Bull. 109, supra, §§4.7.4 and 4.7.5.

c. Paragraph 40(i) (failure to remove ice from ammonia piping) - The recommended industry practice and standard of care for ammonia refrigeration systems is to remove ice that could damage the ammonia piping or other components, and to correct the conditions caused the ice to form. See, e.g., IIAR Bull.109, supra, § 4.10.7.

d. Paragraph 40(w) (exposed high voltage wires that had not been locked-out, tagged-out in Compressor Room 1) - The recommended industry practice and standard of care for ammonia refrigeration systems is to install wiring in compliance with local and national electrical and fire codes, to remove electrical wire taken out of service or to cap the ends of such wires and label them, and to ensure personnel shall have safe access around all serviceable equipment. See, e.g., ASHRAE 15-2007, supra, at §§ 8.5 (install electrical wiring and equipment per local and national electrical codes) and 9.12.1 (ensure safe access to all refrigeration system equipment); IIAR 2-2008, supra, at §13.1.7.1 (install electrical system per codes); and National Fire Protection Association (NFPA) 1-2015, Fire Code at §§ 11.1.2.3 (wiring abandoned in place to be labelled “Abandoned in Place” or removed from accessible areas and insulated from contact from live electrical wires and devices) and 53.2.3.4.3 (electrical equipment in refrigeration machinery rooms to comply with NFPA 1-2015 §11.1).; and

e. Paragraph 40(pp) (general failure to correct deficiencies in Process equipment before further use).

77. By failing to adequately train and record compliance with training requirements, Respondent violated 40 C.F.R. § 68.71 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), for the Process.

Count 6: Failure to Comply with Program 3 Management of Change Requirements

78. Complainant realleges and incorporates by reference Paragraphs 1 through 77 of this document.

79. Pursuant to 40 C.F.R. § 68.75, the owner or operator of a Program 3 process must establish and implement written procedures to manage changes to Process chemicals, technology, equipment, and procedures, including making changes to operating procedures and to update safety information required by 40 C.F.R. § 68.65.

80. As described in Paragraph 40(qq), above, the May 2012 Compliance Audit found that Respondent had not updated its management of change documents when there were changes to Process chemicals, technology, equipment, or procedures, and after such Process changes occurred, had incomplete revisions to its written Process safety information and operating procedures and practices.

81. Accordingly, by not establishing and implementing sufficient written management of change documents, Respondent violated the management of change requirements of 40 C.F.R. § 68.75 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), for the Process.

Count 7: Failure to Comply with Program 3 Compliance Audit Requirements

82. Complainant realleges and incorporates by reference Paragraphs 1 through 81 of this document.

83. Pursuant to 40 C.F.R. § 68.79, the owner or operator of a Program 3 process must evaluate compliance with the provisions of the prevention program at least every three years; document the audit findings; promptly determine and document a response to

each of the findings of the audit; document that deficiencies have been corrected; and retain the two most recent compliance reports.

84. As described in Paragraph 40(rr), above, Respondent performed compliance audits in 2010 and 2012, but as of the date of the Inspection, had not corrected the deficiencies related to mechanical integrity testing that were identified in the 2010 audit that were also identified as deficiencies in the 2012 audit.

85. By failing to comply with the compliance audit requirements, Respondent violated 40 C.F.R. § 68.79 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), for the Process.

E. TERMS OF CONSENT AGREEMENT

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

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) neither admits nor denies the alleged violations of law stated above;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this Agreement and Order;
- (f) waives any right to contest the alleged violations of law set forth in Section E of this Consent Agreement; and

(g) waives its rights to appeal the Order accompanying this Agreement.

87. For the purpose of this proceeding, Respondent:

(a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;

(b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

(c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

(d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the District of Massachusetts, and

(e) waives any rights it 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 Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

88. Respondent certifies that it currently is upgrading the Facility and its RMP Program to be in compliance with 40 C.F.R. Part 68. Respondent has documented that many of the alleged violations have been fixed, and an Administrative Compliance Order on Consent between the parties, dated September 28, 2015 and issued pursuant to Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), requires Respondent to address the remaining alleged violations.

