

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Ronald A. Gonzalez 5/29/18
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CAA-01-2018-0030

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

The Wild Blueberry Company
78 Elm Street
Machias, ME 04654

Total Dollar Amount of Receivable \$ 53,000 Due Date: 6/28/18

SEP due? Yes _____ No _____ Date Due _____

Installment Method (if applicable)

- INSTALLMENTS OF:
- 1st \$ _____ on _____
 - 2nd \$ _____ on _____
 - 3rd \$ _____ on _____
 - 4th \$ _____ on _____
 - 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 Post Office Square, Suite 100
BOSTON, MA 02109-3912

May 29, 2018

RECEIVED

BY HAND

MAY 29 2018
EPA ORC WS
Office of Regional Hearing Clerk

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: *In re The Maine Wild Blueberry Company, Docket No. CAA-01-2018- 0030*

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Consent Agreement and Final Order; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

A handwritten signature in blue ink that reads "Ronald A. Gonzalez".

Ronald A. Gonzalez
Senior Enforcement Counsel
Office of Environmental Stewardship

Enclosures

cc: Dixon P. Pike, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:

The Maine Wild Blueberry Company,
78 Elm Street, Machias, Maine 04654

Respondent.

Proceeding under Section 113 of the Clean
Air Act

Docket No. CAA-01-2018-0030

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

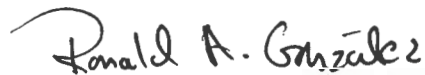
Original and one copy,
hand-delivered:

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

Copy, by Certified Mail,
Return Receipt Requested:

Dixon P. Pike, Esq.
Pierce Atwood, LLP
Merrill's Wharf
254 Commercial Street
Portland, Maine 04101

Dated: May 29, 2018



Ronald A. González
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912
(617) 918-1786

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:

The Maine Wild Blueberry Company,
78 Elm Street, Machias, Maine

Respondent.

Proceeding under Section 113 of the Clean Air
Act

Docket No. CAA-01-2018-0030

RECEIVED

MAY 29 2018

EPA ORC **WS**
Office of Regional Hearing Clerk

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the “Act” or “CAA”), 42 U.S.C. § 7413(d), and Sections 22.13(b) and 22.18(b) 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.
2. Complainant is the United States Environmental Protection Agency, Region 1 (“EPA”). On EPA’s behalf, the Director of the Office of Environmental Stewardship is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is The Maine Wild Blueberry Company, a corporation doing business in the State of Maine.
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (“Consent

Agreement” or “Agreement”) and the attached final order (“Final Order” or “Order”) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order (collectively, “CAFO”). Pursuant to 40 C.F.R. § 22.13(b), EPA and Respondent agree to commence and settle this action simultaneously by the issuance of this CAFO. As further described below, the Consent Agreement and Final Order resolves Respondent’s civil penalty liability for the following alleged violations of the chemical accident prevention provisions of 40 C.F.R. Part 68 with regard to Respondent’s operation of an ammonia-based refrigeration system at its facility in Machias, Maine: Count 1, Failure to Comply with Safety Information Requirements in violation of 40 C.F.R. § 68.65; Count 2: Failure to Adequately Identify, Evaluate, and Control Hazards in violation of 40 C.F.R. § 68.67(e); Count 3: Failure to Comply with Program 3 Operating Procedures Requirements in violation of 40 C.F.R. § 68.69; and Count 4: Failure to Comply with Program 3 Mechanical Integrity Requirements in violation of 40 C.F.R. § 68.73. The settlement requires:

- (a) payment of a civil penalty of \$53,000; and
- (b) certification of compliance with 40 C.F.R. Part 68, including certification of compliance with key safety measures for ammonia refrigeration systems.

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.

EPA may pursue a penalty for the alleged violations pursuant to 113(a)(3)(A).

6. EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.
7. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.18(b).
8. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

9. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. In particular, Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates that EPA promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires that EPA establish, for each listed substance, the threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to

promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement a Risk Management Plan.

