



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUN 30 2016

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Kevin Clark  
EHS Manager  
Field Packing Company LLC  
6 Dublin Lane  
Owensboro, Kentucky 42301

Re: Field Packing Company LLC  
Consent Agreement and Final Order  
CAA-04-2016-8007(b)

Dear Mr. Clark:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2016-8007(b)) involving Field Packing Company LLC. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the U. S. Environmental Protection Agency. If you have any questions with regard to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Ms. Kerry Platt at (404) 562-9004.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Bookman".

Robert W. Bookman  
Chief  
Chemical Management and Emergency  
Planning Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
BEFORE THE ADMINISTRATOR**

**HEARING CLERK**

**2016 JUN 30 PM 2:25**

**OFFICE OF REGIONAL  
ADMINISTRATOR**

**IN THE MATTER OF:** )  
 )  
Field Packing Company LLC )  
 )  
Respondent. )  
\_\_\_\_\_ )

**Docket No.  
CAA-04-2016-8007(b)**

**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"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing 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 4 (the "EPA"). The Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent, Field Packing Company LLC, is a limited liability company doing business in the Commonwealth of Kentucky. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
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 issue of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

**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. The alleged violations in this Consent Agreement are pursuant to Section 113(a)(3)(A).
6. The 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 initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. On April 8, 2015, the EPA issued to Respondent a notice of potential violation (“NOPV”), providing notice that the EPA found that Respondent potentially committed the alleged violations described in Section E of this Agreement and providing Respondent an opportunity to confer with the EPA. On May 6, 2015, representatives of Respondent and the EPA discussed the April 8, 2015, NOPV.

8. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes settlement between Complainant and Respondent. 40 C.F.R. § 22.4(b) and 22.18(b).

9. 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**

10. Respondent operates a “stationary source” as that term is defined by Section 302(z) of the Act, 42 U.S.C. § 7602(z). The Respondent’s stationary source is located at 6 Dublin Lane, Owensboro, Kentucky 42301 (stationary source).

11. Section 112(r) of the Act, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3). The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention.

12. Pursuant to Section 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), the EPA promulgated rules codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the “Risk Management Program” (RMProgram) and apply to an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.

13. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a “process” as defined in 40 C.F.R. § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.

### **D. FACTUAL ALLEGATIONS**

14. Respondent has submitted and registered an RMPlan to the EPA for its stationary source and has developed an RMProgram accidental release prevention program for the stationary source.

15. For the purpose of this Agreement:

- (a) At its stationary source, the Respondent operates a meat processing facility that uses ammonia as its refrigerant.
- (b) At its stationary source, the Respondent has 24,300 pounds of ammonia.
- (c) At its stationary source, the Respondent has one RMP level 3 covered process, an ammonia refrigeration process, which stores or otherwise uses a toxic chemical in an amount exceeding its applicable threshold of 10,000.
- (d) During calendar year 2014, EPA opened an RMP compliance monitoring investigation to determine Respondent's compliance with 40 C.F.R. Part 68 at its stationary source. As part of this investigation, the EPA conducted an onsite inspection of RMP related records on May 22, 2014. The focus of the onsite inspection was to assess the Respondent's compliance with RMP requirements for its covered process operating at its stationary source.
- (e) At the time of the inspection, there were no visual alarms outside the entrance door to the engine room, as defined in the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 15-2013 Section 8.11.2.1, to alert of an ammonia release. Also, sections of the process piping lacked labeling to indicate the physical state, the identity of the refrigerant, and the direction of refrigerant flow, as outlined in International Institute of Ammonia Refrigeration (IIR) Bulletin No. 14 (9/91). Additionally, some of the ammonia process piping located on the roof had sections of insulation that was damaged (mechanical damage) and some of the uninsulated piping was rusted (potential integrity damage); both of which should be repaired upon discovery, as outlined in IIR Bulletin No. 11 (Revised 3/02), Section 6.7.
- (f) At the time of the inspection, the facility was asked to provide all retained on site Process Hazard Analyses (PHAs), including the initial PHA and subsequent 5 year required updates or revalidations. The initial RMP was submitted in June of 1999. The facility could only provide PHAs dated December 4, 2013 and February 25, 2009. Previous RMP submissions indicated PHAs were conducted in October of 1997 and in May of 2004, but the Respondent could not provide these analyses.
- (g) At the time of the inspection, the Respondent indicated that facility and process specific training is completed and tracked in a training and testing platform identified as "*Super Skills*". This platform did not have any tracking that any of the Respondent's 4 process operators had completed the Respondent's required training series in *Super Skills* prior to operating the facility's process.
- (h) At the time of the inspection, the Respondent provided the inspector with a record of one of the process operators completing an off-site training, "Refrigeration Engineers Technician Association" training, in 2003. This same operator completed the Super Skill training series in 2007, but there were no additional records that every three years refresher training for this operator, or the other 3 operators, had been completed.
- (i) At the time of the inspection, the Respondent could not provide information that a vibrational analysis had been performed on the process compressors in 2013. Also, the

Respondent could not provide the inspector with confirmation that the facility's ammonia sensors had been calibrated in January, February or May of 2014. The monthly preventative maintenance schedule the Respondent prepared for their process required the sensors to be calibrated monthly.

(j) The Respondent's safety relief valve (SRV) inspection did not follow IIAR Bulletin No. 110 (Revised 3/02). At the time of inspection, 33 of the Respondent's covered process SRVs had either a manufacture/ install date of January 2009, or earlier, which is beyond the IIAR 5 (five) year replacement guideline for ammonia SRVs.

(k) At the time of the inspection, the facility provided copies of their incident reports. On August 22, 2012, an incident occurred when a filter gasket was blown out, causing oil containing ammonia to escape the system. The incident specific report recommended 3 corrective actions. The Respondent could not provide information that the recommended corrective actions had been completed.

