

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY-REGION 7  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of: )  
 )  
Respondent, Lincoln Cold Storage, Inc. ) Docket No. CAA-07-2019-0200  
 )  
Respondent )  
 )

ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT

PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency, Region 7 (EPA or Complainant) and Respondent, Lincoln Cold Storage, Inc. ("LCS" or "Respondent") have agreed to voluntarily enter into this Administrative Order for Compliance on Consent (Order) for the purpose of carrying out the goals of Section 112(r) of the Clean Air Act (CAA), 42 U.S.C. § 7412(r).

2. This Order requires Respondent to comply with the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion may be specified herein. The terms of this Order shall not be modified except by a subsequent written agreement between the parties.

JURISDICTION

3. The following Order is entered into and issued pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), as amended.

PARTIES

4. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA Region 7, is the Director of the Enforcement and Compliance Assurance Division, EPA, Region 7.

5. Respondent is a corporation in good standing under the laws of the state of Nebraska and doing business in the state of Nebraska.

## STATUTORY AND REGULATORY BACKGROUND

6. In response to growing public concern and awareness of the threats posed by accidental release of extremely hazardous substances, Congress amended the CAA in 1990 to include the accidental release prevention provisions found in Section 112(r), 42 U.S.C. § 7412(r). The objective of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), is to prevent the accidental release, and to minimize the consequence of any such release, of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

7. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), commonly referred to as the General Duty Clause, is designed to impose a general duty on owners and operators to operate a safe facility free of accidental releases that threaten life or property by taking all feasible actions that are available to reduce hazards which are known to exist at the facility or which have been identified for similar facilities in the same industrial group. S. Rep. No. 228, 101st Cong., 1st Sess. 208 (1989).

8. Specifically, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), sets forth that owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty in the same manner and the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 *et. seq.*, to identify hazards which may result from accidental releases using appropriate hazard assessment techniques, to design and maintain a safe facility, taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

9. Pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), EPA promulgated a list of 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. This list is codified at 40 C.F.R. § 68.130.

10. 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.

11. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “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.

12. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(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.

13. Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), grants the Administrator the authority to make a finding of violation of a requirement or prohibition of Title I, and upon such a finding, to issue an order requiring a person to comply with such requirement or prohibition.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

15. Respondent is the owner or operator of a refrigeration warehousing and storage facility located at 1700 Folsom Street, Lincoln, Nebraska 68522 (“Facility”). Respondent’s process uses anhydrous ammonia to refrigerate freezers and coolers at the facility. As a result, Respondent processes, handles and/or stores anhydrous ammonia at the Facility.

16. The Facility is a “stationary source” as defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

17. Anhydrous ammonia is a listed substance pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3).

18. Respondent is subject to the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), because it is the owner and operator of a stationary source that is producing, processing, handling or storing substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), and an extremely hazardous substance.

19. The Lincoln Cold Storage Facility experienced a release of anhydrous ammonia on March 29, 2017 that resulted in a response from Lincoln Fire and Rescue, the city fire department. Following this event, Lincoln Cold Storage was requested to provide answers to a Chemical Release Questionnaire (CRQ) by EPA, pursuant to CERCLA § 104(e). Respondent’s answers to the questionnaire stated that the March 29, 2017 release was of 1,865 pounds of anhydrous ammonia.

20. During the March 29, 2017 release, traffic on nearby streets was shut down. The Facility’s alarm and ventilation system failed to operate in the “machine room” where the ammonia system was located, although the machine room’s sprinkler system had improperly activated. The Facility’s refrigeration process and ventilation system were only manually operated from inside the machine room (where the release occurred), and Respondent and the fire department were unable to shut down the system or ventilate the machine room. “Level A” personal protective equipment was ultimately required to make entry to activate ventilation. The release continued for at least four hours. The cause of the ammonia release was found to be a

failed pressure relief valve. Respondent's CRQ response stated that 1,265 pounds of anhydrous ammonia were released to the air, and 600 pounds drained to the sewer system.

21. On or about October 3, 2017, the EPA conducted an inspection of the Facility to determine Respondent's compliance with Section 112(r) of the CAA (the EPA inspection).

