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

MAY 0 6 2014

REPLY TO THE ATTENTION OF:
SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jaclyn Shoshana Levine
Attorney and Counselor at Law
Miller Canfield
One Michigan Avenue, Suite 900
Lansing, Michigan 48933

Re: **Coca-Cola Refreshments USA, Inc., Paw Paw, Michigan**
Consent Agreement and Final Order
Docket No. **CAA-05-2014-0026**

Dear Ms. Levine,

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on **CAA-05-2014-0026**. Please inform your client of their obligation to pay a civil penalty in the amount of $165,900 in the manner prescribed in paragraphs 36-41 and please note that your client must reference their check with the docket number.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Louise Gross, Regional Counsel, at (312) 866-6844. Thank you for your assistance in resolving this matter.

Sincerely yours,

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

Enclosure

cc. Louise Gross, ORC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of: **Coca-Cola Refreshments USA, Inc.** **Paw Paw, Michigan,** **Respondent.**	**Proceeding to Assess a Civil Penalty Under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)** **Docket No.** CAA-05-2014-0026

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations.

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. Respondent is Coca-Cola Refreshments USA, Inc. (Respondent), a corporation doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. In order to resolve this matter without litigation, Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

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

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

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

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

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include

monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

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

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

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

15. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated "Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7)," 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (Risk Management Program Regulations).

16. Under 40 C.F.R. § 68.3, "stationary source" is defined to mean "any buildings,

structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur."

17. Under 40 C.F.R. § 68.3, "process" is defined to mean "any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities."

18. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed anhydrous ammonia (CAS No. 7664-41-7) as a substance which, in the case of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The Administrator has further identified a threshold quantity of 10,000 lbs. for anhydrous ammonia (CAS No. 7664-41-7) for determining whether sources are subject to the Risk Management Program. 40 C.F.R. § 68.130, Tables 1 and 2.

19. 40 C.F.R. § 68.115 provides that a "threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold."

20. 40 C.F.R. § 68.12(a) requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided in 40 C.F.R. §§68.150 through 68.185.

21. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirements of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 as provided in 40 C.F.R. §68.10(d) shall meet additional requirements identified at 40

C.F.R. § 68.12(d).

22. Section 113(d) of the Act, 42 U.S.C. §7413(d), and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to $37,500 per day of violation up to a total of $295,000 for each violation of Section 112(r) of the Act that occurred after January 12, 2009 and before December 6, 2013.

23. Section 113(d)(1) of the Act, 42 U.S.C. §7413(d), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

24. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

Factual Allegations and Alleged Violations

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

26. Respondent owns and operates a facility located at 38279 Red Arrow Highway, Paw Paw, Michigan that has a refrigeration system which consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person (the Paw Paw Facility).

27. On June 21, 2004, under Section 112(r) of the Act, 42 U.S.C. § 7412(r), and implementing regulations at 40 C.F.R. Part 68, Respondent submitted to U.S. EPA an RMP for the Paw Paw Facility. EPA received the RMP on June 22, 2004.

28. According to the RMP submitted to U.S. EPA by Respondent, the Paw Paw Facility:

a. fell within NAICS Code 311421, as "fruit and vegetable canning";

b. used anhydrous ammonia as a process chemical during its operations; and

c. held at least 10,000 lbs. of anhydrous ammonia.

29. The Paw Paw Facility is a "stationary source," as defined at 40 C.F.R. § 68.3.

30. On June 21, 2004, having held for use in its operations at the Paw Paw Facility 10,000 lbs. or more of anhydrous ammonia, Respondent exceeded the applicability threshold established by 40 C.F.R. § 68.130, and became subject to 40 C.F.R. Part 68.

31. For purposes of compliance with 40 C.F.R. Part 68 in its RMP, Respondent has acknowledged that it was required to meet Program 3 eligibility requirements at the Paw Paw Facility.

32. On September 1, 2011, an authorized representative of U.S. EPA conducted an inspection at the Paw Paw Facility to determine its compliance with 40 C.F.R. Part 68.

