

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

Received by  
EPA Region 1  
Hearing Clerk

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In the Matter of )  
 )  
**HP HOOD LLC** )  
 1250 East Street South )  
 Suffield, CT 06078 )  
 )  
 Respondent. )  
 )  
 Proceeding under Section 113(d) of the Clean )  
 Air Act, 42 U.S.C. § 7413(d) )  


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Docket No. CAA-01-2023-0025

**CONSENT AGREEMENT AND FINAL ORDER**

**I. PRELIMINARY STATEMENT**

1. This proceeding is an administrative action for the assessment of civil penalties under Section 113(a)(3)(A) and (d) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(a)(3)(A) and (d).

2. The issuance of this Consent Agreement (“Consent Agreement” or “Agreement”) and attached Final Order (“Final Order” or “Order”), in accordance with 40 C.F.R. § 22.13(b), simultaneously commences and concludes an administrative penalty assessment proceeding brought under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22.

3. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for an administrative penalty action.

4. This Consent Agreement serves as notice that the EPA has reason to believe that Respondent has violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

5. Furthermore, this Consent Agreement serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA’s intent to issue an order assessing penalties for these violations.

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

## II. PARTIES

7. Complainant is the United States Environmental Protection Agency, Region 1 (“EPA”).

8. Respondent is HP Hood LLC, a limited liability corporation organized under the laws of Delaware, with its headquarters located in the Commonwealth of Massachusetts.

## III. GOVERNING LAW AND REGULATIONS

9. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs to prevent, and minimize the consequences of, accidental releases of certain regulated substances. In particular, Section 112(r)(3), 42 U.S.C. § 7412(r)(3), requires EPA to promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5), 42 U.S.C. § 7412(r)(5), requires EPA to establish for each regulated substance a 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. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs to prevent and minimize the consequences of accidental releases of certain regulated substances. The promulgated regulations are found at 40 C.F.R. Part 68 (“Part 68”).

10. The regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a chemical accident prevention program, and an emergency response program. The risk management program is summarized in a Risk Management Plan (“RMP”) that must be submitted to EPA.

11. Pursuant to Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement.

12. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, a RMP must be submitted for all covered processes by the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process. The RMP must be submitted to EPA no later than the latter of June 21, 1999, three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130, or the date on which a regulated substance is first present above the threshold quantity in a process.

13. The substances regulated under Part 68 are listed in 40 C.F.R. § 68.130 (“RMP chemicals” or “regulated substances”). This list identifies anhydrous ammonia as an RMP chemical with a threshold quantity of 10,000 pounds.

14. Pursuant to 40 C.F.R. § 68.10, 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. Under 40 C.F.R. § 68.10(g), 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(i), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in certain specified NAICS codes or subject to the Occupational Safety and Health Administration (“OSHA”) process safety management (“PSM”) standard set forth at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(h), a covered process meeting neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

15. The RMP for a Program 3 process documents compliance with the elements of a Program 3 Risk Management Program, including 40 C.F.R. § 68.12 (General Requirements); 40 C.F.R. § 68.15 (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).

16. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), allow EPA to assess civil penalties for violations of Part 68. Forty C.F.R. Part 19 and 4 Fed. Reg. 986, 989 (Jan. 6, 2023) set out the statutory penalties as adjusted for inflation.

#### IV. DEFINITIONS

17. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

18. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7612(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

19. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7612(r)(2)(C), and the regulations at 40 C.F.R. § 68.3 define “stationary source,” in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

20. Forty C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, as amended, in 40 C.F.R. § 68.130.

21. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), as amended, listed in 40 C.F.R. § 68.130, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

22. 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. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

## V. EPA’S FINDINGS OF FACT AND LAW

23. At all relevant times, Respondent was and is a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

24. Respondent is the owner or operator of a 153,000 square foot facility where it manufactures ice cream products for retail locations and grocery stores (the “Facility”). The Facility is located at 1250 East Street South, Suffield, Connecticut.

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. The area surrounding the Facility is primarily rural, with some businesses and residences located along Route 159. A worst-case release of anhydrous ammonia could injure tens of thousands of people. The Facility is located approximately one-half mile from the Connecticut River.

