UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

IN THE MATTER OF	
Cold Storage Solutions II, Inc. 220 Kenneth Welch Drive Lakeville, MA 02347 Respondent	Docket Nos. CAA-01-2013-0065 EPCRA-01-2013-0066
Proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), and Section 325(c) of the Emergency Planning and Community-Right-to-Know Act, 42 U.S.C. § 11045(c)	**COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency ("EPA") issues this administrative Complaint and Notice of Opportunity for Hearing ("Complaint") pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), and Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c) (also known as the Emergency Planning and Community Right-to-Know Act of 1986, hereinafter "EPCRA"). This action is subject to 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, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). The authority to issue this Complaint has been delegated to the Director of the Office of Environmental Stewardship, EPA Region 1.

2. The Complaint notifies Respondent Cold Storage Solutions II, Inc. ("CSSII" or "Respondent"), that EPA intends to assess penalties for Respondent's failure, in its handling of ammonia at the company's Lakeville, Massachusetts cold storage warehouse, to comply with: a) Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and b) Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the federal regulations that set out these statutory requirements in greater detail, 40 C.F.R. Part 370.

3. The Notice of Opportunity for Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

II. STATUTORY AND REGULATORY AUTHORITY

CAA Statutory Authority

4. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), 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 to: (a) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the CAA is referred to as the "General Duty Clause."

5. The extremely hazardous substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), include, among others, anhydrous ammonia.

6. The term "accidental release" is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

7. The term "stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

8. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

EPCRA Statutory and Regulatory Authority

9. Pursuant to Sections 312 and 328 of EPCRA, 42 U.S.C. §§ 11022 and 11048, EPA promulgated the Hazardous Chemical Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 370.

10. Under Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44, and 370.45, any facility that is required to prepare, or have available, a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder ("OSHA") must prepare and submit an emergency and hazardous chemical inventory form ("Inventory Form") to the local emergency planning committee ("LEPC"), the state emergency response commission ("SERC"), and the local fire department. Pursuant to 40 C.F.R. §§ 370.40 and 370.45, the Inventory Form must be submitted annually on or before March 1st and is required to contain information with respect to the preceding calendar year.

11. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), provides for the assessment of penalties for each violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

III. FACTUAL ALLEGATIONS

12. CSSII is a domestic corporation organized under the laws of Massachusetts, with its principal office located in Lakeville, Massachusetts. As a corporation, Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.

13. CSSII operates a cold food storage warehouse at 220 Kenneth Welch Drive in Lakeville, Massachusetts (the "Facility").

14. The Facility is near a railway line, within a third of a mile of Interstate Route 495, and within 1.5 miles of the downtown of neighboring Middleborough, two elementary schools, and a supermarket.

15. 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). The Facility is also a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.

16. At all times relevant to the violations alleged herein, Respondent was the "owner or operator" of the Facility, including as that term is defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

17. At the times relevant to the violations alleged herein, the Facility's ammonia refrigeration system ("System") used approximately 7,000 pounds of anhydrous ammonia. Accordingly, Respondent "stored" and "handled" anhydrous ammonia, which,

as indicated in Paragraph 5 above, is an "extremely hazardous substance" subject to the General Duty Clause.

18. 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 15% to 28% 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 in the ammonia refrigeration industry. In collaboration with the American National Standards Institute, the International Institute of Ammonia Refrigeration 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 has issued (and updates) "Standard 15: Safety Standard for Refrigeration Systems." These standards are consistently relied upon by refrigeration experts and are sometimes incorporated into state building and mechanical codes.

19. The System was installed in 2007. The System is a "closed-loop" refrigeration system with components and piping in three connected areas of the Facility: the Machinery Room, where most of the System equipment is located (including the compressors and the recirculator) and which has two Access Doors (from the building exterior and from the Loading Dock), an area exterior to the building where the receiver,

condenser, and piping are located, and the freezer warehouse spaces, where the evaporator(s) and associated piping are located.

20. On February 13, 2012, EPA inspectors visited the Facility ("Inspection") to assess Respondent's compliance with Section 112(r) of the CAA and with Sections 302–312 of EPCRA.

