

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 4

In the Matter of:

Emmaus Foods, LLC,

Respondent.

Docket No. CAA-04-2020-8010(b)

**CONSENT AGREEMENT**

**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413(d), and Sections 22.13(b) 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 Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (“EPA”), Region 4, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency (EPA) to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 113(d) of the Act.

5. Respondent is Emmaus Foods, LLC, a corporation doing business in the State of Alabama. This proceeding pertains to Respondent's facility located at 661 Railroad Avenue, Albertville, Alabama, 35951 (Facility).

### **III. GOVERNING LAW**

6. Any person who violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r) rule promulgated thereunder, may be assessed a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19. Each day a violation continues may constitute a separate violation. Civil penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d), may be assessed by an administrative order.
7. Section 112(r) of the Act 42 U.S.C. § 7412(r), addresses the prevention of release of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), and other extremely hazardous substances. The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.
8. Pursuant to Sections 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the "Risk Management Program" (RMProgram) and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.
9. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a "process" as defined in 40 C.F.R. § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.
10. The EPA and the United States Department of Justice jointly determined that this matter, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

### **IV. FINDINGS OF FACTS**

11. Respondent operates a "stationary source" as that term is defined by Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C). The Respondent's stationary source is located at 661 Railroad Avenue, Albertville, Alabama 35951 (stationary source).
12. Respondent has registered an RMPlan with the EPA for its Facility and has developed an RMProgram accidental release prevention program for the stationary source.
13. On March 5, 2019, the EPA issued to Respondent a Notice of Potential Violation ("NOPV"), providing notice that the EPA found that Respondent potentially committed the alleged violations described in Section V of this Agreement and providing Respondent an opportunity

to confer with the EPA. On June 18, 2019, representatives of Respondent and the EPA held a meeting to discuss the NOPV.

14. For purposes of this Agreement:

- (a) At its stationary source, the Respondent operates an ammonia refrigeration process.
- (b) At its stationary source, the Respondent has on-site for storage, 15,416 pounds of anhydrous ammonia.
- (c) At its stationary source, the Respondent has one RMProgram level 3 covered process, which stores or otherwise uses a toxic substance in an amount exceeding its applicable threshold of 10,000 pounds.
- (d) On December 11, 2018, the EPA conducted an on-site inspection of the RMProgram related records and equipment for the purpose of assessing the Respondent's compliance with the RMProgram requirements and the implemented recognized and generally accepted good engineering practices (RAGAGEP) for its covered process at its stationary source.
- (e) At the time of the inspection, the records on the worst-case scenario portion of the offsite consequence analyses, including a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for the selection of specific scenarios were not available for review.
- (f) At the time of the inspection, the records on the alternative case scenario portion of the offsite consequence analyses, including a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for the selection of specific scenarios were not available for review.
- (g) During a walk-through of the Facility, the EPA inspectors made the following observations:
  - 1) Doors entering the ammonia engine room did not have visual or audible alarms to alert of an ammonia release. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 15, Section 8.11.2.1 requires the ammonia alarm annunciate visual and audible alarms inside the refrigerating machinery room and outside each entrance to the refrigerating machinery room and the meaning of each alarm be clearly marked by signage near the annunciators. The Facility did not demonstrate the documentation that the doors alarm complied with RAGAGEP.
  - 2) Some of the ammonia piping did not have labels indicating the pipe contents or direction of flow. The International Institute of Ammonia Refrigeration (IIAR) Bulletin 109: IIAR Minimum Safety Criteria for a

Safe Ammonia Refrigeration System, Section 4.7.6 requires that all ammonia piping should have appropriate pipe markers attached to indicate the use of the pipe and arrows to indicate the direction of flow. The Facility did not demonstrate the documentation that the ammonia pipe labeling complied with RAGAGEP.

