

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

In the Matter of:	:	
	:	
MDV SpartanNash, LLC	:	U.S. EPA Docket No.
P.O. Box 8700	:	CAA-03-2021-0045
850 76 th Street, S.W.	:	
Grand Rapids, MI 49518,	:	Proceeding under Sections 112(r) and 113 of the
	:	Clean Air Act, 42 U.S.C. §§ 7412(r) and 7413
Respondent.	:	
	:	
MDV SpartanNash, LLC	:	
1133 Kingwood Avenue	:	
Norfolk, VA 23502,	:	
	:	
Facility.	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and MDV SpartanNash, LLC (“MDV”) (referred to as “Respondent”) (Complainant and Respondent are collectively the “Parties”), pursuant to Section 113(d) of the Clean Air Act, as amended (the “CAA”), 42 U.S.C. § 7413(d) and 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. Section 113 of the CAA vests the President of the United States with the authority to assess penalties and undertake other actions required by this Consent Agreement, which authority has been delegated to the Administrator of the U.S. Environmental Protection Agency. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under the CAA for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Administrator and the Attorney General, each through its respective delegates, have jointly determined that this administrative penalty action is appropriate.

EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Respondent is a limited liability company organized under the laws of Delaware.
14. As a limited liability company, Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is subject to the assessment of civil penalties for the violations alleged herein.

15. Respondent owns and operates a food distribution center located at 1133 Kingwood Avenue in Norfolk, Virginia (the “Facility”).
16. 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).
17. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), known as the “General Duty Clause,” the 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 identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.
18. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated 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, the 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). The list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.
19. Regulated substances include, but are not limited to, regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, and chemicals on the list of extremely hazardous substances published pursuant to the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11011 *et seq.*, at 40 C.F.R. Part 355, Appendices A and B. The legislative history of the 1990 Clean Air Act Amendments intended that the term “extremely hazardous substance” include any agent “which may or may not be listed or otherwise identified by any Government agency which may as the result of short-term exposures associated with releases to the air cause death, injury or property damage due to its toxicity, reactivity, flammability, volatility, or corrosivity.” Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Report No. 228, 101st Congress, 1st Session 211 (1989).
20. Ammonia is an extremely hazardous substance listed in accordance with CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), in the list of substances compiled at 40 C.F.R. § 68.130.
21. EPA conducted an inspection of the Facility on October 23, 2018 (“Inspection”), to assess compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r). On July 8, 2020, EPA sent MDV a Show Cause Letter for alleged violations identified during the Inspection. On August 5, 2020, MDV responded to EPA’s Show Cause Letter providing additional information related to the violations.

22. The Facility has two separate ammonia refrigeration systems. The “Chill Side” contains about 2,288 pounds of ammonia; the “Freezer Side” contains about 7,414 pounds of ammonia.
23. The Chill and Freezer Sides are each contained within a separate refrigerating machinery room (also known as a “machinery room”).
24. MDV has indicated to EPA that although MDV’s Facility did not exceed the threshold quantity of ammonia in a process listed at 40 C.F.R. 68.130 requiring implementation of a Risk Management Plan (RMP), under 42 U.S.C. § 7412(r)(7) and the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, MDV developed an RMP and a Process Safety Management Plan to address ammonia risks related to the Facility’s refrigeration systems.
25. EPA’s Inspection revealed the following instances in which Respondent failed to comply with the obligations under Section 112(r)(1) of the CAA to design and maintain a safe facility taking such steps as are necessary to prevent releases because the Facility did not provide protections consistent with applicable industry standards.

**Count I—No Audible and Visual Alarms Inside or Outside Chill Side
Machinery Room Entrance**

26. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
27. The relevant industry standards are:
 - a. ANSI/ASHRAE, Standard 15-2016, Safety Standard for Refrigeration Systems, Section 8.11.2.1 (emphasis added)

“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.*”
 - b. ANSI/IIAR 2-2014, Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems, Section 16.13.1.3

“Audible and visual alarms shall be provided inside the room to warn that access to the room is restricted to authorized personnel and emergency responders when the alarm has activated. Additional audible and visual alarms shall be located outside each entrance to the machinery room.”