21. During the Inspection of the Facility and three related facilities, EPA requested and received certain documentation pertaining to the System, including the Facility's emergency response plan. Respondent provided EPA with a document titled, "Anhydrous Ammonia Emergency Response Plan for Cold Storage Solutions," dated June 19, 2009 ("Plan").

22. EPA later received copies of EPCRA "Tier II" Inventory Forms, which CSSII submitted to the relevant emergency response organizations for the first time in February 2012, covering the year 2011.

23. The Inspection and EPA's review of subsequently submitted information revealed that Respondent:

a. Had not conducted an adequate hazard analysis of the System, using appropriate hazard assessment techniques;

b. Did not have, or have available for EPA review, critical documents and information about the System that would allow Respondent to adequately identify hazards posed by the System and to maintain and safely operate it. For example, Respondent did not have a complete Piping and Instrumentation Diagram (the diagram it had lacked identification of the System's valves) or

information, diagrams, and calculations concerning the ventilation capacity of the Machinery Room;

c. Had not designed, installed, and operated an adequate ventilation system, ensuring that the Machinery Room had sufficient air sweep to clear it of ammonia fumes in case of emergency, by not adequately locating the fresh air inlet and the exhaust outlet. There were no fresh air inlet vent openings aside from an opening in the ceiling above the ammonia recirculator through which pipes passed to and from the freezer, the location of which, in relation to the location of the exhaust fan, cannot provide adequate vertical or horizontal flow through the room. Also, the exhaust outlet was located on a side wall of the room rather than positioned so it discharged vertically, and it was less than twenty feet from the exterior Access Door;

d. Had not designed and operated an Machinery Room that could be isolated if necessary, in that the pipes above the ammonia recirculator passed through a hole in the ceiling that was not sealed so as to be air-tight;

e. Had not posted adequate ammonia warning signs and signs restricting entry to authorized personnel at each entrance to the Machinery Room, nor signs displaying a diagram and other information about the System's capacity, operation, alarms, and emergency shutdown process, near the compressor or outside either of the two Machinery Room doors. The lone ammonia warning sign at the Facility was affixed to the roll-up Access Door from the Loading Dock, so it raises several feet above natural sightline when the door is open;

f. Had not kept the Machinery Room free of flammable and combustible material, in that a drum of oil and cardboard, polymer foam, and wood materials were being stored within it;

g. Had not maintained unobstructed access to the fire sprinkler controls and shutoff valves, which were partially blocked by extraneous materials being stored in front of them;

h. Had not ensured that all components and piping were protected from forklift traffic or other potential impact;

i. Did not have an eyewash and shower station just outside of the Machinery Room and did not have the necessary personal protective equipment to help protect employees in case of ammonia exposure or other emergency;

j. Had not maintained the paint on the condenser support structure to prevent corrosion;

k. Had not installed the receiver or condenser relief valve discharges in a safe location;

l. Had not installed the main pressure-relief vent pipe in a safe manner. The vent pipe opening was located just above the roof level. Further, it was aimed downwards instead of upwards, and it was situated to vent in the general vicinity of the Machinery Room Access Door;

m. Had not equipped the ammonia detectors to actuate visual alarms at each Machinery Room entrance;

n. Had not provided a switch controlling the emergency ventilation system or markings identifying the function or status of the key-operated emergency shutdown control outside the exterior Machinery Room door;

o. Had not labeled the King Valve on the ammonia receiver and did not have a handle on the King Valve;

p. Had not developed an adequate emergency response program, including an up-to-date and accurate emergency action plan that addressed release scenarios based on hazards associated with the design, location, and operation of the Facility. For example, the emergency plan provided to EPA ("Plan") was drafted for another company's operations and only partially updated to reflect the specific conditions at the Facility. The Plan erroneously included several references to itself as being the emergency plan for the company "American Refrigeration." The Plan also severely undercounted the size of surrounding population (estimating the population within three miles to be 2,500 while EPA estimates indicate it is over 16,000) and neglected to include contact information for officials from the neighboring town of Middleborough even though the Facility is located near its populous downtown. The Plan also referenced an evacuation route plan that was not attached. Additionally, Respondent's failure to submit EPCRA Tier II Inventory Forms deprived emergency responders of information about the Facility, including the quantity of ammonia in the System and the location of critical equipment and shutoff mechanisms, which would compromise their ability to safely respond to an emergency at the Facility.