27. The Facility’s refrigeration system is a “process,” as that term is defined in 40 C.F.R. § 68.3.

28. At the times relevant to the violations alleged herein, the Facility operated a refrigeration system that used anhydrous ammonia. The Facility’s refrigeration system, which is comprised of a series of interconnected vessels, evaporators, piping, and other equipment, uses at least 45,000 pounds of anhydrous ammonia as a refrigerant. Accordingly, Respondent “stored” and “handled” anhydrous ammonia.

29. Anhydrous ammonia is a “regulated substance” pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3).

30. The Facility is subject to the RMP Regulations applicable to “Program 3” facilities within the meaning of 40 C.F.R. §§ 68.10(d) and 68.12(d). The covered process is

subject to Program 3 because (1) the distance to a toxic or flammable endpoint for a worst-case release of anhydrous ammonia is more than the distance to a public receptor, making the process ineligible for Program 1; and (2) the process is subject to OSHA's PSM regulations.

31. On June 28, 2019, Respondent re-submitted a Program 3 RMP to EPA for its ammonia refrigeration system. The RMP lists one Program Level 3 covered process that uses anhydrous ammonia in an amount exceeding its applicable threshold of 10,000 pounds.

32. 40 C.F.R. § 68.12(d)(3) requires owners and operators of stationary sources with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. §§ 68.65-68.87.

33. On December 5, 2019, EPA conducted an on-site inspection of the Facility's records and equipment to assess its compliance with the RMP regulations, and on May 13, 2021, EPA and Respondent entered into an administrative order on consent to correct alleged violations of the RMP regulations.

34. On October 28, 2022, an ammonia release occurred at the Facility.

## VI. VIOLATIONS

### **Count 1: Failure to Comply with RMP Process Safety Information Requirements**

35. The allegations in Paragraphs 1 through 34 are hereby realleged and incorporated herein by reference.

36. Complainant alleges the following violations of Clean Air Act 112(r)(7) and the implementing regulations at 40 C.F.R. Part 68.

37. Pursuant to 40 C.F.R. § 68.65(a), the owner or operator of a Program 3 process is required, among other things, to compile written process safety information about the process before completing the process hazard analysis. This includes documenting information pertaining to the hazards of the RMP chemical, and information about the technology and equipment of the process. Pursuant to 40 C.F.R. §§ 68.65(d)(2) and (3), the owner or operator must also document that the equipment complies with recognized and generally accepted good engineering practices ("RAGAGEP") and, for equipment designed and constructed in accordance with codes, standards or practices that are no longer in use, determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

38. As further described in Attachment A, which is incorporated by reference into this CAFO, Respondent failed to document that the processes complied with recognized and generally accepted good engineering practices ("RAGAGEP") and that equipment designed according to outdated standards was designed, maintained, inspected, tested, and operated in a safe manner.

39. Accordingly, Respondent violated 40 C.F.R. § 68.65(d)(2) and (3) and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

## **Count 2: Failure to Comply with Program 3 Mechanical Integrity Requirements**

40. The allegations in Paragraphs 1 through 39 are hereby realleged and incorporated herein by reference.

41. Pursuant to 40 C.F.R. § 68.73, the owner or operator of a Program 3 process is required, among other things, to develop inspection and testing procedures that follow RAGAGEP as well as performing inspections and tests at a frequency consistent with manufacturer's recommendations and good engineering practices, or more frequently if needed based on prior operating experience.

42. Respondent provided monthly internal inspection checklists that indicated rooftop process piping and pipe insulation were in an acceptable condition. During EPA's December 5, 2019 inspection, EPA inspectors observed sections of process pipe insulation that had been damaged, including sections of pipe insulation that contained pinholes which could compromise the function of the insulation. During the same inspection, EPA inspectors observed and documented a minor anhydrous ammonia leak from a valve along a stretch of rooftop piping. These observations made by the EPA inspectors indicate that the frequency of Respondent's piping inspections was insufficient for the requirements of the process.

43. Respondent violated the Mechanical Integrity requirements of 40 C.F.R. § 68.73 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), by failing to conduct piping inspections on a frequency sufficient for the requirements of the process.

