

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2017 SEP 20 AM 7:45

IN THE MATTER OF:)
)
Cloverdale Foods Company)
3015 34th Street NW)
Mandan, North Dakota 58554)
)
Respondent)
_____)

FILED
EPA REGION VIII
HEARING CLERK
**ADMINISTRATIVE COMPLIANCE ORDER
ON CONSENT**
Docket No.: CAA-08-2017-0003

PRELIMINARY STATEMENT

This Administrative Compliance Order On Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency (the EPA) and by the Respondent, Cloverdale Foods Company (Respondent) and is issued under the authority vested in the Administrator of the EPA by section 113(a)(3) and (4) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7413(a)(3) and (4).

1. The Assistant Regional Administrator for Region 8's Office of Enforcement, Compliance and Environmental Justice is delegated the authority to issue this Order under section 113(a) of the Act.
2. This Order requires Respondent to comply with the requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. part 68. All activities specified and ordered below shall be initiated and completed as soon as possible even though maximum time periods or specific dates for their completion may be detailed herein. With the exception of extension or deadlines for submittals or performance, the terms of this Order shall not be modified except by a subsequent written agreement between the EPA and Respondent.
3. By entering into this Order, Respondent (1) consents and agrees not to contest the EPA's authority or jurisdiction to issue or enforce this Order, (2) agrees to undertake all actions required by the terms and conditions of this Order, and (3) consents to be bound by the requirements set forth herein.

STATUTORY AND REGULATORY BACKGROUND

4. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added section 112(r) to the CAA, 42 U.S.C. § 7412(r), which requires the Administrator of the EPA to, among other things, promulgate regulations to prevent accidental releases of certain regulated substances.
5. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), provides that the owners and operators of stationary sources are required to develop and implement a risk management plan (RMP) that includes a hazard assessment, a prevention program and an emergency response program.
6. 40 C.F.R. part 68 sets forth the requirements of a risk management program that must be established and implemented at a stationary source that has more than a threshold quantity of a regulated substance in a process.
7. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines the term “person” to include in relevant part, an individual, corporation, or partnership.

FINDINGS

8. Respondent is a company authorized to do business in the state of North Dakota and is therefore a “person” as that term is defined under the section 112(r) of the CAA, 42 U.S.C. § 7412(r).
9. Respondent is the owner and/or operator of Cloverdale Foods Company, a stationary source, located at 3015 34th Street NW, Mandan, North Dakota 58554 (the Facility).
10. The Facility uses, handles, and/or stores more than a threshold quantity of anhydrous ammonia, a regulated substance, as specified at 40 C.F.R. §§ 68.115 and 68.130.
11. Pursuant to CAA section 112(r)(7), 42 U.S.C. § 7412(r)(7), Respondent is required to prepare and implement a risk management program to detect and prevent or minimize accidental releases of such substances.

12. The EPA conducted an inspection of the Facility on December 12, 2016, to assess compliance with section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. part 68.
13. During the inspection, the EPA representative observed alleged violations of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. part 68. The alleged violations are described in paragraphs 14-26, below.
14. 40 C.F.R. § 68.65(c)(1) provides that the process safety information shall include information pertaining to the technology of the process. Respondent failed to have maximum intended inventory concerning the technology of the ammonia refrigeration process. This is a violation of 40 C.F.R. § 68.65(c)(1).
15. 40 C.F.R. § 68.65(d)(1)(iv) provides that the process safety information shall include information pertaining to the equipment in the process including relief system design and design basis. Respondent failed to have specific information pertaining to the relief system design and design basis. This is a violation of 40 C.F.R. § 68.65(d)(1)(iv).
16. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices (RAGAGEP). The manual king valve on the Controlled Pressure Receiver was not labelled in accordance with Section 5.14.3 of IIAR 2 2014, Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems. This is a violation of 40 C.F.R. § 68.65(d)(2).
17. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with RAGAGEP. Ammonia piping mains, headers, and branches, including piping connected to compressors C-5 and C-6 and piping in the warehouse cooler, were not adequately identified and marked in accordance with Section 5.14.5 of IIAR 2 2014. This is a violation of 40 C.F.R. § 68.65(d)(2).

18. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with RAGAGEP. All machinery room entrance doors were not marked with a sign indicating that only authorized personnel are permitted to enter in accordance with Section 6.3.4 of IIAR 2 2014. This is a violation of 40 C.F.R. § 68.65(d)(2).

19. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with RAGAGEP. The two doors to the machinery room were not equipped with panic-type hardware in accordance with Section 6.10.2 of IIAR 2 2014. This is a violation of 40 C.F.R. § 68.65(d)(2).

20. 40 C.F.R. § 68.65(d)(2) provides that the owner or operator shall document that equipment complies with RAGAGEP. The Low Pressure Accumulator nameplate was not visible above the insulation and could not be inspected in accordance with Section 12.5.2 of IIAR 2 2014. This is a violation of 40 C.F.R. § 68.65(d)(2).

