

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

** FILED **
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U.S.EPA - Region 09

IN THE MATTER OF:)

The Vons Companies, Inc.)
3361 Boxford Avenue)
Commerce, CA 90040)

Respondent.)
_____)

Docket No.
CAA(112r)-09-2019-00 83

CONSENT AGREEMENT
AND FINAL ORDER
40 C.F.R. §§ 22.13 and 22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. §§ 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”).
3. Respondent is The Vons Companies, Inc. (“Respondent”), a subsidiary of Safeway, Inc.
4. The Administrator of EPA has delegated to the Regional Administrators the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA. Delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, has re-delegated this authority to the Director of the Enforcement and Compliance Assurance Division. Regional Delegation R9-7-6-A, dated February 11, 2013. On EPA’s behalf, the Director of the Enforcement and Compliance Assurance Division is therefore delegated the authority to

settle civil administrative penalty proceedings under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

5. This Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations.

6. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this CA/FO without adjudication of any issues of law or fact herein. Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

B. GENERAL ALLEGATIONS

7. Respondent owns and operates the Jerseymaid Milk Products facility located at 3361 Boxford Avenue, Commerce, California (“Facility”). Respondent produces and processes dairy and other products at the Facility, including milk, yogurt, and orange juice. These products are stored, processed, and packaged at the Facility prior to distribution.

8. On September 20, 2017, EPA performed an inspection of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), Sections 304-312 of EPCRA, 42 U.S.C. §§ 11004-12, and Section 103 of CERCLA, 42 U.S.C. § 9603(a). Based upon the information gathered during this inspection and subsequent investigation, EPA determined certain alleged violations identified in the Notice of Inspection Findings dated May 14, 2018, and the Notification of Potential Enforcement Action dated August 9, 2018, violated certain provisions of the CAA.

9. In a letter dated February 13, 2019, the United States Department of Justice granted EPA a waiver from the condition specified in Section 113(d) of the CAA, 42 U.S.C. § 7413(d), that the first alleged date of violation occurred no more than one year before the initiation of the administrative action, to allow EPA to pursue certain administrative actions for violations of 40

C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r). This administrative action falls within the scope of that waiver.

10. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations, owners and operators of stationary sources at which a regulated substance is present in more than a threshold quantity (“TQ”) must prepare and implement a risk management plan (“RMP”) to detect and prevent or minimize accidental releases of such substances from the stationary source in order to protect human health and the environment.

11. At all times relevant to this CA/FO, Respondent has been a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

12. At all times relevant to this CA/FO, the Facility has been a “stationary source” as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).

13. At all times relevant to this CA/FO, Respondent has been the “owner or operator” of the Facility as defined by Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9).

14. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7412(r).

15. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

16. Pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), EPA established a TQ for each “regulated substance” at or above which a facility that has such a substance in one or more processes shall be subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). For substances designated as “regulated toxic substances,” the TQs are specified at 40 C.F.R. § 68.130, Table 1.

17. Ammonia (anhydrous) is a “regulated toxic substance” listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), with a TQ of 10,000 pounds. 40 C.F.R. § 68.130, Table 1.

18. At all times relevant to this CA/FO, Respondent had 10,000 pounds or more of ammonia (anhydrous) in one or more processes at its Facility.

C. ALLEGED VIOLATIONS

COUNT I

(Failure to comply with process safety information requirements for labeling)

19. Paragraphs 1 through 18, above, are incorporated herein by this reference as if they were set forth here in their entirety.

20. 40 C.F.R. § 68.65(d)(2) requires owners and operators to document that process equipment complies with recognized and generally accepted good engineering practices (“RGAGEP”). EPA generally determines RAGAGEP by referencing standards published by established industry organizations and manufacturers’ requirements and recommendations.

21. The American National Standards Institute/International Institute of Ammonia Refrigeration (“ANSI/IIAR”) 2-2014, Section 6.15.3 and the American Society of Heating, Refrigeration, and Air Conditioning Engineers (“ASHRAE”) 15-2016, Section 8.11.8, requires that access to the refrigerating machinery room shall be restricted to authorized personnel and that doors be clearly marked or permanent signs shall be posted at each entrance to indicate this restriction.