### **VII. TERMS OF CONSENT AGREEMENT**

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

- a. Admits that EPA has jurisdiction over the subject matter alleged herein;
- b. Neither admits nor denies the specific allegations of fact and law contained herein;
- 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 Consent Agreement;
- f. Consents to any stated Permit Action;
- g. Waives any right to contest the allegations set forth herein; and
- h. Waives its rights to appeal the Final Order accompanying this Consent Agreement.

45. For the purpose of this proceeding, Respondent:

- a. Agrees that this CAFO states a claim upon which relief may be granted against Respondent;

- b. Acknowledges that this CAFO 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 CAFO, 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 Consent Agreement or Final Order, or both, in the United States District Court for the District of Connecticut; and
- e. Waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

46. Respondent certifies that it has corrected the violations alleged in this CAFO and is currently in compliance with 40 C.F.R. Part 68 at the Facility. Respondent further certifies that it has taken steps to ensure that piping in the machinery room is protected from forklift impacts.

47. Respondent agrees to:

- a. Pay the civil penalty identified in Paragraph 48 below; and
- b. Conduct a third-party expert review of its RMP-covered facilities as specified in Paragraphs 52 through 55, below.

### **Penalty Payment**

48. 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 applicable penalty policy, and Respondent's cooperation in agreeing to perform the non-penalty obligations in this CAFO, the EPA has determined that it is fair and proper to assess a civil penalty of one-hundred fifteen thousand eight hundred forty-nine dollars (\$115,849) for the violations alleged in this matter. This penalty includes a separate assessment for the violative conditions that caused the October 28, 2022, ammonia release.

49. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Respondent shall pay the penalty using any method, or combination of methods, provided on the website <https://www.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying every payment with "Docket No. CAA-01-2023-0025." **Do not pay the penalty until receiving a copy of the fully executed CAFO.**

50. Respondent shall, within 24 hours of payment of the EPA Penalty, send proof of payment to the following addresses. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated

clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with “CAA-01-2023-0025.”

Tyler Diercks  
U.S. Environmental Protection Agency, Region 1  
Enforcement and Compliance Assurance Division  
5 Post Office Square, Suite 100  
Mail Code: 05-4  
Boston, Massachusetts 02109-3912  
[diercks.tyler@epa.gov](mailto:diercks.tyler@epa.gov)

and

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: 04-6  
Boston, Massachusetts 02109-3912  
[r1\\_hearing\\_clerk\\_filings@epa.gov](mailto:r1_hearing_clerk_filings@epa.gov)

51. **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 48 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 agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 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.

### **Non-Penalty Conditions**

52. As a condition of settlement, Respondent agrees to retain at least one third-party expert to lead a minimum system safety evaluation in accordance with the International Institute of Ammonia Refrigeration's Standard 9, 2020 edition ("IIAR 9 audit") at each of Respondent's six (6) RMP-covered facilities that use anhydrous ammonia as a refrigerant, including the Suffield, Connecticut facility.

53. The third-party expert ("Expert") shall meet the following competency and expertise requirements:

- a. The Expert has experience conducting process hazard analyses and audits under Section 112(r) of the CAA;
- b. The Expert is knowledgeable about the industry codes, standards, and bulletins that apply to ammonia refrigeration facilities; and
- c. The Expert is familiar with the design of refrigeration systems to meet such codes, standards, and bulletins (or has access to someone who does have such design experience).

54. By January 31, 2025, Respondent shall submit to EPA written confirmation that the IIAR 9 audits at each of Respondent's RMP-covered facilities are complete.

### **55. Notifications**

- a. Submissions required by this CAFO shall be in writing and shall be mailed to the following addresses with a copy also sent by electronic mail:

Tyler Diercks  
U.S. Environmental Protection Agency, Region 1  
Enforcement and Compliance Assurance Division  
5 Post Office Square, Suite 100  
Mail Code: 05-4  
Boston, Massachusetts 02109-3912  
[diercks.tyler@epa.gov](mailto:diercks.tyler@epa.gov)

and

Catherine Smith  
U.S. Environmental Protection Agency, Region 1  
Office of Regional Counsel  
5 Post Office Square, Suite 100  
Mail Code: 04-4  
Boston, Massachusetts 02109-3912  
[Smith.catherine@epa.gov](mailto:Smith.catherine@epa.gov)

