

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2023-0025
)	
Sysco Food Services)	Proceeding to Assess a Civil Penalty
Des Plaines, Illinois,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
)	

Consent Agreement and Final Order

Preliminary Statement

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

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Sysco Food Service, a subsidiary of Sysco Corporation doing business in Illinois.

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

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

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

Jurisdiction and Waiver of Right to Hearing

7. For the purposes of this proceeding, Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

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

Statutory and Regulatory Background

Clean Air Act Section 112(r)

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

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

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

other design, equipment, work practice, and operational requirements.

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

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

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

15. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$55,808 per day of violation up to a total of \$446,456 for violations that occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020. CAA Section 113(d)(1), 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

16. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United

States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

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

40 C.F.R. Part 68: Chemical Accident Prevention Provisions

18. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which is codified at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (CAPP). The Administrator promulgated the most recent amendment to CAPP on December 19, 2019. 84 Fed. Reg. 69834.

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

a. Applicability

20. Section 68.10(a) of CAPP provides, in part, that the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 C.F.R. § 68.115, shall comply with the requirements of CAPP no later than the date on which a regulated substance is first present above a threshold quantity in a process.

21. Section 68.3 of CAPP provides that “regulated substance” means any substance listed pursuant to Section 112(r)(3) of the Act at 40 C.F.R. § 68.130.

22. Table 1 at Section 68.130(a) of CAPP lists ammonia (anhydrous) as a regulated toxic substance with a threshold quantity of 10,000 pounds.

23. Section 68.3 of CAPP provides that “process” means “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, a single process includes “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 . . .” A “covered process” means “a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.”

24. Section 68.10(g) of CAPP provides, in part, that a covered process is subject to Program 1 requirements if the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under CAPP subpart B and 40 C.F.R. § 68.25 is less than the distance to any public receptor, as defined in 40 C.F.R. § 68.3.

25. Section 68.10(i) of CAPP provides, in part, that a covered process is subject to Program 3 requirements if the process does not meet the requirements of 40 C.F.R. § 68.10(g) and if either of the following conditions is met: the process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or the process is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 CFR § 1910.119.

26. Section 68.12(a) and (d) of CAPP identify CAPP requirements that the owner or operator of a stationary source with a process subject to Program 3 shall meet, which include, among other provisions, requirements regarding management systems, hazard assessments,

prevention requirements, response actions, emergency response programs, and the submittal of a single RMP.

b. Process Safety Information

27. Section 68.65(a) and (c) of CAPP provides, in part, that the owner or operator shall complete a compilation of written process safety information (PSI), before conducting any process hazard analysis (PHA). The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances. The process safety information shall include information pertaining to the technology of the process including safe upper and lower limits for such items as temperatures, pressures, flow or compositions; and an evaluation of the consequence of deviation.

c. Management of Change

28. Section 68.75(a) of CAPP provide that the owner or operator shall establish and implement written procedures to manage changes (except for “replacement in kind”) to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process.

d. Pre-start up Safety Review

29. Section 68.77(a) of CAPP provides that the owner or operator shall perform a pre-startup safety review for modified stationary source when the modification is significant enough to require a change in the process safety information.

e. Risk Management Plan

30. Section 68.160(b)(6) of the CAPP requires the registration to include: The name, title, telephone number, 24-hour telephone number, and, as of June 21, 2004, the e-mail address (if an e-mail address exists) of the emergency contact.

31. Section 68.195(b) of CAPP requires the owner or operator to submit a correction to its RMP within a month of a change in the emergency contact information required under 40 C.F.R. § 68.160(b)(6).

f. Recordkeeping

32. Section 68.200 of CAPP requires the owner or operator to maintain records supporting the implementation of CAPP at the stationary source for five years, unless otherwise provided in CAPP subpart D.

Factual Allegations and Alleged Violations

33. Respondent owns and operates an ammonia refrigeration system at its food distribution warehouse facility (the Facility) located at 501 S. Wolf Road, Des Plaines, Illinois 60016.

