

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA are proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, 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.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA, together with the specific provisions of the CAA, and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a limited liability corporation organized in the State of Oregon and does business in the State of Oregon.

3.2. Respondent owns and/or operates a facility involved in the manufacturing and storage of ice cream located at 885 Grant Street, Eugene, Oregon (“Facility”).

3.3. Plant 1 at Oregon Ice Cream produced, processed, handled or stored between 4,440 pounds and 8,937 pounds of anhydrous ammonia at its facility.

3.4. EPA inspected the facility on March 16, 2011, to determine compliance with Section 112(r) of the CAA and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that the Respondent uses anhydrous ammonia in the process at its facility.

3.5. Respondent is, and at all times referred to herein, was a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e). Respondent's facility located at 885 Grant, Eugene, Oregon, is a "stationary source" pursuant to 112(r)(c)(2).

3.6. Anhydrous Ammonia is a "regulated substance" as defined by Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 74129(r)(2)(B).

3.7. Pursuant to Section 112(r)(1) of the CAA, Respondent has a general duty in the same manner and to the same extent as 29 U.S.C. § 654, to: (a) identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, 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 which do occur.

3.8. Based on the information available to EPA, including information gathered during the inspection performed by EPA at the facility, EPA has determined that Respondent failed to satisfy the general duty requirements and therefor the provisions of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). EPA alleges Respondent:

3.9. Respondent failed to meet the "nonhazardous electrical classification" for the process equipment in the Plant 1 engine room referenced in American National Standard ("ANS")/American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") Standard 15, *Safety Code for Mechanical Refrigeration* and ANS/International Institute of Ammonia Refrigeration (IIR) 2-2008, *Equipment, Design, and Installation of*

Closed-Circuit Ammonia Mechanical Refrigerating Systems, is in violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

3.10. Respondent failed to meet the relief system design, and design basis, for the Plant 1 ammonia refrigeration system referenced in American National Standard (“ANS”)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”) Standard 15, *Safety Code for Mechanical Refrigeration* and ANS/International Institute of Ammonia Refrigeration (IIAR) 2-2008, *Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems*.

3.11. Respondent failed to meet the ventilation system design in the Plant 1 engine room referenced in American National Standard (“ANS”)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”) Standard 15, *Safety Code for Mechanical Refrigeration* and ANS/International Institute of Ammonia Refrigeration (IIAR) 2-2008, *Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating System*.

3.12. Respondent failed to follow recognized and generally accepted good engineering practices for inspections and testing maintenance procedures of the Plant 1 ammonia refrigeration system referenced in American National Standard (“ANS”)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”) Standard 15, *Safety Code for Mechanical Refrigeration* and ANS/International Institute of Ammonia Refrigeration (IIAR) 2-2008, *Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating System*, ANS/International Institute of Ammonia Refrigeration (IIAR) Bulletin 111, *Ammonia Machinery Room Ventilation*.

3.13. Respondent failed to ensure that the frequency of inspections and tests to maintain process equipment of the Plant 1 ammonia refrigeration system is consistent with applicable manufacturers' recommendations, good engineering practices, and prior operating experience, referenced in American National Standard ("ANS")/American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") Standard 15, *Safety Code for Mechanical Refrigeration* and ANS/International Institute of Ammonia Refrigeration (IIAR) 2-2008, *Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating System*, ANS/International Institute of Ammonia Refrigeration (IIAR) Bulletin 111, *Ammonia Machinery Room Ventilation*.

3.14. Respondent failed to establish and implement written procedures to maintain the ongoing integrity of process equipment of the Plant 1 ammonia refrigeration system such as piping referenced in American National Standard ("ANS")/American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") Standard 15, *Safety Code for Mechanical Refrigeration* and ANS/International Institute of Ammonia Refrigeration (IIAR) 2-2008, *Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating System*, ANS/International Institute of Ammonia Refrigeration (IIAR) Bulletin 111, *Ammonia Machinery Room Ventilation*.

3.15. Section 112(r)(1) requires the owner or operator of a stationary source to design and maintain a safe facility taking such steps as necessary to prevent releases. The facts set forth in paragraphs 3.9 through 3.14 constitute violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

CAA ENFORCEMENT AUTHORITY

3.16. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of up to \$37,500 per day of violation after January 12, 2009.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. After considering the penalty assessment factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$55,000 (“Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
luna.teresa@epa.gov

Javier Morales
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
morales.javier@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date:

- a. The entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty for the CAA violations under the CAA. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.
- b. Respondent shall be responsible for payment of the following amounts:
 - i. Interest. Any unpaid portion of the Assessed Penalty for the CAA violations shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty for the CAA violations that is paid within 30 days of the effective date of the Final Order contained herein.
 - ii. Attorney's Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty

for the CAA violations and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.8. The Assessed Penalty, including any additional costs incurred under Paragraphs 4.7 represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violations alleged in Part III.

4.11. Except as described in Paragraph 4.7, each party shall bear its own costs and attorney's fees in bringing or defending this action.

4.12. For purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

2-4-2016

Steve Favro

STEVE FAVRO
Vice President of Operations
Oregon Ice Cream, LLC.

DATED:

FOR COMPLAINANT:

2/10/2016

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CAA-10-2016-0040
OREGON ICE CREAM, LLC.)	FINAL ORDER
)	
Eugene, Oregon)	
)	
Respondent.)	

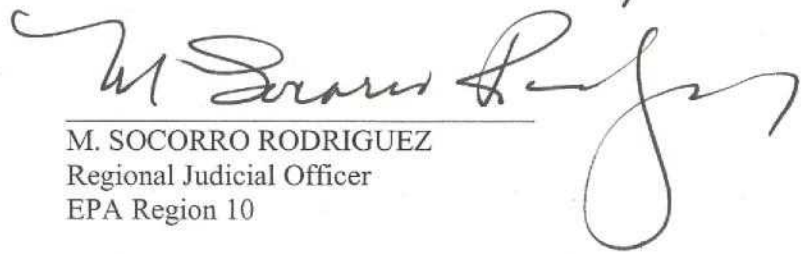
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 16th day of February, 2016



A handwritten signature in black ink, appearing to read "M. Socorro Rodriguez", is written over a horizontal line. The signature is cursive and extends to the right of the line.

M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Oregon Ice Cream, LLC Docket No.: CAA-10-2016-0040**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Javier Morales, RMP Coordinator
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900, OCE-101
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Steve Favro
Vice President of Operations
Oregon Ice Cream, LLC.
4600 NW Camas Meadows Drive, Suite 100
Camas, Washington 98607

DATED this 16 day of February, 2016

Teresa Luna
Teresa Luna
Regional Hearing Clerk
EPA Region 10

