

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF

RBF FROZEN DESSERTS LLC

240 Park Road, Unit 3
West Hartford, CT 06119

Respondent,

Proceeding under Section 113 of the Clean Air Act, 42 U.S.C. § 7413(d), and Section 325(c) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(c).

Docket Nos. CAA-01-2016-0068,
EPCRA-01-2016-0069

**ANSWER AND AFFIRMATIVE
DEFENSES TO COMPLAINT AND
REQUEST FOR HEARING**

RECEIVED

JAN 30 2017

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Office of Regional Hearing Clerk

Respondent RBF Frozen Desserts, LLC (“RBF”), through its counsel, Michelman & Robinson, LLP, for its Answer and Affirmative Defenses to Complaint and Request for Hearing, states as follows:

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency Region 1 (“EPA”) issues this administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), and Section 325(c) of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045(c). This action is subject to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The authority to issue this Complaint has been delegated to the Director of the Office of Environmental Stewardship, Region 1 (“Complainant”).

Response: Paragraph 1 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

2. This Complaint alleges that RBF Frozen Desserts LLC (“RBF” or “Respondent”) violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) by failing to: (1) identify hazards which may result from accidental releases of extremely hazardous substances; (2) design and maintain a safe facility, taking such steps as are necessary to prevent such releases; and (3) minimize the consequences of accidental releases, should they occur.

Response: Paragraph 2 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. Further, Paragraph 2 seeks to construe a written document, the Complaint, that speaks for itself. To the extent a response is required, the allegations are denied.

3. This Complaint also alleges that RBF violated Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, and its implementing regulations at 40 C.F.R. Part 370, by failing to timely submit material safety data sheets or chemical lists and a Tier 2 form to the proper authorities.

Response: Paragraph 3 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. Further, Paragraph 3 seeks to construe a written document, the Complaint, that speaks for itself. To the extent a response is required, the allegations are denied.

4. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

Response: Paragraph 4 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. Further, Paragraph 4 seeks to construe a written document, the Complaint, that speaks for itself. To the extent a response is required, the allegations are denied.

II. APPLICABLE STATUTES AND REGULATIONS

CAA Statutory and Regulatory Authority

5. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed

pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to: (a) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases which do occur. This section of the CAA is referred to as the “General Duty Clause.”

Response: Paragraph 5 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

6. The extremely hazardous substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), include, among other things, anhydrous ammonia.

Response: Paragraph 6 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

7. The term “accidental release” is defined by Section 112(r)(2) of the CAA, 42 U.S.C. § 7412(r)(2), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

Response: Paragraph 7 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

8. A “stationary source” is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

Response: Paragraph 8 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

9. The term “have a general duty in the same manner and to the same extent as Section 654, Title 29 of the United States. Code” means owners and operators must comply with the General Duty Clause in the same manner and to the same extent as employers must comply with the Occupational Safety Health Act administered by the Occupational Safety and Health Administration (“OSHA”).

Response: Paragraph 9 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

10. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act (“DCIA”), 31 U.S.C. §§ 3701 et seq., provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to \$37,500 per day for violations of the CAA occurring from January 12, 2009, through November 2, 2015.

Response: Paragraph 10 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

EPCRA Statutory and Regulatory Authority

11. EPCRA was enacted on October 17, 1986, and establishes requirements for Federal, State and local governments and industry regarding emergency planning for and reporting on hazardous and toxic chemicals.

Response: Paragraph 11 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

12. Pursuant to Section 311(a) of EPCRA, 42 U.S.C. § 11021.(a), and its implementing regulations at 40 C.F.R. Part 370, the owner or operator of a facility that is required under OSHA to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical must

prepare and submit an MSDS for each such chemical, or a list of such chemicals, to: (a) the appropriate local emergency planning committee (“LEPC”); (b) the State emergency response commission (“SERC”); and (c) the local fire department.

Response: Paragraph 12 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

13. In accordance with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), owners and operators of facilities that are required to prepare or have available MSDSs for hazardous chemicals under OSHA (“hazardous chemicals” or “hazardous chemicals under OSHA”) must prepare and submit an emergency and hazardous chemical inventory form (“Tier 1” or “Tier 2” form) to the LEPC, SERC, and local fire department. Tier 1 or Tier 2 forms must be submitted annually on or before March 1 and are required to contain chemical inventory information with respect to the preceding calendar year. Additionally, Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), authorizes EPA to establish minimum threshold levels of hazardous chemicals for the purposes of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Response: Paragraph 13 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

14. The regulations promulgated pursuant to Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, are found at 40 C.F.R. Part 370.

Response: Paragraph 14 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

15. In accordance with Sections 311(b) and 312(b) of EPCRA, 42 U.S.C. §§ 11021(b) and 11022(b), 40 C.F.R. § 370.10(a) establishes minimum threshold levels for hazardous chemicals for the purposes of Part 370.

Response: Paragraph 15 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

16. Under 40 C.F.R. §§ 370.20, 370.30, and 370.32, the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level must submit an MSDS for each hazardous chemical to the LEPC, SERC, and local fire department. Alternatively, the owner or operator may submit a list of the hazardous chemicals for which the MSDS is required (“chemical list”), grouped by hazard category, with the chemical or common name of each hazardous chemical as provided on the MSDS and a description of the hazardous component of each hazardous chemical. Under 40 C.F.R. § 370.33, the MSDS or chemical list must be submitted within three months after the owner or operator is first required to prepare or have a MSDS available for a hazardous chemical or after such chemical becomes present in an amount exceeding the threshold established in 40 C.F.R. § 370.10(a).

Response: Paragraph 16 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

17. Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level must prepare and submit a Tier 1 or Tier 2 form to the LEPC, SERC, and local fire department. Forty C.F.R. § 370.45 prescribes that Tier 1 or Tier 2 forms must be submitted annually on or before March 1 and are required to contain chemical inventory information with respect to the preceding calendar year. The LEPC, SERC, or local fire department may request that a facility submit the more comprehensive Tier 2 form in lieu of the Tier I form. Connecticut requires the Tier 2 form.

Response: Paragraph 17 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

18. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the DCIA, 31 U.S.C. § 3701, provides for the assessment of civil penalties for violations of Section 311 of EPCRA, 42 U.S.C. § 11021, in amounts of up to \$16,000 per day for violations occurring from January 13, 2009, through November 2, 2015.

Response: Paragraph 18 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

19. Likewise, Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the DCIA, 31 U.S.C. § 3701, provides for the assessment of civil penalties for violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), in amounts of up to \$37,500 per day for violations occurring from January 13, 2009, through November 2, 2015.

Response: Paragraph 19 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

III. GENERAL ALLEGATIONS

20. Respondent is a limited liability company organized under the laws of the State of Connecticut with its principal office located in West Hartford, Connecticut.

Response: Respondent admits the allegations of Paragraph 20 of the Complaint.

21. At all times relevant to the allegations in this Complaint, Respondent was the operator of a frozen desserts production facility located at 240 Park Road, Unit 3, in West Hartford, Connecticut (the "Facility").

Response: Respondent admits that it leased the premises located at 240 Park Road, Unit 3, in West Hartford, Connecticut from XXX to XXX.

22. The Facility is located in a commercial condominium building that also houses a family restaurant, a community theater playhouse, and a printing shop. The Facility is located

adjacent to a residential street and near multiple retail shops, a car repair shop, several restaurants, and a school.

Response: Respondent admits that the Facility was located in a commercial condominium building. Respondent lacks knowledge sufficient to admit or deny all other allegations of Paragraph 22 of the Complaint.

23. Respondent is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), against whom a civil penalty may be assessed. Additionally, Respondent is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), 40 C.F.R. § 370.66, against whom a civil penalty may be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

Response: Paragraph 23 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

24. At all times relevant to the allegations in this Complaint, Respondent was the operator of a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66. Likewise, Respondent was the operator of a “stationary source,” as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

Response: Paragraph 24 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

25. At all times relevant to the violations alleged in this Complaint, Respondent was the “operator” of the Facility, as that term is defined by Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

Response: Paragraph 25 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

26. From at least July 23, 2013 until September 3, 2014, the Facility had an operating refrigeration system, which cycled anhydrous ammonia through various physical states to cool and freeze Respondent's ice cream and other frozen dessert products (the "System").

Response: Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 26 of the Complaint.

27. From at least July 23, 2013 until September 3, 2014, the System used and stored at least 2,000 pounds of anhydrous ammonia. Accordingly, Respondent "stored" and "handled" anhydrous ammonia.

Response: Paragraph 27 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

28. Anhydrous ammonia is a regulated "extremely hazardous substance" subject to the General Duty Clause. It is also a "hazardous chemical" subject to reporting under EPCRA Sections 311 and 312, 42 U.S.C. §§ 11021 and 11022. Pursuant to 40 C.F.F. Part 355, Appendix A, the threshold level for ammonia is 500 pounds.

Response: Paragraph 28 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

29. As the operator of a stationary source that processes, handles or stores extremely hazardous substances, Respondent was, at all times relevant to the allegations herein, subject to the General Duty Clause found in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Response: Paragraph 29 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

30. Anhydrous ammonia is a clear, colorless gas at atmospheric conditions of temperature and pressure with a strong odor. It is often stored and shipped under pressure as a liquid. It presents a significant health hazard because it is corrosive to the skin, eyes, and lungs.

Inhalation of ammonia may cause irritation and burns of the respiratory tract, laryngitis, shortness of breath, high-pitched respirations, chest pain, pulmonary edema, and pneumonia. A pink frothy sputum, convulsions, and coma are often seen following exposure to high concentrations. Ammonia vapors may be fatal if inhaled. Ingestion of ammonia may cause nausea, vomiting, and oral, esophageal, and stomach burns. If ammonia has contacted the eyes, irritation, pain, conjunctivitis, tearing, and corneal erosion may occur, and loss of vision is possible. Dermal exposure may result in severe burns and pain. Exposure to 300 parts per million by volume is immediately dangerous to life and health.

