



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
September 30, 2021

VIA E-MAIL
DELIVERY RECEIPT REQUESTED

Shane Dood
Kent Quality Foods, Inc.
3426 Quincy Street
Hudsonville, Michigan 49426

Email: shane.dood@kqf.com

Dear Mr. Dood:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Kent Quality Foods, Inc., docket no. CAA-05-2021-0038. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2021.

Pursuant to paragraph 68 of the CAFO, Kent Quality Foods, Inc., must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to William Wagner, ORC Attorney, (312) 886-4684.

Sincerely,

Brian
Dickens

Digitally signed by Brian
Dickens
Date: 2021.09.27
12:37:21 -05'00'

Brian Dickens, Chief
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Coyle.ann@epa.gov

Regional Hearing Clerk/via electronic mail
R5hearingclerk@epa.gov

William Wagner/via electronic mail
wagner.william@epa.gov

Jenine Camilleri (MI EGLE)/via electronic mail
camillerij@michigan.gov

Heidi Hollenbach (MI EGLE)/via electronic mail
hollenbachh@michigan.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2021-0038
)	
Kent Quality Foods, Inc.)	Proceeding to Assess a Civil Penalty
Hudsonville, Michigan,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
<hr/>)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22, for alleged violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r) and the implementing regulations at 40 C.F.R. Part 68.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Kent Quality Foods, Inc. (Kent), a private company doing business in Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of review under Section 113(d)(4) of the Act, 42 U.S.C. § 7413(d)(4), and under 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

9. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$48,762 per day of violation up to a total of \$390,092 for violations that occurred after November 2, 2015, where penalties are assessed on or after December 23, 2020. CAA Section 113(d)(1), 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

10. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

11. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Statutory and Regulatory Background

Clean Air Act, Subsection 112(r)

12. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

13. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

14. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

15. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

16. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

17. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which is codified, as amended, at 40 C.F.R. § 68.130.

40 C.F.R. Part 68: Chemical Accident Prevention Provisions

18. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which is codified at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (CAPP). The Administrator promulgated the most recent amendment to CAPP on December 19, 2019. 84 Fed. Reg. 69834.

19. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

a. Applicability

20. Section 68.10(a) of CAPP provides, in part, that the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 C.F.R. § 68.115, shall comply with the requirements of CAPP no later than the date on which a regulated substance is first present above a threshold quantity in a process.

21. Section 68.3 of CAPP provides that “regulated substance” means any substance listed pursuant to Section 112(r)(3) of the Act at 40 C.F.R. § 68.130.

22. Table 1 at Section 68.130(a) of CAPP lists ammonia (anhydrous) as a regulated toxic substance with a threshold quantity of 10,000 pounds.

23. Section 68.3 of CAPP provides that “process” means “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.” For purposes of this definition, a single process includes “any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release . . .” A “covered process” means “a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.”

24. Section 68.10(i) of CAPP provides, in part, that a covered process is subject to Program 3 requirements if the process does not meet the requirements of 40 C.F.R. § 68.10(g) and if either of the following conditions is met: the process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or the process is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 CFR § 1910.119.

25. Section 68.12(a) and (d) of CAPP identify CAPP requirements that the owner or operator of a stationary source with a process subject to Program 3 shall meet, which include, among other provisions, requirements regarding management systems, hazard assessments, prevention requirements, response actions, emergency response programs, and the submittal of a single RMP.

b. Management

26. Section 68.15(a) and (c) of CAPP provide, in part, that the owner or operator of a stationary source with processes subject to Program 3 requirements shall develop a management system to oversee the implementation of the risk management program elements, and, when the responsibility for implementing the individual requirements is assigned to persons other than a qualified person or position as provided in Section 68.15(b) of CAPP, that the owner or operator shall document the names or positions of those people responsible for implementing the individual requirements and define the lines of authority through an organizational chart or similar document.

c. Process Hazard Analysis

27. Section 68.67(a) of CAPP provides, in part, that the owner or operator of a stationary source with processes subject to Program 3 shall perform a process hazard analysis appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process.

28. Section 68.67(c)(3) of CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall perform a process hazard analysis which addresses engineering and administrative controls applicable to hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases.

29. Section 68.67(c)(4) of CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall perform a process hazard analysis which addresses consequences of failure of engineering and administrative controls.

30. Section 68.67(e) provides, in part, that the owner or operator of a stationary source with processes subject to Program 3 shall promptly address the team's findings and

recommendations, assure that the recommendations are resolved in a timely manner and that the resolution is documented, and complete actions as soon as possible.

d. Operating Procedures

31. Section 68.69(a) of CAPP provides, among other provisions, that the owner or operator of a stationary source with processes subject to Program 3 shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with process safety information.

e. Training

32. Section 68.71(a) of CAPP provides, in part, that each employee involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in 40 C.F.R. § 68.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

f. Mechanical Integrity

33. Section 68.73(b) of CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall establish and implement written procedures to maintain the ongoing integrity of process equipment, as identified at 40 C.F.R. § 68.73(a).