89. Respondent consents to the issuance of this CAFO hereinafter recited and consents for purposes of settlement to the performance of the Supplemental Environmental Projects (“SEPs”) described in Paragraphs 90 through 113, below, the Independent Third-Party Compliance Audit at the Franklin, MA Facility described in Paragraphs 114 through 116, below, and to the payment of the civil penalty cited in Paragraph 131, below.

Conditions.

Supplemental Environmental Projects

90. Respondent shall satisfactorily complete the three supplemental environmental projects (SEPs) described below and in the Scope of Work attached to this CAFO as Exhibit A, which is incorporated herein by reference and which is enforceable by this CAFO. The Parties agree that the SEPs are intended to secure significant environmental and public health protection and benefits by a) helping prevent or mitigate releases of ammonia from, and improve chemical safety at the Facility (the “Garelick Farms Safety Upgrades SEP”); b) enhance the hazardous materials response capabilities of the Fire Department for the City of Lynn, MA (the “Lynn Fire Department SEP”); and c) protect Lynn school children by removing unneeded hazardous chemicals from the

high school science laboratory, and providing safety equipment and chemical management training for the Lynn Public Schools (collectively, the “Lynn Schools SEP”). Respondent has selected the Lynn Fire Department and the Lynn Public Schools to be the SEP Recipients for the Lynn Fire Department SEP and the Lynn Schools SEP, respectively.

Garelick Farms Safety Upgrades SEP

91. Respondent shall make safety improvements at its Facility in Lynn, MA in accordance with the requirements and deadlines described in Exhibit A. Respondent will install ammonia sensors at all pressure relief valve headers, at an estimated cost of \$75,000, and install a Win911 ammonia release emergency notification system, at an estimated cost of \$25,000.

92. Respondent represents that, to the best of its knowledge after thorough review of the most current industry standards by Respondent or its agents, that each part of the Garelick Farms Safety Upgrades SEP described above and in Exhibit A exceed the requirements of the most current industry standards.

93. The total cost of the Garelick Farms Safety Upgrades SEP is anticipated to be approximately \$100,000. “Satisfactory completion” of the Garelick Farms Safety Upgrades SEP shall mean: (a) making safety improvements to the Lynn, MA Facility according to the requirements and deadlines described above and in Exhibit A, and (b) spending approximately \$100,000 to carry out the Garelick Farms Safety Upgrades SEP.

94. Respondent shall include documentation of the expenditures made in connection with the Garelick Farms Safety Upgrades SEP as part of the SEP Completion Report described in Paragraph 108, below. Cost overruns on one of the Garelick Farms

Safety Upgrades projects described in Exhibit A may be offset by savings from another Safety Upgrades project that costs less than anticipated, as the case may be.

95. Within seven (7) days of completion of each separate Garelick Farms Safety Upgrades project listed in Exhibit A, Respondent shall send an electronic mail message to Len Wallace, Wallace.len@epa.gov and Stuart Hunt, hunt.stuart@epa.gov, to confirm that the new equipment has been installed and is in operation. Upon completion of both Garelick Farms Safety Upgrade projects, Respondent shall submit a SEP Completion Report for the Garelick Farms Safety Upgrades SEP, as specified in paragraph 108 below.

Lynn Fire Department SEP

96. Respondent shall provide emergency response equipment, two ammonia detectors and twelve pumps, a five-year maintenance and service contract for the detectors and pumps, and training classes to the Lynn Fire Department, which Respondent has selected to be the SEP Recipient, according to the requirements, specifications and deadlines described in Exhibit A. The purpose of this SEP is to enhance the emergency planning and chemical spill response capabilities, including those for an ammonia release, for local first responders. The Lynn Fire department SEP is expected to cost approximately \$195,000.