22. ASHRAE 15-2016, Section 11.2.1, requires that each refrigerating system erected on the premises shall be provided with a legible permanent sign, securely attached and easily accessible, indicating: (a) the name and address of the installer; (b) the refrigerant number and amount of refrigerant; (c) the lubricant identity and amount; and (d) the field test pressure applied. National Fire Protection Association (“NFPA”) 1-2012, Section 53.2.4.1, provides that refrigeration units

or systems shall be provided with the following: (1) name and address of the manufacturer or installer; (2) type and total number of pounds of refrigerant contained in the system; and (3) field test pressure applied.

23. ANSI/IIAR 2-2014, Section 6.15.1 and NFPA 1-2012, Section 53.2.4.1, require buildings and refrigeration systems to have placards to indicate the presence of anhydrous ammonia in accordance with NFPA 704 and the Mechanical Code.

24. ANSI/IIAR 2-2014, Sections 5.14.4.1 and 5.14.4.2, require equipment to have a nameplate with minimum data that describes or defines the manufacturer's information and design limits. The original nameplate for pressure vessels must also be affixed as specified in ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, Section UG-119(e).

25. ANSI/IIAR 2-2014, Section 5.14.4, IIAR Bulletin 109, Section 4.7.6, IIAR Bulletin 114, Section 4.1.1 through 4.1.8, and ANSI/ASME 13.1-2007, require ammonia piping mains, headers, and branches to be identified with the contents (i.e., "AMMONIA"), and also include the physical state of the ammonia, the pressure level of the ammonia (i.e., low or high), the pipe service, and the direction of flow.

26. Based on EPA's inspection and information gathered during EPA's investigation, the entry door to the facility's engine room for ammonia machinery room ("AMR") No. 1 was not marked to limit entry to only authorized personnel.

27. Based on EPA's inspection and information gathered during EPA's investigation, there was no signage available at both AMR No. 1 and AMR No. 2 to indicate who installed the system, the ammonia charge, the oil type in the compressors, and the system test pressures.

28. Based on EPA's inspection and information gathered during EPA's investigation, the high-pressure receiver in AMR No. 2 did not have NFPA placarding to indicate the presence of anhydrous ammonia.

29. Based on EPA's inspection and information gathered during EPA's investigation, the HPR nameplate on AMR No. 2 had been painted over, which prevented information such as maximum allowable working pressure for the vessel to be verified.

30. Based on EPA's inspection and information gathered during EPA's investigation, the ammonia piping was either unlabeled or the labeling was damaged in numerous locations on the roof and on the glycol chiller.

31. By failing to comply with the process safety information requirements for labeling, Respondent failed to document that equipment complies with RAGAGEP, in violation of 40 C.F.R. § 68.65(d)(2).

COUNT II

(Failure to comply with process safety information requirements for emergency switches and notification)

32. Paragraphs 1 through 31, above, are incorporated herein by this reference as if they were set forth here in their entirety.

33. ANSI/IIAR 2-2014, Section 6.12.1 and ASHRAE 15-2016, Section 8.12(h), state that a clearly identified emergency shut-off switch with a tamper resistant cover must be located outside and adjacent to the designated principal machinery room door. The switch shall provide off-only control of refrigerant compressors, refrigerant pumps, and normally closed automatic refrigerant valves located in the machinery room. The function of the switch must also be clearly marked by signage near the controls.

34. ANSI/IIAR 2-2014, Section 6.13.1.3 and ASHRAE 15-2016, Section 8.11.2.1, require AMRs to be equipped with audible and visual alarm devices inside to warn that access to the room

is restricted to authorized personnel and emergency responders when the alarms are activated. The audible and visual alarm devices must also be located outside of each entrance to the AMR.

