EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for William D. Chin (Name of Case Attorney) 8/17/18 (Date)

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

Case Docket Number CAA-01-2018-0051 and EPCRA-01-2018-0052

Site-specific Superfund (SF) Acct. Number ____________

✓ This is an original debt ____ This is a modification

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

McCain Foods USA, Inc
319 Richardson Road
Easton, Maine 04740
____

Total Dollar Amount of Receivable $ 225,000 Due Date: 9/16/18

SEP due? Yes ______ No ✓ Date Due ______

Installment Method (if applicable)

INSTALLMENTS OF:

1ST $ ____________ on ____

2nd $ ____________ on ____

3rd $ ____________ on ____

4th $ ____________ on ____

5th $ ____________ on ____

For RHC Tracking Purposes:

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

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number ____________

If you have any questions call: ____________ in the Financial Management Office

____________ Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

August 17, 2018

RECEIVED
AUG 17 2018
EPA ORC WS
Office of Regional Hearing Clerk

By Hand Delivery

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC04-6
Boston, Massachusetts 02109-3912

Re: In the Matter of: McCain Foods USA, Inc., Docket Nos. CAA-01-2018-0051 and EPCRA-01-2018-0052

Dear Ms. Santiago:

Please accept for filing the attached original and one copy of a Consent Agreement and Final Order (CAFO) settling the above-captioned administrative case against McCain Foods USA, Inc. for alleged violations of CAA/RMP and EPCRA at its facility in Easton, Maine.

Please note that this enforcement action has no accompanying administrative complaint. Instead, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2), this CAFO simultaneously commences and settles the action.

If you have any questions regarding the CAFO, please call me at 617-918-1728. Thank you for your assistance with this matter.

Sincerely,

William D. Chin

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1

cc: Dixon P. Pike, Esq.

In the Matter of: McCain Foods USA, Inc.
Docket Nos. CAA-01-2018-0051, EPCRA-01-2018-0052

CERTIFICATE OF SERVICE

I certify that I hand-delivered to the office of the Regional Hearing Clerk the original and one copy of the final Consent Agreement and Final Order (CAFO) in the above-captioned case, together with a cover letter, and arranged to send a copy of the CAFO and letter via first class mail to Respondent's counsel at the address set forth below:

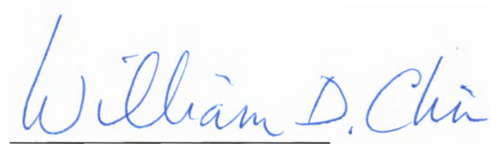
BY HAND-DELIVERY: (original and one copy)

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: ORC04-6
Boston, MA 02109-3912

VIA FIRST CLASS MAIL: (copy)

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

Dated: 8/17/18



William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: OES04-4
Boston, MA 02109-3912
617-918-1728

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED
AUG 17 2018
EPA ORC WS
Office of Regional Hearing Clerk

In the Matter of:	)	
	)	Docket Nos.
McCain Foods USA, Inc.	)	CAA-01-2018-0051
319 Richardson Road	)	EPCRA-01-2018-0052
Easton, Maine 04740	)	
	)	**CONSENT AGREEMENT AND**
Respondent.	)	**FINAL ORDER**
	)	
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)	)	

CONSENT AGREEMENT

Preliminary Statement

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), and Section 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

2. Complainant is the United States Environmental Protection Agency ("EPA"), Region 1. On EPA's behalf, the Director of the Office of Environmental Stewardship, Region 1 is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA and Section 325(c) of EPCRA.

3. Respondent is McCain Foods USA, Inc. ("McCain"), a corporation doing business in the State of Maine.

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (the "Consent Agreement" or "Agreement") and the attached final order (the "Final Order" or "Order") without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order. This Consent Agreement and Final Order resolves Respondent's civil penalty liability for the following alleged violations of the chemical accident prevention provisions of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), with regard to Respondent's operation of two ammonia-based refrigeration systems at its facility in Easton, Maine: (a) Program 3 Process Safety Information Requirements; (b) Program 3 Process Hazard Analysis Requirements; (c) Program 3 Operating Procedure Requirements; (d) Mechanical Integrity Requirements; and (e) Program 3 Emergency Response Requirements. This Consent Agreement and Final Order also resolves Respondent's civil penalty liability for an alleged violation of the hazardous chemical inventory reporting provisions of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), for the filing of an incomplete Tier 2 form for its facility in Easton, Maine. As further delineated below, the settlement requires:

(a) The payment of a civil penalty of $225,000;

(b) Submission of a description of a plan/process that has been developed and implemented to provide notice to nearby Amish residents of an ammonia release or other emergency at Respondent's Easton, Maine facility that could adversely affect such residents;

(c) Confirmation that key safety measures for ammonia refrigeration systems are in place at its Easton, Maine facility; and

(d) Certification that Respondent is now in compliance with 40 C.F.R. Part 68 at its Easton, Maine facility.

Jurisdiction

5. This Consent Agreement is entered into pursuant to Section 113(d) of the CAA, Section 325(c) of EPCRA, 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) of the CAA and Sections 325(c)(1) and (4) of EPCRA, 42 U.S.C. §§ 11045(c)(1) and (4).

6. EPA and the United States Department of Justice jointly determined that this matter is appropriate for an administrative penalty assessment. *See* 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4.

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

8. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. *See* 40 C.F.R. § 22.13(b).