- b. EPA will send all written communications to the following representative(s) for Respondent:

Dave Crowley, CSP, CHMM, STS  
 Vice President of EHS & Sustainability  
 HP Hood LLC  
 Six Kimball Lane  
 Lynnfield, MA 01940  
[Dave.Crowley@hphood.com](mailto:Dave.Crowley@hphood.com)

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

### **Stipulated Penalties**

56. In the event that Respondent fails to satisfactorily complete all provisions related to the compliance provisions as described above in Paragraphs 52 through 55 (“the Non-Penalty Conditions”), Respondent shall be liable for stipulated penalties in the following amounts:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 <sup>st</sup> through 14 <sup>th</sup> day
\$2,500	15 <sup>th</sup> through 30 <sup>th</sup> day
\$3,000	31 <sup>st</sup> day and beyond

57. 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 49, above. Interest and late charges shall be paid as stated in Paragraph 58, below.

58. **Collection of Unpaid Stipulated Penalty for Failure to Perform Non-Penalty Conditions:** Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that Respondent fails to timely pay any portion of the stipulated penalty relating to the performance of the Non-Penalty Conditions, 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.

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

## VIII. ADDITIONAL PROVISIONS

60. The terms, conditions, and compliance requirements of this CAFO 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 modifying schedules for the compliance conditions in Paragraphs 52 through 55.

61. Schedules and deadlines for the compliance conditions in Paragraphs 52 through 55 may be extended by the Manager of the EPA Region 1 Enforcement and Compliance Assurance Division, Waste and Chemical Compliance Section, at their discretion, without further amendment of this Order. The EPA will provide Respondent with written confirmation and documentation of any such extensions of time.

62. Respondent agrees that the time period from the Effective Date of this CAFO until all of the conditions specified in Paragraphs 52 through 55 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 VII of this CAFO. 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.

63. The provisions of this CAFO 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 CAFO until the end of the Tolling Period, as set out in Paragraph 62, above, Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, 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 CAFO unless the EPA has provided written approval of the release of said obligations or liabilities.

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

65. By signing this CAFO, 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 CAFO and has the legal capacity to bind the party he or she represents.

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

67. By signing this CAFO, 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.

68. Complainant and Respondent, by entering into this CAFO, each consents to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by e-mail, at [Paul.Nightingale@hphood.com](mailto:Paul.Nightingale@hphood.com). Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

#### **IX. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER**

69. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above. This release from civil penalty liability does not extend to the Non-Penalty Conditions, as outlined in Paragraphs 52 through 55 above.

70. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162 (f)(2)(A)(ii), the actions referred to in Paragraphs 46 and 52-55 are restitution or required to come into compliance with the law.

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

72. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties, or both, as provided in Section 113(b)(2) of the Clean Air Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

73. Nothing in this CAFO 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, or be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

74. 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.

75. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, 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.

76. Except as qualified by Paragraphs 51 and 58 (Collection of Unpaid Civil Penalty and Collection of Unpaid Stipulated Penalty for Failure to Perform Non-Penalty Conditions), each party shall bear its own costs and fees in this proceeding including attorney’s fees. Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

**X. EFFECTIVE DATE**

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

The foregoing Consent Agreement In the Matter of HP Hood LLC, Docket No. CAA-01-2023-0025, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT HP HOOD LLC:

DocuSigned by:  
*Scott Blake*  
E0D6A0A313AD4D3

Date: July 26, 2023 | 2:04 PM PDT

\_\_\_\_\_  
Scott Blake  
Senior Vice President of Operations  
HP Hood LLC

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

\_\_\_\_\_  
James Chow, Acting Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 1

Date: \_\_\_\_\_

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the matter of	)	
	)	
HP Hood LLC,	)	
	)	
Respondent.	)	Docket No. CAA-01-2023-0025
	)	
Proceeding under Section 113(d) of the Clean	)	
Air Act, 42 U.S.C. § 7413(d)	)	
	)	
	)	

**FINAL ORDER**

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the 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 all terms of the Consent Agreement, which shall become effective on the date it is filed with the Regional Hearing Clerk.

So ordered.