35. ANSI/IIAR 2-2014, Section 6.14.7.1 and ASHRAE 15-2016, Section 8.12(h), require AMRs to be equipped with emergency ventilation systems that provide not less than 30 air changes per hour based on the gross machinery room volume. Section 6.14.7.2 of ANSI/IIAR 2-2014 requires the emergency mechanical ventilation system to be activated by both an ammonia leak detection system and a manual control switch. NFPA 1-2012, Section 53.2.3.3.1 also states that fans providing emergency purge ventilation for refrigerant escape from a refrigeration room shall have a clearly identified switch of the break-glass type and provide on-only control immediately adjacent to, and outside of, each refrigerant machinery room means of egress.

36. ANSI/IIAR 2-2014, Section 5.14.6, requires that where a windsock, pennant, or other wind indicator is provided, it shall be in accordance with specifications and locations prescribed by emergency planning documents.

37. ANSI/IIAR 2-2014, Section 17.6, requires ammonia leak detection alarms to be identified by signage adjacent to audible and visual alarm devices.

38. Based on EPA's inspection and information gathered during EPA's investigation, there were no emergency shut-off switches to shut down the refrigeration system located outside the interior door to AMR No. 1.

39. Based on EPA's inspection and information gathered during EPA's investigation, there were no auditory or visual alarms present outside any of the AMR entry doors to alert employees of an ammonia release.

40. Based on EPA's inspection and information gathered during EPA's investigation, there were no emergency ventilation manual override switches located outside either the AMR No. 1 or

AMR No. 2 entry doors, which indicated that the AMRs did not have an emergency ventilation system.

41. Based on EPA's inspection and information gathered during EPA's investigation, no windsocks were visible from the alleyway leading to the AMR No. 1 exterior entrance.

42. During EPA's inspection of the Facility, Facility representatives stated that the only ammonia detection alarm light was located in the hallway outside the maintenance shop above an electrical panel. The alarm light was not labeled to indicate the purpose of the alarm. While there are several alarm lights above the ammonia refrigeration system control monitor in the maintenance shop, one set of lights is not labeled to indicate the purpose of the alarms. Although one light was labeled as "Ammonia Sniffer," the ammonia refrigeration technician was not aware of the light's function and whether it was connected to the existing ammonia detection system.

43. By failing to comply with the process safety information requirements for emergency switches and notification, Respondent failed to document that equipment complies with recognized and generally accepted good engineering practices, in violation of 40 C.F.R. § 68.65(d)(2).

COUNT III

(Failure to comply with process safety information requirements for mechanical design)

44. Paragraphs 1 through 43, above, are incorporated herein by this reference as if they were set forth here in their entirety.

45. 40 C.F.R. § 68.65(d)(1)(v) specifies that information pertaining to equipment in the process shall include ventilation system design.

46. ANSI/IIAR 2-2014, Section 6.10.2 and ASHRAE 15-2016, Section 8.11.2, require machinery room doors to be self-closing and tight fitting. Doors that are part of the means of

ingress and egress shall be equipped with panic hardware and shall be side hinged to swing outward for occupants leaving the machinery room in an emergency.

47. ANSI/IIAR 2-2014, Section 6.9.2, states that where a drainage system is not designed for handling oil, secondary coolants, or other liquids that may be spilled, a means shall be provided to prevent such substances from entering the drainage system.

48. ANSI/IIAR 2-2014, Section 6.3.3.2, requires manually operated isolation valves to be identified as being part of the system and be directly operable from the floor or chain operated from a permanent work surface. ASHRAE 15-2015, Section 8.3, states that a clear and unobstructed approach and space must be provided for inspection, service, and emergency shutdown of condensing units, compressor units, condensers, stop valves, and other serviceable components of the refrigerating machinery. Additionally, permanent ladders, platforms, or portable access equipment shall be provided to access this equipment.

49. ANSI/IIAR 2-2014, Section 6.14.3.5, requires AMR exhaust to discharge vertically upward with a minimum discharge velocity of 2,500 ft./min. at the required emergency ventilation flow rate. ANSI/ASHRAE 15-2016, Section 8.11.4. requires the discharge exhaust air from an AMR shall be to the outdoors and in such a manner to not cause a nuisance or danger.

50. ANSI/IIAR 2-2014, Section 6.14.5.3, requires make-up air openings to be covered with a corrosion-resistant screen of not less than one-quarter inch or equivalent protection.