33. Based on the inspection conducted on September 1, 2011 and a review of additional information received by U.S. EPA subsequent to that date, it has identified the following alleged violations by Respondent of the Risk Management Program Regulations:

a. Failure to develop a management system to oversee the implementation of the risk management program elements, as required under 40 C.F.R. § 68.15(a).

b. Failure to determine the worst-case release quantity to be the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity, as required under 40 C.F.R. § 68.25(b)(1).

c. Failure to establish a system to promptly address the findings and recommendations by a team with expertise in engineering and process operations; assure that the recommendations are resolved in a timely manner and documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule

of when these actions are to be completed; and communicate the actions to operating, maintenance, and other employees whose work assignments are in the process and who may be affected by the recommendations, as required under 40 C.F.R. § 68.67(e).

d. Failure to update and revalidate the process hazard analysis by the team every five years after the completion of the initial process hazard analysis to assure that the process hazard analysis is consistent with the current process, as required under 40 C.F.R. § 68.67(f).

e. Failure to establish a written procedure to maintain the on-going integrity of the process, as required under 40 C.F.R. § 68.73(b).

f. Failure to train each employee involved in maintaining the on-going integrity of the process equipment, as required under 40 C.F.R. § 68.73(c).

g. Failure to follow the frequency of inspections and tests of process equipment that are consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience, as required under 40 C.F.R. § 68.73(d)(3).

h. Failure to correct deficiencies in equipment that is outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation, as required under 40 C.F.R. § 68.73(e).

i. Failure to inform and train employees involved in operating a process and maintenance and contract employees whose job tasks would be affected by a change in the process in the change prior to start-up of the process or affected part of the process, as required under 40 C.F.R. § 68.75(c).

j. Failure to promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected, as required under 40 C.F.R. § 68.79(d).

k. Failure to initiate incident investigations no later than 48 hours following an incident, as required under 40 C.F.R. § 68.81(b).

l. Failure to establish an incident investigation team that consists of at least one person knowledgeable in the process involved, as required under 40 C.F.R.§ 68.81(c).

m. Failure to include the date the investigation began in incident investigation reports, as required under 40 C.F.R. § 68.81(d)(2).

n. Failure to include the factors that contributed to the incident in investigation reports, as required under 40 C.F.R. § 68.81(d)(4).

o. Failure to include any recommendations resulting from incident investigations in the

incident investigation reports, as required under 40 C.F.R. § 68.81(d)(5).

p. Failure to establish a system to address and resolve incident investigation report findings and recommendations, and document resolution and corrective actions, as required under 40 C.F.R. § 68.81(e).

q. Failure to submit corrected emergency contact information within one month of a change, as required under 40 C.F.R. § 68.195(b).

34. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

35. Accordingly, the above-described alleged violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Civil Penalty

36. Based on an analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation and prompt compliance, Complainant has determined that an appropriate civil penalty to settle this action is $ 165,900.00.

37. Within 30 days after the effective date of this CAFO, Respondent must pay the $ 165,900.00 civil penalty by sending a cashier's or certified check, by regular U.S. Postal Service mail, payable to the "Treasurer, United States of America," to:

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

The check must note "Coca-Cola Refreshments USA" and the docket number of this CAFO.

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

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Monika Chrzaszcz, (SC-5J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Louise Gross, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

40. If Respondent does not pay timely the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

41. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In

addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

42. This CAFO resolves Respondent's liability only for federal civil penalties for the violations originally alleged in the Notice of Intent to File a Civil Administrative Complaint issued by U.S. EPA on March 12, 2013 and alleged in this CAFO.

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

44. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 42, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

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

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

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

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

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

50. The effective date of this CAFO is the date when this CAFO is filed with the Regional Hearing Clerk's office.

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of Coca-Cola Refreshments USA, Inc.
Docket No.

Coca-Cola Refreshments USA, Inc., Respondent

Date: 4/22/14 By: _____
James Chris Gaffney,
Senior Vice President, Technical Officer
Coca-Cola Refreshments USA, Inc.

United States Environmental Protection Agency, Complainant

4/30/2014 _____
Date Richard C. Karl, Director
for Superfund Division

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5-2-2014
Date

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

CAA-05-2014-0026

Certificate of Service

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

Jaclyn Shoshana Levine
Attorney and Counselor at Law
Miller Canfield
One Michigan Avenues, Suite 900
Lansing, Michigan 48933

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

Dated this 6th day of May, 2014.

Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5