28. At the time of the Inspection, EPA observed that there was no audible or visual alarm (a) inside the machinery room on the Chill Side or (b) outside the door leading to the machinery room on the Chill Side. EPA also observed that there was a functional and audible alarm outside of the Freezer Side machinery room.
29. At the time of the Inspection, Respondent failed to comply with the obligation under Section 112(r)(1) of the CAA to design and maintain a safe facility taking such steps as are necessary to prevent releases because the Facility did not provide protections consistent with ANSI/ASHRAE, Standard 15-2016, Section 8.11.2.1 and ANSI/IIAR 2-2014, Section 16.13.1.3.
30. In failing to comply with Section 112(r)(1), Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

**Count II—Ammonia Refrigeration Pipes Piercing the Walls of the Chill Side
Machinery Room not Properly Sealed**

31. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
32. The relevant industry standards are:
 - a. ANSI/ASHRAE Standard 15-2016, Safety Standard for Refrigeration Systems

Section 8.12 (Machinery Room, Special Requirements)

“In cases specified in the rules of Section 7.4, a refrigerating machinery room shall meet the following special requirements in addition to those in Section 8.11:
....
“e. All pipes piercing the interior walls, ceiling, or floor of such rooms shall be tightly sealed to the walls, ceiling, or floor through which they pass.”
 - b. ANSI/IIAR 2-2014, Standard for Safe Design of Closed-Circuit Ammonia

Refrigeration Systems, Section 6.6.2

“Pipes penetrating the machinery room separation shall be sealed to the walls, ceiling, or floor through which they pass in accordance with Section 6.2.1. Where Section 6.2.1 requires that the separation have a fire rating, pipe penetrations shall be fire stopped in accordance with the Building Code.”
33. At the time of the Inspection, EPA observed that numerous ammonia refrigeration pipes piercing the exterior walls of the Chill Side machinery room to the outside were not sealed to the walls through which they passed.

34. At the time of the Inspection, Respondent failed to comply with the obligation under Section 112(r)(1) of the CAA to design and maintain a safe facility taking such steps as are necessary to prevent releases because the Facility did not provide protections consistent with ANSI/ASHRAE, Standard 15-2016, Section 8.12 and ANSI/IIAR 2-2014, Section 6.6.2.
35. In failing to comply with Section 112(r)(1), Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

Count III—No Eyewash Stations Inside or Outside the Chill Side Machinery Room or Outside the Freezer Side Machinery Room

36. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
37. The relevant industry standards are:
 - a. ANSI/IIAR 2-2014, Standard for Safe Design of Closed-Circuit Ammonia

Refrigeration Systems, Section 6.7.1

“Each machinery room shall have access to a minimum of two eyewash/safety shower units, one located inside the machinery room and one located outside of the machinery room, each meeting the requirements in Section 6.7.3. Additional eyewash/safety shower units shall be installed such that the path of travel in the machinery room is no more than 55 ft to an eyewash/safety shower unit.”

38. At the time of the Inspection, EPA observed that there was no eyewash station inside or outside the machinery room on Chill Side and there was no eyewash station outside the machinery room on Freezer Side. EPA also observed that the Facility had one eyewash station inside the Freezer Side mechanical room.
39. At the time of the Inspection, Respondent failed to comply with the obligation under Section 112(r)(1) of the CAA to design and maintain a safe facility taking such steps as are necessary to prevent releases because the Facility did not provide protections consistent with ANSI/IIAR 2-2014, Section 6.7.1.
40. In failing to comply with Section 112(r)(1), Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

Count IV—Ammonia Detection Systems in the Chill Side Machinery Room Were Not Set at 25 ppm

41. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
42. The relevant industry standard is:

- a. ANSI/IIAR 2-2014, Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems, Section 6.13.1 (Ammonia Detection and Alarms)

“Machinery rooms shall be provided with ammonia detection and alarm in accordance with Sections 17.2-17.6 and the following features:

1. At least one ammonia detector shall be provided in the room or area;
2. The detector shall activate an alarm that reports to a monitored location so that corrective action can be taken at an indicated concentration of 25ppm or higher.”

43. At the time of the Inspection, EPA observed that the ammonia detection systems in the Chill Side machinery room were set at 100 ppm instead of 25ppm.
44. At the time of the Inspection, Respondent failed to comply with the obligation under Section 112(r)(1) of the CAA to design and maintain a safe facility taking such steps as are necessary to prevent releases because the Facility did not provide protections consistent with ANSI/IIAR 2-2014, Section 16.13.1.
45. In failing to comply with Section 112(r)(1), Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

Count V—Failure to Inspect and Immediately Repair Pipe Insulation on the Freezer Side Machinery Room and Roof

46. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
47. The relevant industry standards are:
- a. IIAR Bulletin No. 110 (3/93), Guidelines for: Startup, Inspection and Maintenance of

Mechanical Refrigerating Systems, Section 6.7.2 (Insulated Piping)

“Any mechanical damage to insulation should be repaired immediately and the vapor seal reinstated to prevent access of water or water vapor which will lead to breakdown of insulation and corrosion of pipework.