24. EPA issued a Notice of Violation, Administrative Order and Reporting Requirement ("NOV/AO/RR") to Respondent pursuant to CAA Sections 113 and 114, 42 U.S.C. §§ 7413 and 7414, which became effective on April 24, 2013. Among other things, the NOV/AO/RR required Respondent to comply with the General Duty Clause at the Facility. Respondent had begun to address its compliance deficiencies after the Inspection and was likewise cooperative after receiving the NOV/AO/RR.

25. After receiving information from Respondent that it had complied with all of the NOV/AO/RR requirements, EPA re-inspected the Facility on August 5, 2013 ("Re-Inspection").

26. The Re-Inspection revealed that many of the deficiencies identified in Paragraph 23, above, had been corrected and that others were not fully and adequately resolved.

27. Additionally, information subsequently submitted by Respondent in response to the NOV/AO/RR revealed that Respondent:

a. Had not developed and implemented an adequate training program, in that it had no records indicating that it had developed a training agenda nor provided and documented training to the necessary employees; and

b. Had not developed and implemented an adequate maintenance program, in that it had no procedures and schedules for the inspection, testing, and preventative maintenance of the System and only sporadic inspection records.

IV. VIOLATIONS

Count 1: Failure to Identify Hazards in Violation of the CAA's General Duty Clause

28. The allegations in Paragraphs 1 through 27 are hereby realleged and incorporated herein by reference.

29. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty to identify hazards that may result from accidental releases of such substances, using appropriate hazard assessment techniques.

30. The recommended industry practice and standard of care for identifying, analyzing, and evaluating potential hazards associated with ammonia refrigeration systems of this size is to use standard, industry-developed checklists, a "What If" analysis, or a Hazard and Operability study. See, e.g., U.S. Envtl. Prot. Agency, Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1) § 2.3.1 (2000) [hereinafter "EPA GDC Guidance"], available at http://www.epa.gov/oem/docs/chem/gdcregionalguidance.pdf (last checked Sept. 9, 2013).

31. At the time of the Inspection, Respondent had not conducted a hazard analysis of the System, using industry-recognized hazard assessment techniques.

32. Also, as described in Paragraph 23 above, inspectors observed potentially dangerous conditions and management practices at the Facility, including Respondent's failure to possess certain documentation and information about the System, its unsafe Facility design (including the lack of marked emergency ventilation and shutdown switches and the dangerous positioning of the exhaust fan and pressure-relief discharge), its failure to post critical information on and about the System to facilitate a quick

response to releases, and its failure to develop an adequate emergency response plan that accurately reflected conditions at, and potential hazards posed by, the Facility. These deficiencies indicate a failure to adequately identify hazards associated with the release of ammonia at the Facility.

33. By failing to conduct an adequate hazard analysis of the System using appropriate hazard assessment techniques, Respondent failed to identify hazards that may result from accidental releases, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 2: Failure to Design and Maintain a Safe Facility in Violation of the CAA's General Duty Clause

34. The allegations in Paragraphs 1 through 33 are hereby realleged and incorporated herein by reference.

35. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances also have a general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases.

Lack of Refrigeration System Documentation

36. As described in Paragraph 23(b), above, Respondent did not have critical information about the System and its operation that would allow Respondent to ensure safe operation of the System.

37. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to maintain this, and more, refrigeration system documentation, to help personnel identify hazards posed by the system and to safely maintain the system. See, e.g., Int'l Inst. of Ammonia Refrigeration, Bulletin No. 110:

Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems § 4 (1993) [hereinafter "IIAR Bull. 110"] (recommending retention of "[a]ll essential records relevant to the system...," including piping and instrumentation diagrams, other types of engineering diagrams, and refrigeration circuit and ventilation flow diagrams). See also Int'l Inst. of Ammonia Refrigeration, Ammonia Refrigeration Management Program §§ 3.4, 3.10 (2005) [hereinafter, "IIAR ARM"].