51. NFPA 70-2014, Section 110.12(B), states that there shall to be no damaged parts that adversely affect safe operation or mechanical strength of the equipment, such as parts that are broken, bent, cut, or deteriorated by corrosion, chemical action, or overheating.

52. ANSI/IIAR 2-2014, Section 15.5.1.5, requires the termination of a pressure relief valve ("PRV") to be directed upward and arranged to avoid spraying ammonia on persons in the vicinity.

ANSI/ASHRAE 15-2016, Section 9.7.8.2(d), further provides that the termination point of a vent discharge line shall be made in a manner that prevents discharged refrigerant from spraying directly onto personnel that might be in the vicinity.

53. ANSI/IIAR 2-2014, Section 5.12.1, requires equipment to be accessible for maintenance, as required by the Mechanical Code. ANSI/ASHRAE 15-2016, Section 8.3, further provides that permanent ladders, platforms, or portable access equipment shall be provided in accordance with the requirements of the authority having jurisdiction. The OSHA standards found at 29 C.F.R. § 1910.23(d)(2), state that the minimum perpendicular distance from the centerline of the steps or rungs, grab bars, or both, to the nearest permanent object in the back of the ladder, must be at least 7 inches.

54. ANSI/IIAR 2-2014, Section 6.4, states that combustible materials shall not be stored in machinery rooms outside of approved fire-rated storage containers. NFPA 1-2012, Section 53.3.1.3.1, further provides that flammable and combustible materials shall not be stored in refrigeration machinery rooms except for incidental materials necessary for the safe and proper operation and maintenance of the system.

55. ANSI/IIAR 2-2014, Section 7.2.4, requires equipment to be protected where a risk of physical damage exists. Where equipment containing ammonia is in an area with heavy vehicular traffic during normal operations and a risk of impact exists, vehicle barriers or alternative protection shall be provided in accordance with the Fire Code.

56. Based on EPA's inspection and information gathered during EPA's investigation, there was no emergency ventilation design documentation available to determine if the existing exhaust fans for AMR No. 1 and AMR No. 2 were sufficiently sized. Additionally, no design calculations were provided to determine the size of the PRV discharge headers.

57. Based on EPA's inspection and information gathered during EPA's investigation, neither the interior entry door nor exterior entry door to AMR No. 1 was tight fitting at the bottom. Additionally, the exterior exit doors from AMR No. 1 did not contain panic hardware.

58. Based on EPA's inspection and information gathered during EPA's investigation, the floor drains in AMR No. 1 were not designed to prevent the entry of oil, chemicals, or secondary coolants stored nearby. Additionally, 55-gallon drums of oil were being stored without secondary containment in AMR No. 1.

59. Based on EPA's inspection and information gathered during EPA's investigation, the King Valve on the HPR in AMR No. 2 is located approximately eight feet off the floor and above the vessel. However, there was no permanent ladder or work platform to access the valve in the event of an emergency, and there no chain was installed on the valve so it could be operated on the floor level.

60. Based on EPA's inspection and information gathered during EPA's investigation, exhaust fans from AMR No. 2 discharged horizontally onto the stairway leading to the roof rather than vertically and exhaust ventilation from AMR No. 1 discharged horizontally on the roof rather than vertically.

61. Based on EPA's inspection and information gathered during EPA's investigation, a fabric air filter had been placed over the air intake of AMR No. 2 to prevent dust intrusion. However, no documentation was available to determine if the fabric air filter would impact air flow.

62. During EPA's inspection of the Facility, inspectors observed open electrical conduit in AMR No. 2, the mezzanine area, and on the roof. Additionally, a corroded electrical box was observed on an ammonia evaporator in the cold box.

63. During EPA's inspection of the Facility, inspectors observed many PRV vents on the roof included a "goose-neck" at the discharge that directed the vapors in a downward direction rather than a vertical direction.

64. Based on EPA's inspection and information gathered during EPA's investigation, there was only one functional ladder to access the upper deck level of the roof. Additionally, the Facility had installed permanent electrical conduit across the rungs of the ladder such that personnel needed to climb over process piping and electrical conduit to access the immediate roof level to even gain access to this ladder.