97. "Satisfactory completion" of the Lynn Fire Department SEP shall mean: (a) providing the Lynn Fire Department with emergency response equipment, detectors and pumps, an associated five-year maintenance and service contract, and training classes according to the requirements, specifications and deadlines described in Exhibit A, (b) confirming that the purchased equipment is functional and that Lynn Fire Department

personnel are trained to use it; and (c) spending approximately \$195,000 to carry out the Lynn Fire Department SEP.

98. Respondent shall include documentation of the expenditures made in connection with the Lynn Fire Department SEP as part of the SEP Completion Report described in Paragraph 108, below. Cost overruns on one of the Lynn Fire Department projects described in Exhibit A may be offset by savings from another part of the Lynn Fire Department project that costs less than anticipated, as the case may be.

99. Within seven (7) days of completing each separate Lynn Fire Department project listed in Exhibit A, Respondent shall send an electronic mail message to Len Wallace, Wallace.len@epa.gov, and Stuart Hunt, hunt.stuart@epa.gov, to confirm that the new equipment or contract has been purchased and given or assigned to the Lynn Fire Department, or that the training classes have been completed. Upon completion of all the Lynn Fire Department projects, Respondent shall submit a SEP Completion Report for the Lynn Fire Department SEP, as specified in Paragraph 108, below.

Lynn Schools SEP

100. Respondent shall provide each of the goods and services as described in this paragraph and Exhibit A to the Lynn Public Schools, which Respondent has identified as the SEP Recipient, according to the requirements and deadlines described in Exhibit A. Respondent will do portions of the Lynn Schools SEP itself, and another portion will be performed by a SEP Implementer selected by Respondent. The first component is the removal of unneeded toxic and flammable materials from science laboratories at Lynn Classical High School. Respondent has selected Clean Harbors Environmental Services, Inc., to be the SEP Implementer for this part of the project. The

second component is to provide safety equipment and chemical safety training at Thurgood Marshall, Breed, and Pickering Middle Schools. The purpose of this SEP is to promote health and safety for Lynn Public Schools students and staff. The Lynn Schools SEP is expected to cost \$21,000.

101. "Satisfactory completion" of the Lynn Schools SEP shall mean:

(a) providing the Lynn Public Schools and the students with the services, supplies, and training according to the requirements, specifications and deadlines described in Exhibit A, and (b) spending approximately \$21,000 to carry out the Lynn Schools SEP.

102. Respondent shall include documentation of the expenditures made in connection with the Lynn Schools SEP as part of the SEP Completion Report described in Paragraph 108, below. Cost overruns on one of the Lynn School projects described in Exhibit A may be offset by savings from another part of the Lynn School project that costs less than anticipated, as the case may be. Further, if any one or more of the Garelick Farms Safety Upgrades SEP, Lynn Fire Department SEP, or Lynn Schools SEP costs less than currently anticipated, Respondent may apply the excess to completion of the one or more of the other SEPs described above and in Exhibit A, if that SEP costs more than anticipated.

103. Within seven (7) days of completing each separate Lynn Schools SEP project listed in Exhibit A, Respondent shall send an electronic mail message to Len Wallace, Wallace.len@epa.gov, and Stuart Hunt, hunt.stuart@epa.gov, to confirm that the materials removal and proper disposal has been completed, the new equipment or contract has been purchased and given or assigned to the Lynn Public Schools, and that the training classes have been completed. Upon completion of all the Lynn Schools

projects, Respondent shall submit a SEP Completion Report for the Lynn Schools SEP, as specified in Paragraph 108, below.