- 3) Some of the piping in the engine room and outside was rusted. The IIAR Bulletin 110, Section 6.7.1 requires that all uninsulated piping and associated components such as flanges and supports shall be inspected annually for any damage to or deterioration of the piping or its protective finish; and remedial action is taken where necessary. Areas affected by slight corrosion should be cleaned off and appropriately treated before reinstating the protective finish. The Facility could not demonstrate the documentation that the ammonia piping complied with RAGAGEP.
- 4) Sections of insulated ammonia piping were damaged. There were also some sections of insulation missing from the insulated piping. The IIAR Bulletin 110 Section 6.7.2 requires any mechanical damage to insulation should be repaired immediately and the vapor seal reinstates to prevent access to water or water vapor which will lead to the breakdown of insulation and corrosion of the pipework. The Facility could not demonstrate the documentation that the ammonia piping insulation complied with RAGAGEP.
- 5) Eyewash stations and showers were not present inside the engine room. The ANSI/IIAR 2-2014, Section 6.7.1. requires each machinery room to have access to a minimum of two eyewash/safety shower units, one located inside the machinery room and one located outside of the machinery room, each meeting the requirements in Section 6.7.3, and inspected at least weekly. The Facility could not demonstrate the documentation that the eyewash stations and showers complied with RAGAGEP.
- 6) There were no National Fire Protection Association (NFPA) placards indicating the degree of hazard, flammability, and reactivity on some of the doors entering ammonia engine room and ammonia vessels/equipment. The ANSI/IIAR 2-2014 requires the NFPA 704-ammonia fire diamond with a black text, white, blue and yellow background to be placed on machinery room doors entrances reflecting the 3-3-0 for the indoor ammonia refrigeration equipment and 3-1-0 for the outdoor ammonia refrigeration equipment. The Facility could not demonstrate the documentation that the NFPA placards complied with RAGAGEP.
- 7) The Facility representatives were unable to produce the compressor vibration analyses, compressor oil analyses for the piping/pressure vessel nondestructive tests, and corrosion tests conducted for the previous two years for the refrigeration system. Additionally, the Facility representatives stated that they had not performed any of the above-

mentioned analysis or tests and were looking to conduct these tests in the future. The ANSI/IIAR 2-2014, Section 17.3 identifies a compressor minimum test frequency of annually or more often according to manufacturer's recommendations. The IIAR Bulletin 110 "Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems" indicates that all pressure vessels, insulated and non-insulated piping systems, and other process equipment are required to have non-destructive tests at least annually". IIAR Bulletin 110 section 6.4.3 also indicates the external surface or the insulation and associated vapor barrier applied to the external surface of vessels and heat exchangers should be inspected no less than once every 12 months. The IIAR Bulletin 109, IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, indicates in Section 5.1, "Each owner should ensure an ammonia system safety check is conducted annually." The Facility could not provide documentation that its testing methods and frequency complied with RAGAGEP.

- (h) At the time of inspection, the Facility could not demonstrate that Process Hazard Analysis recommendations/ action items from the 2015 PHA were resolved in a timely manner.
- (i) During the inspection, EPA asked the Facility representatives for a copy of the RMPlan. The Facility representatives produced a RMPlan which had been submitted on June 2016 (thirty months) before EPA's inspection. However, this RMPlan was not timely submitted. 40 C.F.R. 68 § 150(b)(3) specifies that an owner or operator is to submit a RMPlan on the date on which a threshold substance is first above a threshold quantity in a process. The Respondent had knowledge that the Facility used more than 10,000 pounds of ammonia in its ammonia refrigeration process several times before June 2016. These times are when the Respondent purchased the Facility in 2013; when the Respondent conducted a process hazard analysis in December 2015; and when the Respondent conducted a Tier audit in March 2016.

## **V. ALLEGED VIOLATIONS**

- 15. Respondent is a "person" within the meaning of Section 302(e) of the Act, 42 § U.S.C. § 7602(e).
- 16. At all times relevant to the violations alleged herein, Respondent was the "owner or operator" of the Facility, as defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).
- 17. Based on the EPA's compliance monitoring investigation, the EPA alleges that the Respondent violated 40 C.F.R. Part 68, the codified rules governing the Act's Chemical Accident Prevention Provisions and Section 112(r) of the Act, 42 U.S.C. § 7412(r), when it:
  - a. Failed to maintain records on the worst-case scenario portion of the offsite consequence analyses, including a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the

rationale for the selection of specific scenarios as required by 40 C.F.R. § 68.39(a);