34. EPA inspectors completed an inspection at the Facility on September 27 through September 29, 2021 to evaluate Respondent's compliance with CAA 112(r).

35. Respondent uses ammonia anhydrous, a regulated substance, in its refrigeration system at the Facility.

36. Respondent's process at the Facility is an activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities and is thus a "process," as that term is defined at 40 C.F.R. § 68.3 of CAPP.

37. Respondent maintains a refrigeration system at the Facility that contains at least 10,000 pounds of anhydrous ammonia.

38. Respondent's process at the Facility is a "covered process," as that term is defined at 40 C.F.R. § 68.3 of CAPP.

39. Respondent's worst-case release assessment at the Facility conducted under Subpart B of Part 68 and 40 C.F.R. § 68.25 of CAPP determined that the distance to the toxic endpoint for anhydrous ammonia (0.14 mg/L, as listed in Appendix A of Part 68) is greater than the distance to any public receptor. Respondent therefore does not meet the eligibility requirements of 40 C.F.R. § 68.10(g) for Program 1 at the Facility.

40. Respondent's covered process at the Facility is subject to the OSHA process safety management standard, 29 CFR § 1910.119.

41. Based on Paragraphs 37 through 40, Respondent's process at the Facility is a covered process that is subject to requirements of CAPP in accordance with 40 C.F.R. § 68.10(a) of CAPP and the requirements of Program 3 in accordance with 40 C.F.R. § 68.10(i).

42. Respondent provided records during and after the inspection on September 27 through 29, 2021 that were related to its implementation of the CAPP, such as the standard operating procedures (SOP), process safety information (PSI), management of change (MOC), risk management plan (RMP), and pre-startup safety review (PSSR).

a. Count I-II - Process Safety Information

43. Complainant incorporates Paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.

44. At the time of the September 27-29, 2021, inspection, Respondent failed to include an upper or a lower limit to each parameter listed in its safe upper and lower limit records; and in

its consequence of deviation records, failed to identify a safety related consequence to deviating from the parameters identified in its safe upper and lower limit records. These records were part of the Facility's SOP for each of the following equipment.

High Pressure Receiver Vessels

- a. The SOP did not have safe low pressure identified in safe upper and lower limit and a safety consequence of deviation for low pressure at the time of the inspection.
- b. The SOP did not have safe low temperature identified in safe upper and lower limit for low temperature at the time of the inspection, even though there is a safety consequence of deviation.
- c. The SOP did not have a consequence of deviation analysis for high level of anhydrous ammonia, which was included in the safe upper and lower limit.

High Temperature Vessel

- a. The SOP did not have safe low pressure identified in safe upper and lower limit and a safety consequence of deviation.
- b. The SOP did not have safe high temperature identified in safe upper and lower limit, even though there was a safety related consequence of deviation for high temperature.
- c. The SOP did not have a consequence of deviation analysis for high level of anhydrous ammonia, which was included in the safe upper and lower limit.

Compressor

- a. The SOPs for RB1, RB2, RC1, RC2, and RC3 compressors did not have an upper and lower limit identified for discharge temperature.

- b. The SOPs for RB1, RB2, RC1, RC2, and RC3 compressors did not have a consequence of deviation analysis for low discharge pressure, which was included in the safe upper and lower limit.

45. By failing to record all safe upper and lower limits and consequence of deviation in the PSI, Respondent did not complete the compilation of the PSI that would enable an owner or operator to identify and understand the hazards posed by a process, in violation of 40 C.F.R. § 68.65(a) and (c) of CAPP.

d. Count III - Risk Management Plan

46. Complainant incorporates Paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.

47. During the September 27-29, 2021, inspection, EPA learned that the Facility emergency contact listed in the RMP had not been employed at the Facility since February 2021.

48. During the September 27-29, 2021, inspection, a Facility representative acknowledged that the Facility had not updated its RMP to include: the name, title, telephone number, 24-hour telephone number, and e-mail address of the current emergency contact.