### **E. ALLEGED VIOLATIONS OF LAW**

16. Based on EPA's compliance monitoring investigation, the EPA alleges that the Respondent violated the codified rules governing the Act's Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 C.F.R. Part 68 when it:

Failed to document that equipment complies with recognized and generally accepted good engineering practices as required by 40 CFR § 68.65(d)(2);

Failed to retain PHAs and updates or revalidations as well as the resolution of recommendations for the life of the process as required by 40 CFR § 68.67(g);

Failed to initially train each employee before being involved in operating a newly assigned process as required by 40 CFR § 68.71(a)(1);

Failed to provide refresher training at least every three years, to each employee involved in operating a process to assure that the employee understands and adhere to the current operating procedures of the process as required by 40 CFR § 68.71(b);

Failed to perform inspection and tests on process equipment as required by 40 CFR § 68.73(d)(1);

Failed to ensure its inspection and testing procedures followed recognized and generally accepted good engineering practices as required by 40 CFR § 68.73(d)(2); and

Failed to establish a system to address and resolve the (compliance report) findings and recommendations and to document resolutions and corrective actions as required by 40 CFR § 68.81(e).

## F. TERMS OF CONSENT AGREEMENT

17. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) neither admits nor denies the alleged violations of law stated above;
- (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 Agreement;
- (f) consents to any Permit Action;
- (g) waives any rights to contest the alleged violations of law set forth in Section E of this Consent Agreement;
- (h) waives its rights to appeal the Order accompanying this Agreement, and
- (i) certifies that as of its execution of this Agreement, it is in compliance with all relevant requirements of 40 C.F.R. Part 68.

18. For the purpose of this Agreement, Respondent:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement 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 Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Commonwealth of Kentucky; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

19. Penalty Payment. Respondent agrees to:

- a) pay the civil penalty of **EIGHTY-TWO THOUSAND SIX HUNDRED DOLLARS (\$82,600)** ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement;
- b) pay the EPA Penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," or by electronic transfer to one of the following addresses:

For payment sent via electronic transfer  
Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: "U.S. Environmental Protection Agency";

For payment sent via standard delivery  
U.S. Environmental Protection Agency  
PO Box 979077  
St. Louis, MO 63197-9000; or

For payment sent for signed receipt confirmation (FedEx, DSL, UPS, USPS Certified)  
U.S. Environmental Protection Agency  
1005 Convention Plaza  
SL-MO-C2GL  
St. Louis, MO 63101  
Delivery Location Phone Number: 314-425-1819.

The check shall reference on its face the name and the Docket Number of the CAFO. Within 24 hours of payment of the EPA Penalty, send a separate copy of the check or confirmation of electronic transfer, and a written statement that payment has been made in accordance with this Agreement, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Kerry Platt  
Chemical Management and Emergency  
Planning Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Saundi Wilson  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

20. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- b) 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;
- c) 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; and
- d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

21. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

22. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

23. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

24. By signing this Agreement, 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.

25. Except as qualified by Paragraph 20, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.



## **G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER**

26. 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 and facts specifically alleged above.

27. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

28. This Agreement 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.

29. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon written agreement of both parties, and approval of the Regional Judicial Officer.

30. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 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.

31. Nothing in this Agreement 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 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.

32. 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 an imminent and substantial endangerment to the public health, welfare, or the environment.


33. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

**H. EFFECTIVE DATE**

34. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order 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 Field Packing Company LLC, Docket No. CAA-04-2016-8007(b), is Hereby Stipulated, Agreed, and Approved for Entry.


FOR RESPONDENT:

Field Packing Company LLC

By:  Date: 6/7/16  
Name: Kevin Clark (Typed or Printed)  
Title: HR. Manager (Typed or Printed)

FOR COMPLAINANT:

U.S. Environmental Protection Agency

By:  Date: 6/10/16  
Carol L. Kemker  
Acting Director  
Air, Pesticides and Toxics Management Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
BEFORE THE ADMINISTRATOR**

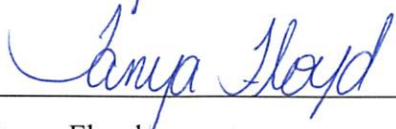
**IN THE MATTER OF:** )  
 )  
Field Packing Company LLC )  
 )  
Respondent. )  
\_\_\_\_\_ )

**Docket No.**  
CAA-04-2016-8007(b)

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective on the date that the Consent Agreement and Final Order are filed by the Regional Hearing Clerk.

SO ORDERED this 30<sup>th</sup> day of June, 2016

  
\_\_\_\_\_  
Tanya Floyd  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of Field Packing Company LLC, CAA-04-2016-8007(b), on the parties listed below in the manner indicated:

Robert W. Bookman  
U. S. EPA, Region 4  
Air, Pesticides and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA's internal mail)

Lucia Mendez  
U. S. EPA, Region 4  
Office of Regional Counsel  
61 Forsyth Street  
Atlanta, GA 30303

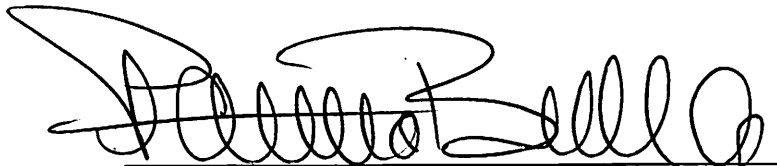
(Via EPA's internal mail)

Kevin Clark  
Field Packing Company LLC  
6 Dublin Lane  
Owensboro, Kentucky 42301

(Via Certified Mail -  
Return Receipt Requested)

Date:

6-30-16



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511