65. During EPA's inspection of the Facility, inspectors observed flammable gas cylinders being stored in the same area as the ammonia containing equipment. Additionally, the propane grill and tanks located adjacent to and under the safety shower, blocking access.

66. During EPA's inspection of the Facility, inspectors observed ammonia piping and ammonia evaporators in the milk and orange juice cooler left unprotected from physical damage by lift trucks stacking product pallets.

67. By failing to comply with the process safety information requirements for mechanical design, Respondent failed to document that equipment complies with RAGAGEP, in violation of 40 C.F.R. §§ 68.65(d)(1)(v) and (d)(2).

COUNT IV

(Failure to comply with the training requirements)

68. Paragraphs 1 through 67, above, are incorporated herein by this reference as if they were set forth here in their entirety.

69. 40 C.F.R. § 68.71 requires an owner or operator to ascertain that each employee involved in operating a process has received the required training. The owner or operator is also required

to prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

70. During EPA's inspection of the Facility, Respondent could not provide documentation that its lead refrigeration system operator had taken formal refrigeration systems training.

71. By failing to ascertain and provide documentation that the lead refrigeration system operator has received the required training, Respondent failed to comply with the training requirements, in violation of 40 C.F.R. § 68.71.

COUNT V

(Failure to comply with mechanical integrity requirements)

72. Paragraphs 1 through 71, above, are incorporated herein by this reference as if they were set forth here in their entirety.

73. 40 C.F.R. § 68.73(d) requires that inspections and tests be performed on process equipment, that the inspection and testing procedures follow RAGAGEP, and that the frequency of inspections and tests of process equipment be consistent with applicable manufacturer's recommendations and good engineering practices. This section also requires owners and operators to document each inspection and test that has been performed on any process equipment.

74. 40 C.F.R. § 68.73(e) requires owners and operators to correct deficiencies in equipment that are outside acceptable limits as defined by the process safety information in 40 C.F.R. § 68.65, before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

75. ANSI/IIAR 2-2014, Section 13.4.2, requires refrigerant piping to be isolated and supported to prevent damage from vibration, stress, corrosion, and physical impact. ANSI/ASHRAE 15-2016, Section 8.10.4, further states that refrigerant piping shall be properly isolated and supported to prevent damaging vibration, stress, or corrosion.

76. ANSI/IIAR 2-2014, Section 5.10.1, requires piping and equipment surfaces not intended for heat exchange to be insulated, treated, or otherwise protected to mitigate condensation and extensive frost buildup where the surface temperature is below the dew point of the surrounding air during normal operation and in an area where condensation and frost could develop and become a hazard to occupants or cause damage to the structure, electrical equipment, or refrigeration system. IIAR Bulletin 109, Section 4.7.5, further provides that insulated piping showing signs of vapor barrier failure should have the insulation removed and be inspected.

77. During EPA's inspection of the Facility, the sensor inside the Culture Room was highlighted in red and the status was "???????", indicating that the sensor was not operation. Although the Facility's mechanical integrity policy states that visual inspections are conducted daily by facility personnel, facility maintenance personnel was not aware of the sensor's status indicating either Respondent's inspection procedures were not being followed or that a more robust system is necessary to alert facility maintenance personnel of safety system failures.

78. Based on EPA's inspection and information gathered during EPA's investigation, the list of recommendations developed from the 2014 seismic evaluation indicated that the seismic recommendations were scheduled for completion in 2015. However, only one recommendation had been complete before EPA's 2017 inspection. Additionally, many of the same seismic recommendations from the 2009 evaluation were included in the 2014 seismic evaluation, which indicates that many recommendations that were discovered nearly eight years before EPA's inspection still had not been addressed.

79. During EPA's inspection of the Facility, inspectors observed piping supports that had collapsed. The sagging piping impacts the electrical and communications cabling in the mezzanine area. On the roof, inspectors observed unsupported ammonia piping that was sagging, ammonia

pipng supported by other piping and electrical conduit using a temporary fabric strap, and an ammonia piping support that was not fastened to the roof.