10. The regulations promulgated pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), are found at 40 C.F.R. Part 68.
11. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), renders it unlawful for any person to operate a stationary source subject to the regulations promulgated under the authority of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in violation of such regulations.
12. The substances regulated under Part 68 (“RMP chemicals” or “regulated substances”) are listed in 40 C.F.R. § 68.130, together with their associated threshold quantities, in accordance with the requirements of Sections 112(r)(3) and (7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and (7). This list includes anhydrous ammonia as an RMP chemical and identifies a threshold quantity of 10,000 pounds.
13. A “process” is defined by 40 C.F.R. § 68.3 as any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.
14. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is

first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

15. Each process in which a regulated substance is present in more than a threshold quantity (“covered process”) is subject to one of three risk management programs. Program 1 is the least comprehensive, and Program 3 is the most comprehensive. Pursuant to 40 C.F.R. § 68.10(b) a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d) a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in a specified NAICS code or subject to the Occupational Safety and Health Administration (“OSHA”) process safety management (“PSM”) standard at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process that meets neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.
16. Anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds is subject to OSHA’s PSM requirements at 29 C.F.R. § 1910.119.
17. The owner or operator of a stationary source subject to the requirements of Part 68 is mandated to submit a Risk Management Plan (“RMP”) to EPA, as provided in 40 C.F.R. § 68.150. The RMP documents compliance with Part 68 in a summary format. For example, the RMP for a Program 3 process documents compliance with the elements of a Program 3 Risk Management Program, including 40 C.F.R. § Part 68, Subpart A (including General Requirements and a

Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment to Determine Off-Site Consequences of a Release); 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

18. Additionally, 40 C.F.R. § 68.190(b) requires that the owner or operator of a stationary source must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or most recent update. Other aspects of the prevention program must also be periodically updated.
19. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2016 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 28 U.S.C. § 2461 note, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, section 701 of Public Law 114-74, 129 Stat. 599 (Nov. 2, 2015), provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to \$37,500 per day per violation for violations occurring from December 7, 2013, through November 2, 2015, and in amounts up to \$46,192 per day per violation for violations that occurred after November 2, 2015.

D. ALLEGED VIOLATIONS

20. The Maine Wild Blueberry Company owns and operates a blueberry processing plant and controlled temperature storage warehouse at 78 Elm Street (also known as State Highway Route 92) in Machias, Maine (the “Facility”).
21. The Facility is located on the south bank of the Machias River, near a mixed business-residential area approximately one half mile northeast of the Machias campus of the University of Maine, and approximately one half mile east of downtown Machias.
22. The Maine Wild Blueberry Company (“Maine Wild Blueberry”) is a Maine corporation, and is reported to be in “good standing” by the Maine Department of the Secretary of State. Maine Wild Blueberry is a subsidiary of Oxford Frozen Foods, a Canadian corporation.
23. As a corporation, Respondent is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), against whom an administrative order may be issued under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3).
24. For at least two decades, Respondent has been the “owner or operator” of the Facility, as that term is defined by Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).
25. The Facility is a building or structure from which an accidental release may occur and is therefore a “stationary source,” as defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.
26. The unanticipated emission of ammonia gas into the ambient air from the Facility would constitute an “accidental release,” as that term is defined 40 C.F.R. § 68.3.