Date: \_\_\_\_\_

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

## APPENDIX A

### Recognized and Generally Accepted Good Engineering Practices

In collaboration with the American National Standards Institute (“ANSI”), the International Institute of Ammonia Refrigeration (“IIAR”) has issued and updated *Standard 2: American National Standard for Safe Design of Closed-Circuit Ammonia Mechanical Refrigeration Systems* (2014) (“ANSI/IIAR 2-2014”), *American National Standard for the Inspection, Testing, and Maintenance of Closed-Circuit Ammonia Refrigeration Systems* (2019) (“ANSI/IIAR 6-2019”), and *American National Standard for Minimum System Safety Requirements for Existing Closed-Circuit Ammonia Refrigeration Systems* (2020) (“ANSI/IIAR 9-2020”), along with other applicable standards and guidance. Bulletins and guidance include, without limitation, IIAR Bulletin No. 109, *Guidelines for IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System* (1997, and in effect until 2019 when ANSI/IIAR 6 replaced it) (“IIAR Bulletin 109”); IIAR Bulletin No. 110, *Guidelines for Start-Up, Inspection, and Maintenance of Ammonia Mechanical Refrigerating Systems* (1993, most recently updated in 2007, and in effect until 2019 when ANSI/IIAR 6 replaced it) (“IIAR Bulletin 110”); and IIAR Bulletin No. 114, *Guidelines for Identification of Ammonia Refrigeration Piping and Components* (1991, most recently updated in 2018) (“IIAR Bull. 114”). Also, in collaboration with ANSI, the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (“ASHRAE”) has issued and updated *Standard 15: Safety Standard for Refrigeration Systems* (“ANSI/ASHRAE 15-2013”). Lastly, the National Fire Protection Association has issued the *Fire Code* (2015), and *Standard 704, Standard System for the Identification of the Hazards of Materials for Emergency Response* (2012) (“NFPA 704”). These standards are consistently relied upon by refrigeration experts and are sometimes incorporated by reference into state building and mechanical codes.

The applicable standards of care cited are those that were in effect in 2019, when Respondent completed its latest Process Hazard Analysis (PHA) prior to the EPA inspection of the facility. Bulletin 109 and Bulletin 110 are listed as applicable RAGAGEP as they were in effect at the time of the Facility’s 2019 PHA. The chart also includes citations to ANSI/IIAR 6-2019 and ANSI/IIAR 9-2020, which were approved by ANSI for publication *after* the Facility’s 2019 PHA. ANSI/IIAR 9-2020 is cited for informational purposes as it contains IIAR’s latest pronouncement on bare minimum safety standards for ammonia refrigeration systems, regardless of size or age. ANSI/IIAR 6-2019 is cited for informational purposes as it contains minimum inspecting, testing, and maintenance requirements for ammonia refrigeration systems.

For Counts 1 and 2, the following RAGAGEP apply:

Facility/Count/Findings	Examples of Relevant RAGAGEP
<b>Count 1</b>	<b>40 C.F.R. § 68.65(d)(2) &amp; (3)</b>
Lack of audible/visual alarms inside the office area located in the ammonia machinery room.	<ul style="list-style-type: none"> <li>• ANSI/IIAR 9-2020 § 7.3.12.1(3) (requiring audible and visual alarms inside the machinery room and outside each of its entrances)</li> <li>• ANSI/IIAR 2-2014 § 6.13.1.3 (same as ANSI/IIAR 9-2020 § 7.3.12.1(3))</li> </ul>