Governing Law

CAA Authority

9. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. In particular, Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates that EPA promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health or the environment if accidentally released. Section

112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), requires that EPA establish, for each listed substance, the threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement a Risk Management Plan.

10. The regulations promulgated pursuant to Section 112(r)(7) of the CAA are found at 40 C.F.R. Part 68 (Part 68").

11. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), renders it unlawful for any person to operate a stationary source subject to the regulations promulgated under the authority of Section 112(r) of the CAA in violation of such regulations.

12. Forty C.F.R. § 68.130 lists the substances regulated under Part 68 ("RMP chemicals" or "regulated substances") and their associated threshold quantities, in accordance with the requirements of Section 112(r)(3) and (7) of the CAA. The list includes anhydrous ammonia as a RMP chemical and identifies a threshold quantity of 10,000 pounds.

13. A "process" is defined by 40 C.F.R. § 68.3 as any activity involving a regulated substance, including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.

14. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply

with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

15. Each process in which a regulated substance is present in more than its associated threshold quantity ("covered process") is subject to one of three risk management programs. Program 1 is the least comprehensive, and Program 3 is the most comprehensive. Pursuant to 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 requirements if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is less than the distance to any public receptor. Pursuant to 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 requirements if the process does not meet the eligibility requirements for Program 1 and is either in a specified NAICS code or subject to the Occupational Safety & Health Administration's ("OSHA's") process safety management ("PSM") standard at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process that meets neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

16. Anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds is subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119.

17. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source subject to the requirements of Part 68 submit a Risk Management Plan ("RMP") to EPA, as provided in 40 C.F.R. § 68.150. The RMP documents compliance with Part 68 in a summary format. For example, the RMP for a Program 3 process must document compliance with all of the elements of a Program 3 Risk Management Program, including

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

18. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 28 U.S.C. § 2461 note, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, section 701 of Public Law 114-74, 129 Stat. 599 (Nov. 2, 2015), provide for the assessment of civil penalties for violations of Section 112(r) of the CAA in amounts up to $37,500 per day per violation for violations occurring from December 7, 2013 through November 2, 2015, and in amounts up to $46,192 per day per violation for violations that occurred after November 2, 2015.

EPCRA Authority

19. EPCRA was enacted on October 17, 1986, and establishes requirements for Federal, State and local governments and industry regarding emergency planning for, and reporting on, hazardous and toxic chemicals.

20. Under Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), owners and operators of facilities that are 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 ("hazardous chemicals") must prepare and submit an emergency and hazardous chemical inventory form ("Tier 1" or "Tier 2" form) to the local emergency planning committee ("LEPC"), the state emergency response commission ("SERC"), and the local fire department. Tier 1 or Tier 2 forms must be submitted annually on or before March 1 and are required to contain information with respect to the preceding calendar year.

21. The regulations promulgated pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, are found at 40 C.F.R. Part 370 ("Part 370").

22. Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), authorizes EPA to establish minimum threshold levels of hazardous chemicals for the purposes of Section 312(a) of EPCRA. In accordance with Section 312(b) of EPCRA, 40 C.F.R. § 370.10 establishes minimum threshold levels for hazardous chemicals for the purposes of 40 C.F.R. Part 370.

23. Under 40 C.F.R. §§ 370.20, 370.40, and 370.44, the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level, as set forth in 40 C.F.R. § 370.10, must prepare and submit a Tier 1 or Tier 2 form to the LEPC, SERC and local fire department. Forty C.F.R. § 370.45(a) requires that Tier 1 or Tier 2 forms be submitted annually on or before March 1 and contain information relating to the preceding calendar year. Forty C.F.R. § 370.40(b) allows the LEPC, SERC or local fire department to request that a facility submit the more comprehensive Tier 2 form in lieu of the Tier 1 form. The State of Maine requires the use of Tier 2 forms.

24. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by EPA's Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 28 U.S.C. § 2461 note, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, section 701 of Public Law 114-74, 129 Stat. 599 (Nov. 2, 2015), provide for the assessment of civil penalties for violations of Section 312 of EPCRA in amounts up to $37,500 per day per violation for violations occurring from December 7, 2013 through November 2, 2015, and in amounts up to $55,907 per day per violation for violations that occurred after November 2, 2015.

EPA Findings

25. Respondent is a corporation organized under the laws of the state of Maine with its principal office located in Lisle, Illinois.

26. As a corporation, Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7402(e), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), against whom an administrative order may be issued under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), and Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4).

27. Respondent operates a facility located at 319 Richardson Road in Easton, Maine that produces frozen French fries and other potato products (the "Facility"). The Facility was acquired by Respondent in 1976, and its operations are located along both sides of Richardson Road. The main production plant (the "Main Plant" or "E1") and potato storage buildings are located on the north side of the road; the cold

storage/shipping (the "Cold Storage" or "E2") and wastewater treatment facilities are along the south side of the road. Both Easton 1 and Easton 2 contain refrigeration systems which use anhydrous ammonia as a coolant.

28. The Facility produces approximately 67,000 pounds of products per hour and employs approximately 520 full-time employees, operating three shifts. Wastewater generated from potato processing is discharged to a screening building where large potato particles are removed before discharge to the Facility's wastewater treatment plant.

29. 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), 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

30. At all times relevant to the violations alleged herein, Respondent is the "operator" of the Facility.

31. As described above in paragraph 27, Respondent uses anhydrous ammonia in two refrigeration "processes," as defined by 40 C.F.R. § 68.3, in a series of interconnected pipes and vessels in both E1 and E2 (the "E1 Process" and the "E2 Process," respectively).