27. Maine Wild Blueberry uses anhydrous ammonia in a “closed-loop” refrigeration system. According to the Respondent, as of February 2, 2016, the refrigeration system was expanded and contains up to 21,610 pounds of anhydrous ammonia. Prior to the 2016 modification, the system had contained up to 16,500 pounds of anhydrous ammonia, distributed through interconnected refrigeration vessels, piping, and other components.
28. On September 7, 1999, Respondent submitted an initial Program 3 RMP for its use, storage, and handling of anhydrous ammonia at the Facility (the “1999 RMP”) and reported that it utilized 18,088 pounds of anhydrous ammonia.
29. In a letter to EPA postmarked December 5, 2006, Respondent declared that the actual total system inventory of anhydrous ammonia in the process was less than 8,000 pounds, i.e., less than the threshold quantity (10,000 lbs.) for anhydrous ammonia, and requested that the ammonia refrigeration process be de-registered from the Risk Management Program. EPA allowed the de-registration, with an effective date of December 5, 2006.
30. On March 4, 2011, Respondent re-registered the ammonia refrigeration process, listing the total system inventory of anhydrous ammonia as 16,500 pounds.
31. Accordingly, the anhydrous ammonia Process at the Facility is a “covered process” subject to the RMP provisions of Part 68 because Respondent “uses,” “stores,” and “handles” the RMP chemical anhydrous ammonia in the Process in an amount greater than 10,000 pounds.

32. According to the RMP, the endpoint for a worst case release of the amount of anhydrous ammonia used in the process is *greater* than the distance to a public receptor.
33. Additionally, the Process is subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119 because it uses anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds.
34. Therefore, in accordance with 40 C.F.R. § 68.10(a)-(d), Respondent's use, storage, and handling of anhydrous ammonia in the Process is subject to the requirements of RMP Program 3.
35. Ammonia presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. Exposure to 300 parts per million is immediately dangerous to life and health. Ammonia is also flammable at concentrations of approximately 16% to 25% by volume in air. It can explode if released in an enclosed space with a source of ignition present, or if a vessel containing anhydrous ammonia is exposed to fire. In light of the potential hazards posed by the mishandling of anhydrous ammonia, industry trade associations have issued standards outlining the recognized and generally accepted good engineering practices ("RAGAGEP") in the ammonia refrigeration industry. In collaboration with the American National Standards Institute, the International Institute of Ammonia Refrigeration ("IIAR") has issued (and updates) "Standard 2: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems," along with other applicable standards and guidance. Also in collaboration with the American National Standards Institute, the American

Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”) has issued (and updates) “Standard 15: Safety Standard for Refrigeration Systems.” These standards are consistently relied upon by refrigeration experts and are often incorporated into state building and mechanical codes.¹ IIAR also issues bulletins and guidance for the ammonia refrigeration industry, including IIAR Bulletin No. 109: Minimum Safety Criteria for a Safe Ammonia Refrigeration System (1997) (hereinafter “IIAR Bull. 109”); IIAR Bulletin No. 110: Start-Up, Inspection, and Maintenance of Ammonia Mechanical Refrigerating Systems (rev. 2007) (hereinafter, “IIAR Bull. 110”); and IIAR Bulletin 114: Identification of Ammonia Refrigeration Piping and System Components (2014) (hereinafter “IIAR Bull. 114”), among others.

36. On October 30, 2012, EPA inspectors visited the Facility following a prior notification by letter dated October 11, 2012, to inspect and assess Respondent’s compliance with Section 112(r) of the CAA and with Sections 302-312 of the Emergency Planning and Community Right-to-Know Act (the “Inspection”).
37. The “closed-loop” refrigeration system at the Maine Wild Blueberry facility includes a number of compressors together with associated refrigeration equipment. Four condensers are located exterior to the buildings on elevated support structures. A single high pressure receiver, located in an exterior ground-level enclosed shed attached to the building, serves the entire interconnected process.

¹ For example, the Maine State Building Code references the 2009 International Building Code (“IBC”). In turn the IBC states, “Refrigeration systems shall comply with the requirements of this code and, except as modified by this code, ASHRAE 15. Ammonia-refrigerating systems shall comply with this code and, except as modified by this code, ASHRAE 15 and IIAR 2.”