Response: Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 30 of the Complaint.

31. Ammonia gas is generally regarded as nonflammable but does burn at concentrations of approximately 15.5% to 27% by volume in air with strong ignition. It can explode if released in an enclosed space with a source of ignition present or if a vessel containing anhydrous ammonia is exposed to fire. The fire hazard increases in the presence of oil or other combustible materials.

Response: Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 31 of the Complaint.

32. Due to the dangers associated with anhydrous ammonia, the ammonia refrigeration industry has developed industry standards to control the risks associated with the use of ammonia. In collaboration with the American National Standards Institute (“ANSI”), the International Institute of Ammonia Refrigeration (“IAR”) has issued (and updates) Standard 2-2008: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems (2012 ed.) (Includes Addendum B) (“ANSI/IAR 2-2008 (2012 ed.)”), along with other applicable standards and guidance. Bulletins and guidance include, without limitation, IAR Bulletin No. 109, Guidelines for MR Minimum Safety Criteria for a Safe Ammonia Refrigeration System (1997) (IAR Bull. 109”); IAR Bulletin No. 110, Guidelines for Start- Up, Inspection, and Maintenance of Ammonia Mechanical Refrigerating Systems (rev. 2002) (“IAR Bull. 110”); IAR Bulletin 114, Guidelines for Identification of Ammonia Refrigeration Piping and

Components (1991 and 2014 editions) CHAR Bull. 114”); IIAR Bulletin No. 116, Guidelines for Avoiding Component Failure in Industrial Refrigeration Systems Caused by Abnormal Pressure or Shock (1992) CHAR Bull. 116”); and the Ammonia Refrigeration Management Program (2005) (“IIAR ARM Program”), which is intended to provide streamlined guidance to facilities like Respondent's that have less than 10,000 pounds of ammonia. Also in collaboration with ANSI, the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (“ASHRAE”) has issued (and updates) Standard 15: Safety Standard for Refrigeration Systems (2013 ed.) (“ANSI/ASHRAE 15-2013”). These standards are consistently relied upon by refrigeration experts and are sometimes incorporated by reference into state building and mechanical codes, including Connecticut's codes.

Response: Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 32 of the Complaint.

33. An ammonia release occurred at the Facility in 2010, when the Facility was under different ownership. After the 2010 release, the West Hartford Fire Department (“WHFD”) was told that the Facility no longer intended to use ammonia in the System. Subsequently, a fire broke out on the roof of the Facility on July 23, 2013, at which point the WHFD contacted the State of Connecticut Department of Energy & Environmental Protection (“CTDEEP”) to ask whether CTDEEP was aware of the presence of ammonia at the Facility. EPA learned about the Facility from CTDEEP after the WHFD and CTDEEP reported that the Facility had never filed Tier 2 forms reporting the ammonia in the System, as required by EPCRA.

Response: Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 33 of the Complaint.

34. On July 17, 2014, a duly authorized EPA inspector visited the Facility to determine whether Respondent was complying with Section 112(r) of the CAA and EPCRA (the “July Inspection”). The EPA inspector interviewed the Facility's plant manager (“Plant Manager”) and took a walking tour of the Facility's refrigeration operations, which are housed primarily on the first floor of the building, with refrigeration system components also present in the basement and on the ground level (where the “Machinery Room” was located), the first floor, and the roof.

Response: Respondent admits the allegations of Paragraph 34 of the Complaint.

35. During the July Inspection, the Plant Manager stated that besides himself, there were no other full time employees at the Facility, but he brings in between four and ten part-time employees as needed to fulfill orders.

Response: Respondent admits the allegations of Paragraph 35 of the Complaint, but denies that part-time employees were hired.

36. During the July Inspection, the EPA inspector asked the Plant Manager how much anhydrous ammonia was currently in the System. The Plant Manager responded that he did not know, but he provided a copy of a delivery receipt showing that 2,000 pounds of anhydrous ammonia was added to the System in October 2013 and confirmed that the receipt was accurate.

Response: Respondent admits that, during the July Inspection, the Plant Manager provided a copy of a delivery receipt to the EPA inspector. The remaining allegations describe a written document, the delivery receipt, that speaks for itself and the allegations therefore require no answer. To the extent an answer is required, the allegations are denied. Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 36 of the Complaint.

37. During the July Inspection, the EPA inspector observed several potentially dangerous conditions relating to the System, including the following:

Response:

a. Ammonia detected in/around the Spiral Freezer: When the EPA inspector entered the Spiral Freezer room, he noticed an ammonia odor that was so strong that he had to immediately exit the room. Monitoring conducted later that day by the EPA inspector using a MultiRAE multi-gas detector equipped with an ammonia sensor detected ammonia levels in and around the Spiral Freezer up to 68 parts per million (“ppm”). The National Institute for Occupational Safety and Health (“NIOSH”) Short-Term Exposure Limit value for anhydrous ammonia is 35 ppm, which is not to be exceeded during any 15-minute work period. The Occupational Safety and Health Administration 8-hour Time-Weighted Average Permissible Exposure Limit is 50 ppm. The NIOSH Recommended Exposure Level is 25 ppm over a 10-hour shift.

Response: Respondent lacks knowledge sufficient to admit or deny the EPA inspector's perception of the smell of ammonia such that he "had to" immediately exit the room, what testing was done, or the results of said testing. The remaining allegations seek to construe written documents, third-party safety guidance documents, that speak for themselves, and therefore require no answer. To the extent an answer is required, the allegations are denied. Respondent denies the remaining allegations of Paragraph 37(b) of the Complaint.

b. Dangerous siting of the high pressure receiver: The high pressure receiver is located in a basement area that has very limited lighting and ventilation. The pressure relief valve on the high pressure receiver was piped to vent directly into the basement area, but the end of the vent line was plugged, effectively eliminating the capability of the pressure relief valve to perform its intended function of providing relief to an over-pressurized receiver. There was also a stop valve between the receiver and the pressure relief valve that could have impeded the overpressure protection that would otherwise be provided by the pressure relief valve. An over-pressurized receiver could explode during a fire, releasing ammonia into the restaurant and outside the building. The basement area is a shared space that is also used by an adjacent restaurant in the condominium for storage, and there was no means of limiting or preventing access to the high pressure receiver by restaurant personnel or other unauthorized persons, nor any labels, signs, or alarms to warn them of the dangers of ammonia or potential releases.

Response: Respondent denies the allegations contained in Paragraph 37(b) of the Complaint.

c. Inadequate information available about System: Inadequate documentation was available about the technology and equipment of the System. For example, there was no Process and Instrumentation Diagram or floor plan that would allow Facility personnel, inspectors, or emergency responders to identify the location of key System equipment, piping, and valves. When asked, the Plant Manager could not provide the amount of ammonia in the System or identify whether certain piping was being actively used to convey ammonia or not.

Response: Respondent denies the allegations contained in Paragraph 37(c) of the Complaint.

d. No documented mechanical integrity program: The EPA inspector noted that the company had no documented program to maintain the mechanical integrity of the refrigeration

equipment. Such a program should identify which process equipment to include, develop and implement written procedures, provide training, schedule and perform inspection and testing of equipment, resolve equipment deficiencies, and perform quality assurance for the program. For example, pressure relief valves should be replaced or inspected, cleaned, and tested every five years of service, but some of the pressure relief valves in the Facility's Machinery Room were marked to indicate that they should have been replaced in 2010. Moreover, the pressure relief valve on the System's high pressure receiver was the original relief valve that was installed when the high pressure receiver itself was installed in 1979. A proper mechanical integrity program should have provided for regular inspection, testing, and replacement of these valves. As pressure relief valves age, they can start to release ammonia at lower pressures than intended, potentially at levels that represent normal operating conditions, which can result in excessive ammonia releases. Old pressure relief valves can also corrode to such a degree that they become sealed shut, which prevents them from relieving pressure as designed and can lead to a catastrophic release from the associated vessel. Also, a sight glass was missing from the high pressure receiver, but it appeared that the Facility had attempted to isolate and seal off the former sight glass connections to the high pressure receiver by using some epoxy and valves. However, without a regular inspection and testing program in place, there is no way to know when the epoxy or valves might fail due to the pressure of the System and cause a catastrophic release of ammonia from the high pressure receiver, which holds a significant percentage of the System's ammonia. A catastrophic release would go into the restaurant and beyond.

Response: Respondent denies the allegations contained in Paragraph 37(d) of the Complaint.

e. Most of the pressure relief valves in the System discharged to areas inside the building: Most of the existing components in the System that were equipped with pressure relief valves were designed and installed to discharge to spaces within the building. The industry standard is to direct discharge from all atmospheric pressure relief valves/piping to the outdoors, not less than 7.25 feet above the adjacent grade or roof level and not less than 20 feet from any window, ventilation intake, or personnel exit.

Response: Respondent denies the allegations contained in Paragraph 37(e) of the Complaint.

f. Rusting/corroding pipes and valves: There were rusting and corroding pipes and valves in many locations, creating a risk that the valves and pipes could further deteriorate and break, releasing ammonia.

Response: Respondent denies the allegations contained in Paragraph 37(f) of the Complaint.

g. Unlabeled equipment, valves, and piping: The EPA inspector observed unlabeled ammonia equipment, valves, and piping throughout the entire Facility, impeding the ability of Facility personnel, contractors, inspectors, and emergency responders to identify which components contained ammonia, and which valves performed what functions. For example, there was a National Fire Protection Association (“NFPA”) diamond-shaped warning label on the high pressure receiver, but no other warning signs or labels identifying the composition or state of contents were anywhere else on or around the receiver. There were no labels identifying the composition, state_ or direction of flow of the contents for the majority of the piping in the System.