32. On March 17, 2010, Respondent filed a program 3 RMP for the Facility (the "2010 RMP"), and updated it on September 20, 2013 (the "2013 RMP"). The 2010 and 2013 RMPs both reported that the E1 Process and the E2 process used 55,000 pounds and 26,000 pounds of anhydrous ammonia, respectively.

33. Accordingly, the E1 Process and the E2 Process are "covered processes" subject to the RMP provisions of Part 68 because Respondent "uses," "stores," and

"handles" the RMP chemical anhydrous ammonia for both processes in an amount greater than 10,000 pounds.

34. According to both the 2010 and 2013 RMPs, the endpoint for a worse-case release of anhydrous ammonia used in the E1 Process and the E2 Process is greater than the distance to a public receptor.

35. Additionally, the E1 and E2 Processes are subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119 because they each use anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds.

36. Therefore, in accordance with 40 C.F.R. § 68.10(a)-(d), Respondent's use, storage, and handling of anhydrous ammonia in the E1 Process and the E2 Process is subject to the requirements of RMP Program 3.

37. Ammonia presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. Exposure to 300 parts per million is immediately dangerous to life and health. Ammonia is also flammable at concentrations of approximately 16% to 25% by volume in air. It can explode if released in an enclosed space with a source of ignition present, or if a vessel containing anhydrous ammonia is exposed to fire. In light of the potential hazards posed by the mishandling of anhydrous ammonia, industry trade associations have issued standards outlining the recognized and generally accepted good engineering practices ("RAGAGEP") in the ammonia refrigeration industry. In collaboration with the American National Standards Institute, the International Institute of Ammonia Refrigeration ("IIAR") has issued (and updates) "Standard 2: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigeration

Systems,"[1] along with other applicable standards and guidance. Also in collaboration with the American National Standards Institute, the American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") has issued (and updates) ("Standard 15: Safety Standard for Refrigeration Systems." These standards are consistently relied upon by refrigeration experts and are sometimes incorporated into state building and mechanical codes.[2]

38. During the evening of February 22, 2014, a boiler operator at the Facility discovered a leak in the E1 Process that resulted in the release of approximately 770 pounds of anhydrous ammonia (the "February 2014 Release"). The leak was reported to the Easton Fire Department, the Maine Department of Environmental Protection ("ME DEP"), the LEPC, the SERC, and the National Response Center.

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[1] The most recent update to this standard was issued in 2014 and renamed "Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems."

[2] For example, as of September 8, 2011, municipalities of 4,000 or more (formerly 2000) in Maine must enforce the Maine Uniform Building and Energy Code (MUBEC) if they had a building code in place by August 2008. As of July 1, 2012, MUBEC must be enforced in a municipality of 4000 if no building code was adopted before. See web site for Maine building codes.

MUBEC incorporates by reference the 2009 International Building Code. The International Building Code itself also incorporates the International Mechanical Code. Int'l Bldg. Code § 101.4.2 (2009) ("The provisions of the International Mechanical Code shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.") (emphasis added). The International Mechanical Code, in turn, specifies that "[a]mmonia-refrigerating systems shall comply with this code and, except as modified by this code, ASHRAE 15 and IIAR 2." Int'l Mech. Code § 1101.6 (2009).

Also, the Maine State Fire Marshal has adopted NFPA 1, which has a chapter dedicated to Mechanical Refrigeration (Chapter 53). This chapter includes a requirement that refrigeration systems be installed and maintained in a safe manner that will minimize the life, health, and fire hazards of the installation (Section 53.5.1) and that the installation shall be in accordance with the mechanical code adopted by the jurisdiction (Section 53.5.2). As referenced above, the mechanical code requires compliance with ASHRAE 15 and IIAR 2. In addition, Chapter 53 contains many other requirements for vapor detection, emergency switches, safe ventilation, visual and audible alarms, etc.

39. On May 20-21, 2014, authorized representatives of EPA conducted an inspection at the Facility to follow up on the February 2014 Release and to determine the facility's compliance with Section 112(r) of the CAA and with Sections 302-312 of EPCRA, 42 U.S.C. §§ 11002-11022, (the "Inspection").

40. During the Inspection, EPA inspected the E1 Process, which is involved in the manufacturing of products at the Facility, and the E2 Process, which is involved with the cold storage of the products once they are manufactured. EPA also requested and eventually received and reviewed certain documentation pertaining to the Facility and the E1 and E2 Processes, including:

- The 2010 RMP;
- The 2013 RMP;
- A document titled "Emergency Action Plan," Revision #23, dated March 28, 2014 (the 2014 EAP");
- A document titled "EPA Prevention Program 3 and OSHA Process Safety Management Compliance Audit Report – Ammonia Refrigeration System," dated April 1, 2010 (the "2010 PSM Audit Report");
- A document titled "What-If Checklist PHA Study of the McCain Foods Ammonia Refrigeration System," dated June 15, 2011 (the "2011 PHA Checklist");
- A document titled "Compliance Audit of OSHA Process Safety Management (PSM) and EPA Program 3 Prevention Program." dated March 28, 2013 (the "2013 PSM Audit Report");
- A document titled "Ammonia Refrigeration Leak Response Procedures," Revision – 0, dated November 11, 2011;
- A document titled "Ammonia Refrigeration Leak Response Procedures," Revision – 1, dated March 3, 2014;
- A document titled "Incident Investigation Form," dated February 22, 2014;

- A document titled "Incident Investigation Form," dated May 20, 2014;
- A document titled "PHA Recommendation Management & Tracking Report," last revised on June 14, 2011; and
- Tier 2 Form for 2013 (filed on February 26, 2014).