38. During and after the Inspection of the Facility, EPA requested and received certain documentation pertaining to the process.
39. On September 29, 2017, EPA and Respondent entered into a Notice of Violation and Administrative Order on Consent (“NOV/AOC”) pursuant to CAA Sections 113, 42 U.S.C. §§ 7413, which became effective on October 2, 2017. The NOV/AOC summarized conditions and alleged RMP deficiencies and observed by EPA inspectors; ordered Respondent to comply with RMP requirements at the Facility; and ordered Respondent to certify and document its compliance with applicable RMP requirements. Immediately after the Inspection, Respondent started to address the compliance deficiencies EPA alleged.
40. EPA found that the Inspection and EPA’s review of submitted information revealed certain violations of 40 CFR Part 68. EPA has not visited the Facility since Respondent submitted a modification to its RMP on February 2, 2016, so the allegations herein relate to the pre-2016 conditions.
41. Complainant alleges the following violations of 40 C.F.R. Part 68:

Count 1: Failure to Comply with Safety Information Requirements

42. The allegations in Paragraphs 1 through 41 of this document are incorporated by reference as if fully set forth herein.
43. Pursuant to 40 C.F.R. § 68.65, the owner or operator of a Program 3 process is required, among other things, to compile written process safety information, including information pertaining to the technology of the process (40 C.F.R. § 68.65(c)(1)) and information pertaining to the equipment in the process (40

C.F.R. § 68.65(d)(1)), before completing the process hazard analysis (“PHA”), in order to perform an adequate PHA and to enable proper maintenance of process equipment. The owner or operator must document that equipment complies with recognized and generally accepted good engineering practices (40 C.F.R. § 68.65(d)(2)). Additionally, for existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator must determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner (40 C.F.R. § 68.65(d)(3)).

44. Respondent failed to document that the Process complied with recognized and generally accepted good engineering practices (“RAGAGEP”) and that equipment designed according to outdated standards was designed, maintained, inspected, tested, and operated in a safe manner. For example:

- (a) Respondent failed to have emergency stop and remote ventilation switches located outside the door to the ground-level, enclosed shed attached to the building exterior that houses the high pressure receiver;
- (b) there was insufficient or inadequate labeling of certain piping, valves and machinery room doors;
- (c) there was no ammonia detector located in the enclosed shed, referenced above, that houses the high pressure receiver;
- (d) the ammonia evacuation alarms present were not separate audio/visual (“A/V”) alarms to warn of an ammonia leak and A/V alarms were not located at machinery room doors;

- (e) Although Respondent had installed an electric solenoid valve to serve as a main isolation valve, and which was intended to be operated remotely, Respondent had not ensured accessibility of the main manual isolation valve (king valve), and had not prominently labeled this valve with a tag or sign that would be readily visible to emergency responders;
 - (f) there were insufficient eye wash/safety shower stations inside and outside of the machinery rooms;
 - (g) the air intake (for emergency ventilation) for one of the machinery rooms included windows that were not equipped with an automatic opening mechanism and were observed to be closed at the time of the Inspection;
 - (h) there was some combustible material stored in the machinery rooms;
 - (i) Respondent had not properly sealed machinery room wall joints and around pipes penetrating through a machinery room wall; and
 - (j) there were machinery room doors that were not tight-fitting and not all were self-closing and had panic-bar hardware installed.
45. Accordingly, Respondent violated 40 C.F.R. § 68.65 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E).

Count 2: Failure to Comply with Process Hazard Analysis Requirements

46. The allegations in Paragraphs 1 through 45 of this document are incorporated by reference as if fully set forth herein.
47. Pursuant to 40 C.F.R. § 68.67, the owner or operator of a Program 3 process is required, among other things, to perform an initial process hazard analysis

(“PHA”) on each covered process. The PHA must identify, evaluate, and control the hazards involved in the process. The owner or operator must update the PHA every five years and when a major change in the process occurs. Additionally, pursuant to 40 C.F.R. § 68.67(e), the owner or operator must establish a system to promptly address the recommendations identified in the PHA, including by defining a schedule for completing the action items, taking the actions as soon as possible, and documenting the resolution of the recommendations.