Inadequate Ventilation System Design and Operation

38. As described in Paragraph 23(c), above, Respondent had not designed, installed, and operated an adequate ventilation system, including by failing to have sufficient air sweep in the Machinery Room to clear it of ammonia fumes in case of emergency.

39. The recommended industry practice and standard of care for ammonia refrigeration systems of this size includes designing and installing a ventilation system based on calculations and other analysis of the ammonia system and Machinery Room to determine the air sweep necessary for safe operation in normal conditions and to clear ammonia fumes in case of emergency. See, e.g., Am. Nat'l Standards Inst./Am. Soc'y of Heating, Refrigerating and Air-Conditioning Eng'rs, Standard 15-2007: Safety Standard for Refrigeration Systems § 8.11.5 (2007) [hereinafter "ASHRAE 15-2007"]; Am. Nat'l Standards Inst./Int'l Inst. of Ammonia Refrigeration, Standard 2-1999: Equipment, Design, and Installation of Ammonia Mechanical Refrigerating Systems §§ 6.2.3.3 & 6.2.3.4 (1999) [hereinafter "IIAR 2-1999"] (normal and emergency ventilation capacities). The fresh air inlet openings should be near the machinery, should provide for vertical and horizontal sweep across the Machinery Room, and should be sufficient to

allow the inlet air to replace that exhausted. See, e.g., ASHRAE 15-2007, supra, § 8.11.4; IIAR 2-1999, supra, § 6.2.3.7.

40. As also described in Paragraph 23(c), above, Respondent failed to adequately locate the Machinery Room exhaust fan. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to ensure that the exhaust fan discharges air so as to provide good dispersion and not cause danger. See, e.g., ASHRAE 15-2007, supra, § 8.11.4; IIAR 2-1999, supra, §§ 6.2.3.11 & .12.

41. Also, as described in Paragraph 23(d), above, Respondent failed to ensure that the Machinery Room was designed to be air-tight, in that the pipes above the ammonia recirculator passed through a hole in the ceiling.

42. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to ensure any piping that pierces the ceiling is tightly sealed to the ceiling through which it passes. See, e.g., ASHRAE 15-2007, supra, § 8.12(f); IIAR 2-1999, supra, § 6.3.1.10.

Inadequate Signs

43. As described above in Paragraph 23(e), at the time of the Inspection, Respondent did not have sufficient signs to adequately identify many aspects of the Facility.

44. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to post signs warning of the presence of ammonia and restricting entry to authorized personnel at *each* entrance to the Machinery Room, see, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.1.2.4; ASHRAE 15-2010, supra, §§ 8.11.8, 11.2.4, and to post other signs with information about the operation of the System,

including signs explaining the alarms and the emergency shutdown process, outside the principal Machinery Room door. See, e.g., IIAR 2-2008 (2010 ed.), supra, §§ 13.1.10.4 (systems need "informative signs, emergency signs, charts and labels in accordance with [National Fire Protection Association] 704"), 13.2.4.1 (alarms), App. L (summarizing signage and providing examples); ASHRAE 15-2010, supra, §§ 8.11.2.1 (meaning of alarms at each entrance), 11.2.1 (installer name and address, amount and kind of refrigerant, amount and kind of lubricant, and field test pressure applied), 11.7 (emergency shutdown procedures and precautions in case of a breakdown or leak); Int'l Inst. of Ammonia Refrigeration, Bulletin No. 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System §§ 4.10.4 (1997) [hereinafter "IIAR Bull. 109"] (general system information), 4.10.6 (evacuation plan with activation responsibility clearly indicated).

Inadequate Basic Safety Practices

45. As described above in Paragraph 23(f), at the time of the Inspection, Respondent had failed to maintain the Machinery Room to be clear and free of flammable and combustible material.

46. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to store no flammable or combustible material in machine rooms or otherwise near vessels. See, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.1.3.1.

47. As described above in Paragraph 23(g), at the time of the Inspection, Respondent had failed to maintain clear access to the fire sprinkler control and shutoff valves.

48. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to provide for clear and unobstructed access to the machinery for inspection, service, and emergency shutdown. See, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.1.2.2; ASHRAE 15-2010, supra, § 8.3.