41. EPA temporarily discontinued the Inspection on May 20, 2014 when inspectors noted a strong odor of ammonia near an oil separator cleanout port in the ammonia machinery room ("AMR") of the E1 Process. Inspection activities were delayed by EPA to allow facility personnel time to investigate the apparent ammonia leak. When the Inspection resumed the following day, facility staff reported that the source of the ammonia leak was a faulty gasket on the cleanout port and that the damaged gasket had been replaced with a new one. The facility staff also later showed the faulty gasket to the inspectors and explained that the gasket had apparently been previously used and had a wear point/fault in it, and been mistakenly re-installed on the cleanout port.

42. EPA found that the Inspection and EPA's review of information submitted by Respondent identified certain conditions related to the E1 and E2 Processes at the time of the Inspection, including that:

a. Ammonia piping and equipment had not been properly labeled and/or consistently color-coded (e.g., the piping for the E1 Process was color-coded in an inconsistent manner such that it was difficult to differentiate between piping that contained ammonia, natural gas, and fuel oil; the piping for the E1 Process was also largely unlabeled and lacking any information on the contents, direction of flow, physical state, and or pressure level; and the piping for the rooftop condensers for the E2 process was also largely unlabeled);

b. Respondent did not have any information/data to show that the ammonia detectors for the AMRs of the E1 and E2 Processes would sound an alarm and start a ventilation system if levels of ammonia reached a certain concentration;

c. Respondent did not have any information/data to show that the ammonia detectors for the AMRs of the E1 and E2 Processes would trigger an alarm if the continuous ventilation system failed;

d. Ammonia detectors in the AMRs did not activate visual and audio alarms outside the machinery rooms (e.g., there were no audio/visual alarms outside of the AMR and the boiler room of the E1 Process; and Respondent did not provide any information the ammonia detectors and/or alarms for the AMR of the E1 Process worked as designed; and the exterior access door for the AMR of the E2 Process has an ammonia alarm with a visual warning, but no audio alarm);

e. Emergency shutdown information had not been posted at the entrances to AMRs of the E1 and E2 Processes;

f. Doors for the AMRs were not all self-closing and tight-fitting (e.g., the overhead door/vent for the AMR of the E1 Process could only be closed manually via the interior of the AMR; and the door for the AMR of the E2 Process was rusted and poorly sealed);

g. The AMRs could not be isolated/sealed and/or had other wall penetrations that could allow ammonia to release/leak to other parts of the building or to the outside environment (e.g., the overhead door/vent for the AMR of the E1 Process was open during the Inspection and could only be closed manually via the interior of the AMR; and the door for the AMR of the E2 Process was rusted and poorly sealed);

h. The AMRs did not have eyewash/safety shower stations inside the machinery room and/or close to outside of the room (e.g., there were no eyewash/safety shower stations near the exits for the AMR of the E1 Process; and there was no safety shower station either in or immediately outside of the AMR of the E2 Process);

i. The AMRs of the E1 and E2 Processes did not have ventilation air inlets that were located at ground level near machinery (e.g., the large wall vent (i.e., an overhead door) in the AMR for the E1 Process could only be opened/closed from inside the AMR; and the air inlets in the AMR for the E2 Process were all located at the top part of the room);

j. The fresh air intakes to the AMRs of the E1 and E2 Processes may have been closed or inadequate (e.g., the 2013 PSM Audit Report indicated that Respondent had not yet completely addressed questions regarding ventilation calculations and ammonia detectors in the AMRs of the E1 and E2 Processes that had been previously cited in the 2010 PSM Audit Report (and initially raised in 2004));

k. Respondent had not posted any signage to either identify the main ammonia shut-off valve (i.e., the "King Valve") for the accumulator for the E2 Process or to direct emergency responders to the valve;

l. Emergency shut-off controls for the E1 and E2 Processes were missing, not easily identifiable to emergency responders and/or not accessible to responders wearing emergency equipment;

m. There were multiple locations for the E1 and E2 Processes where ammonia pressure relief discharge points: (1) were less than 20 feet away from windows, ventilation intakes, or personnel exits; (2) were less than 7.5 feet above roof surface; and/or (3) had outlets aimed downwards (i.e., toward the ground) rather than upwards;

n. There was a lack of signage or inadequate signage for manual ventilation fan overrides outside the AMRs of the E1 and E2 Processes to direct emergency responders to the equipment;

o. The AMRs had some impediments to a safe exit in case of an emergency (e.g., any escape from the AMR of the E1 Process via the overhead door/vent (which leads into an alcove area for the exterior door exit) could be hampered if an ammonia release vented into the alcove; and any escape from the AMR of the E2 Process was blocked by a padlocked gate/fence that lacked any "crash-out" capability);

p. Respondent had not yet addressed all findings from the 2010 and 2013 PSM Audit Reports, including questions initially raised in 2004 regarding ventilation calculations and ammonia detectors in the AMRs of the E1 and E2 Processes;

