



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

DEC 20 2013

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Tim Timm
Registered Agent
Schoep's Ice Cream Company, Inc.
514 Division Street
Madison, WI 53704

Re: Schoep's Ice Cream Company, Inc., Consent Agreement and Final Order.
Docket No. **CAA-05-2014-0005**

Dear Mr. Timm:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on December 20, 2013. Please pay the civil penalty in the amount of \$9,000 in the manner prescribed in paragraph(s) 38 thru 39 and reference your check with the docket number. In addition, your client must complete a Supplemental Environmental Project worth at least \$27,000 as prescribed in paragraphs 43-57.

Please feel free to contact Bob Mayhugh at 312-886-5929 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jacqueline Clark, Associate Regional Counsel at 312-353-4191. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. E. Hans".

Michael E. Hans, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

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. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. 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

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

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

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

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

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

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

15. Under Section 112(r) of the Act, 42 U.S.C. § 112(r), the Administrator promulgated "Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Action Section 112(r)(7)," 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (Risk Management Program Regulations).

16. The Risk Management Program Regulations, at 40 C.F.R. § 68.3, define "stationary source" as "any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more

contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.”

17. The Risk Management Program Regulations, at 40 C.F.R. § 68.3, define “process” as “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.”

18. The Risk Management Program Regulations, at 40 C.F.R. § 68.3, define “regulated substance” as “...any substance listed pursuant to Section 112(r)(3) of the Clean Air Act...in [40 C.F.R.] § 68.130.”

19. Under Section 112(r)(3) of the Act, 42 U.S.C. § 112(r)(3), the Administrator has listed anhydrous ammonia (CAS # 7664-41-7) as a substance which, in the case of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The Administrator has further identified a threshold quantity of 10,000 lbs. for anhydrous ammonia (CAS # 7664-41-7) for determining whether sources are subject to the Risk Management Program. 40 C.F.R. § 68.130, Tables 1 and 2.

20. 40 C.F.R. § 68.115 provides that a “threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”

21. 40 C.F.R. § 68.12 requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided in 40 C.F.R. § 68.150 through 68.185.

22. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirements of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

23. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009.

24. 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.

25. 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.

Factual Allegations and Alleged Violations

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

27. Respondent owns and operates a refrigerated ice cream facility located at 514 Division Street, Madison, Wisconsin, that stores and manufactures milk, cream, and ice cream using an industrial refrigeration system, and which consists of buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and are under the control of Respondent ("the facility").

28. The facility is a "stationary source," as that term is defined at 40 C.F.R. § 68.3.

29. Respondent's RMPs for the facility, dated 2004 and 2009, were submitted to U.S. EPA pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), and implementing regulations at 40 C.F.R. Part 68.

30. According to the 2004 and 2009 RMPs, and a May 26, 2010 Charge Management Report, submitted to U.S. EPA by Respondent, the facility used anhydrous ammonia as a process chemical during its operations.

31. The facility maintained anhydrous ammonia in its operational processes in excess of 10,000 lbs from at least calendar year 2004 through calendar year 2010. Respondent thus maintained anhydrous ammonia at its facility in quantities exceeding the threshold quantities established by 40 C.F.R. § 68.130, and Respondent became subject to 40 C.F.R. Part 68.

32. Respondent's process at its facility subjects it to Program 3 requirements because the distance to a public receptor, as defined at 40 C.F.R. § 68.30, is less than the distance to the flammable or toxic endpoint for a worst-case release assessment under 40 C.F.R. § 68.25, and because the process is subject to the process safety management standard at 29 U.S.C. § 1910.119.

33. On September 1, 2010, an authorized representative of U.S. EPA conducted a compliance inspection at the facility to determine its compliance with the 40 C.F.R. Part 68.

34. Based on the inspection conducted on September 1, 2010 and a review of additional information received by U.S. EPA subsequent to that date, it has identified the following violations by Respondent of the Risk Management Program Regulations:

- a. Failure to assure that the facility's 2009 process hazard analysis recommendations were resolved in a timely manner, as required under 40 C.F.R. § 68.67(e); and

b. Failure by the owner or operator of the facility to certify that the stationary source evaluated compliance with the provisions of the Risk Management Program Regulations at least every three years to verify that the developed procedures and practices are adequate and being followed, as required under 40 C.F.R. § 68.79(a).