48. Respondent conducted a process hazard analysis in 2011 following re-registration of its process.
49. Respondent failed to document resolution of all recommendations in the 2011 process hazard analysis, as required under 40 C.F.R. § 68.67(g).
50. Accordingly, Respondent violated the PHA requirements of 40 C.F.R. § 68.67(e) and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), for the Process.

Count 3: Failure to Comply with Program 3 Operating Procedures Requirements

51. The allegations in Paragraphs 1 through 50 of this document are incorporated by reference as if fully set forth herein.
52. Pursuant to 40 C.F.R. § 68.69, the owner or operator of a Program 3 process is required to develop and implement written operating procedures that provide instructions or steps for safely conducting activities associated with the covered process. These operating procedures must address steps for each operating phase, operating limits, safety and health considerations, and safety systems. The owner or operator must make these procedures available to employees

involved in the process, keep them up-to-date with current practices, and certify annually that they are current. The owner or operator must also develop and implement safe work practices to control hazards during specific operations, including by developing a “lockout/tag out” program for handling equipment during maintenance or bringing equipment in or out of service.

53. Respondent failed to include all required specific minimum elements that must be included in the written operating procedures provided to EPA.
54. By failing to comply with the operating procedures requirements, Respondent violated 40 C.F.R. § 68.69 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), for the Process.

Count 4: Failure to Comply with Program 3 Mechanical Integrity Requirements

55. The allegations in Paragraphs 1 through 54 of this document are incorporated by reference as if fully set forth herein.
56. Pursuant to 40 C.F.R. § 68.73, the owner or operator of a Program 3 process must establish and implement written procedures to maintain the ongoing integrity of certain process equipment and train employees accordingly. The owner or operator must train each employee involved in maintaining the ongoing integrity of process equipment in the procedures applicable to the employee’s job task. The owner or operator must inspect and test the equipment either in accordance with the manufacturer’s recommendations and good engineering practices, or more frequently if needed based on prior operating experience. The owner or operator must also document the inspections or tests on process

equipment, correct deficiencies, assure that any new equipment is suitable for the process application, perform checks to ensure that equipment is installed properly, and assure that maintenance materials and spare parts are suitable for the process application.

57. Respondent's maintenance program had not sufficiently addressed outdoor piping and valves, some of which exhibited rust.
58. Respondent had not properly maintained or documented the maintenance of the calibration of ammonia detectors at the Facility.
59. By failing to comply with the Program 3 mechanical integrity requirements, Respondent violated 40 C.F.R. § 68.73 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), for the Process.

E. TERMS OF CONSENT AGREEMENT

60. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - (a) admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
 - (b) neither admits nor denies the facts and violations alleged in this CAFO;
 - (c) consents to the assessment of a civil penalty as stated below;
 - (d) consents to the issuance of any specified compliance or corrective action order;
 - (e) consents to the conditions specified in this CAFO;

- (f) waives any right to contest the alleged violations of law set forth in Section D of this CAFO; and
- (g) waives its rights to appeal the Final Order accompanying this Consent Agreement.

61. For the purpose of this proceeding, Respondent:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement and Final Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Maine; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

62. Respondent certifies that it has corrected the violations alleged in this CAFO pursuant to the Administrative Order on Consent (“AOC”) that EPA and Respondent entered into on September 29, 2017. Respondent further certifies that its compliance at the Facility includes all the safety measures listed in the “List of Key Safety Measures,” appended to this CAFO as Attachment A. For the purpose of the identifying requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of the actions required in Paragraphs 69 and 70 of the AOC and Attachment A is restitution or required to come into compliance with the law.
63. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for purposes of settlement to pay the civil penalty cited in Paragraph 64, below.