q. There were multiple locations for the E1 and E2 Processes where piping and valves were corroded (e.g., the ammonia piping around the rooftop condensers for the E1 Process lacked paint and showed substantial corrosion; the ammonia piping under and around the rooftop condensers for the E2 Process were corroded; and the valves and pipe segments around the penthouse/chiller for the E2 Process were unpainted and quite corroded);

r. There were multiple locations for the E2 process where vapor barrier and insulation were breached (e.g., the valves and pipe segments around the penthouse/chiller for the E2 Process had many uninsulated areas; there were several areas around the penthouse/chiller for the E2 Process where piping insulations covers were broken, dislodged or missing, which allowed moisture to condense and collect resulting in corrosion both at the openings and under adjacent portions of insulation (i.e., "corrosion-under-insulation"); and there was ice formation around areas in the AMR for the E2 process where insulation was missing or apparently broken with staining indicative of corrosion-under-insulation); and

s. Respondent had apparently reused a gasket in the oil separator cleanout port of RC-12 in the AMR of the E1 Process, which resulted in a leak of ammonia during the Inspection.

43. On March 8, 2016, EPA issued a Notice of Potential Violation to Respondent that identified potential violations or areas of concern that were observed during the Inspection.

44. On October 31, 2017, Respondent provided Complainant with a list of improvement activities (and their costs) that it had undertaken at the Facility since the Inspection that included in part, a list of upgrades that were taken to correct the areas of concern observed during the Inspection and noted in EPA's Notice of Potential Violation.[3] These upgrades included PSM upgrades and electrical installation work

45. Accordingly, Complainant alleges the following violations of Part 68 and Part 370.

Alleged CAA/RMP Violations

Failure to Comply with Program 3 Process Safety Information Requirements

46. Complainant re-alleges and incorporates by reference paragraphs 1 through 45 of this Consent Agreement.

47. Pursuant to 40 C.F.R. §§ 68.12(d)(3) and 68.65, the owner or operator of a Program 3 process is required, among other things, to compile written process safety information, including information pertaining to the technology of the process and information pertaining to the equipment in the process, before conducting a PHA, in order to perform an adequate PHA and to enable proper maintenance of process equipment. This includes documenting: information pertaining to the hazards of the RMP chemical in the process; information pertaining to the technology and equipment of the process (including that the equipment complies with recognized and generally

[3] This list was also re-submitted to Complainant on April 6, 2018.

accepted good engineering practices); and information showing that any existing equipment that was designed in accordance with outdated standards is designed, maintained, inspected, tested, and operating in a safe manner.

48. At the time of the Inspection, Respondent failed to document that the E1 and E2 Processes complied with recognized and generally accepted good engineering practices ("RAGAGEP") and that existing equipment designed according to outdated standards was designed, maintained, inspected, tested, and operated in a safe manner. For example:

(a) Respondent had not properly labeled and/or consistently color-coded all of the ammonia piping and equipment for the E1 and E2 Processes;

(b) Respondent did not have any information/data to show that the ammonia detectors for the AMRs of the E1 and E2 Processes would sound an alarm and start a ventilation system if ammonia levels reached a certain concentration;

(c) Respondent did not have any information/data to show that the ammonia detectors for the AMRs of the E1 and E2 Processes would trigger an alarm if the continuous ventilation system failed;

(d) Ammonia detectors in the AMRs for the E1 and E2 Processes did not activate visual and/or audio alarms outside the machinery rooms;

(e) Respondent had not posted emergency shutdown information at the entrances to AMRs of the E1 and E2 Processes;

(f) The doors for the AMRs for the E1 and E2 Processes were not all self-closing and tight-fitting;

(g) The AMRs could not be isolated/sealed and/or had other wall penetrations that could allow ammonia to release/leak to other parts of the building or to the outside environment;

(h) The AMRs did not have eyewash/safety shower stations inside the machinery room and/or close to each exit outside of the room;

(i) The AMRs of the E1 and E2 Processes did not have ventilation air inlets that were positioned so as to avoid recirculation of exhaust air;

(j) Respondent had not yet addressed questions raised in the 2010 and 2013 PSM Audit Reports regarding ventilation calculations and ammonia detectors in the AMRs of the E1 and E2 Processes;

(k) Respondent had not posted any signage to either identify the main ammonia shut-off valve (i.e., the "King Valve") for the accumulator for the E2 Process or to direct emergency responders to the valve;

(l) The emergency shut-off controls for the E1 and E2 Processes were missing, not easily identifiable to emergency responders and/or not accessible to responders wearing emergency equipment;

(m) There were multiple locations for the E1 and E2 Processes where ammonia pressure relief discharge points: (1) were less than 20 feet away from windows, ventilation intakes, or personnel exits; (2) were less than 7.5 feet above roof surface; and/or (3) had outlets aimed downwards (i.e., toward the ground) rather than upwards;

(n) There was a lack of signage or inadequate signage for manual ventilation fan overrides outside the AMRs of the E1 and E2 Processes to direct emergency responders to the equipment; and

(o) The AMRs had some impediments to a safe exit in case of an emergency. located at ground level near machinery; and

(p) The AMRs for the E1 and E2 Processes could not be completely isolated/sealed.

49. Accordingly, by failing to compile the necessary information about the technology and equipment of the E1 and E2 Processes, including by documenting that the E1 and E2 Processes complied with recognized and generally accepted good engineering practices, Respondent violated 40 C.F.R. § 68.65 and Section 112(r)(7)(E) of the CAA.