35. 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.

36. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 1139d) of the Act, 42 U.S.C. § 7413(d).

Civil Penalty

37. 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 other factors such as cooperation and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$9,000.

38. Within 30 days after the effective date of this CAFO, Respondent must pay the \$9,000 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note "Schoep's Ice Cream Company, Inc." and the docket number of this CAFO.

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

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Robert Mayhugh (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Jacqueline Clark (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

41. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 53, below, U.S. EPA may 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.

42. 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).

Supplemental Environment Project

43. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing the facility's ammonia waste load to the City of Madison, Wisconsin, Waste Water Treatment Plant and reducing the potential risk of ammonia release from the facility's refrigeration system.

44. At its facility, Respondent must complete the SEP as follows: by January 15, 2014, Respondent will modify its existing refrigeration system to install a new pump out piping system in the facility that ties into the wet suction system and limits the loss of ammonia during both routine and emergency maintenance operations. Respondent anticipates that this SEP will recirculate previously vented ammonia gas back into the refrigeration system, and thus, reduce some of the load to the City's industrial sewer system and reduce the potential risk of ammonia release from the refrigeration system at the facility.

45. Respondent must spend at least \$27,000 to implement the SEP described in the previous two paragraphs.

46. Respondent, by its undersigned signatory, certifies as follows:

I certify that Schoep's Ice Cream Company, Inc. is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Schoep's Ice Cream Company, Inc. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Schoep's Ice Cream Company, Inc. 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 SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same

activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For 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 expired.

47. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

48. Respondent must submit a SEP completion report to U.S. EPA during the sixth month following the filing of this CAFO. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantifying the benefits and pollution reductions, if feasible).

49. One electronic copy of all notices and reports required by this CAFO shall be submitted to Robert Mayhugh of the Chemical Emergency Preparedness and Prevention Section at the address provided in paragraph 39, above.

50. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the

information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

51. Following receipt of the SEP completion report described in paragraph 48, above,

U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 53.

52. If U.S. EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 53, below.

53. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 44, Respondent must pay a penalty of \$27,000.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 45, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 45, Respondent must pay a penalty of \$6,750.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$250	1 st through 14 th day
\$500	15 th through 30 th day
\$1,000	31 st day and beyond

54. U.S. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

55. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 37-39, above, and will pay interest and nonpayment penalties on any overdue amounts.

56. Any public statement that Respondent makes referring to the SEP must include the following language: "Schoep's Ice Cream Company, Inc. undertook this project in settlement of an enforcement action brought by the United States Environmental Protection Agency against Schoep's Ice Cream Company, Inc. for violations of the emergency planning requirements of the Clean Air Act."

57. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

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

60. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in paragraph 58, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by U.S. EPA.

61. Respondent certifies that it is complying fully with 40 C.F.R. Part 68.

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

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

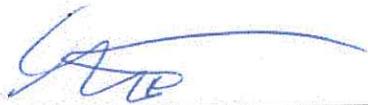
64. Each party agrees to bear its own costs and attorneys fees in this action.

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

66. The effective date of this CAFO is the date when this CAFO is filed with the Regional Hearing Clerk.

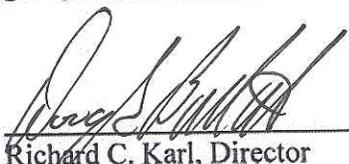
Schoep's Ice Cream Company, Inc., Respondent

11/25/13
Date


Eric Thomsen
Director of Food Safety
Schoep's Ice Cream Company, Inc.

United States Environmental Protection Agency, Complainant

12/11/2013
Date


Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Schoep's Ice Cream Company, Inc.
Docket No. CAA-05-2014-0005

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.

12/12/2013
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5



CAA-05-2014-0005

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) to be served upon the persons designated below, on the date below, by causing said copies to be delivered by depositing in the U.S. Mail, First Class, and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelope addressed to:

Tim Timm
Registered Agent
Schoep's Ice Cream Company, Inc.
514 Division Street
Madison, Wisconsin 53704

I have further caused the original CAFO and this Certificate of Service, and one copy, to be filed with the Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, on the date below.

Dated this 20 day of December, 2013.


~~Robert Mayhugh~~ Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5