Penalty Payment

64. Pursuant to Sections 113(d)(2)(B) and (e) of the CAA, 42 U.S.C. § 7413(d)(2)(B) and (e), and taking into account the relevant statutory penalty criteria, the applicable penalty policy, and Respondent’s cooperation in agreeing to perform the non-penalty obligations in this CAFO, EPA has determined that it is fair and proper to assess a civil penalty of \$53,000 for the violations alleged in this matter. Respondent agrees to:
- (a) pay the civil penalty of \$53,000 (“EPA Penalty”) within 30 calendar days of the Effective Date of this Agreement.
 - (b) pay EPA Penalty using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions->

making-payments-epa, and identifying each and every payment with “Docket No. CAA-01-2018-0030.” Within 24 hours of payment of EPA Penalty, send proof of payment to Leonard Wallace, Environmental Scientist, at U.S. EPA, Region 1, 5 Post Office Square, Suite 100, Mail Code OES 05-1, Boston, MA 02109-3912, and by email to Wallace.len@epa.gov. (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “Docket No. CAA-01-2018-0030”).

Collection of Unpaid Civil Penalty

65. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay the civil penalty referenced in paragraph 64(a) in full, it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid within thirty (30) calendar days of the effective date of this CAFO. In that event, interest will accrue from the effective date of this CAFO at the “underpayment rate” established pursuant to 26 U.S.C. § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorneys’ fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty

persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. There are other actions EPA may take if Respondent fails to timely pay: refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33; collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; suspend or revoke Respondent's licenses or other privileges; or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

F. ADDITIONAL PROVISIONS

66. The terms of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.
67. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
68. By signing this CAFO, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and agrees that this CAFO does

not contain any confidential business information or personally identifiable information.

69. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
70. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

71. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.
72. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.
73. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof, with the exception of the NOV/AOC issued on September 29, 2017.

74. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties of up to the statutory maximum penalty per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
75. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, 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, or determination of, any issue related to any federal, state, or local permit.
76. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
77. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.
78. Except as qualified by Paragraphs 65 (overdue penalty collection), each party shall bear its own costs and fees in this proceeding including attorney's fees.

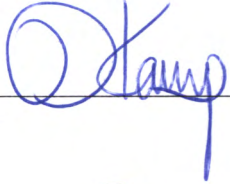
Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

H. EFFECTIVE DATE

79. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement In the Matter of The Maine Wild Blueberry Company, Docket No. CAA-01-2018-0030, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

Signature  Date May 7, 2018

Printed Name: Ragnar Kamp


Title: COO

Address: 50 Elm St, Machias ME 04654

Respondent's Federal Tax Identification Number: 01-0392102

The foregoing Consent Agreement In the Matter of The Maine Wild Blueberry Company, Docket No. CAA-01-2018-0030, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:



Karen McGuire, Acting Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England

5-21-18

Date

ATTACHMENT A

LIST OF KEY SAFETY MEASURES

Identifying Hazards

- Hazard Addressed: Releases or safety deficiencies that stem from a failure to identify hazards in design/operation of system
 - Facility has completed a process hazard analysis or review.

Operating Activities:

- Hazard Addressed: High risk of release from operating or maintenance activity
 - System has self-closing/quick closing valves on oil pots.
 - Facility has written procedures for maintenance and operation activities.
 - Only authorized persons have access to machinery room and the ability to alter safety settings on equipment.

Maintenance/Mechanical Integrity:

- Hazard Addressed: Leaks/releases from maintenance neglect
 - A preventative maintenance program is in place to, among other things, detect and control corrosion, deteriorated vapor barriers, ice buildup, and pipe hammering, and to inspect integrity of equipment/pipe supports.
 - All piping system openings except the relief header are plugged or capped, or valve is locked.
 - Equipment, piping, and emergency shutdown valves are labeled for easy identification, and pressure vessels have legible, accessible nameplates.
 - All atmospheric pressure relief valves have been replaced in the last five years with visible confirmation of accessible pressure relief valves [note – replacement every five years is the general rule but there are two other options in IIAR Bulletin 110, 6.6.3].