Response: Respondent denies the allegations contained in Paragraph 37(g) of the Complaint.

h. No emergency shutdown controls for the Machinery Room: There were no emergency shutdown controls immediately outside the Machinery Room doors. The lack of appropriate emergency shut-offs creates a risk of harm to workers and emergency responders, who cannot quickly shut down the System or properly ventilate the Machinery Room without entering the room, which could have dangerous levels of ammonia vapors. The delay could also contribute to a longer ammonia release time, exacerbating risks to workers, emergency responders, and people off-site.

Response: Respondent denies the allegations contained in Paragraph 37(h) of the Complaint.

i. No standard operating procedures: The EPA inspector noted that there were no written standard operating procedures to operate the refrigeration System.

Response: Respondent denies the allegations contained in Paragraph 37(i) of the Complaint.

j. The Machinery Room was not isolated from other areas of the Facility:

Both doors to the Machinery Room were in an open position, and the EPA inspector observed numerous pipes penetrating the Machinery Room walls through holes that were not

sealed. Care should be taken to ensure that no air can flow from the Machinery Room to other parts of the building, to minimize the spreading of ammonia during a leak.

Response: Respondent denies the allegations contained in Paragraph 37(j) of the Complaint.

k. There was no means of egress from the Machinery Room to the outside:

Neither of the two Machinery Room doors opened directly to outside air or through a vestibule equipped with self-closing, tight-fitting doors equipped with panic-type hardware.

Response: Respondent denies the allegations contained in Paragraph 37(k) of the Complaint.

l. Inadequate normal and emergency ventilation system in the Machinery Room: The EPA inspector observed no mechanical system to provide ventilation of the Machinery Room during normal operations or during an emergency such as an accidental ammonia release. Relief valves in the Machinery Room were vented through the ceiling, but the Plant Manager could not tell the EPA inspector where the vent piping ultimately discharged (the Plant Manager said that the company planned to install a relief valve header that discharged to the roof, but this was not yet in place). Without adequate ventilation, vapors are more likely to build up to levels that are hazardous to human health or that risk causing fire or explosion.

Response: Respondent denies the allegations contained in Paragraph 37(l) of the Complaint.

m. Lack of adequate ammonia vapor detection equipment: There were no ammonia detectors or alarm systems installed at the Facility. In the event of an accidental release of ammonia while the Plant Manager was away from the Facility, there would be no means of warning patrons and workers at the adjoining restaurant, theater, or printing shop.

Response: Respondent denies the allegations contained in Paragraph 37(m) of the Complaint.

n. No warning signs or alarms on/near Machinery Room doors: The Machinery Room doors did not have adequate labeling to warn people of the hazards of entering into a room with ammonia-containing machinery, nor were there audible/visual alarms near the Machinery Room doors to warn people about any ammonia leaks inside the Machinery Room. This was particularly dangerous given that one point of access to the Machinery Room was through a storage area/work space used by personnel from the restaurant in the building.

Response: Respondent denies the allegations contained in Paragraph 37(n) of the Complaint.

o. Presence of potential ignition sources and combustible materials in Machinery Room: Ammonia vapors are flammable at certain concentrations, which means that machinery rooms with ammonia-containing equipment need to be kept as free as possible of ignition sources and combustible materials to reduce the risk of a fire or explosion. The EPA inspector observed open electrical wiring associated with the compressors in the Machinery Room, which could ignite any released ammonia fumes, as well as an open drum of waste oil, which could ignite and exacerbate any fire in the room. Additionally, the Machinery Room was partially constructed with combustible wood materials.

Response: Respondent denies the allegations contained in Paragraph 37(o) of the Complaint.

p. Lack of emergency eye wash and shower stations: There was no emergency eye wash or shower facility inside or outside the exit from the Machinery Room, nor anywhere else at the Facility.

Response: Respondent denies the allegations contained in Paragraph 37(p) of the Complaint.

q. No windsocks: There were no windsocks at the Facility to indicate wind direction and relative wind speed in the event of an accidental release of ammonia.

Response: Respondent denies the allegations contained in Paragraph 37(q) of the Complaint.

r. Inadequate emergency action plan or coordination with fire department: When asked, the Plant Manager could not produce an Emergency Action Plan (“EAP”) or Emergency Response Plan (“ERP”) for the Facility. Moreover, the Respondent had not reported the presence and amounts of ammonia (or other chemicals) to emergency response and planning agencies, as required by EPCRA. According to the local Fire Chief, when WHFD responded to a fire associated with a Freon-based evaporative condenser on the roof of the Facility on July 23, 2013, responders discovered that Respondent was installing a new ammonia-based refrigeration system on the roof without obtaining proper permits. The fire department was not aware of the presence of ammonia before they arrived on the roof to respond to the fire. Respondent's failure to inform them of the presence of ammonia put the emergency responders at heightened risk in responding to the fire.

Response: Respondent denies the allegations contained in Paragraph 37(r) of the Complaint.

38. At the end of the July Inspection, the EPA inspector explained some of the concerns identified to the Plant Manager, emphasized the poor condition, lack of overall awareness, and management of the System, and instructed the Plant Manager to tell the Manager of RBF that the Facility should immediately file “Tier 2” forms to report the presence and quantity of ammonia on site to the SERC, the LEPC, and WHFD.

Response: Respondent denies the allegations contained in Paragraph 38 of the Complaint.

39. Given the number, severity, and complexity of problems identified during the July Inspection, EPA immediately contacted WHFD and took steps to engage an ammonia refrigeration expert (the “Refrigeration Expert”) to help EPA assess the nature and extent of the problems and the dangers they posed, and to determine how to best address them.

Response: Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 39 of the Complaint.

40. The Refrigeration Expert engaged by EPA has 23 years of experience working in the ammonia refrigeration field, consulting on the design, build, operation, and proper maintenance of ammonia refrigeration systems.

Response: Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 40 of the Complaint.

41. On August 14, 2014, duly authorized EPA inspectors visited the Facility with the Refrigeration Expert to assess the nature and extent of the problems with the System and the dangers they posed, and to determine an appropriate course of action to address them (“the August Inspection”). The EPA inspectors, the Plant Manager, and the Refrigeration Expert toured the Facility's refrigeration operations to assess the situation.

Response: Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 41 of the Complaint.

42. During the August Inspection, the Refrigeration Expert concurred with the dangerous conditions identified by EPA inspectors during the July Inspection, and also observed additional potentially dangerous conditions relating to the System, including the following:

Response: Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 42 of the Complaint.

a. There was additional evidence that the System was actively leaking ammonia: When the EPA inspectors and the Refrigeration Expert toured the basement area where the high pressure receiver was located, they smelled the odor of ammonia in the room. When the EPA inspectors and the Refrigeration Expert entered a large walk-in freezer on the first floor of the Facility, they observed two ceiling-mounted evaporator units, only one of which was currently operating. The EPA inspectors and the Refrigeration Expert smelled a strong ammonia odor inside the freezer room. The Plant Manager stated that ammonia leaks out of the non-operating evaporator unit when it goes into defrost mode. EPA inspectors and the Refrigeration Expert observed that some of the coils on the unit that was currently operating were plugged, indicating that ammonia had leaked from those points in the past. The EPA inspectors and the Refrigeration Expert also smelled a strong ammonia odor near a compressor (which was not currently operating) that was located outside the large walk-in freezer unit.

Response: Respondent denies the allegations contained in Paragraph 42(a) of the Complaint.

b. Dangerous venting from a suction trap to an area used by both the Facility and the restaurant. EPA inspectors and the Refrigeration Expert observed a vessel containing ammonia being used as a suction trap inside a multipurpose room located on the ground floor. The vessel was equipped with a pressure relief valve that vented directly inside the room and at eye level, so any person walking in front of the discharge point during a release would be exposed directly in the face. This room was regularly used and accessed by restaurant personnel. During the August Inspection, the garage door on the wall of the room opened as a restaurant employee pulled his car into the room to park. The open garage door would provide a way for ammonia to release into the neighborhood. The car could be an ignition source in the event of an ammonia release from the suction trap. The doors to this area were not locked or otherwise secured to limit access, and no audible or visual alarms or warning signs were present.

Response: Respondent denies the allegations contained in Paragraph 42(a) of the Complaint.

c. Pressure relief valves associated with the System's compressors discharged to locations that could expose workers or residents in nearby houses. Pressure relief valves associated with the System's compressors discharged through a pipe on the roof that vents in a horizontal orientation approximately two feet above the roof in a location that is near a window and an air intake unit on the roof. Current industry standards require pressure relief valves to vent to locations not less than 20 feet from any window, ventilation intake, or personnel exit, and not less than 7.25 feet above the adjacent grade or roof level. Three-story multi-family residential units are located nearby (the closest residential unit is approximately sixty feet from the discharge point). The roof line was at approximately the same level as the top units in the neighboring residential buildings.

Response: Respondent denies the allegations contained in Paragraph 42(c) of the Complaint.

d. An ammonia-containing pressure vessel located on the roof had no pressure relief protection or nameplate. A pressure vessel located near the condensers had no nameplate providing specifications about its date of manufacture, design pressure rating, or other information that would enable someone to evaluate whether the vessel was an appropriately designed pressure vessel and whether it was being operated in a safe manner. Additionally, there was no pressure relief valve installed on this vessel, so if the vessel were to reach a pressure level above its design capacity, it could explode and release its contents.