Facility/Count/Findings	Examples of Relevant RAGAGEP
The king valve on the high pressure receiver (HPR) was not properly labeled.	<ul style="list-style-type: none"> <li>• ANSI/IIAR 9-2020 § 7.2.9.3 (emergency shutoff valves shall be clearly identified at the valve itself and in system schematics)</li> <li>• ANSI/IIAR 2-2014 § 5.14.3 (same as ANSI/IIAR 9-2020, § 7.2.9.3)</li> <li>• IIAR Bulletin No. 109 § 4.10.3 (main shut-off valves should be identified with a prominent sign having letters sufficiently large to be easily read)</li> </ul>
The ammonia machinery room ventilation exhaust discharged into the outdoor ammonia area near the HPR and within 20 feet of an air intake for a compressor housing building. In addition, the exhaust discharged horizontally rather than vertically upward. This presents a hazard in the event an ammonia release inside the ammonia machinery room occurs and discharges to an exterior area.	<ul style="list-style-type: none"> <li>• ANSI/IIAR 9-2020 § 7.4.2.1 (“The termination of pressure relief device discharge piping relieving to the atmosphere shall not be . . . less than 20 ft (6.1 m) from windows, ventilation intakes, or exits”)</li> <li>• ANSI/IIAR 2-2014 <ul style="list-style-type: none"> <li>○ § 6.14.3.4 (machinery room exhaust shall vent to the outdoors and no fewer than 20 ft from a property line or openings into buildings)</li> <li>○ § 6.14.3.5 (machinery room exhaust shall discharge vertically upward)</li> </ul> </li> <li>• ANSI/ASHRAE 15-2013 § 8.11.4 (discharge of air from ammonia machinery room ventilation “shall be to the outdoors in such a manner as not to cause a nuisance or danger.”)</li> </ul>
Ammonia pressure relief valve (PRV) vent piping on the roof discharged less than 7.25 feet above the condenser platform. This presents a hazard in the event of an ammonia release.	<ul style="list-style-type: none"> <li>• ANSI/IIAR 9-2020 § 7.4.2.2 (“The discharge termination from pressure relief devices relieving to atmosphere shall not be less than 7.25 ft (2.2 m) above a roof that is occupied solely during service and inspection. Where a higher adjacent roof level is within 20 ft (6.1 m) horizontal distance from the relief discharge, the discharge termination shall not be less than 7.25 ft (2.2 m) above the height of the higher adjacent roof”)</li> <li>• ANSI/IIAR 2-2014 <ul style="list-style-type: none"> <li>○ § 15.5.1.3 (same as ANSI/IIAR 9-2020 § 7.4.2.2)</li> <li>○ § 15.5.1.4 (“Discharge piping shall be permitted to terminate not less than 7.25 ft (2.2. m) above platform surfaces, such as upper condenser walks, that are occupied solely during service and inspection.”)</li> </ul> </li> </ul>
Failure to label audio/visual alarms outside the ammonia machinery room to indicate the reason for alarming.	<ul style="list-style-type: none"> <li>• ANSI/IIAR 9-2020 <ul style="list-style-type: none"> <li>○ § 7.2.9.1(2) (“The meaning of each alarm shall be clearly marked by signage near the visual and audible alarms”)</li> <li>○ § 7.3.12.6 (“Ammonia leak detection alarms shall be identified by signage adjacent to visual and audible alarm devices”)</li> </ul> </li> <li>• ANSI/IIAR 2-2014 § 17.6 (same as ANSI/IIAR 9-2020 § 7.3.12.6)</li> <li>• ANSI/ASHRAE 15-2013 § 8.11.2.1 (all ammonia leak detection alarms shall have “[t]he meaning of each alarm . . . clearly marked by signage near the annunciators”)</li> </ul>