104. With regard to the Garelick Farms Safety Upgrades SEP, Lynn Fire Department SEP, and Lynn Schools SEP, Respondent hereby certifies the truth and accuracy of each of the following:

a. that all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and that Respondent, in good faith, estimates that the cost to complete the Garelick Farms Safety Upgrades SEP is approximately \$100,000, the cost to complete the Lynn Fire Department SEP is approximately \$195,000, and the cost to complete the Lynn Schools SEP is approximately \$21,000;

b. that, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEPs by any federal, state, or local law or regulation, and is not required to perform or develop the SEPs by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the SEPs are not projects that Respondent was 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 was otherwise intended to remain in use for at least ten years but for this settlement;

d. that Respondent has not received and will not receive credit for the SEPs in any other enforcement action;

e. that Respondent will not receive any reimbursement for any portion of the SEPs from any other person;

f. that for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs;

g. that Respondent is not 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

h. that Respondent has inquired of the Lynn Fire Department and of the Lynn Public Schools, whether either is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Lynn Fire Department and Lynn Public Schools that neither is a party to such a transaction.

105. 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.

106. Respondent agrees that EPA may inspect the Facility and the Garelick Farms Franklin, MA facility at any time to confirm that the Garelick Farms Safety Upgrades SEP was undertaken in conformity with the representations made herein.

107. Respondent hereby waives any confidentiality rights it has under 26 U.S.C. § 6103 with respect to such 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 Respondent’s SEP cost certification.

108. As described in paragraphs 94, 99, and 102, above, Respondent shall submit SEP Completion Reports to EPA within sixty (60) days of completion of each SEP. The SEP Completion Reports shall contain the following information:

- a. A detailed description of the SEP as implemented, including, for the Garelick Farms Safety Upgrades SEP, photographs of the newly installed equipment; for the Lynn Fire Department SEP, a list of the equipment, maintenance contract, and training purchased and/or provided to the Lynn Fire Department; and for the Lynn Schools SEP, a description of when the cleanout and proper disposal of laboratory chemicals was completed, and a list of the equipment purchased and training provided for the three middle schools.
- 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. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be 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 Respondent will contain deductions or depreciations for any expense associated with the SEP; and

g. The following statement, signed by Respondent's officer, 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.

109. Except as specified in Paragraphs 95, 99, and 102, above, Respondent shall submit all notices and reports required by this CAFO, by first class mail or any other commercial delivery service, to:

Len Wallace, Environmental Scientist
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: OES 05-1
Boston, MA 02109-3912
Wallace.len@epa.gov,

with a copy by electronic mail to:

Mary Jane O'Donnell
Acting Manager, RCRA, EPCRA and Federal Programs Unit,
Office of Environmental Stewardship
U.S. EPA, Region 1
Odonnell.maryjane@epa.gov; and

Stuart E. Hunt, Attorney-Advisor
U.S. EPA, Office of Enforcement and Compliance Assurance
Hunt.stuart@epa.gov.

110. Respondent 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 Respondent relied to write the SEP Completion Reports and

shall provide such documentation within fourteen (14) days of a request from EPA.

111. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO, and the Respondent shall become liable for stipulated penalties in accordance with Paragraph 125, below.

112. After receipt of each SEP Completion Report described in Paragraph 108, above, EPA will notify Respondent in writing: (i) indicating that the project has been completed satisfactorily; (ii) identifying any deficiencies in the SEP Completion Report itself and granting Respondent 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 125, below.

113. If EPA elects to exercise options (ii) or (iii) in Paragraph 112, above, Respondent 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 Respondent failed to implement or abandoned the project. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's 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 Respondent, EPA shall provide a written statement of its decision on the adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees 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 the SEP is not

completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent in accordance with Paragraph 125, below.

Independent Third-Party Compliance Audit at the Franklin, MA Facility

114. Respondent shall retain an independent third-party auditor to conduct an RMP compliance audit at its facility in Franklin, MA. The audit shall conform to all requirements under 40 C.F.R. § 68.79. The third-party auditor shall have at least 10 years of experience doing Section 68.79 compliance audits at Program 3 RMP ammonia refrigeration facilities. The audit shall be completed and audit report prepared by March 31, 2016. Respondent shall prepare and submit its written response in conformance with Section 68.79(d) to each of the findings in the audit report within 10 days of its receipt of the audit report. In addition, on the first day of each month thereafter, Respondent shall prepare and submit updated written responses that detail how and when the deficiencies were corrected. Respondent shall prepare and submit the monthly reports until each deficiency has been corrected.