At least as part of the annual piping inspection, but preferably more frequently, the external condition of the insulation and supports shall be inspected. Condensation or frosting on the surface of insulated finishes indicates a deterioration or breakdown of the insulation or vapor barrier. Sections of insulation which are obviously in poor condition shall be removed and the integrity of the exposed piping determined with the aid of a non-destructive testing technique, as appropriate. Piping shall be replaced as necessary, and protective coatings, insulation and vapor seal re-applied.”

b. IIAR Bulletin No. 109 (10/97), Guidelines for: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, Section 4.7.5

“Insulated piping showing signs of vapor barrier failure should have the insulation removed and the pipe inspected. The pipe should then be treated in accordance with Section 4.7.3”

48. At the time of the Inspection, EPA observed that liquid ammonia lines inside the machinery room on the Freezer Side showed signs of frost, which indicates a deterioration or breakdown of the insulation or vapor barrier. In addition, piping on the roof of the Freezer Side showed signs of damaged or broken insulation throughout various pipe runs.
49. At the time of the Inspection, Respondent failed to comply with the obligation under Section 112(r)(1) of the CAA to design and maintain a safe facility taking such steps as are necessary to prevent releases because the Facility did not provide protections consistent with IIAR Bulletin No. 110 (3/93), Section 6.7.2.
50. In failing to comply with Section 112(r)(1), Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).
51. The MDV Facility handles and/or stores extremely hazardous substances as the term is used in Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).
52. MDV is, and at times referred to herein was, the operator of a “stationary source,” as the term is defined in Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.
53. As the operator of a stationary source, with respect to the handling and storage of ammonia, MDV has a duty under the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to design and maintain a safe facility taking such steps as are necessary to prevent the accidental release of this extremely hazardous substance to the air.
54. MDV violated the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), by failing to ensure that the storage and use of ammonia at the Facility was designed and maintained safely to prevent accidental releases as set forth above.
55. In failing to comply with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), MDV is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

56. MDV has indicated to EPA that, after receipt of EPA's Inspection Report, MDV corrected all items identified in the Inspection Report as summarized above. In addition, MDV has represented to EPA that it tested the refrigeration piping system, replaced certain piping, and replaced certain piping insulation beyond the areas identified in the Inspection Report.
57. The duration of the violations is calculated from the time of the CAA Inspection on October 23, 2018, to January 22, 2020, which is when Respondent reported to EPA that it had completed the work to resolve the violations set forth herein.

CIVIL PENALTY

58. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **FORTY SEVEN THOUSAND FOUR HUNDRED TWENTY-NINE DOLLARS (\$47,429)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
59. The civil penalty is based upon EPA's consideration of a number of factors, including, the penalty criteria ("statutory factors") set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), including the following: size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to 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), and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
60. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, i.e., CAA-03-2021-0045;
 - b. All checks in payment of the CAA civil penalty shall be made payable to the "United States Treasury";
 - c. All payments made by check in payment of the CAA civil penalty and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077

St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amounts see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's checks or other documentation of payment of the penalties using the method selected by Respondent for payment shall be sent simultaneously to:

Jefferie E. Garcia
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029
garcia.jefferie@epa.gov

61. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
62. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
63. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order 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).
64. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives – Case 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 payment is due and an additional \$15.00 for each

subsequent thirty (30) days the penalty remains unpaid.

65. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 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. 31 C.F.R. § 901.9(d).
66. If Respondent fails to make a full and complete payment of the civil penalty in accordance with the terms of this Consent Agreement and Final Order, the entire unpaid balance of the penalty shall become immediately due and owing. Failure by Respondent to pay the civil penalty may subject Respondent to a civil action to collect the assessed penalties, 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.
67. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

68. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
69. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its respective officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

70. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

71. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CAA or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

72. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CAA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

73. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of each of the Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of each Respondent is acknowledging that they are fully authorized by that Respondent to execute this Consent Agreement and to legally bind that Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

74. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

75. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than

In Re: MDV SpartanNash, LLC
EPA Docket Nos. CAA-03-2021-0045


those expressed in this Consent Agreement and Final Order.

In Re: MDV SpartanNash, LLC
EPA Docket Nos. CAA-03-2021-0045

For Respondent:

MDV SpartanNash LLC

Date: 6/14/21

By: 
David Sisk
President

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____

Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____

By: _____

Jefferie E. Garcia
Sr. Assistant Regional Counsel
U.S. EPA – Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

MDV SpartanNash, LLC
P.O. Box 8700
850 76th Street, S.W.
Grand Rapids, MI 49518,

Respondent.

MDV SpartanNash, LLC
1133 Kingwood Avenue
Norfolk, VA 23502,

Facility.

EPA Docket Nos. CAA-03-2021-0045

FINAL ORDER

**Proceeding under Sections 112(r) and
113 of the Clean Air Act, 42 U.S.C. §§
7412(r) and 7413**

FINAL ORDER

Complainant, the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, MDV SpartanNash, LLC, 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 upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s *Combined Enforcement Policy for CAA Section 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (June 2012), and the statutory factors set forth in Section 113(e) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(e).

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 in the amount of **FORTY-SEVEN THOUSAND FOUR HUNDRED TWENTY-NINE DOLLARS (\$47,429.00)**, in accordance with

the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and the regulations promulgated thereunder.

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.

Date

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