49. Also, as described above in Paragraph 23(h), at the time of the Inspection, Respondent had not ensured that all components and piping were protected from forklift traffic or other impact.

50. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to safeguard piping, controls, and other refrigeration equipment to minimize the chance of accidental damage by external sources such as forklifts. See, e.g., ASHRAE 15-2010, supra, § 11.1; IIAR Bull. 109, supra, §§ 4.4.2, 4.7.3.

51. Also, as described above in Paragraph 23(i), at the time of the Inspection, Respondent had failed to provide the necessary eyewash and shower stations and personal protective equipment to protect employees in case of ammonia exposure or other emergency.

52. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to have eyewash and shower stations inside the Machinery Room and just outside its exit. See, e.g., IIAR 2-1999, supra, § 6.3.1.4; IIAR Bull. 109, supra, § 4.10.10. It is also to have a self-contained breathing apparatus outside but nearby the Machinery Room, with a second apparatus also available. See, e.g., IIAR Bull. 109, supra, § 4.10.11.

53. Additionally, as described above in Paragraph 23(j), at the time of the Inspection, Respondent had failed to maintain the paint on the condenser support structures to prevent corrosion.

54. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to adequately anchor and support condensers, including by preventing, and inspecting for, corrosion. See, e.g., IIAR Bull. 109, supra, §§ 4.2.1, 4.2.4.

Inadequate Emergency Design and Mechanisms

55. As described above in Paragraph 23(k), at the time of the Inspection, Respondent had not ensured that the receiver or condenser relief valve discharges were in a safe location.

56. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to ensure that the discharges of relief valves are positioned above the level of any liquid refrigerant, away from the location of any personnel servicing the equipment, and at least twenty feet away from any building exit. See, e.g., ASHRAE 15-2007, supra, §§ 9.4.8, 9.7.8; IIAR 2-1999, supra, § 7.3.2; IIAR Bull. 109, supra, § 4.9.6.

57. As described above in Paragraph 23(l), at the time of the Inspection, the main relief header piping was not installed in a safe manner.

58. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to raise the relief header pipe at least fifteen feet above the adjoining surface level, orient it to point up and away from where any people may be nearby, and locate it at least twenty feet from any building exit. See, e.g.,

ASHRAE 15-2007, supra, §§ 9.4.8, 9.7.8; IIAR 2-1999, supra, § 7.3.2; IIAR Bull. 109, supra, § 4.9.6.

59. As described above in Paragraph 23(m), at the time of the Inspection, Respondent had not equipped the ammonia detectors at the Facility to actuate visual alarms at each Machinery Room entrance.

60. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to equip ammonia detectors to actuate visual alarms inside the Machinery Room and at each of its entrances. See, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.2.1.2; ASHRAE 15-2010, supra, § 8.11.2.1.

61. Also, as described above in Paragraph 23(n), at the time of the Inspection, Respondent had not provided and labeled adequate emergency shutdown and ventilation switches for the System outside the principal Machinery Room door.

62. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to provide clearly marked emergency shutdown and ventilation switches at the principal Machinery Room door (and, preferably, all access doors). See, e.g., IIAR 2-2008 (2010 ed.), supra, §§ 13.1.13.2 (shutdown), 13.3.11 (ventilation). The shutdown switch should be either of the break-glass type or have an approved tamper resistant cover. See, e.g., id. § 13.1.13.2.

63. Additionally, as described above in Paragraph 23(o), at the time of the Inspection, Respondent had not labeled the King Valve and had not installed a handle on the King Valve. Both of these situations would impede quick operation of the King Valve, which can be used to shut off the flow of ammonia throughout the System, in an emergency.

64. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to identify the King Valve with a prominent, permanent sign, see, e.g., ASHRAE 15-2010, supra, § 11.2.2 (label valves controlling refrigerant flow); IIAR ARM, supra, § 4.2 (including the labeling of emergency isolation valves as a part of writing operating procedures); IIAR Bull. 109, supra, § 4.10.3, and to ensure that the King Valve is readily operable. See, e.g., IIAR 2-2008 (2010 ed.), supra, § 13.1.2.3; IIAR Bull. 109, supra, § 4.10.3.