80. During EPA's inspection of the Facility, inspectors observed that the vapor retarder and insulation on the ammonia piping was either missing or damaged in numerous locations on the roof, at the main shutoff valve on the glycol chiller, and on an evaporator in the cold box.

81. By failing to comply with the mechanical integrity requirements, Respondent is in violation of 40 C.F.R. §§ 68.73(d) and (e).

COUNT VI

(Failure to comply with management of change requirements)

82. Paragraphs 1 through 81, above, are incorporated herein by this reference as if they were set forth here in their entirety.

83. 40 C.F.R. § 68.75(b) requires owners and operators to assure the following considerations are addressed prior to any management of change ("MOC"): (1) the technical basis for the proposed change; (2) impact of change on safety and health; (3) modifications to operating procedures; (4) necessary time period for the change; and (5) authorization requirements for the proposed change.

84. 40 C.F.R. § 68.75(d) requires owners and operators to update such information if a change covered by this paragraph results in a change in the process safety information required by 40 C.F.R. § 68.65.

85. Based on EPA's inspection and information gathered during EPA's investigation, the MOC checklist for the change to a different PRV set pressure showed that signatures by Respondent's maintenance manager were absent from the checklist prepared by RACE Engineering. Respondent's maintenance manager should have signed the checklist in numerous locations, including, after the initial screening of the project with the contract, after a review of the project's

impact on safety and health, and to provide authorization for the change and startup. Without the signatures on the MOC checklist by the maintenance manager, approval of the change and authorization for startup could not be verified.

86. Based on EPA's inspection and information gathered during EPA's investigation, the P&ID for the MOC to replace the C-8 oil separator PRVs with the proper size did not provide information on the original PRV set pressure, the MAWP for the oil separator that the new PRV was designed to protect, or which PRVs will be replaced with the new PRVs set at 250 PSIG. The MOC should have verified that the P&ID was updated with this necessary information.

87. By failing to comply with the management of change requirements, Respondent is in violation of 40 C.F.R. § 68.75(d) and (e).

COUNT VII

(Failure to comply with the compliance audit requirements)

88. Paragraphs 1 through 87, above, are incorporated herein by this reference as if they were set forth here in their entirety.

89. 40 C.F.R. § 68.79(d) requires owners or operators to promptly determine and document an appropriate response to each of the findings of its compliance audit, and to document that deficiencies have been corrected.

90. EPA determined during its inspection that numerous recommendations listed on Respondent's compliance audits in January 2012 and April 2015 remained open. Numerous recommendations included in Respondent's compliance audits were also noted as AOCs during EPA's September 2017 inspection.

91. By failing to promptly determine and document an appropriate response to each of the findings in the compliance audits, and document that deficiencies have been corrected, Respondents are in violation of 40 C.F.R. § 68.79(d).

D. CIVIL PENALTY

92. EPA proposes that Respondent be assessed, and Respondent agrees to pay **ONE-HUNDRED SIXTY-EIGHT THOUSAND AND FORTY-THREE DOLLARS (\$168,043)**, as the civil penalty for the violations alleged herein.

93. The proposed penalty was calculated in accordance with the “Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68” dated June 2012, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. ADMISSIONS AND WAIVER OF RIGHTS

94. For the purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO. Respondent consents to and agrees not to contest EPA’s jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA’s jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

95. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

96. EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

F. PARTIES BOUND

97. This CA/FO shall apply to and be binding upon Respondent, successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section I) and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full and complete settlement of the violations alleged herein.

98. No change in ownership or legal status relating to the Facility will in way alter Respondent's obligations and responsibilities under this CA/FO.

99. Until all the requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

100. The undersigned representative hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. CERTIFICATION OF COMPLIANCE

101. Respondent certifies to EPA that as of the Effective Date it has fully complied with the requirements of Section 112(r) of the CAA that formed the basis for the violations alleged in this CA/FO, and the Facility will be in compliance with Section 112(r) of the CAA.

102. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

H. PAYMENT OF CIVIL PENALTY

103. Respondent consents to the assessment of and agrees to pay civil penalties of **ONE-HUNDRED SIXTY-EIGHT THOUSAND AND FORTY-THREE DOLLARS (\$168,043)**, in settlement of the civil penalty claims made in this CA/FO. This CA/FO constitutes a settlement of all claims for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), alleged in Section C above.

104. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order Contained in this CA/FO having been approved and issued by the Regional Judicial Officer is filed with the Regional Hearing Clerk.

105. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the appropriate EPA docket number of this action. Payments shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077

St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 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”

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC, 20074
Contact – Jesse White (301-887-6548)
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:
www.pay.gov
Enter “sfol.1” in the search field
Open form and complete required fields.

A copy of each check, or notification that payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent’s name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency – Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Donald Nixon (ENF-2-2)
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region 9
75 Hawthorne Street
San Francisco, CA 94105

106. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. § 13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

107. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

I. DELAY IN PERFORMANCE/STIPULATED PENALTIES

108. In the event that Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

109. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section H of the CA/FO.

110. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. EPA reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

111. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

112. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

J. RESERVATION OF RIGHTS

113. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, right and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory, or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or

authorities, civil or criminal, which EPA has under the CAA, or any other statutory, regulatory, or common law enforcement authority in the United States.

114. Compliance by Respondent with the terms of this CAFO shall not relieve Respondent of its obligations to comply with the CAA, or any other applicable local, state, tribal, or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state, or local permit.

115. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement action should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

116. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

L. MISCELLANEOUS

117. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

118. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

119. Each party to this action shall bear its own costs and attorneys' fees.

120. Respondent consents to the entry of this CA/FO without further notice.

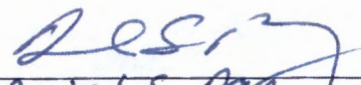
K. EFFECTIVE DATE

121. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.


Respondent The Vons Companies, Inc.

DATE: 9/24/19

BY: 
Name: Daniel S. Day
Title: Authorized signatory
The Vons Companies, Inc.

United States Environmental Protection Agency, Region 9

DATE: 9/30/19

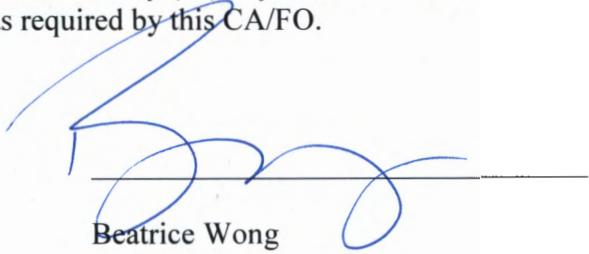
BY: 
Amy C. Miller
Director
Enforcement and Compliance Assurance
Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. Sections 22.13 and 22.18 (Docket No. CAA (112r)-09-2019-00~~83~~) be entered and that Respondent pays a civil penalty of ONE-HUNDRED SIXTY-EIGHT THOUSAND AND FORTY-THREE DOLLARS (\$168,043) due within thirty (30) days from the Effective Date of this CA/FO, and complete any and all tasks as required by this CA/FO.

September 30, 2019

Date



Beatrice Wong
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Vons Companies, Inc. Jerseymaid Milk Products* (CAA(112r)-09-2019-0083), signed by the Regional Judicial Officer, has been filed with the Regional Hearing Clerk and was served on Respondent, and Counsel for EPA, as indicated below:

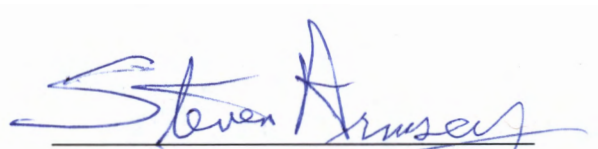
BY FIRST CLASS MAIL:
(Certified w/Return Receipt)

Respondent - Mr. Jim Earhart
Plant Manager
Vons Companies, Inc. Jerseymaid Milk Products
3361 Boxford Avenue
Commerce, California 90040

HAND DELIVERED:

Complainant - Ylan Nguyen, Esq.
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, California 94105

Date: 2019-09-30


Steven Armsey
Regional Hearing Clerk
EPA, Region 9