- b. Failed to maintain records on the alternative case scenario portion of the offsite consequence analyses, including a description of the vessel or pipeline and substance selected as alternative case, assumptions and parameters used, and the rationale for the selection of specific scenarios as required by 40 C.F.R. § 68.39(b);
- c. Failed to document that equipment complied with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2);
- d. Failed to establish a system to: promptly address the team's findings and recommendations (of the PHA); assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions, as required by 40 C.F.R. § 68.67(e); and
- e. Failed to submit a single RMP in a timely manner that includes the information required by §§ 68.155 through 68.185 for all covered processes, the date on which a regulated substance is first present above a threshold quantity in a process as required by 40 C.F.R. § 68.150(b)(3).

## VI. STIPULATIONS

18. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

19. 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 in this CAFO;
- b. neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- f. waives its rights to appeal the Final Order accompanying this CAFO.

20. 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 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 CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
  - d. by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
  - e. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
  - f. agrees to comply with the terms of the CAFO.
21. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

## VII. TERMS OF PAYMENT

22. Based on the Respondent's certified statement that COVID-19 has negatively impacted its financial health, and in accordance with the Act, EPA has determined that **EIGHTY-FOUR THOUSAND NINE HUNDRED TWENTY FOUR DOLLARS (\$84,924.00)**, is an appropriate civil penalty to settle this action, which Respondent consents to pay as follows:
- a. The civil penalty will be paid in 12 equal installments in order to complete payment of the entire civil penalty including interest. Including the civil penalty and interest, the total amount that will be paid upon completion of all payments will be  $\$84,924.00 + \$778.44 = \$85,702.44$ . The first payment is due within thirty (30) days of the Effective Date of this CAFO, which is upon its filing with the Regional Hearing Clerk. Respondent's subsequent payments shall thereafter be due in 30 day intervals from said Effective Date.
  - b. Respondent shall make payments in accordance with the following schedule:

<b>Payment Number</b>	<b>Payment shall be made <i>no later than</i></b>	<b>Principal Amount</b>	<b>Interest Amount</b>	<b>Total Payment Amount</b>
1	Thirty (30) calendar days following the Effective Date of this CAFO.	U.S. \$ 7,077.00	U.S. \$ 64.87	U.S. \$ 7,141.87
2	Sixty (60) calendar days following the Effective Date of this CAFO.	U.S. \$ 7,077.00	U.S. \$ 64.87	U.S. \$ 7,141.87
3	Ninety (90) calendar days following the Effective Date of this CAFO.	U.S. \$ 7,077.00	U.S. \$ 64.87	U.S. \$ 7,141.87
4	One hundred twenty (120) calendar days following the Effective Date of this CAFO.	U.S. \$ 7,077.00	U.S. \$ 64.87	U.S. \$ 7,141.87
5	One hundred fifty (150) calendar days following the Effective Date of this CAFO.	U.S. \$ 7,077.00	U.S. \$ 64.87	U.S. \$ 7,141.87
6	One hundred fifty (180) calendar days following the Effective Date of this CAFO.	U.S. \$ 7,077.00	U.S. \$ 64.87	U.S. \$ 7,141.87
7	Two hundred ten dollars (210) calendar days following the Effective Date of this CAFO.	U.S. \$ 7,077.00	U.S. \$ 64.87	U.S. \$ 7,141.87
8	Two hundred forty dollars (240) calendar days following the Effective Date of this CAFO.	U.S. \$ 7,077.00	U.S. \$ 64.87	U.S. \$ 7,141.87
9	Two hundred seventy dollars (270) calendar days following the Effective Date of this CAFO.	U.S. \$ 7,077.00	U.S. \$ 64.87	U.S. \$ 7,141.87
10	Three hundred dollars (300) calendar days following the Effective Date of this CAFO.	U.S. \$ 7,077.00	U.S. \$ 64.87	U.S. \$ 7,141.87
11	Three hundred thirty dollars (330) calendar days following the Effective Date of this CAFO.	U.S. \$ 7,077.00	U.S. \$ 64.87	U.S. \$ 7,141.87
12	Three hundred sixty dollars (360) calendar days following the Effective Date of this CAFO.	U.S. \$ 7,077.00	U.S. \$ 64.87	U.S. \$ 7,141.87



- c. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay a non-payment penalty and other charges as described below in Paragraph 26 in the event of any such failure or default.
- d. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may take action as set forth below in Paragraph 27.

Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of \$84,924.00 within thirty (30) calendar days of the Effective Date of this CAFO and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

- 23. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33

33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury Facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: John Schmid, (202) 874-7026  
REX (Remittance Express): 1-866-234-5681

24. Respondent shall send proof of each payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
bullock.patricia@epa.gov

and

Om P. Devkota  
Air Enforcement Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
Devkota.om@epa.gov

25. “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 EPA requirements, in the amount due, and identified with the Facility name and Docket No. CAA-04-2020-8010(b).
26. Pursuant to 42 U.S.C. § 7413(d)(5), if Respondent fails to timely pay any portion of the penalty assessed under the CAFO, EPA may recover, in addition to the amount of the unpaid penalty assessed, the following amounts on any amount overdue:
- a. Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and

- accrued Interest is paid. Interest will be assessed at the rates established pursuant to 26 U.S.C. § 6621(a)(2)(c);
- b. Non-Payment Penalty. A 10 percent quarterly non-payment penalty pursuant to 42 U.S.C. § 7413(d)(5); and
  - c. Attorneys' Fees and Costs of Collection. The United States enforcement expenses, including, but not limited to, attorneys' fees and cost of collection.
27. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:
- a. Refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
  - b. 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;
  - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
  - d. Request that the Attorney General bring a civil action in an appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.
28. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

### **VIII. EFFECT OF CAFO**

29. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
30. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c).
31. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
32. 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

EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.

33. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
34. 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.
35. 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.
36. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
37. By signing this Consent Agreement, 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.
38. By signing this Consent Agreement, the 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 to this CAFO.
39. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
40. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and to the best of its knowledge, continues to be, 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.
41. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent, including Respondent's certified statement that COVID-19 has negatively impacted its financial health, was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

42. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
43. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **IX. EFFECTIVE DATE**

44. This CAFO shall become effective after execution of the accompanying Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

**Remainder of Page Intentionally Left Blank  
Complainant and Respondent will Each Sign on Separate Pages**

The foregoing Consent Agreement In the Matter of Emmaus Foods, LLC, Docket No. CAA-04-2020-8010(b) is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



9/10/2020

Signature

Date

Printed Name: RICHARD MCELRATH

Title: CEO

Address: 1061 RAILROAD AVE AUBENTVILLE, AL 36851

The foregoing Consent Agreement In the Matter of Emmaus Foods, LLC, Docket No. CAA-04-2020-8010(b) is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

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Carol L. Kemker  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Emmaus Foods, LLC,

Respondent.

Docket No. CAA-04-2020-8010(b)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED**

\_\_\_\_\_  
Tanya Floyd  
Regional Judicial Officer



## CERTIFICATE OF SERVICE

I hereby certify that the foregoing “Consent Agreement” and “Final Order,” in the Matter of Emmaus Foods, LLC, Docket No. CAA-04-2020-8010(b) were filed and copies of the same were emailed to the parties as indicated below.

**Via email to all parties at the following email addresses:**

To Respondent:        Mr. Richard McElrath, Chief Executive Officer  
Emmaus Foods, LLC  
Email: [rmcelrath@emmausfoods.com](mailto:rmcelrath@emmausfoods.com)  
Phone number: 256-894-5934  
661 Railroad Avenue  
Albertville, Alabama 35951

Mr. T. Michael Brown, Partner  
Bradley Arant Boult Cummings LLP  
Email: [mbrown@bradley.com](mailto:mbrown@bradley.com)  
Phone number: 205-521-8462  
One Federal Place, 1819 Fifth Avenue North  
Birmingham, AL 35203-2119

To EPA:                 Om P. Devkota, Case Development Officer  
[Devkota.om@epa.gov](mailto:Devkota.om@epa.gov)  
Phone number 404-562-8963

Ellen Rouch, Regional Counsel  
[rouch.ellen@epa.gov](mailto:rouch.ellen@epa.gov)  
(404) 562-9575

U.S EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

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Patricia A. Bullock, Regional Hearing Clerk  
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