22. Individual engineering standards exist for the safe management and maintenance of anhydrous ammonia systems in refrigeration operations. These standards include but are not limited to the American National Standard Institute (ANSI) and the International Institute of Ammonia Refrigeration (IIAR) standards (2-2014 version), which state in pertinent part:

- a. Section 1.1 states: "**Purpose.** This standard specifies minimum requirements for the safe design of closed-circuit ammonia refrigeration systems."
- b. Section 5.9.3 states: "**Oil Removal.** Oil removal shall be accomplished by one or more of the following:
  - i. A rigid-piped oil return or transfer system.
  - ii. A vessel equipped with a shut-off valve in series with a self-closing shut-off valve.
  - iii. A valve and piping assembly at the draining point where oil is removed from the system. At a minimum, a shut-off valve in series with a self-closing shut-off valve is required."
- c. Section 6.7.1 (**Eyewash/Safety Shower**) states: "General. Each machinery room shall 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 Additional eyewash/safety shower units shall be installed such that the path of travel in the machinery room is no more than 55 ft to an eyewash/safety shower unit."
- d. Section 6.9.3 states: "**Control of Ammonia Spills.** A means shall be provided to limit the spread of a liquid ammonia spill into the machinery room drainage system."
- e. Section 6.10.2 states: "**Door Features.** Machinery room doors shall be self-closing and tight fitting. Doors that are part of the means of egress shall be equipped with panic hardware and shall be side hinged to swing in the direction of egress for occupants leaving the machinery room. Where the machinery room is not provided with fire sprinklers, doors communicating with the building interior shall be 1-hour fire rated. Doors to the outdoors shall be fire rated where required by the Building Code based on the fire rating required for exterior wall openings."
- f. Section 6.12.1 states: "**Emergency Stop Switch.** A clearly identified emergency shut-off switch with a tamper-resistant cover shall be located outside and adjacent to the designated principal machinery room door. The switch shall provide off-only control of refrigerant compressors, refrigerant pumps, and normally closed automatic refrigerant valves located in the machinery room. The function of the switch shall be clearly marked by signage near the controls."
- g. Section 6.12.2 states: "**Emergency Ventilation Control Switch.** A clearly identified control switch for emergency ventilation with a tamper-resistant cover

shall be located outside the machinery room and adjacent to the designated principal machinery room door. The switch shall provide "ON/ AUTO" override capability for emergency ventilation. The function of the switch shall be clearly marked by signage near the controls."

- h. Section 6.13.2.2 (*Ammonia Detection and Alarm*) states: "Detection of ammonia concentrations equal to or exceeding 25 ppm shall activate visual indicators and audible alarms as specified in Section 6.13.1. The visual indicator and audible alarm shall be permitted to automatically reset if the ammonia concentration drops below 25 ppm."
- i. Section 6.13.2.3 (*Ammonia Detection and Alarm*) states: "Detection of ammonia concentrations equal to or exceeding 150 ppm (1/2 IDLH) shall activate visual indicators and an audible alarm and shall activate emergency ventilation, where required, in accordance with Section 6.14.7. Once activated, emergency ventilation shall continue to operate until manually reset by a switch located in the machinery room."
- j. Section 6.14.7.2 (*Emergency Ventilation*) states: "Emergency mechanical ventilation shall be activated by both of the following:
  - i. Ammonia leak detection complying with Section 6.13.
  - ii. A manual control switch provided in accordance with Section 6.12.2."

#### FINDINGS OF VIOLATIONS

23. The facts stated in Paragraphs 1 through 23 above are herein incorporated.

24. Based on EPA's inspection and information provided by LCS, EPA hereby finds Respondent LCS' violations of the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Specifically, Respondent had not identified nor implemented the following:

- a. the facility had no written operating procedures for the ammonia refrigeration system;
- b. the facility had no maintenance logs or documentation of maintenance for the ammonia refrigeration system;
- c. the facility had no calibration records for the ammonia refrigeration system;
- d. the facility had no training records for the ammonia refrigeration system;
- e. the facility had no incident investigation program;
- f. the facility had no documentation of self-audits;
- g. the facility had failed to maintain and operate a safe facility in conformance with current codes/standards (ANSI/IIAR 2-2014), including but not limited to the following:
  - i. adequate eyewash/safety shower installations (Section 6.7.1).
  - ii. the facility maintenance person was not aware or trained in the operation procedure for the proper and safe draining of oil from the ammonia refrigeration system although he performed this function (Section 5.9.3).
  - iii. the drain in the machine room was not designed to prevent releases of ammonia from reaching the sewer system (Section 6.9.3).

- iv. the machinery room interior door from the facility was not hinged to swing in the direction of egress (Section 6.10.2). emergency switches did not function; alarm was not installed or did not function.
- v. the facility did not have functioning emergency stop or ventilation switches (Sections 6.12.1 and 6.12.2).
- vi. the facility did not have a functioning ammonia detection and alarm system, or a manual system, that would activate the machine room ventilation system to address a release (Sections 6.13.2.2, 6.13.2.3 and Section 6.14.7.2).

25. Based on the information available to EPA, as detailed above, EPA has determined that Respondent failed to comply with its general duty, pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to design and maintain a safe facility, taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. Such failures are a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

### **ORDER FOR COMPLIANCE**

26. Based upon the Findings of Fact and Conclusions of Law, and Findings of Violations set forth above, and pursuant to the authority of Section 113(a)(3)(B) of the CAA, 42 U.S.C. § 7413(a)(3)(B), Respondent is hereby ORDERED and AGREES to take the actions described below.