Failure to Comply with Program 3 Process Hazards Analysis Requirements

50. Complainant re-alleges and incorporates by reference paragraphs 1 through 40 of this CAFO.

51. Pursuant to 40 C.F.R. §§ 68.12(d)(3) and 68.67(a), the owner or operator of a Program 3 process is required to perform an initial process hazard analysis ("PHA") on covered processes. The PHA shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process.

52. Pursuant to 40 C.F.R. § 68.67(c), the PHA shall identify the hazards of the process, opportunities for equipment malfunction or human error, safeguards that are used or needed, and any steps used or needed to detect releases.

53. Pursuant to 40 C.F.R. § 68.67(e), the owner or operator shall, among other things: (1) establish a system to address the findings and recommendations of the team that performed the PHA; (2) assure that that the recommendations are resolved in a timely manner and that resolution is documented; (3) document what actions are to be taken; (4) and complete actions as soon as possible. Pursuant to 40 C.F.R. § 68.67(f), the

PHA shall be updated and revalidated every five years. Pursuant to 40 C.F.R. § 68.67(g), the owner or operator shall retain the documented resolution of these recommendations for the life of the process.

54. At the time of the Inspection, Respondent had not yet addressed all findings from the 2010 and 2013 PSM Audit Reports, including questions initially raised in 2004 regarding ventilation calculations and ammonia detectors in the AMRs of the E1 and E2 Processes.

55. Respondent also failed to identify certain emergency response-related hazards in these Audit Reports, specifically: (a) the fact that the closest trained emergency responders were located approximately 65 miles (or 1.5 hours away) from the Facility; and (b) the difficulty of notifying the numerous Amish residents who live in the area around the Facility in the event of an ammonia release (due to the population's lack of modern telecommunications equipment, such as telephones, cellphones and computers).

56. Accordingly, by failing to address all findings from the 2010 and 2013 PSM Audit Reports, as well as failing to identify certain emergency response-related hazards in these Audit Reports, as described above in paragraphs 54 and 55, Respondent violated 40 C.F.R. § 68.67 and Section 112(r)(7)(E) of the CAA.

Failure to Comply with Mechanical Integrity Requirements

57. Complainant re-alleges and incorporates by reference paragraphs 1 through 56 of this CAFO.

58. Pursuant to 40 C.F.R. §§ 68.12(d)(3) and 68.73, the owner or operator of a Program 3 process must establish and implement written procedures to maintain the

ongoing integrity of certain process equipment and to train employees accordingly. *See* 40 C.F.R. § 68.73(b). The owner or operator must train each employee involved in maintaining the ongoing integrity of the processing the procedures applicable to the employee's job task. *See* 40 C.F.R. § 68.73(c). The owner or operator must inspect and test the equipment either in accordance with the manufacturer's recommendations and good engineering practices, or more frequently if needed based on prior operating experience. *See* 40 C.F.R. § 68.73(d). The owner or operator must also document the inspections or tests on process equipment; correct deficiencies; assure that any new equipment is suitable for the process application; perform checks to ensure that equipment is installed properly; and assure that maintenance materials and spare parts are suitable for the process application. *See* 40 C.F.R. §§ 68.73(d)-(f).

59. At the time of the Inspection, Respondent's maintenance program for the E1 and E2 Processes had not complied with RAGAGEP since it did not sufficiently address: (a) certain piping, valves, and other equipment, some of which were unpainted and corroded; (b) that there were multiple locations for the E2 process where vapor barrier and insulation were breached; and (c) that a previously used gasket and/or sealant were suitable for use in the oil separator cleanout port of RC-12 in the AMR of the E1 Process, which resulted in a leak of ammonia during the Inspection.

60. Accordingly, by failing to comply with mechanical integrity requirements for the E1 and E2 Processes, Respondent violated 40 C.F.R. § 68.73 and Section 112(r)(7)(E) of the CAA.

Alleged EPCRA Violation

Failure to Submit Tier 2 Form

61. Complainant re-alleges and incorporates by reference paragraphs 1 through 60 of this Complaint.

62. Respondent is an owner or operator of 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.

63. In at least December 2013, Respondent stored the following chemicals, which are "hazardous chemicals" as defined under 40 C.F.R. § 370.66, at the Facility, each in a quantity that exceeds the minimum threshold level ("MTL") set forth in 40 C.F.R. § 370.10: Drewfloc 2449 Polymer; Propylene Glycol; and Transformer Oil.

64. At all times relevant to the violations cited herein, Respondent was required, pursuant to the Occupational Safety and Health Act of 1970 ("OSHA") and regulations promulgated thereunder, to prepare or have available onsite a MSDS for each of the chemicals listed above in paragraph 63.

65. During calendar year 2013, Respondent stored at least three hazardous chemicals, listed above in paragraph 63, at the Facility in a quantity that exceeded the MTL of 10,000 pounds set forth in 40 C.F.R. § 370.10.

66. Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, Respondent was required to prepare and submit an emergency and hazardous chemical inventory form ("Tier 2 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 at least calendar year 2013 on or before March 1st of the following calendar year.

67. Respondent prepared and submitted a Tier 2 form for calendar year 2013 by March 1, 2014 to the SERC, LEPC and the local fire department, but failed to include information regarding the hazardous chemicals listed above in paragraph 63.

68. Accordingly, Respondent's failure to include information regarding the hazardous chemicals listed above in paragraph 63 on the Tier 2 Form for calendar year 2013 violates 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.