Facility/Count/Findings	Examples of Relevant RAGAGEP
<p>Some ammonia piping and equipment lacked protection from physical impacts, including the HPR in the loading area and ammonia piping in the ammonia machinery room. This ammonia piping and equipment could be inadvertently damaged due to external force causing a sudden release of ammonia. The October 28, 2022, ammonia release occurred when a forklift struck a purge valve on ammonia piping in the machinery room.</p>	<ul style="list-style-type: none"> <li>● ANSI/IIAR 9-2020 § 7.2.12.1 (“Where ammonia-containing equipment is installed in a location subject to physical damage, guarding or barricading shall be provided”)</li> <li>● ANSI/IIAR 2-2014: <ul style="list-style-type: none"> <li>○ § 5.17.1 (same as IIAR 9 § 7.2.12.1)</li> <li>○ § 7.2.4 (where equipment containing ammonia is located in an area with heavy vehicular traffic during normal operations and a risk of impact exists, vehicle barriers or alternative protection shall be provided)</li> </ul> </li> <li>● ANSI/ASHRAE 15-2013 § 11.1 (“Means shall be taken to adequately safeguard piping, controls and other refrigeration equipment to minimize possible accidental damage or rupture due to external sources”)</li> </ul>
<p>Failure to provide component markers on the HPR and multiple ammonia vessels in the machinery room to identify the equipment function and pressure level.</p>	<ul style="list-style-type: none"> <li>● IIAR Bulletin 114 (2018) § 4.2 (specifying that component markers should “bear the name of the equipment” and “allow room for the pressure level designation”)</li> <li>● ANSI/IIAR 9-2020 § 7.2.9.2 (refrigeration equipment shall be labeled to indicate the equipment’s name or identifier)</li> <li>● ANSI/IIAR 2-2014 § 5.14.2 and 2-2014 Add. A § 5.14.3 (Refrigeration machinery shall be provided with labels), 2-2014 § 5.14.4 (requirements for equipment nameplates), see also Chapters 8-16 (specifying the minimum information that must be included on nameplates for ammonia equipment, including pressure level)</li> <li>● ASHRAE 15-2013 § 11.2.1 and Bulletin 109 § 4.10.4 (requiring that each refrigerating system have a legible permanent sign, securely attached and easily accessible, indicating: a. the name and address of the installer, b. the refrigerant number and amount of refrigerant, c. the lubricant identity and amount, and d. the field test pressure applied)</li> </ul>

Facility/Count/Findings	Examples of Relevant RAGAGEP
<p>Failure to label ammonia piping to indicate contents, direction of flow, and physical state. In addition, the inspectors observed damaged pipe labeling throughout the Facility.</p>	<ul style="list-style-type: none"> <li>• ANSI/IIAR 9-2020 § 7.2.9.4 (specifying information that must be included in ammonia piping mains, headers, and branches, which includes “AMMONIA,” “physical state of the ammonia,” and “direction of flow”)</li> <li>• ANSI/IIAR 6-2019 § 11.1 (lists inspection, testing, and maintenance tasks for piping, which includes inspecting pipe labeling for “correct placement, accuracy, and degradation”)</li> <li>• ANSI/IIAR 2-2014 § 5.14.5 (same as ANSI/IIAR 9-2020 § 7.2.9.4)</li> <li>• ANSI/ASME 13.1-2015 (legend used for pipe identification shall include name of contents and arrows to indicate direction of flow; legend used for contents shall provide sufficient details to identify the hazard, including temperature and pressure)</li> <li>• IIAR Bulletin 109 § 4.7.6 (1997) (“All ammonia piping should have appropriate pipe markers attached to indicate the use of the pipe and arrows to indicate the direction of flow, such as in IIAR Bulletin 114”)</li> <li>• IIAR Bulletin 114 (2018) § 4.1 (specifying that pipe markings shall identify the type of refrigerant and its physical state, relative pressure level, and direction of flow)</li> </ul>
<p>The eyewash station near the ammonia HPR was not accessible due to large equipment located directly in front of it. Eyewash stations are important for the safe operation of the equipment in a machinery room.</p>	<ul style="list-style-type: none"> <li>• 29 CFR 1910.151(c) (“where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.”)</li> <li>• ANSI/ISEA Z358.1-2009 § 5.4.2 (eyewash station shall “be in accessible locations that require no more than 10 seconds to reach.” Path of travel to the eyewash station “shall be free of obstructions that may inhibit its immediate use.”)</li> <li>• IIAR 9-2020 §§ 7.3.7.1 and 2 (the machinery room must have at least two eyewash/safety shower units installed, one in the machinery room and one outside. Path of travel to the eyewash unit shall be unobstructed.)</li> <li>• ANSI/IIAR 2-2014 §§ 6.7.1 and 2 (same as IIAR 9 §§ 7.3.7.1 and 2)</li> </ul>