Response: Respondent denies the allegations contained in Paragraph 42(d) of the Complaint.

e. Failure to evaluate the mechanical integrity of ammonia piping after it was potentially compromised during a fire. In July 2013, a fire on the roof of the Facility occurred in the area directly over piping that contained ammonia. Respondent has no records indicating that the piping has been inspected since that time to confirm whether exposure to the fire compromised the mechanical integrity of the piping.

Response: Respondent denies the allegations contained in Paragraph 42(e) of the Complaint.

f. Dangerous practices when adding ammonia to the System. The System was typically charged by running a hose from the street, through a basement window, in an area near the restaurant patio and entrance. During the August Inspection, a restaurant employee stated that ammonia was added to the System in this manner in October 2013, during the day while the

restaurant was open for business, and the ammonia supplier asked the restaurant employee to watch operations upstairs in the area near the supplier's ammonia truck while he was working in the basement to charge the System. There was also no check valve installed for use when charging the System.

Response: Respondent denies the allegations contained in Paragraph 42(f) of the Complaint.

43. On August 22, 2014, EPA issued an Emergency Order to Respondent pursuant to Section 303 of the CAA, 42 U.S.C. § 7603 (the "Order"). Among other things, the Order required Respondent to engage an ammonia refrigeration expert to develop and submit to EPA for review and approval a plan for removing all anhydrous ammonia from the System, remove all ammonia from the System in accordance with the approved plan, and refrain from recharging the System with ammonia until such time as repairs were made to address the dangerous conditions identified by EPA in accordance with recognized and generally accepted good engineering practices ("RAGAGEP"). Concurrently, EPA notified Respondent that in the event that Respondent could not or was not willing to comply with the Order, EPA would consider hiring its own contractor to remove the ammonia from the System pursuant to Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").

Response: Paragraph 43 of the Complaint purports to construe a written document, the Order, which speaks for itself and therefore requires no answer. To the extent the allegations contradict the Order, the allegations are denied.

44. On August 25, 2014, Respondent acknowledged receipt of the Order and stated that, as operator of the Facility, it would voluntarily agree to undertake compliance with the Order. However, because Respondent was unable to remove the ammonia from the System in a timely fashion, EPA removed the ammonia from the System via an emergency removal action from August 29 through September 3, 2014.

Response: Respondent admits acknowledging receipt of the Order. The remaining allegations of Paragraph 44 of the Complaint are denied.

IV. VIOLATIONS
COUNT I: FAILURE TO IDENTIFY HAZARDS IN VIOLATION OF THE CAA'S
GENERAL DUTY CLAUSE

45. The allegations in paragraphs 1 through 44 are hereby realleged and incorporated herein by reference.

Response: Respondent incorporates by reference its responses to paragraphs 1 through 44 as its response to paragraph 45 of the Complaint.

46. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty, in the same manner and to the same extent as Section 654 of Title 29, to, among other things, identify hazards which may result from accidental releases of such substances, using appropriate hazard assessment techniques.

Response: Paragraph 46 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

47. As alleged in paragraphs 24 through 29 above, Respondent operates a stationary source that handled and stored anhydrous ammonia, an extremely hazardous substance. Accordingly, at the time of the violations alleged herein, Respondent was subject to the General Duty Clause.

Response: Paragraph 47 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

48. The recommended industry practice and standard of care for identifying, analyzing, and evaluating potential hazards associated with ammonia refrigeration systems of this size is to use standard, industry-developed hazard identification checklists, a “What-If” analysis, or a Hazard and Operability (a/k/a “HAZOP”) study. See, e.g., U.S. Env’tl Prot. Agency, Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1) (May 2000), Section 2.3.1, available at <https://www.epa.gov/sites/production/files/2013-10/documents/gdcregionalguidance.pdf> (last visited September 2016) (“EPA’s GDC Guidance”);

IIAR Bull. 110, Section 5.2.1. IIAR has developed checklists for this purpose. See, e.g., IIAR ARM Program, Section 10 and Appendix 10.1.

Response: Respondent denies the allegations contained in paragraph 48 of the Complaint.

49. According to EPA's GDC Guidance, the General Duty Clause's duty to identify hazards that may result from hazardous releases requires determining (a) the intrinsic hazards of the chemicals used in the processes; (b) the risks of accidental releases from the processes through possible release scenarios; and (c) the potential effect of these releases on the public and the environment. The document that contains this analysis is often referred to as a process hazard analysis or a process hazard review ("Process Hazard Review" or "PHA").

Response: Paragraph 49 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

50. As described in paragraphs 37 and 42 above, EPA inspectors and the Refrigeration Expert observed potentially dangerous conditions at the Facility that indicated a failure to identify hazards associated with the System. Specifically, the Plant Manager was unable to provide the amount of ammonia in the System or identify the System piping actively used to convey ammonia through the System. In addition, there was no Process or Instrumentation Diagram or floor plan that would allow Facility personnel, inspectors, or emergency responders to identify the location of key System equipment, piping, and valves.

Response: Respondent denies the allegations contained in paragraph 50 of the Complaint.

51. Moreover, Respondent was not able to produce any Process Hazard Review while the EPA inspectors were at the Facility during either the July or August inspection, nor has Respondent done so since then,

Response: Respondent denies the allegations contained in paragraph 51 of the Complaint.

52. Accordingly, Respondent violated the General Duty Clause's requirement to identify hazards associated with the refrigeration system using industry-recognized hazard

assessment techniques, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Response: Paragraph 52 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

COUNT II: FAILURE TO DESIGN AND MAINTAIN A SAFE FACILITY IN VIOLATION OF THE CAA'S GENERAL DUTY CLAUSE

53. The allegations in paragraphs 1 through 52 are hereby realleged and incorporated herein by reference.

Response: Respondent incorporates by reference its responses to paragraphs 1 through 52 as its response to paragraph 53 of the Complaint.

54. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases.

Response: Paragraph 54 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

55. The recommended industry practice and standard of care for designing and maintaining a safe facility with an ammonia refrigeration system of the same size and type as Respondent's System is to base design considerations upon applicable design codes, federal and state regulations, and industry guidelines to prevent releases or minimize their impacts as well as to develop and implement standard operating procedures, maintenance programs, personnel training programs, management of change practices, incident investigation procedures, self-audits, and preventative maintenance programs. IIAR, ASHRAE, and others have developed standards and guidelines for this purpose, such as the IIAR Bulletins, ANSI/IIAR 2-2008 (2012 ed.), the IIAR ARM Program, and ANSI/ASHRAE 15-2013. See also EPA's GDC Guidance, Section 2.3.2, and NFPA 1: Fire Code (2012 ed.) ("NFPA 1"), Section 53.

Response: Respondent denies the allegations contained in paragraph 55 of the Complaint.

56. As described in paragraph 37.c above, Respondent failed to maintain adequate documentation about the technology and equipment in the refrigeration process at the Facility. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to maintain all essential records and documentation relevant to the system in a safe place that is readily available to those who inspect, maintain, and operate the system. See, e.g., IIAR ARM Program, Section 3 (facilities should consider including MSDS sheets; documentation of ammonia inventory at facility (e.g., documentation of ammonia charges, ammonia inventory during pump-out conditions, or detailed pipe-by-pipe/vessel-by-vessel inventory calculations); refrigeration flow diagrams; facility plan view (for use with fire department); equipment list for ammonia refrigeration equipment with detailed information about the equipment; documentation of desired system operating ranges for pressure, levels, and temperatures in the system; information regarding safety systems such as alarms, compressor cut-outs, and ammonia detection systems; relief system design; ventilation system capacity; installation, operation, and maintenance manuals; and manufacturer data reports for all pressure vessels); IIAR Bull. 110, Section 4 (Records); IIAR Bull. 109, Section 7 (Inspection Checklists). Another recommended industry practice and standard of care is to document the maximum intended ammonia inventory in the system (see, e.g., IIAR ARM Program, Section 3.3), and to maintain records of the weight of ammonia charged to the system (see, e.g., IIAR Bull. 110, Section 5.6; NFPA 1, Section 53.3.1.5).

Response: Respondent denies the allegations contained in paragraph 56 of the Complaint.

57. As described in paragraphs 37.d and 37.f above, Respondent failed to have an adequate preventative maintenance program in place, as evidenced by corroded pipes and valves observed throughout the System. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to have a preventative maintenance program. See, e.g., IIAR ARM Program, Section 5 and Appendix 5.1; IIAR Bull. 110, Sections 6.6 (Inspection and Maintenance — Valves and Sensing Devices) and 6.7 (Inspection and Maintenance — Piping); IIAR Bull. 109, Sections 4.7.4 (uninsulated refrigerant piping should be examined for signs of corrosion; if corrosion exists, the pipe should be cleaned down to bare metal and painted

with a rust prevention paint; badly corroded pipe should be replaced), 4.7.5 (insulated piping showing signs of vapor barrier failure should have the insulation removed and the pipe inspected), and 7 (inspection checklist calls for corrosion monitoring for piping and relief valves); NFPA 1, Section 53.3.1.1 (refrigeration systems shall be operated and maintained in a safe and operable condition, free from excessive corrosion).

Response: Respondent denies the allegations contained in paragraph 57 of the Complaint.

58. As described in paragraphs 37.a and 42.a above, Respondent failed to detect and repair active ammonia leaks from the System. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to test for, investigate, and repair leaks in the refrigeration system. See, e.g., IIAR ARM Program, Sections 7 (calls for the development and implementation of emergency response procedures for use in the event of an accidental release of ammonia) and 8 (calls for procedures to investigate and resolve ammonia odor complaints and incidents involving larger releases of ammonia); IIAR Bull. 109, Section 4.10.8 (if an ammonia leak is observed, the source of the leak should be investigated and the leak repaired); IIAR Bull. 110, Sections 5.5 (upon completion of installation, ammonia refrigeration systems should be tested for leaks in accordance with industry standards, and all visible leaks should be repaired and defective material replaced), 5.7.6 (calling for frequent monitoring of pressures and temperature and vigilance for ammonia leakage detection during ammonia refrigeration system start-up; at any abnormal indication, compressors should be stopped immediately); NFPA 1, Section 53.3.1.1 (refrigeration systems shall be operated and maintained in a safe and operable condition, free from leaks).