Inadequate Training Program

65. As described above in Paragraph 27(a), Respondent had not developed and implemented an adequate training program.

66. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to train employees on the hazards of the work area, including those posed by ammonia, on procedures applicable to the employees' tasks that pertain to operating or maintaining the integrity of the System, including safe work practices, and on the emergency response plan, to verify that the employee understood the training, and to maintain records of the training given. See, e.g., IIAR Bull. 110, supra, § 5.2.3; IIAR ARM, supra, § 9.

Inadequate Mechanical Integrity Program

67. As described above in Paragraph 27(b), Respondent had not developed and implemented an adequate mechanical integrity program.

68. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to establish a schedule for testing equipment and

systems according to the manufacturer's recommendations, perform the necessary inspections (some of which should occur daily, weekly, monthly, quarterly, semi-annual, yearly, and every five years), and maintain logs and other inspection records. See, e.g., Bull. No. 110, supra, § 6; IIAR ARM, supra, § 5 & App. 5.1. See also IIAR 2-2008 (2010 ed.), supra, § 13.3.12; ASHRAE 15-2010, supra, § 11.6.3; IIAR ARM, supra, § 4.3.

69. Accordingly, by failing to have (a) appropriate refrigeration system documentation; (b) adequate ventilation system design and operation; (c) adequate signs and labels; (d) adequate basic safety practices; (e) adequate emergency design and mechanisms; (f) an adequate training program; and (g) an adequate mechanical integrity program, Respondent failed to design and maintain a safe facility, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 3: Failure to Minimize the Consequences of Accidental Releases That Do Occur in Violation of the CAA's General Duty Clause

70. The allegations in Paragraphs 1 through 69 are hereby realleged and incorporated herein by reference.

71. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty to minimize the consequences of any accidental releases of anhydrous ammonia that do occur.

72. As described above in Paragraph 23(p), at the time of the Inspection, Respondent did not have an adequate emergency response program, including an up-to-date emergency action plan that addressed release scenarios based on hazards associated with the design, location, and operation of the Facility. The emergency plan provided to

EPA was not fully tailored to reflect the specific conditions at the Facility and so could not adequately address the likely consequences of an accidental release.

73. The recommended industry practice and standard of care for ammonia refrigeration systems of this size is to develop an up-to-date, facility-specific emergency action plan that accurately describes the facility and the potentially affected population. Such a plan should include, among other items: types of evacuation, evacuation procedures and routes, procedures for employees who remain to maintain critical operations, procedures for accounting for evacuated employees, any employee rescue and medical duties, and means for reporting emergencies. See, e.g., IIAR ARM, § 7. An adequate emergency response program should also identify procedures for responding to an ammonia release, including shutting the system down, starting emergency ventilation, and coordinating with all relevant off-site emergency responders. See, e.g., id.

74. In addition, the allegations in paragraphs 38 through 47, 51, and 55 through 63 describe deficiencies that not only constitute a failure to design and maintain a safe facility, but also reflect a failure to minimize the consequences of any accidental release of ammonia. Each of these shortcomings could exacerbate the negative effects of any release of ammonia that does occur at the Facility.

75. Accordingly, by failing to develop and implement an adequate emergency response plan based on the specific design and operation of the Facility, failing to have adequate ventilation system design and operation, failing to have adequate signs posted throughout the Facility, failing to have certain basic safety practices in place, and failing to provide adequate emergency design and mechanisms for the Facility, Respondent violated the requirement to minimize the consequences of any accidental release of

anhydrous ammonia that does occur, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 4: Failure to Submit Hazardous Chemical Inventory Forms in Violation of Section 312 of EPCRA

76. The allegations in Paragraphs 1 through 75 are hereby realleged and incorporated herein by reference.

77. At all times relevant to the violations cited herein, Respondent was storing approximately 7,000 pounds of ammonia in the System, and at least 920 pounds of sulfuric acid in the batteries of the Facility's forklifts.

78. Ammonia and sulfuric acid each are "hazardous chemicals," as defined at 40 C.F.R. § 370.66 and 29 C.F.R. § 1910.1200(c) and "extremely hazardous substances," as defined in 40 C.F.R. Part 355.