Terms of Consent Agreement

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

(a) admits that EPA has jurisdiction over the subject matter alleged in this Agreement;

(b) neither admits nor denies the facts and violations alleged in this Agreement;

(c) consents to the assessment of a civil penalty as stated below;

(d) consents to the conditions specified in this Agreement;

(e) waives any right to contest the alleged violations of law set forth in this Agreement; and

(f) waives its rights to appeal the Final Order accompanying this Agreement.

70. For the purposes of this proceeding, Respondent also:

(a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;

(b) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement and Final Order, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);

(c) consents to personal jurisdiction in any action to enforce this Agreement or Final Order, or both, in the United States District Court for the District of Maine, and

(d) waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

(e) certifies that it has corrected the violations alleged in this CAFO and in the Notice of Potential Violation issued by EPA on March 8, 2016. For the purpose of the identifying requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of the corrective actions identified in paragraphs 44, 71, and 77 of this CAFO is restitution or required to come into compliance with the law.

71. Respondent certifies that it has corrected the violations alleged in this Agreement and is currently in compliance with 40 C.F.R. Parts 68 and 370 at the Facility. Respondent further certifies that it has in place at the Facility, the key safety measures listed in Attachment A.

72. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for purposes of settlement to:

(a) pay the civil penalty cited below in paragraph 73; and

(b) submit a description of a plan/process that has been developed and implemented to provide notice to nearby Amish residents of an ammonia release or other emergency at the Facility that could adversely impact such residents.

73. Pursuant to Sections 113(d)(2)(B) and (e) of the CAA, 42 U.S.C. § 7413(d)(2)(B) and (e), Section 325(c) of EPCRA, and taking into account the relevant statutory penalty criteria, and Respondent's cooperation in agreeing to perform the non-penalty obligations in this CAFO, EPA has determined that it is fair and proper to assess a civil penalty of $225,000 for the violations alleged in this matter.

Penalty Payment

74. Respondent agrees to:

(a) pay the total civil penalty of $225,000 ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement;

(b) pay the EPA Penalty by remitting a check or making an electronic payment, as described below. The check or other payment shall be payable to "Treasurer of the United States" and reference "Docket Nos. CAA-01-2018-0051, EPCRA-01-2018-0052." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

(c) within 24 hours of payment of the EPA Penalty, send proof of payment to:

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

and to:

William D. Chin, Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-4
Boston, MA 02109-3912

(d) "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with "Docket Nos. CAA-01-2018-0051, EPCRA-01-2018-0052."

75. *Collection of Unpaid Civil Penalty:* Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim.

(a) In the event that any portion of the EPA Penalty relating to the alleged CAA violations (which shall be deemed to be $212,000) is not paid when due without demand, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid within thirty (30) calendar days of the effective date of this CAFO. In that event, interest will accrue from the effective date of this CAFO at the "underpayment rate" established pursuant to 26 U.S.C. § 6621(a)(2). In the event that a penalty is not paid

when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorneys' fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

(b) In the event that any portion of the EPA Penalty relating to the alleged EPCRA violation (which shall be deemed to be $13,000) is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

(c) There are other actions EPA may take if Respondent fails to timely pay: refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33; collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not

limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; suspend or revoke Respondent's licenses or other privileges; or suspend or disqualify Respondent from doing business with the EPA or engaging in programs that the EPA sponsors or funds, 40 C.F.R. § 13.17.

Non-Penalty Condition

76. As a condition of settlement, Respondent agrees to submit a description of a plan/process that has been developed and implemented to provide notice to nearby Amish residents of an emergency at the Facility, as further described below in paragraph 77.

77. **Emergency Notification to Amish Residents**: Respondent agrees to request that representatives from local emergency response and planning authorities, including but not limited to Respondent, local public safety departments, and disaster relief organizations (collectively "LEPC"), develop and implement a plan/process to provide notice to nearby Amish residents of an ammonia release or other emergency at the Facility that could, in the judgement of the LEPC, adversely affect such residents. McCain agrees to participate in the development of a notification plan/process to the extent permitted by the LEPC and to participate in the implementation of the plan/process as may be reasonably required by the LEPC. Within 180 days of the Effective Date of this CAFO, Respondent shall submit to EPA a written description of such plan/process.

78. **Notifications**:

(a) Submissions required by this Agreement shall be in writing and shall be mailed to the following addresses with a copy also sent by electronic mail:

Len Wallace
Environmental Scientist
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: OES05-1
Boston, MA 02109-3912
wallace.len@epa.gov

and:

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: OES04-04
Boston, MA 02109-3912
chin.bill@epa.gov

(b) EPA will send all written communications to the following representative(s) for Respondent:

David Giroux
Plant Manager - Easton
McCain Foods USA, Inc.
319 Richardson Road
Easton, ME 04740
david.giroux@mccain.ca

(c) All documents submitted to EPA in the course of implementing this Agreement shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law.

79. **Stipulated Penalties**: In the event that Respondent fails to timely complete the non-penalty condition as outlined above in paragraph 77, Respondent shall be liable for stipulated penalties in accordance with the provisions set forth below. The determination of whether the non-penalty condition has been timely completed shall be in the sole discretion of EPA.

(a) After giving effect to any extensions of time granted by EPA, Respondent shall pay a stipulated penalty in the amount of $200 for each day completion of the non-penalty condition required above by paragraph 77 is late.

80. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions above of paragraph 74. Interest and late charges shall be paid as stated below in paragraph 81.

81. *Collection of Unpaid Stipulated Penalty for Failure to Perform Non-Penalty Conditions*: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event Respondent fails to timely pay any portion of the stipulated penalty relating to the performance of any Non-Penalty Condition, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

82. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement and Final Order.

Additional Provisions

83 The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements modifying the compliance schedule described above in paragraph 77.

84. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, agents, trustees, servants, authorized representatives, successors, and assigns.

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

86. 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 the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

87. 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.

88. 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.

Effect of Consent Agreement and Attached Final Order

89. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations specifically alleged in the Complaint.

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

91. 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.

92. Any violation of this Agreement may result in a civil judicial action for an injunction or civil penalties, or both, as provided in Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), and Section 325(f) of EPCRA, 42 U.S.C. § 11045(f), as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). EPA may use any information submitted under this Consent Agreement and Final Order in an administrative, civil judicial, or criminal action.

93. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or EPCRA and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

94. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

95. EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that 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 EPA. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

96. This Consent Agreement and Final Order in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

97. Except as qualified above by paragraphs 75 and 81, each party shall bear its own costs and fees in this proceeding including attorneys' fees. Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

Effective Date

98. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed Consent Agreement and

attached Final Order to 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 Hearing Clerk.

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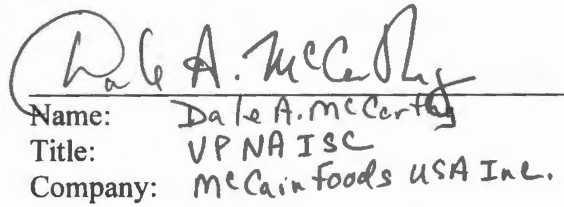
The foregoing Consent Agreement for: In the Matter of: McCain Foods USA, Inc., Docket Nos. CAA-01-2018-0051, EPCRA-01-2018-0052, is hereby Stipulated, Agreed and Approved for Entry

For McCain Foods USA, Inc.:

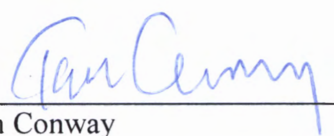


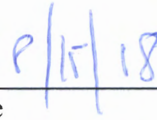
Name: Dale A. McCarthy
Title: VP NA ISC
Company: McCain Foods USA Inc.

Aug. 13/2018
Date

The foregoing Consent Agreement for: In the Matter of: McCain Foods USA, Inc., Docket Nos. CAA-01-2018-0051, EPCRA-01-2018-0052, is hereby Stipulated, Agreed and Approved for Entry.

For U.S. EPA, Region 1:





Tim Conway
Acting Director
Office of Environmental Stewardship
U.S. EPA, Region 1

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:	)	
	)	Docket Nos.
McCain Foods USA, Inc.	)	CAA-01-2018-0051
319 Richardson Road	)	EPCRA-01-2018-0052
Easton, Maine 04740	)	
	)	
Respondent.	)	**FINAL ORDER**
	)	
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)	)	

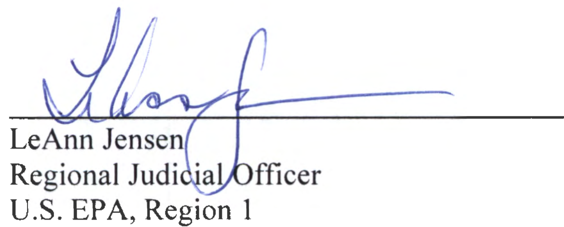
RECEIVED
AUG 17 2018
EPA ORC WS
Office of Regional Hearing Clerk

FINAL ORDER

In accordance with 40 C.F.R. § 22.18(c) of the United States Environmental Protection Agency's Consolidated Rules of Practice, the Parties to this matter have forwarded the foregoing executed Consent Agreement for Final Approval. Section 113(d)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d)(1), and Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), authorizes EPA to issue an administrative penalty order to enforce the requirements of these statutes involved in this matter. In addition, Section 113(d)(2)(B) of the CAA, 42 U.S.C. § 7413(d)(2)(B), authorizes EPA to compromise, modify or remit, with or without conditions, the maximum civil penalty of up to $46,192 per day per violation. Furthermore, the CAA penalty assessed must take into consideration the penalty factors set forth in Section 113(e)(1) of the CAA, § 7413(e)(1). Pursuant to these provisions, EPA has compromised the maximum civil penalty and imposed the compliance condition described in paragraph 77 of the Consent Agreement.

Pursuant to 40 C.F.R. § 22.18(b) of EPA's Consolidated Rules of Practice, Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 325(c) of EPCRA, § 11045(c), the Consent Agreement is incorporated by reference into this Final Order and is hereby ratified. Respondent, McCain Foods USA, Inc., is ordered to pay the civil penalty amount in the amount of $225,000 in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

SO ORDERED THIS 16th DAY OF August 2018.



LeAnn Jensen
Regional Judicial Officer
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ATTACHMENT A

LIST OF KEY SAFETY MEASURES

Identifying Hazards

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

Operating Activities:

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

Maintenance/Mechanical Integrity:

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

Machinery Room and System Design

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

Emergency Actions

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

Identifying Hazards

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

Operating Activities and Maintenance/Mechanical Integrity

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

Machinery Room and System Design

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

Emergency Actions

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