

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)
)
)
Giant Eagle, Inc.)
101 Kappa Drive)
Pittsburgh, Pennsylvania 15238)
)
Respondent.)
)
)
Giant Eagle Fresh Foods)
2500 Lovi Road)
Freedom, Beaver County, PA 15042)
)
and)
)
)
OK Grocery Perishables Warehouse)
735 Beechnut Drive)
Pittsburgh, Allegheny County, PA 15203)
)
Facilities.)

EPA Docket Number
CAA-03-2018-0097

U.S. EPA-REGION 3-RHC
FILED-28SEP2018PM1:26

**Proceedings Pursuant to Section 112(r)
and 113 of the Clean Air Act,
42 U.S.C. §§7412(r) and 7413**

CONSENT AGREEMENT
STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 113(d) of the Clean Air Act, as amended (the "CAA"), 42 U.S.C. § 7413(d). The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency ("EPA"), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has re-delegated these authorities to the Director of the Hazardous Site Cleanup Division, EPA Region III ("Complainant"). Further, this Consent Agreement is proposed and entered into under the authority provided by 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 parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. § 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent Giant Eagle, Inc. admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Consent Agreement.
4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations in this proceeding only.

FINDINGS OF FACT

5. Respondent is a Pennsylvania corporation with a headquarters located at 101 Kappa Drive, Pittsburgh, PA 15238.
6. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
7. At all times relevant to this CA/FO, Respondent owned and operated two food warehousing facilities: one located at 2500 Lovi Road, Freedom, Beaver County, Pennsylvania 15042 (d/b/a Giant Eagle Fresh Foods Manufacturing Warehouse; "Fresh Foods"); and "OK Grocery Perishables Warehouse," located at 735 Beechnut Drive, Allegheny County, Pittsburgh, Pennsylvania 15205 (d/b/a OK Grocery Perishables Warehouse; "OK Grocery") (collectively, "the Facilities"). Fresh Foods is used for food manufacturing and refrigerated warehouse and storage. OK Grocery is used for refrigerated storage.
8. Respondent, as owner/operator of the Facilities, has handled and/or stored anhydrous ammonia at an amount greater than the threshold quantity of 10,000 pounds in a process since at least 1999 at the OK Grocery Facility and since 2009 at the Fresh Foods Facility.
9. On January 26, 2017, EPA conducted a compliance inspection at the Fresh Foods Facility, as well as a records review of Fresh Foods risk management plan (submitted to EPA initially on October 14, 2009, with a resubmission on May 29, 2014), to determine whether the Fresh Food Facility was in compliance with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the risk management program ("RMP") regulations found at 40 C.F.R. Part 68, the Chemical Accident Prevention Provisions.

10. According to Fresh Foods' risk management plan, the Fresh Foods Facility has utilized anhydrous ammonia, Chemical Abstracts Service ("CAS") Number 7664-41-7, at the Facility in its ammonia refrigeration system since at least June 21, 1999, for refrigeration and product storage in its prepared foods manufacturing processes. According to the Fresh Foods risk management plan, the Fresh Foods Facility has handled and stored more than 10,000 pounds of anhydrous ammonia in its ammonia refrigeration system since September 11, 1999.

11. An RMP compliance inspection was not conducted at the OK Grocery Facility. However, on April 4, 2017, EPA issued a request for information to Respondent concerning the OK Grocery Facility, pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, in order to ascertain information regarding the refrigeration system at the OK Grocery Facility to determine whether the Facility was in compliance with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the RMP regulations, 40 C.F.R. Part 68. EPA received Respondent's response to the April 4, 2017 information request on May 12, 2017.

12. Respondent submitted an initial risk management plan for the OK Grocery Facility on July 12, 1999, with resubmissions on June 23, 2004, June 24, 2009 and May 2, 2014. According to the risk management plan and information submitted by Respondent in response to EPA's information request, the OK Grocery Facility has handled and stored approximately 20,000 pounds of anhydrous ammonia in its ammonia refrigeration system since at least July 12, 1999.

13. Anhydrous ammonia is an irritant and is corrosive to the skin, eyes, respiratory tract and mucous membranes. Exposure to liquid ammonia or rapidly expanding gases may cause severe chemical burns and frostbite to the eyes, lungs and skin. Skin and respiratory diseases could be aggravated by exposure.

**FINDINGS OF FACT RELATED TO THE
VIOLATIONS OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

14. The findings of fact and conclusions of law contained in Paragraphs 1 through 13 of this CA/FO are incorporated by reference herein as though fully set forth at length.

15. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).

16. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7), 42 U.S.C. § 7412(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7). The list of regulated substances and threshold levels can be found in 40 C.F.R. § 68.130.

17. On June 20, 1996, EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, also known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. The regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program is described in a risk management plan that must be submitted to EPA. The risk management plan must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in response to an accidental release of a regulated substance, so as to protect human health and the environment.

18. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996 and the subsequent Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$46,192 per day for each violation of Section 112(r) of the CAA that occurs after November 2, 2015, where penalties are assessed on or after January 15, 2018. Section 113(d)(1)(B) limits this authority, in relevant part, to matters where the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a longer period of violation is appropriate for administrative penalty action. By letter dated December 9, 2016, from Thomas A. Mariani, Jr., Chief, Environmental Enforcement Section, United States Department of Justice (“DOJ”), to Gregory A. Sullivan, Acting Director, Waste and Chemical Enforcement Division, EPA, DOJ and EPA jointly decided that, until September 30, 2018 and with certain exceptions not relevant here, violations of 40 C.F.R. Part 68 are appropriate for administrative penalty action.

19. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source,” as “any buildings, structures, equipment, installations, or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.”

20. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

21. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), in 40 C.F.R. § 68.130.

22. Anhydrous ammonia is listed at 40 C.F.R. § 68.130, with a threshold quantity of 10,000 pounds. Respondent has handled and/or stored more than 10,000 pounds of anhydrous ammonia since at least 1999 at the OK Grocery Facility and since 2009 at the Fresh Foods Facility.
23. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.
24. Recognized and generally accepted good engineering practices for mechanical refrigeration systems using anhydrous ammonia include the following specific industry standards: (a) The American National Standards Institute (“ANSI”)/The International Institute of Ammonia Refrigeration (IIAR) 2, Standard for Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigeration Systems (2014) (hereinafter “IIAR 2”), which provides minimum requirements for equipment, design and installation of closed-circuit ammonia refrigerating systems; (b) IIAR Bulletin Number 114 (“IIAR Bulletin 114”), Identification of Ammonia Refrigeration Piping and System Components (2014) which provides requirements for uniform identification of piping in a closed-circuit ammonia refrigeration system and the related refrigeration system components; and (c) ANSI/American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”) Standard 15, Safety Standards for Ammonia Refrigeration Systems (2013) (“ANSI/ASHRAE Standard 15”) which provides standards for the safe design, construction, installation, and operation of refrigeration systems.
25. Based on available information obtained in connection with EPA’s January 26, 2017 RMP compliance inspection at the Fresh Foods Facility, as well as Respondent’s May 12, 2017 response to EPA’s April 4, 2017 request for information related to the OK Grocery Facility, EPA has determined that Respondent failed to comply with 40 C.F.R. Part 68, which requires Respondent to fully implement a Program 3 Risk Management Program for the Facilities. Respondent failed to comply with the following requirements of Subparts D and G of 40 C.F.R. Part 68:

Process Safety Information

26. The regulations at 40 C.F.R. § 68.65 require the owner or operator to compile process safety information before conducting any process hazardous analysis required by the rule, to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by the processes involving regulated substances. 40 C.F.R. § 68.65(a).
27. The regulations at 40 C.F.R. § 68.65(c)(1)(iii) require the owner or operator to compile information regarding the maximum intended inventory. At the inspection, Respondent was unable to provide EPA with information regarding the maximum intended inventory of anhydrous ammonia at the Fresh Foods Facility.

28. The regulations at 40 C.F.R. § 68.65(d)(1)(iv) require the owner or operator to compile information related to the relief system design and the basis for the design. At the inspection, Respondent was unable to provide EPA with documentation of a relief system design for the Fresh Foods Facility.

29. The regulations at 40 C.F.R. § 68.65(d) require the owner or operator to compile information related to the equipment in the process; 40 C.F.R. § 68.65(d)(2) requires that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices:

a. IIAR 2 (2014) 15.5.1.4 states, “Discharge piping shall be permitted to terminate not less than 7.25 feet (2.2 m) above platform surfaces, such as upper condenser catwalks, that are occupied solely during service and inspection.” During the inspection of the Fresh Foods Facility, EPA inspectors observed that the Facility’s relief vent stack, located between two upper condenser platforms, terminated approximately 2 feet above those platforms.

b. ANSI/ASHRAE 15 (2013) Section 8.11.2.1 states: “Each refrigerating machinery room shall contain a detector, located in an area where refrigerant from a leak will concentrate, that actuates an alarm and mechanical ventilation in accordance with Section 8.11.4 at a value not greater than the corresponding TLV-TWA (or toxicity measure consistent therewith). The alarm shall annunciate visual and audible alarms inside the refrigerating machinery room and outside each entrance to the refrigerating machinery room.” During the inspection of the Fresh Foods Facility, EPA inspectors observed that Respondent failed to have audible/visual alarms outside each entrance to the refrigerating machinery room and inside the room itself. In addition, based upon Respondent’s May 12, 2017 response to EPA’s request for information concerning the OK Grocery Facility, audible/visual alarms have not been installed at each entrance to the refrigerating machinery room, or inside the room itself.