79. At all times relevant to the violations cited herein, Respondent was required, pursuant to OSHA, to prepare and have available onsite an MSDS for ammonia and for sulfuric acid.

80. During calendar years 2008, 2009, and 2010, Respondent stored both ammonia and sulfuric acid at the Facility in a quantity that exceeded the minimum threshold level of 500 pounds set forth in 40 C.F.R. § 370.10(a)(1).

81. Respondent was required to prepare and submit an emergency and hazardous chemical Inventory Form (Tier II form) to the SERC, LEPC, and the local fire department with jurisdiction over the Facility in order to report the data required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), for each calendar year from 2008 to 2010, on or before March 1st of the following calendar year.

82. Respondent failed to prepare and submit an Inventory Form for the years 2008, 2009, and 2010 by March 1st of the following year to the SERC, LEPC, and the local fire department, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45.

V. PROPOSED CIVIL PENALTY

83. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and 7413(d), as amended, authorize EPA to assess a civil penalty of up to $25,000 per day of violation for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after January 12, 2009 are subject to up to $37,500 per day of violation.

84. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as adjusted for inflation by the DCIA and 40 C.F.R. Part 19, prescribes a $295,000 penalty limit and a twelve-month duration limitation on EPA's authority to initiate an Administrative Penalty Order. However, these limitations may be waived where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty or a longer period of violation is appropriate for an administrative penalty action. EPA and the Department of Justice jointly have determined that an administrative penalty action is appropriate in this case.

85. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes EPA to assess a civil penalty of up to $25,000 per day of violation for violations of Section 312 of EPCRA, 42 U.S.C. § 11022. Pursuant to the DCIA, 31 U.S.C. § 3701, and 40 C.F.R.

Part 19, violations that occurred after January 12, 2009 are subject to up to $37,500 per day of violation.

86. In light of the above-referenced findings, EPA seeks to assess civil penalties of up to $37,500 for CAA and EPCRA violations occurring after January 12, 2009, as follows:

CAA

(a) Up to four years and eight months (approximately 1,704 days) of violation for Respondent's failure to comply with the General Duty Clause's requirement **to identify hazards**. For penalty purposes, the duration of the violation is from at least October 1, 2008, five years prior to the filing of this Complaint, to June 1, 2013, approximately when Respondents completed a hazard identification checklist. This violation is substantial because a hazard analysis helps facility personnel assess and manage the hazards that are posed by chemicals at a facility so that threats of releases are minimized.

(b) Up to four years and nine months (approximately 1,734 days) of violation for Respondent's failure to comply with the General Duty Clause's requirement to **design and maintain a safe facility**. For penalty purposes, the duration of the violation is from at least October 1, 2008, five years prior to the filing of this Complaint, to July 1, 2013, when Respondents reported that most of the necessary modifications had been completed. This violation is substantial because the failure to compile critical information about the System inhibits understanding of the functioning, capacity, and maintenance needs of the System, as well as the risks posed by it. The failure to have adequate signs and labels throughout the

System can increase the chances for inadvertent releases and injuries and can hamper the ability of emergency responders to address a release. The failure to have adequate ventilation increases the likelihood that vapors will build up to levels that are hazardous to human health or that risk causing fire or explosion, and failing to have sufficient emergency controls may prolong a release. Similarly, inadequate employee training, mechanical integrity program, and basic safety practices increase the likelihood that a release will occur and make it difficult to respond quickly. Inadequate emergency design and mechanisms increase the likelihood that any release will be prolonged and pose a greater threat to human health than would otherwise occur.

(c) Up to four years and nine months (approximately 1,734 days) of violation for Respondent's failure to comply with the General Duty Clause's requirement to **minimize the consequences of any accidental releases of anhydrous ammonia that do occur**. For penalty purposes, the duration of the violation is from at least October 1, 2008, five years prior to the filing of this Complaint, to June 1, 2013, approximately when Respondent updated its Emergency Action Plan and reported to EPA that it had been submitted to the appropriate emergency responders. This violation is substantial because the failure to develop an adequate emergency response plan can impede a swift, safe emergency response, and thus increase risks to workers, emergency responders, and people off-site.