Response: Respondent denies the allegations contained in paragraph 58 of the Complaint.

59. As described in paragraph 37.g above, Respondent failed to adequately label piping and valves in the System. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to label all piping and valves containing ammonia to indicate the direction of flow, physical state of the refrigerant (i.e., liquid or vapor), and the relative pressure level of the refrigerant. See, e.g., IIAR Bull. 109, Section 43.6 (all ammonia piping should have appropriate pipe markers attached to indicate the use of the pipe and arrows to indicate the direction

of flow, such as in IIAR Bulletin No. 114); IIAR Bull. 114 (labeling and color coding scheme for piping marker body, physical state section, pressure level section, abbreviation section, and directional arrow); ANSI/IIAR 2-2008 (2012 ed.), Section 10.6 (all piping mains, headers and branches shall be identified as to the physical state of the refrigerant (that is, vapor, liquid, etc.), the relative pressure level of the refrigerant, and the direction of flow); ANSI/ASHRAE 15-2013, Section 11.2.2 (signage requirements for valves); IIAR ARM Program, Section 4.2.

Response: Respondent denies the allegations contained in paragraph 59 of the Complaint.

60. As described in paragraph 37.h above, Respondent failed to install emergency shutdown controls for the System. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to install emergency shutdown controls immediately outside the Machinery Room doors. See, e.g., ANSI/ASHRAE 15-2013, Section 8.12.i (remote control of the mechanical equipment in the refrigerating machinery room shall be provided immediately outside the machinery room door solely for the purpose of shutting down the equipment in an emergency; ventilation fans shall be on a separate electrical circuit and have a control switch located immediately outside the machinery room door); ANSI/IIAR 2-2008 (2012 ed.), Sections 13.1.13.2 (a remote emergency shutdown control for refrigerant compressors, refrigerant pumps, and normally closed automatic refrigerant valves within the machinery room shall be provided immediately outside the designated principle exterior machinery room door) and 13.3.1 (the mechanical ventilation systems shall be powered independently of the machine room machinery and shall not be subject to emergency shutdown controls); NFPA 1, Sections 53.2.3.1.4 (calls for automatic shutoff of the system when ammonia vapors in the space exceed 25% of the lower explosive limit) and 53.2.3.4.5 (calls for a clearly identified switch providing off-only control of compressors, pumps, and valves in the machinery room, including automatic shut-off whenever ammonia vapors exceed the vapor detector's upper detection limit or 25% of the lower explosive limit).

Response: Respondent denies the allegations contained in paragraph 60 of the Complaint.

61. As described in paragraphs 37.d. and 42.e above, Respondent has not developed nor implemented an adequate mechanical integrity program. The recommended industry practice

and standard of care for ammonia refrigeration systems of this size is to establish a schedule for testing equipment and systems according to the manufacturer's recommendations, perform the necessary inspections (some of which should occur daily, weekly, monthly, quarterly, semi-annually, yearly, and every five years), and maintain logs and other inspection records. See, e.g., ITAR Bull. 110, Section 6.0 (the inspection and maintenance program should account for specific recommendations for the equipment comprising the particular refrigeration system, found in the supplier's instructions manual and relevant supplementary information; the type and frequency of inspection and maintenance will also depend on the effectiveness of previous maintenance, the age of the system, the environment in which the system is located and the duty of the system); IIAR ARM Program, Section 5 (recommends documenting regular inspections); IIAR Bull. 109, Section 5 (calling for an annual ammonia system safety check and a more thorough inspection conducted by a competent ammonia refrigeration engineer and/or fire safety official every five years) and 7 (inspection checklists should be used when performing safety inspections); NFPA 1, Section 53.3.2 (calls for regular testing of refrigeration systems' emergency devices and systems at frequencies in accordance with manufacturers' specifications and as required by the local authority having jurisdiction; a written record of all required testing should be maintained on site).

Response: Respondent denies the allegations contained in paragraph 61 of the Complaint.

62. As described in paragraph 37.b above, Respondent designed and operated the System in such a way that the siting and set-up of the high pressure receiver created highly dangerous conditions for Facility employees and members of the public. At the time of the Inspections, the recommended industry practice and standard of care for ammonia refrigeration systems of this size was to discharge all pressure relief valves to the outdoors, not less than 20 feet from any window, air intake, or exit, and not less than 15 feet above the adjacent grade or roof level. See, e.g., ANSI/IIAR 2-2008 (2012 ed.), Section 11.3.6; ANSI/ASHRAE 15-2013, section 9.7.8. Another recommended industry practice and standard of care is to ensure that no stop valves are located between pressure relief valves and pressure vessels. See, e.g., IIAR Bull. 109, Section 4.9.2; ANSI/ASHRAE 15-2013, Section 9.4.6. See also the Hazard Review Checklist found at

Appendix 10.1 of the IIAR ARM Program, which provides a methodology for reviewing potential hazards arising from the design and siting of a refrigeration system of this size.

Response: Respondent denies the allegations contained in paragraph 62 of the Complaint.

63. As described in paragraph 37.i above, Respondent failed to prepare, implement, and maintain written standard operating procedures to operate the refrigeration System. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to develop and maintain written standard operating procedures that describe the procedures needed to operate ammonia system equipment and manage normal and abnormal situations. The standard operating procedures also serve as the primary training material for new and existing ammonia system operators. See, e.g., IIAR ARM Program, Section 4 (recommended information to include in, and steps to follow to develop standard operating procedures for ammonia systems).

Response: Respondent denies the allegations contained in paragraph 63 of the Complaint.

64. As described in paragraph 37.j above, Respondent failed to isolate the System's Machinery Room from other areas of the Facility. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to ensure that each refrigeration machinery room is provided with tight-fitting, self-closing doors, and all piping in the machinery room should be tightly sealed to walls, ceiling, and/or floors through which it passes. See, e.g., ANSI/IIAR 2-2008 (2012 ed.), Section 13.1.10 (each refrigerating machinery room shall have a tight-fitting door or doors opening outward, self-closing if they open into the building, and adequate in number to ensure freedom for persons to escape in an emergency; doors communicating with the building shall be approved, self-closing, tight-fitting fire doors equipped with panic-type hardware); ANSI/ASHRAE 15-2013, Sections 8.12.b (machinery room doors communicating with the building shall be approved, self-closing, tight-fitting fire doors) and 8.12.f (all pipes piercing the interior walls, ceiling, or floor of machinery rooms shall be tightly sealed to the walls, ceiling, or floors through which they pass).

Response: Respondent denies the allegations contained in paragraph 64 of the Complaint.

65. As described in paragraph 37.k above, Respondent failed to provide a means of egress from the Machinery Room to the outdoors. The recommended industry practice and

standard of care for ammonia refrigeration systems of this size is to provide a least one door from the machinery room that opens directly to the outside air or through a vestibule equipped with self-closing, tight-fitting doors. See, e.g., ANSI/IIAR 2-2008 (2012 ed.), Section 13.1.10; ANSI/ASHRAE 15-2013, Section 8.12.d.

Response: Respondent denies the allegations contained in paragraph 65 of the Complaint.

66. As described in paragraph 37.1 above, Respondent failed to design, install, or operate an adequate ventilation system in the System's Machinery Room to clear it of ammonia in case of an accidental release or other emergency. The recommended industry practice and standard of care for ammonia refrigeration systems of this size includes designing and installing a ventilation system based on calculations and other analyses of the ammonia system and the machinery room to determine the air sweep necessary for a safe operation in normal conditions and to clear ammonia fumes in case of emergency. See, e.g., ANSUASHRAE 15-2013, Sections 8.11.3 (machinery rooms shall be vented to the outdoors, utilizing mechanical ventilation), 8.11.4 (mechanical ventilation provided shall be by one or more power-driven fans capable of exhausting air from the machinery room at least in the amount calculated in accordance with Section 8.11.5; provision shall be made for inlet air to replace that being exhausted; openings for inlet air shall be positioned to avoid recirculation; discharge of the air shall be to the outdoors in such a manner as not to cause a nuisance or danger); and 8.11.5 (provides formulas for calculating adequate ventilation in machinery rooms); ANSUIIAR 2-2008 (2012 ed.), Sections 13.3.1 (each refrigerating machinery room shall be vented to the outdoors by means of mechanical ventilation systems actuated automatically by refrigerant detector(s), temperature sensors, and also operable manually; mechanical ventilation systems shall be designed to produce normal and emergency ventilation rates in accordance with Sections 13.3.8 and 13.3.9), 13.3.8.1 (normal mechanical ventilation design capacity shall be the greater of (a) 20 Air Changes per hour (20 ACH) based on the total gross volume of the machinery room, or (b) the volume required to limit the room temperature to 104°F (40°C) taking into account the ambient heating effect of all machinery in the room and with the ventilation air entering the room at a 1% ASHRAE design), 13.3.9.1 (Emergency mechanical ventilation systems shall be capable of providing at least one air change

every two minutes, which is 30 air changes per hour (30 ACH) based on the gross machinery room volume), and 13.3.9.2 (emergency mechanical ventilation shall be actuated by (a) a refrigerant detector at a level not exceeding 1,000 ppm; and (b) manual controls); see also NFPA 1, Section 53.2.3.3 (ventilation system requirements).