21. 40 C.F.R. § 68.67(c)(2) provides that the process hazard analysis (PHA) shall address the identification of any previous incident which had a likely potential for catastrophic consequences. Respondent failed to address the ammonia incident that occurred on January 5, 2009 when updating and revalidating the PHA in 2014. This is a violation of 40 C.F.R. § 68.67(c)(2).

22. 40 C.F.R. § 68.69(a)(1)(iv) provides that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements: Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner. Respondent failed to develop and implement written operating procedures for emergency shutdown. This is a violation of 40 C.F.R. § 68.69(a)(1)(iv).

23. 40 C.F.R. § 68.73(d)(2) provides that inspection and testing procedures shall follow RAGAGEP. Respondent failed to follow RAGAGEP for the inspection and maintenance of the insulated ammonia piping in the warehouse cooler. One section of insulated piping was breached in the outer jacket and vapor retarder, and two sections of insulated piping had ice formation on the surface. Inspections on the insulated ammonia piping has not been performed in accordance with Section 6.7.2 of IIAR Bulletin 110, Guidelines for Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems. This is a violation of 40 C.F.R. § 68.73(d)(2).

24. 40 C.F.R. § 68.73(d)(3) provides that the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices. Respondent failed to provide documentation regarding the frequency of inspections and tests performed on the ammonia refrigeration process equipment. This is a violation of 40 C.F.R. § 68.73(d)(3).

25. 40 C.F.R. § 68.75(a) provides that the owner or operator shall establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process. Respondent failed to implement a management of change procedure for the installation of a valve on a roof-top vent for the venting system connected to the four pressure vessels located in the machinery room. The purpose of this venting system is to allow for the isolation of a vessel as needed for maintenance. The installation of this valve is discussed in the Near Miss Report dated 11/23/2014. This is a violation of 40 C.F.R. § 68.75(a).

26. 40 C.F.R. § 68.75(d) provides that if a change covered by this paragraph results in a change in the process safety information required by 40 C.F.R. § 68.65, such information shall be updated accordingly. The owner/operator failed to update the P&IDs related to the removal of evaporators E-503 and E-504 from the Bacon Room. This is a violation of 40 C.F.R. § 68.75(d).

COMPLIANCE ORDER

27. Based upon the foregoing Findings by the EPA, it is hereby ordered and agreed that Respondent shall comply with the requirements of section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated thereunder and codified at 40 C.F.R. part 68. Specifically, the EPA and Respondent agree that Respondent shall, as expeditiously as possible, but in no event later than February 1, 2018, correct the violations alleged in paragraphs 14-26.

28. Within 15 days of completion of all actions identified in paragraph 27, Respondent shall provide the EPA with a notification that the actions have been completed.

29. The notification of completion required by paragraph 28 of this Order shall contain the following certification signed by an officer of Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based upon my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment. (Signature and date)

30. All submissions and correspondence shall be mailed or emailed to the following address:

U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Attn: Steven A. Ramirez, ENF-AT-TP
(Email address: ramirez.stevena@epa.gov)

OTHER TERMS AND CONDITIONS

31. Respondent admits the jurisdictional allegations contained in this Order.

32. Respondent neither admits nor denies the findings in the Findings section of this Order.

GENERAL PROVISIONS

33. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$95,284 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). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.
34. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or other federal, state or local laws or statutes, nor shall it restrict the 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.
35. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present imminent and substantial endangerment to the public health, welfare, or the environment.
36. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the effective date of this Order until the termination date as set out in paragraph 50 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

37. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. part 2, subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. part 2, subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

38. Each undersigned representative certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally Respondent and Complainant to this document.

39. Deadlines for submittals or performance may be extended by the EPA, at its sole discretion, without further amendment to this Order. The EPA will provide Respondent written confirmation and documentation of any such extensions of time.

EFFECTIVE DATE AND OPPORTUNITY FOR A CONFERENCE

40. Pursuant to section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

JUDICIAL REVIEW

41. Respondent 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 Order, including any right of judicial review under section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

TERMINATION

42. This Order shall terminate on the date of a determination by the EPA that Respondent has achieved compliance with all terms of this Order.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, REGION 8,
Office of Enforcement, Compliance and
Environmental Justice

Complainant

Date: 9/18/2017

By: *Kimberly S. Opekar*
for Kimberly S. Opekar
Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Cloverdale Foods Company

Respondent

Date: 9-7-2017

By: *Jay*

Plant Engineer
Title

**In the Matter of:
Cloverdale Foods Company**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE ORDER ON CONSENT were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail, Postage Pre-Paid, to:

Cloverdale Foods Company
3015 34th Street NW
Mandan, North Dakota 58554
Attn: Mr. Larry Moen

9/20/17
Date

Andrea Reed
Andrea Reed