115. The independent third-party auditor shall submit the audit report via e-mail to Len Wallace, Environmental Scientist, U.S. Environmental Protection Agency – Region 1, at Wallace.len@epa.gov. The audit report shall be submitted to Mr. Wallace at the same time it is first provided to Respondent. Respondent shall send its response and each monthly report via e-mail to Mr. Wallace at the e-mail address above according to the deadlines set forth above in Paragraph 114.

116. For the purposes of this Consent Agreement, including Paragraph 114, above, “an independent third-party auditor” is a person or persons, and the company that employs such person or persons, that:

- a. Has not previously been employed by, or done work for, Respondent; and
- b. Agrees in writing that he, she and it will not do any work for Respondent, other than the compliance audit described above in Paragraph 114, or accept employment with Respondent, for five years after completion of such audit.

117. Respondent's failure to comply with each of the provisions in Paragraphs 90 through 116, above, including the actions to be performed by the Independent Third-Party Auditor, shall become liable for stipulated penalties as set forth in Paragraphs 125 and 126, below.

118. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraphs 90 through 116 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 Agreement. Respondent 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.

119. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period, as set out in Paragraph 118, Respondent must give written notice and a copy of this Agreement 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, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

120. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

121. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

122. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations. Additionally, both parties agree that Complainant's covenant not to sue Respondent (stated in Paragraph 136) during the time period between the issuance of the attached Final Order and the deadlines (stated in Paragraphs 108 and Exhibit A for the SEPs, and Paragraph 114 for the Independent Third-Party Compliance Audit) for Respondent to complete the non-penalty conditions of this Consent Agreement constitutes sufficient consideration for Respondent's obligation to completely perform the non-penalty conditions of this Consent Agreement as stated in Paragraphs 90 through 116, regardless of whether the covenant not to sue subsequently terminates.

123. By signing this Agreement, Respondent certifies 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. Respondent acknowledges 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.

124. Except as qualified by Paragraph 132, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

STIPULATED PENALTIES

125. In the event that Respondent fails to satisfactorily complete the SEPs as outlined above in Paragraphs 90 through 113 and in Exhibit A, Respondent shall be liable for stipulated penalties in accordance with the provisions set forth below. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

a. If EPA determines that Respondent completely or substantially failed to implement the Garelick Farms Safety Upgrades SEP in accordance with this CAFO, Respondent shall pay a stipulated penalty in the amount of 125% of the estimated cost for each such upgrade, as outlined in Paragraph 1 of Exhibit A;

b. If EPA determines that Respondent completely or substantially failed to implement the Lynn Fire Department SEP in accordance with this CAFO, Respondent shall pay a stipulated penalty in the amount of 125% of the estimated cost for each such project, as outlined in Paragraph 2 of Exhibit A;

c. If EPA determines that Respondent completely or substantially failed to implement the Lynn Schools SEP in accordance with this CAFO, Respondent shall pay a stipulated penalty in the amount of 125% of the estimated cost for each such project, as outlined in Paragraph 3 of Exhibit A;

d. If Respondent spends less than \$316,000 on the three SEPs, but EPA determines that Respondent *otherwise satisfactorily completes each SEP*, Respondent shall only be required to pay a stipulated penalty in the amount equal to the difference between \$316,000 and the actual amount spent on the SEPs, plus interest from the effective date of this CAFO;

e. After giving effect to any extensions of time granted by EPA, Respondent shall pay a stipulated penalty in the amount of \$200 for each day the following submissions are late: (a) each electronic mail message required by Paragraphs 95, 99, and 103; and (b) the SEP Completion Report required by Paragraph 108, above;

f. Respondent 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 131, below. Interest and late charges shall be paid as stated in Paragraph 133, below.