Response: Respondent denies the allegations contained in paragraph 56 of the Complaint.

67. As described in paragraph 37.m above, Respondent failed to install ammonia detectors at the Facility that actuated audible and visual alarms and mechanical ventilation. At the time of the Inspections, the recommended industry practice and standard of care for ammonia refrigeration systems of this size was to install ammonia detectors that are set to actuate visual and audible alarms inside the machinery room and outside each of its entrances and trigger the mechanical ventilation system. See, e.g., ANSI/IIAR 2-2008 (2012 ed.), Sections 13.2 (each machinery room shall contain at least two detectors that actuate an alarm and mechanical ventilation), 13.2.1.2 (detectors shall activate visual and audible alarms inside the machinery room and outside each entrance to the machinery room), 13.3.1 (each machinery room shall be vented to the outdoors by means of mechanical ventilation systems actuated automatically by detectors), and 13.2.3 (requirements to have detectors activate alarms and emergency mechanical ventilation systems); ANSI/ASHRAE 15-2013, Section 8.11.2.1 (each machinery room shall contain a detector, located in an area where refrigerant from a leak will concentrate, that actuates an alarm and mechanical ventilation; the alarm shall annunciate visual and audible alarms inside the machinery room and outside each entrance to the machinery room); see also NFPA 1, Sections 53.2.3.1 (requires vapor detectors, monitors, and alarm system for machinery rooms) and 53.2.3.1.4 (requires vapor detectors to automatically turn off electrical power rooms at concentrations at or above 25% of LFL).

Response: Respondent denies the allegations contained in paragraph 67 of the Complaint.

68. As described in paragraph 37.o above, Respondent failed to maintain the Machinery Room to be clear and free of potential ignition sources and combustible materials. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to ensure that no flammable or combustible materials are stored in machinery rooms and that

wiring is installed in accordance with the National Electrical Code. See, e.g., ANSI/IIAR 2-2008 (2012 ed.), Sections 13.1.3.1 (flammable and combustible materials shall not be stored in machinery rooms) and 13.1.7.1 (requires wiring to be installed in accordance with the National Electrical Code); IIAR Bull. 109, Section 7, General Safety Checklist Item (x) (covers should be securely fastened to all electrical panels and junction boxes); NFPA 1, Section 53.3.1.3.1 (flammable and combustible materials shall not be stored in machinery rooms except for incidental materials necessary for the safe and proper operation and maintenance of the system).

Response: Respondent denies the allegations contained in paragraph 68 of the Complaint.

69. As described in paragraphs 37.e, 42.b, and 42.c above, numerous pressure relief valves in the System discharged to areas inside the building and/or to locations where employees or the public could be sprayed, risking serious injury. At the time of the Inspections, the recommended industry practice and standard of care for ammonia refrigeration systems of this size was to ensure that pressure relief valves discharged to the outdoors, not less than 20 feet from any window, ventilation intake, or personnel exit, not less than 15 feet above the adjacent grade or roof level, and to locations that would not harm employees or the public. See, e.g., ANSIMAR 2-2008 (2012 ed.), Sections 11.3.6 (discharge from all atmospheric pressure relief valves/piping shall be to the outdoors), 11.3.6.3 (pressure relief devices shall not discharge less than 20 feet from any window, ventilation intake, or personnel exit), and 11.3.6.4 (pressure relief devices shall not discharge less than 15 feet above the adjacent grade or roof level and shall be arranged to avoid spraying refrigerant on persons in the vicinity); ANSI/ASHRAE 15-2013, Section 9.7.8 (pressure relief devices shall discharge to atmosphere 15 feet above adjoining ground level and not less than 20 feet from any window, ventilation opening, or exit; the discharge shall terminate in a manner that will prevent discharged refrigerant from being sprayed on people in the vicinity).

Response: Respondent denies the allegations contained in paragraph 69 of the Complaint.

70. As described in paragraph 42.d above, Respondent failed to maintain adequate information about a pressure vessel located on the roof near the condensers. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to ensure that all pressure vessels have affixed a name plate containing certain information including but not

limited to the manufacturer's name, year of manufacture, and the maximum allowable pressure. See, e.g., IIAR Bull. 109, Section 4.3.1.2 (all pressure vessels shall have a nameplate providing, as applicable, the manufacturer's name, serial number, model number, year of manufacture, maximum allowable pressure at a certain temperature, test pressure applied, National Board number, and manufacturer's ASME stamp); ANSI/IIAR 2-2008 (2012 ed.), Sections 9.1.5 (a vessel shall be designed and stamped with a minimum design metal temperature no higher than its lowest expected operating temperature), 9.3.1 (pressure vessels shall have affixed a nameplate providing, as applicable, the ASME stamp, National Board number, manufacturer's name, maximum allowable working pressure at a certain temperature, minimum design metal temperature at a certain pressure, serial number, year of manufacture, model number, test pressure and test type, and type of construction), 9.3.2 (the original nameplate shall be affixed to the pressure vessel); ANSI/ASHRAE 15-2013, Section 9.3.2 (pressure vessels having an inside diameter exceeding 6 inches shall be directly marked, or marked on a nameplate, with symbols signifying compliance with Section VIII of the ASME Boiler and Pressure Vessel Code); IIAR ARM Program, Section 3.12 (requiring manufacturer data reports for all pressure vessels; if the operator cannot locate the appropriate nameplate and/or corresponding manufacturer data report or install a new nameplate, the pressure vessel must be taken out of service and replaced with a new, coded pressure vessel).

Response: Respondent denies the allegations contained in paragraph 70 of the Complaint.

71. Also as described in paragraph 42.d above, Respondent failed to provide pressure relief protection for a pressure vessel located on the roof near the condensers. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to install pressure relief valves or other suitable overpressure relief devices on all pressure vessels in a refrigeration system. See, e.g., ANSI/ASHRAE 15-2013, Section 9.7.1 (pressure vessels shall be provided with overpressure protection in accordance with rules in Section VIII, Division 1, of the ASME Boiler and Pressure Vessel Code); ANSI/IIAR 2-2008 (2012 ed.), Section 11.2.1 (same); IIAR Bull. 109, Section 4.9.1 (pressure relief valves or other suitable relief devices shall be provided on all vessels).

Response: Respondent denies the allegations contained in paragraph 56 of the Complaint.

72. As described in paragraph 42.f above, Respondent failed to implement safe, proper procedures when charging the System with ammonia. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is for all ammonia charging or unloading operations to be performed by trained technicians and for a trained operator to stay close to the delivery truck so that in the event of an emergency, the necessary valves can be closed. See, e.g., ANSI/IIAR 2-2008 (2012 ed.), Sections 15.2.1.2 (the unloading or charging operation shall be performed under continuous supervision) and 15.2.1.4 (ammonia handling and storage shall be performed by trained technicians); IIAR Bull. 110, Section 5.6 (particular care shall be taken that the trained operator who unloads the ammonia refrigerant stays close to the truck, so in case of an emergency, the necessary valves can be closed; the system shall not be left unattended during charging).

Response: Respondent denies the allegations contained in paragraph 72 of the Complaint.

73. Accordingly, by failing to maintain adequate documentation about the technology and equipment in the System, failing to have an adequate preventative maintenance program, failing to detect and repair active ammonia leaks, failing to adequately label piping and valves, failing to install emergency shutdown controls, failing to develop and implement an adequate mechanical integrity program, designing and operating the System in such a way that the siting of the high pressure receiver created highly dangerous conditions, failing to develop and implement adequate standard operating procedures, failing to isolate the Machinery Room from other areas of the Facility, failing to provide a means of egress from the Machinery Room to the outdoors, failing to design, install, or operate an adequate ventilation system in the System's Machinery Room, failing to install ammonia detectors that actuated audible and visual alarms and mechanical ventilation, failing to keep the Machinery Room clear and free of potential ignition sources and combustible materials, failing to ensure that pressure relief valves discharged to areas outdoors and/or to locations where employees or the public could not be sprayed, failing to maintain adequate information about and provide pressure relief protection for a pressure vessel located on the roof, and failing to implement safe, proper procedures when charging the System with

ammonia, Respondent failed to design and maintain a safe facility, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Response: Respondent denies the allegations contained in paragraph 73 of the Complaint.

COUNT III — FAILURE TO MINIMIZE THE CONSEQUENCES OF ACCIDENTAL RELEASES THAT MIGHT OCCUR IN VIOLATION OF THE CAA'S GENERAL DUTY CLAUSE

74. The allegations in paragraphs 1 through 73 are hereby realleged and incorporated herein by reference.

Response: Respondent incorporates by reference its responses to paragraphs 1 through 73 as its responses to paragraph 74 of the Complaint.

75. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances (including anhydrous ammonia) have a general duty to minimize the consequences of any accidental releases that do occur.

Response: Paragraph 75 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

76. As described in paragraph 37.n above, Respondent failed to provide adequate warning of the potential hazards of entering a room with ammonia-containing machinery by not posting signage on the Machinery Room doors nor providing audible/visual alarms near the doors. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to post signs on machinery doors warning of the presence of ammonia and restricting entry to authorized personnel, as well as signs near audible/visual alarms indicating their meaning if actuated. See, e.g., ANSI/ASHRAE 15-2013, Sections 11.2.4 (each entrance to a machinery room shall be provided with a legible permanent sign, securely attached and easily accessible, reading “Machinery Room—Authorized Personnel Only,” and the sign shall further communicate that entry is forbidden except by those personnel trained in emergency procedures when the refrigerant alarm has been activated), 8.11.8 (same), 11.7 (when a machinery room is used, emergency

procedures shall be posted outside the room, immediately adjacent to each door), and 8.11.2.1 (requires signs near visual and audible alarms indicating their meaning); ANSI/11AR 2-2008 (2012 ed.), Sections 13.1.10.4 (requiring approved informative signs, emergency signs, charts and labels in accordance with NFPA 704 and hazard signs in accordance with the International Mechanical Code at entrances and exits to machinery rooms), 13.1.2.4 (machinery room doors shall be clearly marked and permanent signs posted to indicate that access is restricted to authorized personnel), 13.2.4.1 (the meaning of audible and visual alarms shall be clearly marked by nearby signage), and Appendix L (examples of machinery room door signage).