Machinery Room and System Design

- Hazard Addressed: Inability to isolate and properly vent releases
 - The System(s) has/have emergency shut-off and ventilation switches outside each machinery room.
 - The machinery room(s) has/have functional, tested, ventilation. Air inlets are positioned to avoid recirculation of exhaust air and ensure sufficient inlet air to replace exhausted air.
 - Documentation exists to show that pressure relief valves that have a common discharge header have adequately sized piping to prevent excessive backpressure on relief valves, or if built prior to 2000, have adequate diameter based on the sum of the relief valve cross sectional areas.

Emergency Actions

- Hazard Addressed: Inability to regain control and reduce release impact
 - Critical shutoff valves are accessible, and a schematic is in place to show responders where to access them.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
BEFORE THE ADMINISTRATOR

In the Matter of:

The Maine Wild Blueberry Company,
Respondent.

Docket No. CAA-01-2018-0030

FINAL ORDER

In accordance with 40 C.F.R. § 22.18(c) of the United States Environmental Protection Agency's Consolidated Rules of Practice, the Parties to this matter have forwarded the foregoing executed Consent Agreement for Final Approval. Section 113(d)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d)(1), authorizes EPA to issue an administrative penalty order to enforce the requirements of the CAA. The CAA penalty assessed takes into consideration the penalty factors set forth in Section 113(e)(1) of the CAA, § 7413(e)(1). Pursuant to these provisions, EPA has compromised the maximum civil penalty.

Pursuant to 40 C.F.R. § 22.18(b) of EPA's Consolidated Rules of Practice and Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Consent Agreement is incorporated by reference into this Final Order and is hereby ratified. Respondent, The Maine Wild Blueberry Company, is ordered to pay the civil penalty amount in the amount of \$53,000 in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

SO ORDERED THIS 25th DAY OF May 2018.



LeAnn Jensen
Regional Judicial Officer
U.S. EPA, Region I

- EPCRA Tier II reporting is up to date.

Additional Compliance Items

Identifying Hazards

- For systems that employ hot gas defrost, the process hazard analysis/review includes an analysis of, and identifies, the engineering and administrative controls for the hazards associated with the potential of vapor propelled liquid slugs and condensation-induced hydraulic shock events.

Operating Activities and Maintenance/Mechanical Integrity

- Written procedures are in place for proper use and care of personal protective equipment.
- If respirators are used, facilities know the location of their respirators, and they are inspected and maintained per manufacturer or industry standards.
- All changes to automation systems (programmable logic controls and/or supervisory control and data acquisition systems) if present, are subject to management of change procedures.

Machinery Room and System Design

- The facility has engineering controls in place to protect equipment and piping against overpressure due to hydrostatic expansion of trapped liquid refrigerant. Administrative controls are acceptable where hydrostatic overpressure can occur only during maintenance operations.
- Eyewash station(s) and safety shower(s) is/are present and functional.

Emergency Actions

- Emergency response communication has occurred or has been attempted with the Local Emergency Planning Committee and local responders.
- The facility has an emergency action plan pursuant to 29 C.F.R. § 1910.38(a) or an emergency response plan pursuant to 29 C.F.R. § 1910.120(q) and 40 C.F.R. § 68.95.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:

The Maine Wild Blueberry Company,
78 Elm Street, Machias, Maine 04654

Respondent.

Proceeding under Section 113 of the Clean
Air Act

Docket No. CAA-01-2018-0030

RECEIVED

MAY 29 2018

EPA ORC *WS*
Office of Regional Hearing Clerk

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

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

Copy, by Certified Mail,
Return Receipt Requested:

Dixon P. Pike, Esq.
Pierce Atwood, LLP
Merrill's Wharf
254 Commercial Street
Portland, Maine 04101

Dated: May 29, 2018

Ronald A. González

Ronald A. González
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912
(617) 918-1786