126. In the event that Respondent fails to satisfactorily complete all provisions related to the Independent Third-Party Compliance Audit as described above in Paragraphs 114 through 116, Respondent 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 Independent Third-

Party Audit requirements have been satisfactorily completed shall be in the sole discretion of EPA.

127. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

128. 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, as further discussed in Paragraph 133, below.

129. Respondent agrees that any public statement, oral or written, in print, film, or other media, made by Respondent, contractors, or third party implementers making reference 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 Garelick Farms, LLC*, taken by the U.S. Environmental Protection Agency to enforce federal laws."

Penalty Payment.

130. Pursuant to Sections 113 (d)(2)(B) and (e) of the CAA, 42 U.S.C. § 7413(d)(2)(B) and (e), and taking into account the relevant statutory penalty criteria, the facts alleged in the Complaints, the SEPs, the Independent Third-Party Compliance Audit described above, Respondent's cooperation in agreeing to perform the non-penalty obligations in this CAFO, and such other circumstances as justice may require, Complainant has compromised the maximum penalty of \$37,500 per day per violation. Accordingly, EPA has determined that it is fair and proper to assess a civil penalty of \$255,000 for the violations alleged in this matter.

131. Within thirty (30) calendar days of the effective date of this CAFO, Respondent shall make a payment by cashier's or certified check, or by wire transfer, in the amount of \$255,000 and shall include the case name and docket number (CAA-01-2016-0020) on the face of the check or wire transfer confirmation. A check should be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

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

In addition, within 24 hours of payment, Respondents shall forward notice of payment of the civil penalty as well as copies of the payment check or payment receipt by first class mail or other delivery service to:

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

with a copy by electronic mail to:

Leonard Wallace, Environmental Scientist
U.S. Environmental Protection Agency, Region 1
wallace.len@epa.gov;

Mary Jane O'Donnell
Acting Manager, RCRA, EPCRA and Federal Programs Unit, Office of
Environmental Stewardship
U.S. EPA, Region 1
Odonnell.maryjane@epa.gov; and

Stuart E. Hunt, Attorney-Advisor
U.S. EPA, Office of Enforcement and Compliance Assurance
hunt.stuart@epa.gov.

132. **Collection of Unpaid Civil Penalty:** Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay the civil penalty referenced in paragraph 130 in full, it 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 within thirty (30) calendar days of the effective date of this CAFO. In that event, interest will accrue from the effective date of this CAFO 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 attorneys’ 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. There are other actions EPA may take if respondent fails to timely pay: refer the debt to a credit reporting

13.33; collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; suspend or revoke Respondent's licenses or other privileges,; or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

133. **Collection of Unpaid Stipulated 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 stipulated penalty relating to the performance of the SEPs or Independent Third-Party Compliance Audit and accrued pursuant to Paragraphs 125 or 126, above, 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.

134. All penalties, interest, and other charges shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not deductible for purposes of

federal, state or local law. Accordingly, Respondent agrees 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.

F. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

135. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

136. Complainant covenants not to sue Respondent for injunctive or other equitable relief for the violations and facts alleged in this matter, but such covenant automatically terminates if and when Respondent fails to timely and satisfactorily complete every condition stated in Paragraphs 90 through 129 (including payment of any stipulated penalties owed). If and when such covenant terminates, the United States at its election may seek to compel performance of the conditions stated in Paragraphs 90 through 129 in a civil judicial action under the CAA or as a matter of contract. The covenant not to sue becomes permanent upon satisfactory performance of the conditions stated in Paragraphs 90 through 129.

137. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

138. This Agreement 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.

139. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements (a) modifying the SEP schedules described in Exhibit A; (b) allowing any excess amounts from one SEP to be applied towards another; or (c) modifying the schedule for the Independent Third-Party Compliance Audit in paragraph 114.

140. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

141. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act 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, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

142. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

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

144. 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.

145. Except as qualified by Paragraph 132, each party shall bear its own costs and fees in this proceeding including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

G. EFFECTIVE DATE

146. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement in the Matter of Garelick Farms, LLC, Docket No. CAA-01-2016-0020, is hereby Stipulated, Agreed and Approved for Entry.

For Respondent:



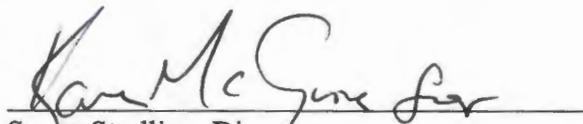
Michael M. Miller
Vice President of Environmental, Health & Safety
Garelick Farms, LLC
2711 North Haskell Ave., Suite 3400
Dallas, TX 75204
Respondent's Federal tax identification Number 52-2133221

12/17/15

Date

The foregoing Consent Agreement in the Matter of Garelick Farms, LLC, Docket No. CAA-01-2016-0020, is hereby Stipulated, Agreed and Approved for Entry.

For Complainant:



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

12-21-15

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)
)
)

Garelick Farms, LLC)
626 Lynnway)
Lynn, MA 01905)

Proceeding under Section 113)
of the Clean Air Act)
)

Docket No. CAA-01-2016-0020

**CONSENT AGREEMENT
AND FINAL ORDER**

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(c) of EPA’s Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with the terms of the above Consent Agreement, effective immediately.

So ordered.



LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

12/22/15
Date:

EXHIBIT A

Scope of Work for Supplemental Environmental Projects (SEPs)

1. Garelick Farms Safety Upgrades SEP

Lynn, MA Plant:

Required Action: Respondent or its contractor(s) shall expand the ammonia detection system to install ammonia sensors in the pressure release valve (PRV) headers in the following locations:

AHU -1 System;
AHU-3 System;
AHU-13 System;
AHU-14 System;
AHU-15 System;
AHU-16 System;
C-1 Silo System;
C-2 Silo System;
C-3 Silo System;
Engine Room 2, System 2:
PS -13 Silo;
RS-4, RS-5, RS-6, RS-7 SRV System;
RS-11, RS-14 Silo SRV System;
RS-9 Silo System;
RS-10 Silo System; and
ST-2 System.

Respondent or its contractor(s) shall test each sensor within five (5) days after it is installed to ensure each one is properly calibrated and operate properly. Respondent or its contractor(s) shall prepare and implement procedures to inspect each sensor in accordance with the manufacturer's recommendations, both substantive and regarding the frequency of such inspections. If the manufacturer does not provide such instructions, they shall be established by Respondent in accordance with recognized and generally accepted good engineering practices (RAGAGEP). This project shall be completed no later than September 30, 2016. The cost of this project is approximately \$75,000.

Benefit: Sensors in the PRV headers allow for early detection of the most common industry-wide type of an outdoor ammonia release. Together with automatic valves and controls, it provides a means to shut down the source of the overpressure to minimize the ammonia release.

Required Action: Respondent or its contractor(s) shall install a WIN911 notification system. Respondent or its contractor(s) shall test the WIN911 notification system within five (5) days after it is installed to ensure it operates properly. The WIN911 notification system shall provide alerts to the following persons for the following types of events:

Alarm Classification – Informational; Alarm Description Example – High temperature in cooler; Actions – Email Production and Maintenance Management

Alarm Classification – Caution; Alarm Description Example – High compressor filter differential pressure; Actions – Email Maintenance Team

Alarm Classification – Warning; Alarm Description Example – Low suction pressure warning; Actions – Email maintenance team

Alarm Classification – Alarm; Alarm Description Examples – Ammonia detector warning, high discharge pressure alarm, high level shutdown; Actions – Email Maintenance Team, call Plant Engineer and Maintenance Supervisors

Alarm Classification – Critical Alarm; Alarm Description Example – Discharge pressure shutdown; Actions – Email Maintenance Team, Call Plant Engineer, Plant Manager, and other members of the Emergency Action Team.