Response: Respondent denies the allegations contained in paragraph 76 of the Complaint.

77. As described in paragraph 37.p above, Respondent failed to provide emergency eyewash and shower stations in or near the Machinery Room or elsewhere at the Facility. At the time of the Inspections, the recommended industry practice and standard of care for ammonia refrigeration systems of this size was to provide an emergency eyewash and body shower station immediately outside the machinery room. See, e.g., ANSIMAR 2-2008 (2012 ed.), Section 13.1.6 (an eyewash and body shower unit shall be located external to the machinery room and readily accessible via an exit); IIAR Bull. 109, Section 4.1.10 (an emergency eye wash station and deluge body shower shall be located just outside the machine room exit door; an additional emergency eye wash station and deluge body shower should be readily accessible inside the machinery room); see also IIAR ARM Program, Appendix 10.1, Hazard Review Checklist Item 11.12 (recommends eyewash and body shower units just outside the machinery room exit door and, in addition, centrally located inside the machinery room).

Response: Respondent denies the allegations contained in paragraph 77 of the Complaint.

78. As described in paragraph 37.r above, Respondent did not have an emergency response program, including an up-to-date emergency action plan that addressed release scenarios based on hazards associated with the design, location, and operation of the Facility, nor had the Respondent coordinated with local emergency responders or even alerted them of the presence of ammonia at the Facility. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to develop an up-to-date, facility-specific emergency action

plan that accurately describes the facility and the affected population. See, e.g., IIAR ARM Program, Section 7 (the emergency action plan should include, among other things, the types of evacuation to be used, emergency escape procedures and routes, procedures for employees who remain to maintain critical operations, procedures for accounting for evacuated employees, any employee rescue and medical duties, and means for reporting emergencies; an adequate emergency response program should also identify procedures for responding to an ammonia release, including shutting the system down, starting emergency ventilation, and coordinating with all relevant off-site emergency responders); see also EPA's GDC Guidance, Section 2.3.3 (at minimum, the plan should include anticipation of the types of releases that could occur from the process, mitigation process, notification process to local responders, and local responder involvement; coordination with local officials, training of employees, and periodic exercises to ensure the plan is adequate are also important components).

Response: Respondent denies the allegations contained in paragraph 78 of the Complaint.

79. In addition, the allegations in paragraphs 56, 58-62, and 64-72 above describe deficiencies that not only constitute a failure to design and maintain a safe facility, but also reflect a failure to minimize the consequences of an accidental release of ammonia. Each of these shortcomings could exacerbate the negative effects of an accidental release of ammonia that might occur at the Facility.

Response: Respondent denies the allegations contained in paragraph 79 of the Complaint.

80. Accordingly, by failing to post appropriate signage on the Machinery Room doors, failing to provide emergency eyewash and shower stations, failing to install windsocks, failing to develop and implement an emergency response program, failing to maintain adequate documentation about the technology and equipment in the System, failing to detect and repair active ammonia leaks, failing to adequately label piping and valves, failing to install emergency shutdown controls, failing to isolate the Machinery Room from other areas of the Facility, failing to provide a means of egress from the Machinery Room to the outdoors, failing to design, install, or operate an adequate ventilation system in the System's Machinery Room, failing to install ammonia detectors that actuated audible and visual alarms and mechanical ventilation, failing to

keep the Machinery Room clear and free of potential ignition sources and combustible materials, and failing to ensure that pressure relief valves discharged to areas outdoors and/or to locations where employees or the public could not be sprayed, Respondent violated the requirement to minimize the consequences of an accidental release of anhydrous ammonia that might occur, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Response: Respondent denies the allegations contained in paragraph 80 of the Complaint.

COUNT IV — FAILURE TO TIMELY PROVIDE MSDS OR CHEMICAL LIST TO THE PROPER AUTHORITIES

§1. The allegations in paragraphs 1 through 80 are hereby realleged and incorporated herein by reference.

Response: Respondent incorporates by reference its responses to paragraphs 1 through 80 as its responses to paragraph 81 of the Complaint.

82. As described in paragraph 27 above, from at least July 23, 2013 through September 3, 2014, Respondent was storing at least 2,000 pounds of anhydrous ammonia, an OSHA hazardous chemical, in the System.

Response: Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 82 of the Complaint.

83. Ammonia is a “hazardous chemical,” as defined at 40 C.F.R. § 370.66 and 29 C.F.R. § 1910.1200(c), and an “extremely hazardous substance,” as defined in 40 C.F.R. Part 355.

Response: Paragraph 83 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

84. In accordance with 40 C.F.R. § 370.10(a), extremely hazardous substances are subject to a 500 pound minimum threshold level (“MTL”).

Response: Paragraph 84 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

85. At all times relevant to the violations cited herein, Respondent was required under OSHA to prepare or have available on site a MSDS for ammonia.

Response: Paragraph 85 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

86. As the operator of a facility that was required to prepare or have available a MSDS for a hazardous chemical under OSHA, which hazardous chemical was present at the Facility in a quantity exceeding the MTL, Respondent was subject to Part 370. In particular, the presence of more than 500 pounds of ammonia from at least July 23, 2013 until September 3, 2014 required the company to:

a. provide a one-time submittal of a MSDS for ammonia to the LEPC, SERC, and the local fire department; and

b. submit a Tier 2 form to the LEPC, SERC, and local fire department by March 1 of 2014 and 2015, with respect to the Facility's ammonia inventory in the previous calendar year.

Response: Paragraph 86 of the Complaint, including subparts, states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

87. Pursuant to EPCRA Section 311(a), 42 U.S.C. § 11021(a), and 40 C.F.R. §§ 370.20, 370.30, and 370.32, Respondent was required to prepare and submit an MSDS or a chemical list for anhydrous ammonia to the SERC, LEPC, and the local fire department within three months after it was first present at the Facility in an amount exceeding the MTL. As specified in paragraph 82 above, by July 23, 2013, if not earlier, Respondent stored anhydrous ammonia in the System in an amount exceeding the MTL. Accordingly, beginning on October 23, 2013, if not earlier, Respondent was required to submit an MSDS or chemical list to the SERC, LEPC, and the local fire department.

Response: Paragraph 87 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

88. Respondent has never submitted an MSDS for anhydrous ammonia to the SERC, LEPC, or the local fire department.

Response: Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 88 of the Complaint.

89. Accordingly, Respondent violated EPCRA Section 311(a), 42 U.S.C. § 11021(a), and 40 C.F.R. §§ 370.20, 370.30, and 370.32.

Response: Paragraph 89 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

COUNT V — FAILURE TO PROVIDE TIER 2 HAZARDOUS CHEMICAL INVENTORY FORMS TO THE PROPER AUTHORITIES

90. The allegations in paragraphs 1 through 89 are hereby realleged and incorporated herein by reference.

Response: Respondent incorporates by reference its responses to paragraphs 1 through 89 as its responses to paragraph 90 of the Complaint.

91. During calendar years 2013 and 2014, Respondent stored anhydrous ammonia in quantities that exceeded the MTL of 500 pounds for extremely hazardous substances set forth in 40 C.F.R. § 370.10(a)(1).

Response: Paragraph 91 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

92. Pursuant to EPCRA Section 312(a), 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, Respondent was required to prepare and submit a Tier 2 form to the

SERC, LEPC, and local fire department for calendar years 2013 and 2014 on or before March 1 of the next calendar year, in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), and 40 C.F.R. § 370.42.

Response: Paragraph 92 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

93. Respondent failed to submit Tier 2 forms by March 1 of 2014 and 2015 to the SERC, LEPC, or local fire department.

Response: Respondent lacks knowledge sufficient to admit or deny the allegations of Paragraph 93 of the Complaint.

94. Accordingly, Respondent violated EPCRA Section 312(a), 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45.

Response: Paragraph 94 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

V. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY CAA PENALTIES

95. Based on the foregoing allegations and pursuant to the authority of Section 113(a)(3) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (d), as amended, the Federal Civil Penalties Inflation Act of 1990, 28 U.S.C. §§ 2461 et seq., the DCIA, 31 U.S.C. §§ 3701 et seq., and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4, Complainant proposes that a Final Order assessing civil penalties be issued against Respondent of up to \$37,500 per day for the duration of the following CAA violations, up to a maximum of \$320,000:

a. One violation by Respondent, for up to 408 days, for failing to identify hazards associated with the refrigeration system using industry-recognized hazard assessment techniques, in violation of the General Duty Clause. This violation is significant because a proper hazard

analysis helps facility personnel assess and manage the hazards that are posed by chemicals at a facility so that threats of releases are minimized.

b. One violation by Respondent, for up to 408 days, for failing to design and maintain a safe facility, in violation of the General Duty Clause. This violation is significant because the failure to compile and convey critical information about an ammonia refrigeration system (for example, by compiling process and instrumentation diagrams and labeling piping, valves, and other components) means that the system cannot be properly inspected and maintained. Likewise, the failure to develop and implement adequate preventative maintenance and mechanical integrity programs and standard operating procedures can lead to an accidental release. Indeed, Respondent's failure to design and maintain a safe facility, by failing to install emergency shutdown controls, isolate and provide a means of egress from the Machinery Room, install adequate ventilation, install ammonia detectors that actuated audible and visual alarms and mechanical ventilation, keep the Machinery Room free of potential ignition sources, ensure that pressure relief valves discharged to safe areas, and maintain adequate information about and provide pressure relief protection for all pressure vessels, created a risk of a catastrophic ammonia release that could have seriously harmed Facility workers, emergency responders, employees and customers of the adjacent businesses, and neighboring residents.

c. One violation by Respondent, for up to 408 days, for failing to minimize the consequences of an accidental release of anhydrous ammonia that might occur, in violation of the General Duty Clause. This violation is significant because the failure to provide standard safety protections such as ammonia detectors, alarms, ventilation, safe pressure relief protection, emergency shutdown controls, a sealed/isolated Machinery Room free from ignition sources and with adequate means of egress, a safety eye wash/shower station, and an emergency response program impedes the ability of Facility workers and emergency responders to quickly isolate a potential release, shut down the System, or ventilate the Facility's Machinery Room in case of emergency. The resulting delay could contribute to a longer ammonia release time and increased exposure to ammonia, which would exacerbate potential harm to Facility workers, emergency responders, employees and customers of the adjacent business, and neighboring residents.