Process Hazard Analysis

30. The regulations at 40 C.F.R. § 68.67(e) require the owner or operator to establish a system to promptly address the findings and recommendations of a process hazard analysis (PHA), assure that the recommendations are resolved in a timely manner and that resolution is documented, document what actions are to be taken, and develop a written schedule of when these actions are to be completed. During the inspection, Respondent was unable to produce for EPA inspectors documentation regarding implementation of actions recommended by PHAs undertaken at the Fresh Foods Facility, and EPA inspectors determined that Respondent had no system in place to document that PHA recommendations are addressed.

Training

31. The regulations at 40 C.F.R. § 68.71(c) require that the owner or operator prepare a training record for each employee involved in operating a process which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the

training. During the inspection, Respondent provided to EPA inspectors a procedure for documentation of employee training for the Fresh Foods Facility, however, EPA inspectors observed that Respondent failed to complete documentation of the initial training for the refrigeration system operator.

Mechanical Integrity

32. The regulations at 40 C.F.R. § 68.73 require that Respondent establish and implement written procedures to maintain the ongoing integrity of process equipment, conduct inspections and tests on process equipment and document the outcome of the inspections and tests, and correct deficiencies in equipment in a safe and timely manner. 40 C.F.R. § 68.73(b)(d)(e). During the inspection of the Fresh Foods Facility, EPA inspectors identified several mechanical integrity deficiencies, including excessive ice buildup and visible vapor barrier damage on insulated ammonia piping associated with the low temperature recirculator, ice buildup and visible vapor barrier failure damage on the low temperature recirculator vessel, and excessive ice buildup on valve stems on the refrigeration system causing apparent inoperability of the valves. According to Respondent's documentation of inspections and tests, these issues were not identified by Facility inspections despite checks for these types of issues being written into the mechanical integrity plan for the Fresh Foods Facility. Additionally, EPA determined that action items listed in the 2013 System Mechanical Integrity Evaluation for the Fresh Foods Facility (identified equipment deficiencies) had not been completed as of the EPA inspection date.

Compliance Audit

33. The regulations at 40 C.F.R. § 68.79(d) require the owner or operator to determine and document an appropriate response to each finding of the compliance audit required by 40 C.F.R. § 68.79(b). During the inspection, EPA inspectors determined that Respondent failed to document the completion of action items from previous compliance audits for the Fresh Foods Facility. Several action items required to be documented as completed were carried over from one compliance audit to the next.

Risk Management Plan

34. 40 C.F.R. § 68.190(b)(5) requires that Respondent revise and update the risk management plan within six (6) months of a change that requires a revised PHA or hazard review. At the inspection, EPA inspectors determined that Respondent failed to update the risk management plan for the Fresh Foods Facility related to a change requiring a revised PHA: an increase in anhydrous ammonia with the addition of system component in 2015. A new PHA was conducted on April 24, 2015 when a new evaporative condenser was installed in the system and an additional 1,500 pounds of ammonia was added to the system. However, at the time of the inspection, the risk management plan had not been updated since 2014.

35. On January 8, 2018, Respondent submitted a report to EPA which summarizes a series of corrective actions voluntarily undertaken by Respondent at each of the Facilities, in connection with the CAA Section 112(r)(7) violations found at the Fresh Foods Facility during EPA's January 26, 2017 RMP compliance inspection, as well as the corrective action undertaken to

address the Respondent's failure to design its ammonia refrigeration room at the OK Grocery Facility in accordance with industry standards.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATIONS OF SECTION 112(r) OF THE CLEAN AIR ACT**

36. The findings of fact and conclusions of law contained in Paragraphs 5 through 35 of this CA/FO are incorporated by reference herein as though fully set forth at length.

37. Anhydrous ammonia is a regulated substance pursuant to Section 112(r)(2) and (3) of the CAA, 42 U.S.C. § 7412(r)(2) and (3), and is listed at 40 C.F.R. § 68.130, with a threshold quantity of 10,000 pounds.

38. At all times relevant to this Consent Agreement, anhydrous ammonia has been present in a process at the Facilities in an amount exceeding its threshold quantity.

39. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

40. Respondent has been the owner and operator of a "stationary source," as the term is defined at 40 C.F.R. § 68.3, since at least 1999.

41. Respondent is subject to the requirements of Section 112(r) of the CAA, 40 U.S.C. § 7412(r), and 40 C.F.R. Part 68, because it is the owner and/or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

42. The Facilities are each a Program 3 Facility under the Chemical Accident Prevention Provisions, in accordance with 40 C.F.R. § 68.10(d).

43. Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its regulations at 40 C.F.R. Part 68 Subpart D and G. Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

SETTLEMENT

44. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), in the amount of SEVENTY THOUSAND, SIX HUNDRED AND FORTY-EIGHT DOLLARS (\$70,648).