Respondent or its contractor(s) shall prepare and implement procedures to inspect the WIN911 notification system in accordance with the manufacturer's recommendations, both substantive and regarding the frequency of such inspections. If the manufacturer does not provide such instructions, they shall be established by Respondent in accordance with recognized and generally accepted good engineering practices (RAGAGEP). This project shall be completed no later than September 30, 2016. The cost of this project is approximately \$25,000.

Benefit: The WIN911 notification system interfaces with the ammonia refrigeration programmable logic controller (PLC) to automatically send alerts (email, text, call) of any alarm conditions from a central system. These alerts can be sent to the appropriate plant personnel and emergency responders, thus reducing the time to alert personnel to an ammonia release.

2. Lynn Fire Department SEP

Required Action: Respondent shall provide the following to the Lynn Fire Department:

- 2 Ammonia sensor units;
- 12 Pumps for the ammonia sensor units;
- 14 Vehicle Charging Cradles for the ammonia sensors and pumps;
- 12 Single Gas CO monitors;

8 one-hour classes to train Lynn fire responders on the use of the ammonia sensors;
4 four-hour classes to provide advanced training to selected Lynn fire responders on the use of the ammonia sensors;
1 five-year maintenance service contract for the ammonia sensors and pumps;
12 two-three hour classes to train all Lynn fire responders on proper hazmat response to facilities that have ammonia on site;
16 LTO Black Kevlar/Nomex EWR bunker coats;
16 LTO Black Kevlar/Nomex EWR bunker pants;
16 Defender Black and gold wristlet gloves; and
16 Nomex hoods.

Respondent shall provide all of the above items and training to the Lynn Fire Department by September 30, 2016.

The cost of this project is approximately \$195,000.

Benefit: The equipment and training will improve the Fire Department's ability to detect and safely respond to releases of ammonia and other toxic substances.

3. Lynn Public Schools SEP

Required Action: Respondent, through Clean Harbors Environmental Services, Inc. (Clean Harbors), the SEP Implementer selected by Respondent for this portion of the Lynn Public Schools SEP, shall package and safely dispose of the science laboratory chemicals from Lynn Classical High School, as set forth in the November 24, 2015, letter from Bryan J Manke, Clean Harbors, to Rick Held, Lynn Classical High School. This project shall be completed by September 30, 2016. The cost of this project is approximately \$4,500.

Benefit: Flammable and toxic chemicals will be removed from the school and safely disposed of, thus reducing the risk of chemical exposure to students, teachers, and staff.

Required Action: Respondent shall provide the science laboratory equipment to the Thurgood Marshall, Breed, and Pickering Middle Schools specified in the December 3, 2015, letter from Richard Held, Lynn Public Schools, to Larry Cuomo, Dean Foods. This project shall be completed by September 30, 2016. The cost of this project is approximately \$16,500.

Benefit: The science laboratory safety equipment will help protect students and teachers from exposure to toxic chemicals.

Required action: Respondent, through its Environmental Health and Safety professionals, shall provide HAZCOM 2012 (Global Harmonization) compliant chemical safety training to the Lynn Public Schools Assistant Director of Curriculum and Instruction/Science K-12, and four teachers from each of the following schools: Classical High School, and Thurgood Marshall, Breed, and Pickering Middle Schools. This project shall be

completed by September 30, 2016. There is no SEP-creditable cost for this project because the training will be provide by Respondent's employee(s).

Benefit: The HAZCOM 2012 compliant training will help the teachers better understand and comply with the safe handling, storage, and disposal of toxic and flammable chemicals found in the school science laboratories, thus helping protect students, teachers and staff from exposure to those chemicals.