Facility/Count/Findings	Examples of Relevant RAGAGEP
<p>The doors to the ammonia machinery room were not tight-fitting, risking spread of ammonia vapors from equipment leaks in the machinery room. Tight-fitting doors also help properly isolate the ammonia machinery room by maintaining a slight negative pressure in the machinery room to properly contain and vent flammable ammonia leaks from the machinery room.</p>	<ul style="list-style-type: none"> <li>• ANSI/IIAR 9-2020: <ul style="list-style-type: none"> <li>○ § 7.3.2.1 (“The machinery room shall be separated from the remainder of the building by tight-fitting construction”)</li> <li>○ § 7.3.9.2 (Machinery room doors shall be tight fitting)</li> </ul> </li> <li>• ANSI/IIAR 2-2014: <ul style="list-style-type: none"> <li>○ § 6.2.1 (“The machinery room shall be separated from the remainder of the building by tight-fitting construction with a one-hour fire-resistance rating. Doors shall comply with Section 6.10.”)</li> <li>○ § 6.10.2 (same as ANSI/IIAR 9-2020 § 7.3.9.2)</li> </ul> </li> <li>• ANSI/ASHRAE 15-2013: <ul style="list-style-type: none"> <li>○ § 8.11.2 (substantively same as ANSI/IIAR 9-2020 § 7.3.9.2)</li> <li>○ § 8.12(b) (“Doors communicating with the building shall be approved, self-closing, tight-fitting fire doors.”)</li> </ul> </li> </ul>
<p>There was a row of windows in the ammonia machinery room that are not fire-rated, which increased the chance that a fire from ammonia vapors could spread to other parts of the building.</p>	<ul style="list-style-type: none"> <li>• NFPA 1-2012 § 12.7.3.1 (“Openings required to have a fire protection rating by Table 12.7.2 shall be protected by approved, listed, labeled fire door assemblies and fire window assemblies and their accompanying hardware . . . in accordance with the requirements of Section 12.4”)</li> <li>• ANSI/IIAR 2-2014 and 2-2014 Add. A. § 6.2.1; ANSI/IIAR 2-2008 § 13.1.1.3 (Walls, floor, and ceiling separating the refrigerating machinery room from other occupied spaces shall be of at least one-hour fire-resistive construction.)</li> <li>• ANSI/ASHRAE 15-2013 § 8.12(c) (“Walls, floor, and ceiling shall be tight and of noncombustible construction. Walls, floor, and ceiling separating the refrigerating machinery room from other occupied spaces shall be of at least one-hour fire-resistive construction”)</li> </ul>
<p><b>Count 2</b></p>	<p><b>40 C.F.R. § 68.73(d)(3)</b></p>
<p>Inspections of rooftop piping and insulation was insufficient for the requirements of the process. There were pinholes and damage to the refrigeration insulation located on the roof that could lead to water intrusion and corrosion under insulation. In addition, at the time of inspection there was an ammonia leak from a rooftop flange.</p>	<ul style="list-style-type: none"> <li>• ANSI/IIAR 9-2020, § 5.1 (specifying that “[a]ll equipment and system components shall be inspected, tested, and maintained in accordance with ANSI/IIAR 6 (2019).”)</li> <li>• ANSI/IIAR 6-2019 <ul style="list-style-type: none"> <li>○ § 5.2.1 (“Where a history of deficiencies has been recorded, the (ITM) task frequencies shall be increased.”)</li> <li>○ § 11.1 (Inspection, testing, and maintenance (ITM) tasks shall be performed on . . . piping at the indicated frequencies set forth in Table 11.1 or per manufacturer’s instructions, unless a different frequency is justified in accordance with Section 5.2.1.”)</li> <li>○ Table 11.1 (specifying frequencies for inspection of insulated piping, including annual visual inspections for damage or moisture incursion in insulation, cracks and degradation on supports, and insulation protective jacketing)</li> </ul> </li> <li>• IIAR Bulletin 109, § 5.2 (“Each owner should ensure an ammonia system safety check is conducted annually.”)</li> </ul>

Facility/Count/Findings	Examples of Relevant RAGAGEP
	<ul style="list-style-type: none"><li data-bbox="526 268 1490 554">• IIAR Bulletin 110 § 6.7.2 (“Any mechanical damage to [piping] insulation should be repaired immediately and the vapor seal reinstated to prevent access of water or water vapor which will lead to breakdown of insulation and corrosion of the pipework. At least as part of the annual piping inspection, but preferably more frequently, the external condition of the insulation and supports shall be inspected. Condensation or frosting on the surface of insulated finishes indicates a deterioration or breakdown of the insulation or vapor barrier.”)</li></ul>