49. Respondent failed to update its emergency contact information listed in the RMP within a month of the change of personnel, in violation of 40 C.F.R. § 68.195(b).

e. Count IV – Recordkeeping

50. Complainant incorporates Paragraphs 1 through 42 of this CAFO as if set forth in this paragraph.

51. Respondent's written procedure for the Facility established pursuant to Section 68.75a of CAPP states that the Facility must initiate a MOC Record within 72 hours of a permanent change.

52. During the September 27-29, 2021, inspection of the Facility, Respondent did not have available the MOC Record it created following a permanent change, the installation of an ammonia loading station, on August 22, 2019.

53. During the September 27-29, 2021, inspection of the Facility, Respondent did not maintain the record of the PSSR following a significant modification that required a change to the PSI, the installation of an ammonia loading station, on August 22, 2019.

54. By failing to maintain the MOC Record and PSSR following the installation of the ammonia loading station, Respondent failed to maintain records supporting the implementation of CAPP at the Facility for five years, in violation of 40 C.F.R. § 68.200.

Civil Penalty

55. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and any other factor such as cooperation, prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$12,000.

56. Penalty Payment. Respondent agrees to:

- a. Pay the civil penalty of \$ 12,000 within 30 days after the effective date of this CAFO.
- b. Pay the civil penalty using any method provided in the table below.

Payment Method	Payment Instructions
Automated Clearinghouse (ACH) payments made through the US Treasury	US Treasury REX/Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking In the comment area of the electronic funds transfer, state Respondent’s name and the CAFO docket number.
Wire transfers made through Fedwire	Federal Reserve Bank of New York ABA: 021030004

	<p>Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Beneficiary: US Environmental Protection Agency</p> <p>In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.</p>
<p>Payments made through Pay.gov</p> <p>Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.</p>	<ul style="list-style-type: none"> • Go to Pay.gov and enter “SFO 1.1” in the form search box on the top left side of the screen. • Open the form and follow the on-screen instructions. • Select your type of payment from the "Type of Payment" drop down menu. <p>Based on your selection, the corresponding line will open and no longer be shaded gray. Enter the CAFO docket number into the field</p>
<p>Cashier’s or certified check payable to “Treasurer, United States of America.”</p> <p>Please notate the CAFO docket number on the check</p>	<p>For standard delivery: U.S. Environmental Protection Agency Fines and Penalties Cincinnati Finance Center P.O. Box 979077 St. Louis, Missouri 63197-9000</p> <p>For signed receipt confirmation (FedEx, UPS, Certified Mail, etc): U.S. Environmental Protection Agency Government Lockbox 979077 U.S. EPA Fines and Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, Missouri 63101</p>

57. Within 24 hours of the payment of the civil penalty Respondent must send a notice of payment and state Respondent’s name and the docket number of this CAFO to EPA at the following addresses:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Nora Wells
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
wells.nora@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

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

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

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

General Provisions

61. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: wells.nora@epa.gov (for Complainant), and Leilani.holgado@sysco.com (for

Respondent). Respondent understands that the CAFO will become publicly available upon filing.

62. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

63. The effect of the settlement described in paragraphs 55 and 62, above, is conditioned upon the accuracy of Respondent's representations to EPA relating to this matter, including Respondent's correspondence dated April 13, 2023.

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

65. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 6, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

66. Respondent certifies that, to the best of its knowledge, it is complying fully with Section 112(r) of the Act, 42 U.S.C. § 7412(r) and the implementing regulations at 40 C.F.R. Part 68.

67. This CAFO constitutes an "enforcement response" as that term is used in EPA's Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).


68. The terms of this CAFO bind Respondent, its successors and assigns.

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

70. Each party agrees to bear its own costs and attorney's fees in this action.
71. This CAFO constitutes the entire agreement between the parties.

Sysco Food Services, Respondent

7/31/2023
Date



Andrew McCarty, Vice President of Finance
Sysco Food Services

36-3677150
Tax Identification Number

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: Sysco Food Services
Docket No. CAA-05-2023-0025**

Final Order

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

Date

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