EPCRA

(d) Up to at least 365 days for each of three violations of failing to prepare and submit an inventory form by March 1st of the calendar year following the

reporting years 2008, 2009, and 2010, to the SERC, LEPC, and the local fire department. The failure to report in a timely manner, as required by Section 312 of EPCRA, 42 U.S.C. § 11022, may deprive the community of its right to know about chemicals used or stored near or in the neighborhood that may affect public health and the environment, and may prevent comprehensive planning by federal, state, and local authorities to properly prepare for accidental chemical releases.

87. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty and explaining how the proposed penalty was calculated, as required by the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

88. In determining the amount of the CAA penalty to be assessed, EPA will take into account the statutory factors listed in Section 113(e) of the CAA, 42 U.S.C. § 7413(e). These factors include the 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, the seriousness of the violation, and such other factors as justice may require.

89. In determining the amount of the EPCRA penalty to be assessed, EPA will calculate the penalty in accordance with Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and will consider the following factors: the nature, circumstances, extent, and gravity of the violations, and with respect to the Respondent, its ability to pay, history of prior

violations, degree of culpability, any economic benefit or savings resulting from the violations, and other such factors as justice may require.

90. An appropriate penalty will be derived pursuant to the following penalty policies: (1) "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" (Jun. 2012), and (2) "Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act" (Sept. 30, 1999), including updated penalty matrices that reflect inflation adjustments. Copies of these penalty policies are enclosed with this Complaint. These policies each provide a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

91. Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22. Any request for a hearing must be included in Respondent's written Answer(s) to this Complaint and filed with the Regional Hearing Clerk at the address listed below within 30 days of receipt of this Complaint.

92. In its Answer, a Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which a Respondent has any knowledge. If a Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny

an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts a Respondent intends to place at issue.

93. The original and one copy of any motions or other pleadings filed or made before an Answer to the Complaint is filed, the Answer to the Complaint, and any Consent Agreement and Final Order to settle the case filed in this action must be sent to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

94. After an Answer has been filed, except for a Consent Agreement and Final Order settling the case, a copy of all other documents that Respondent files in this action must be sent to the Headquarters Hearing Clerk, in the following manner:

For U.S. Postal Service mailings –
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

For UPS, FedEx, DHL, or other courier, or personal delivery –
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave., NW
Washington, DC 20460

95. Respondent should also send a copy of the Answer, as well as a copy of all other documents that Respondent files in this action to Christine M. Foot, the attorney assigned to represent EPA and designated to receive service on behalf of Complainant in this matter at:

Christine M. Foot, Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912

96. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

VII. INFORMAL SETTLEMENT CONFERENCE

97. Whether or not a hearing is requested upon the filing of an Answer, Respondent may confer informally with EPA concerning the alleged violations, the amount of any penalty, and/or the possibility of settlement. Such a conference provides Respondent with an opportunity to respond informally to the charges, and to provide any additional information that may be relevant to this matter or the penalty. EPA has the authority to adjust the penalty, where appropriate, to reflect any settlement reached in an informal conference. The terms of such an agreement would be embodied in a binding Consent Agreement and Final Order.

98. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written Answer must be submitted in order to avoid a default. To request an informal settlement conference, Respondent or its representative(s) should contact Christine M. Foot, Enforcement Counsel, at (617) 918-1333.

VIII. CONTINUED COMPLIANCE OBLIGATION

99. Neither assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with environmental laws and regulations.

Susan Studlien

09/27/13

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1 – New England

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

IN THE MATTER OF Cold Storage Solutions II, Inc. 220 Kenneth Welch Drive Lakeville, MA 02347 Respondent	Docket Nos. CAA-01-2013-0065 EPCRA-01-2013-0066 **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Complaint and Notice of Opportunity for Hearing has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

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

Copy of Complaint (with the Consolidated Rules of Practice and Penalty Policies), certified mail, return receipt requested:

Thomas J. Parenteau, President
Cold Storage Solutions, Inc.
310 Kenneth Welch Drive
Lakeville, MA 02347

Roger Zehntner
Partridge Snow & Hahn LLP
128 Union Street, Suite 500
New Bedford, MA 02740

Dated: 9/30/13

Christine Foot, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912