Response: Paragraph 95 of the Complaint, including subparts, states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

96. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as adjusted for inflation by the DCIA and 40 C.F.R. Part 19, prescribes a \$295,000 administrative penalty limitation for violations from January 12, 2009, through December 6, 2013, a \$320,000 administrative penalty limitation for violations from December 7, 2013, through November 2, 2015, and a twelve-month duration limitation on EPA's authority to initiate an Administrative Penalty Order. However, these limitations may be waived where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty or a longer period of violation is appropriate for an administrative penalty action. EPA and the Department of Justice have jointly determined that an administrative penalty action is appropriate in this case.

Response: Paragraph 96 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

97. EPA is seeking a penalty from Respondent of up to \$37,500 per day for the duration of each of Respondent's violations of the General Duty Clause, each of which was for a total of up to 408 days, up to a maximum of \$320,000. For penalty purposes, the duration is from at least July 23, 2013 to September 3, 2014.

Response: Paragraph 97 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

98. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty, as required by the Consolidated Rules of Practice, taking into account the size of the business, the economic impact of the penalty on the business, Respondent's prior compliance history and good faith efforts to comply, the duration of the violation, payment by Respondent of any penalties previously assessed for the same violation, any economic benefit or savings accrued

to Respondent resulting from the violation, and the seriousness of the violation. To assess a penalty for the alleged CAA violations in this Complaint, Complainant will take into account the particular facts and circumstances of EPA's Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" (June 2012) (the "CAA Penalty Policy"). A copy of the CAA Penalty Policy is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case.

Response: Paragraph 98 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

EPCRA PENALTIES

99. Based on the foregoing allegations and pursuant to the authority of Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), the Federal Civil Penalties Inflation Act of 1990, 28 U.S.C. §§ 2461 et seq., the DCIA, 31 U.S.C. §§ 3701 et seq., and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4, Complainant seeks to assess civil penalties against Respondent of up to \$16,000 per day for the duration of Respondent's violation of the requirement to submit an MSDS or a chemical list for anhydrous ammonia to the SERC, LEPC, and the local fire department within three months after it was first present at the Facility in an amount exceeding the MTL, which violation continued from at least October 23, 2013 through September 3, 2014. Complainant also seeks to assess civil penalties against Respondent of up to \$37,500 per day for the duration of Respondent's violation of the requirement to prepare and submit a Tier 2 form to the SERC, LEPC, and local fire department for calendar years 2013 and 2014 on or before March 1 of the next calendar year, in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), and 40 C.F.R. § 370.42 for anhydrous ammonia, which violation continued from at least March 2, 2014 through March 2, 2015. These violations are significant because failure to report the presence of hazardous chemicals prevents comprehensive planning by federal, state and local authorities to properly prepare for and respond to accidental chemical releases.

Response: Paragraph 99 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

100. In determining the amount of any penalty to be assessed for the EPCRA violations alleged above, in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), EPA will take into account the nature, circumstances, extent and gravity of the violations, and, with respect to the Respondent, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require. To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act; dated September 30, 1999 (the "EPCRA Penalty Policy") and updated penalty matrices, a copy of which is enclosed with this Complaint. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

Response: Paragraph 100 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

101. Pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed. Any request for a hearing must be included in Respondent's written Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

Response: Respondent hereby invokes its right to request a hearing.

102. In its Answer, a Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts the Respondent intends to place at issue.

Response: Paragraph 102 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

103. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Wanda Santiago
Regional Hearing Clerk U.S. EPA, Region 1
5 Post Office Square Suite 100 (ORA18-1)
Boston, MA 02109-3912

Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action, to Laura J. Berry, the attorney assigned to represent EPA and who is designated to receive service in this matter at:

Laura J. Berry
Enforcement Counsel U.S. EPA, Region 1
5 Post Office Square Suite 100 (OESO4-2) Boston, MA 02109-3912
Tel: (617) 918-1148

Response: Paragraph 103 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

104. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

Response: Paragraph 104 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

105. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

Response: Paragraph 105 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

VII. INFORMAL SETTLEMENT CONFERENCE

106. Whether or not a hearing is requested upon the filing of an Answer, Respondent may confer informally with EPA concerning the alleged violations, the amount of any penalty, and/or the possibility of settlement. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter. EPA has the authority to adjust penalties, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order.

Response: Paragraph 106 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

107. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondent or its representative should contact Laura J. Berry, Enforcement Counsel, at (617) 918-1148.

Response: Paragraph 107 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

VIII. CONTINUED COMPLIANCE OBLIGATION

108. Neither assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, and 40 C.F.R. Part 370.

Response: Paragraph 108 of the Complaint states legal conclusions rather than factual allegations, and therefore no response is required. To the extent a response is required, the allegations are denied.

AFFIRMATIVE DEFENSES

Respondent RBF Frozen Desserts, LLC states the following affirmative defenses to the Complaint:

1. Respondent disputes the penalty proposed by Complainant as inappropriate and unwarranted based upon the allegations of the Complaint.
2. Respondent states that it has no ability to pay the proposed penalties due to extreme financial distress.
3. Respondent states that the Complainant's Claims for Relief are unconstitutional due to vagueness and overbreadth, denying Respondent its due process rights.
4. Respondent reserves its right to present any other defenses to the Complaint in the future.
5. Respondent has created no danger to health and public safety or human welfare, nor any danger to the environment. The absence of harm has not adequately been considered as a mitigating factor in connection with the penalty assessment.
6. Complainant's penalty assessment constitutes an abuse of discretion.

7. Respondent states that it no longer operates the Facility, thereby limiting the public's interest in assessing penalties.

8. Respondent states that it was solely the tenant of the Facility and not the owner, and is therefore not the proper Respondent in this Complaint.

REQUEST FOR A HEARING

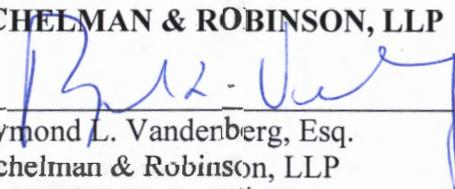
Based on the above, Respondent hereby requests a hearing to dispute the allegations of the Complaint as well as the proposed penalty assessment.

Dated: New York, New York
January 27, 2017

Respectfully submitted,

MICHELMAN & ROBINSON, LLP

By: _____


Raymond L. Vandenberg, Esq.

Michelman & Robinson, LLP

800 Third Avenue, 24th Floor

New York, New York 10022

Tel: 212.730.7700

Fax: 212.730.7725

E-mail: rvandenberg@mrllp.com

Attorneys for RBF Frozen Desserts LLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the matter of)

RBF FROZEN DESSERTS LLC)

240 Park Road, Unit 3)
West Hartford, CT 06119)

Respondent)

Proceeding under Section 113 of the Clean Air Act,)
42 U.S.C. § 7413(d), and Section 325(c) of the)
Emergency Planning and Community Right-to-)
Know Act, 42 U.S.C. § 11045(c))

Docket Nos. CAA-01-2016-0068,
EPCRA-01-2016-0069

CERTIFICATE OF SERVICE

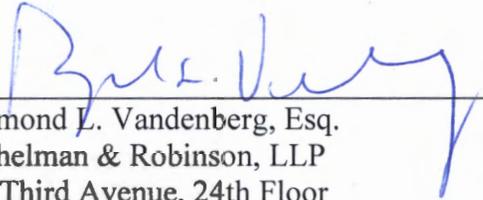
I hereby certify that the Answer and Affirmative Defenses to Complaint and
Request for Hearing has been sent via Federal Express to the following persons on the date noted
below:

Laura J. Berry, Esq.
Enforcement Counsel
US EPA, Region 1
5 Post Office Square, Suite 100 (OES04-02)
Boston, Massachusetts 02109-3912

Wanda Santiago
Regional Hearing Clerk
US EPA, Region 1
5 Post Office Square, Suite 100 (ORA18-1)
Boston, Massachusetts 02109-3912

Cynthia A. Lewis, Esq.
Senior Enforcement Counsel
US EPA, Region 1
5 Post Office Square, Suite 100 (OES04-3)
Boston, Massachusetts 02109-3912

Dated: New York, New York
January 27, 2017


Raymond L. Vandenberg, Esq.
Michelman & Robinson, LLP
800 Third Avenue, 24th Floor
New York, New York 10022
Tel: 212.730.7700
Fax: 212.730.7725
E-mail: rvandenberg@mrlp.com
Attorneys for RBF Frozen Desserts LLC