- a. No later than thirty (30) days after the Effective Date of this Order, Respondent shall submit a statement for EPA approval that describes the actions that the Respondent has taken, or will take, at the Facility to comply with the obligations of CAA § 112(r)(1)'s General Duty Clause, and to achieve compliance with the violations cited in Paragraph 24, above. Respondent's statement must specifically:
  - i. describe how Facility is or will be designed and maintained to be safe, including the measures the Facility has taken or will complete to prevent releases (including actions required for compliance with the violations and industry standards cited in Paragraph 24, above); and
  - ii. describe a specific schedule for the actions and work required to achieve compliance with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and the violations cited in Paragraph 24, to be completed no later than September 30, 2019.
- b. All actions, construction and/or Facility modifications required to be comply with the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and Paragraph 26(a), shall be completed as expeditiously as possible, but no later than September 30, 2019.

27. Respondent shall submit a Completion Report to EPA within thirty (30) days of completion of the actions described and required by Paragraphs 26(a) and (b), but no later than October 30, 2019. The Report shall include a copy of the administrative control(s) used at those facilities. For facilities utilizing engineered controls, the Report shall include relevant documentation of the engineering controls, including the date of completion, total construction costs, contractor invoices, and photos of the completed projects.

### **Submissions**

28. All submissions to EPA required by this Order shall contain the following certification signed by an officer of the Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment. (Signature)

29. All submissions to EPA required by this Order shall be sent to:

Christine Hoard  
Chemical Branch  
Enforcement and Compliance Assurance Division  
United States Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

30. All documents submitted by Respondent to EPA in the course of implementing this Order 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.

### **General Provisions**

31. By entering into this Order, Respondent (1) consents to and agrees not to contest EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein.

32. Solely with regard to the EPA and NDEQ, Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order,

including, but not limited, any right of judicial review of this Order under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1), or under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

33. Failure to comply with any of the provisions of this Order may result in an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. Section 113(b) of the CAA authorizes commencement of an action for violation of an Order and penalties up to \$99,681 per day of violation. Additionally, under Section 113(a) of the CAA, the Administrator is authorized to address such a violation as follows:

- a. Issue an administrative penalty order assessing a civil penalty not to exceed \$47,357 per day of violation;
- b. Bring a civil action for permanent or temporary injunction, or to recover a penalty not to exceed \$47,357 per day of violation, or both; or
- c. Request the Attorney General to commence a criminal action pursuant to Section 113(c) of the CAA.

34. In accordance with Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), issuance of this Order does not preclude EPA or any state from assessing penalties or taking any other action authorized under the CAA. This Order does not affect the obligation of Respondent to comply with all federal, state and local statutes, regulations and permits.

35. EPA may subsequently amend this Order, in writing, in accordance with the authority of the CAA. In the event of any such subsequent amendment to this Order, all requirements for performance of this Order not affected by the amendment shall remain as specified by the original Order. Any amendment will be transmitted to Respondent.

36. If any provision or authority of the Order or the application of the Order to Respondent is held by federal judicial authority to be invalid, the application to Respondent of the remainder of the Order shall remain in full force and effect and shall not be affected by such a holding.

37. Nothing in this Order shall limit EPA's right to obtain access to, and/or inspect the Facility, and/or to request additional information from Respondent pursuant to the authority of Section 114 of the CAA, 42 U.S.C. § 7414.

38. This Order shall become effective and enforceable on the date that it is signed by all Parties.

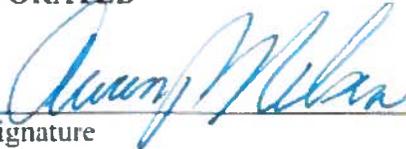
39. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

40. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

41. This Order shall apply to and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

**RESPONDENT:  
LINCOLN COLD STORAGE, INCORPORATED**

Date: 6-26-19

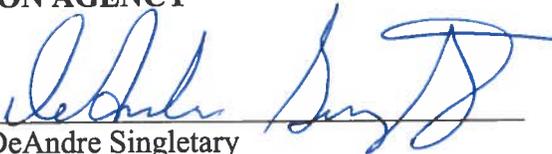
  
Signature

Aaron J Nelson  
Name

Pres.  
Title

**COMPLAINANT:  
U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 6/28/19

  
DeAndre Singletary  
Acting Director  
Enforcement and Compliance Assurance Division

Date: 6/27/19

  
Howard C. Bunch  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 7

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Administrative Order for Compliance on Consent to the Regional Docket Clerk, United States Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance on Consent by first class certified mail, return receipt requested, to:

Lincoln Cold Storage, Inc.  
c/o Barry J. Nelson, Registered Agent  
7321 S. 96th Court  
Lincoln, Nebraska 68526

7/1/19  
Date