PAYMENT TERMS

45. Respondent consents to the issuance of this Consent Agreement and consents, for purposes of settlement, to the payment of the civil penalty cited in the foregoing Paragraph.

46. The Civil Penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CA/FO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, Respondent shall pay the civil penalty of SEVENTY THOUSAND, SIX HUNDRED AND FORTY-EIGHT DOLLARS (\$70,648), no later than thirty (30) days after the date on which a copy of the CAFO is mailed or hand-delivered to Respondent by either cashier's check, certified check, or electronic wire transfer, as set forth in the following paragraphs.

47. Payment of the \$70,648 civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, CAA-03-2018-0097;
- b. All checks shall be made payable to **United States Treasury**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Jessica Henderson (513-487-2718)

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

U.S. EPA
Cincinnati Finance
26 W. Martin Luther King Drive, MS-002
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

U.S. Treasury REX /Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Randolph Maxwell 202-874-3720;
or REX, 1-866-234-5681

- h. Online Payment Option: WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

<http://www.epa.gov/ocfo/finservices/make a payment.htm>

48. Respondent shall submit copies of checks, verification of wire transfer or ACH to the following persons:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103
R3_Hearing_Clerk@epa.gov

and

Dennis M. Abraham
Senior Assistant Regional Counsel
U.S. EPA, Region III
Mail Code 3RC10
1650 Arch Street
Philadelphia, PA 19103

49. The CAA Penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68 (June 2012).

50. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment in accordance with this CA/FO or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

51. In accordance with 40 C.F.R. § 13.11(a)(1), interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this fully executed CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

52. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the penalties become due and payable and an additional \$15.00 for each subsequent thirty (30) day period the penalties remain unpaid.

53. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

54. Failure by Respondent to pay the CAA civil penalty assessed by the Final Order in full in accordance with this CA/FO may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

55. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2).

56. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

57. This CA/FO resolves only the civil penalty claims for the specific violations alleged in this Consent Agreement. Complainant reserves the right to commence action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nothing in this CA/FO shall be construed to limit the United States authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the CAA the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

58. By signing this Consent Agreement, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.

59. By signing this Consent Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

60. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

61. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

62. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

63. Each party to this action shall bear its own costs and attorney's fees.

FOR THE RESPONDENT: GIANT EAGLE, INC.

A handwritten signature in blue ink, appearing to read "J. Hurley", written over a horizontal line.

Joseph L. Hurley
Senior Vice President, Supply Chain
Giant Eagle, Inc.

A handwritten date "9/13/18" in blue ink, written over a horizontal line.

DATE

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Karen Melvin, Director
Hazardous Site Cleanup Division

SEP 25 2018

DATE

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

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and)	
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OK Grocery Perishables Warehouse)	
735 Beechnut Drive)	
Pittsburgh, Allegheny County, PA 15203)	
)	
Facilities.)	

FINAL ORDER

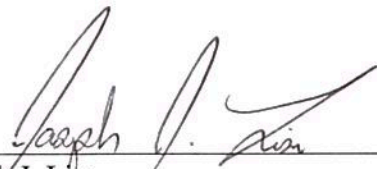
Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Giant Eagle, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice 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 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory factors set forth in Section 113(e) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(e), and 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).

NOW, THEREFORE, PURSUANT TO Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **SEVENTY THOUSAND, SIX HUNDRED AND FORTY-EIGHT DOLLARS (\$70,648)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Sept. 26, 2018
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:)	
)	
)	EPA Docket Number
Giant Eagle, Inc.)	CAA-03-2018-0097
101 Kappa Drive)	
Pittsburgh, Pennsylvania 15238)	
)	
Respondent.)	
)	
)	Proceedings Pursuant to Section 112(r)
Giant Eagle Fresh Foods)	and 113 of the Clean Air Act,
2500 Lovi Road)	42 U.S.C. §§7412(r) and 7413
Freedom, Beaver County, PA 15042)	
)	
and)	
)	
OK Grocery Perishables Warehouse)	
735 Beechnut Drive)	
Pittsburgh, Allegheny County, PA 15203)	
)	
Facilities.)	

CERTIFICATE OF SERVICE

I certify that on SEP 26 2018, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to the following person, in the manner specified below, at the following address:

Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Alan S. Miller, Esquire
Houston Harbaugh
Three Gateway Center, 22nd Floor
401 Liberty Avenue
Pittsburgh, PA 15222
milleras@hh-law.com
Tele: (412) 288-4004
Fax: (412) 281-4499
(Counsel for Respondent, Giant Eagle, Inc.)

Copy served via **Hand Delivery or Inter-Office Mail** to:

Dennis M. Abraham
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC10)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: SEP 26 2018

Berlin Exposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 7008 0500 000157529566