34. Section 68.73(c) of CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

35. Section 68.73(d)(3) of CAPP provides that the frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

36. Section 68.73(d)(4) of CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

g. Management of Change

37. Section 68.75(a) and (b) of CAPP provide that the owner or operator shall establish and implement written procedures to manage changes (except for “replacements in kind”) to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process. The procedures shall assure that, among other things, the technical basis for the proposed change is addressed prior to any change.

h. Hot Work Permit

38. Section 68.85(a) provides that the owner or operator shall issue a hot work permit for hot work operations conducted on or near a covered process. Section 68.85(b) provides, among other provisions, that the hot work permit shall indicate the date(s) authorized for hot work and identify the object on which hot work is to be performed.

i. Contractors

39. Section 68.87(b)(1)-(3) of CAPP provide that the owner or operator, when selecting a contractor, shall: obtain and evaluate information regarding the contract owner or operator's safety performance and programs; inform contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process; and, explain to the contract owner or operator the applicable provisions of the emergency response provisions of 40 C.F.R. Part 68, subpart E.

40. Section 68.87(b)(5) of CAPP provides that the owner or operator shall periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in 40 C.F.R. § 68.87(c).

j. Emergency Planning

41. Section 68.90(b)(3) of the CAPP provides that the owner or operator whose employees will not respond to accidental releases of regulated substances need not comply with § 68.95 of CAPP, provided that appropriate mechanisms are in place to notify emergency responders when there is a need for a response.

Factual Allegations and Alleged Violations

a. Applicability

42. Kent owns and operates an ammonia refrigeration system at its meat processing facility at 3426 Quincy Street Hudsonville, Michigan, which began operation in February 2019.

43. Kent's ammonia refrigeration system had an initial charge of 17,000 pounds anhydrous ammonia when operations began.

44. Kent's Hudsonville, Michigan facility is subject to requirements of Chemical Accident Prevention Provisions in accordance with 40 C.F.R. § 68.10(a) and the requirements of Program 3 in accordance with 40 C.F.R. § 68.10(i).

45. On November 11, 2019, EPA conducted an announced inspection of Kent's Hudsonville, Michigan facility.

46. Kent provided numerous documents prior to and during the November 11, 2019 inspection. These documents were related to various aspects of its RMP including: management system, process hazard analysis, operating procedures, training, mechanical integrity, management of change, hot work, and contractors.

b. Management

47. Kent failed to document the names or positions of people and define the lines of authority through an organizational chart or similar document in violation of 40 C.F.R. § 68.15(c).

c. Process Hazard Analysis

48. Kent failed to address the engineering and administrative controls applicable to hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases in violation of 40 C.F.R. § 68.67(c)(3).

49. Kent failed to address consequences of failure of engineering and administrative controls in violation of 40 C.F.R. § 68.67(c)(4).

50. Kent failed to promptly address the team's findings and recommendations, assure that the recommendations are resolved in a timely manner and that the resolution is documented, and complete actions as soon as possible in violation of 40 C.F.R. § 68.67(e).

d. Operating Procedures

51. Kent failed to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with process safety information in violation of 40 C.F.R. § 68.69(a).

e. Training

52. Kent failed to train each employee involved in operating the anhydrous ammonia refrigeration system in an overview of the process and in the operating procedures as specified in § 68.69 in violation of 40 C.F.R. § 68.71(a).

f. Mechanical Integrity

53. Kent failed to establish and implement written procedures to maintain the ongoing integrity of process equipment in violation of 40 C.F.R. § 68.73(b).

54. Kent failed to train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner in violation of 40 C.F.R. § 68.73(c).

55. Kent failed to establish the frequency of inspections and tests of process equipment consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience in violation of 40 C.F.R. § 68.73(d)(3).

56. Kent failed to document each inspection and test that has been performed on process equipment in violation of 40 C.F.R. § 68.73(d)(4).

g. Management of Change

57. Kent failed to establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process in violation of 40 C.F.R. § 68.75(a) and (b).

h. Hot Work Permit

58. Kent failed to document the date(s) authorized for hot work and identify the object on which hot work is to be performed in the hot work permits in violation of 40 C.F.R. § 68.85(b).

i. Contractors

59. Kent failed to obtain and evaluate information, when selecting a contractor, regarding the contract owner or operator's safety performance and programs, inform contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process, and explain to the contract owner or operator applicable provisions in violation of 40 C.F.R. § 68.87(b)(1-3).

60. Kent failed to periodically evaluate the performance of the contract owner or operator in fulfilling their obligations in violation of 40 C.F.R. § 68.87(b)(5).

j. Emergency Response

61. Kent failed to establish appropriate mechanisms to notify emergency responders when there is a need to respond to accidental releases of regulated substances in violation of 40 C.F.R. § 68.90(b)(3).

k. Violations of the Clean Air Act

62. Pursuant to Section 112(r)(7)(E) of the Act, the above-described violations of the regulations and requirements of 40 C.F.R. Part 68, are violations of the Act.

63. On March 31, 2020, EPA issued a Finding of Violation to Kent for violations of listed above in paragraphs 47-62.

64. On May 20, 2020, Kent submitted to EPA documentation of actions taken by Kent to address the alleged violations in the March 31, 2020, Finding of Violation.

65. On May 28, 2020, representatives of EPA and Kent met to discuss the March 31, 2020, Finding of Violation.

66. In response to the Finding of Violation, Kent updated and upgraded components of its ammonia refrigeration system and elements of its RMP Program. Kent installed and commissioned an industrial alarm notification software system to monitor the ammonia refrigeration system and provide notification to Kent personnel of any alarm, developed and updated Standard Operating Procedures for missing elements, and identified Kent employees for ammonia operator training and certification.

Civil Penalty

67. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Kent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$87,261.

68. Within 30 days after the effective date of this CAFO, Respondent must pay a \$87,261 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should
read: "D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

69. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

William Wagner
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
wagner.william@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
r5hearingclerk@epa.gov

70. This civil penalty is not deductible for federal tax purposes.

71. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

72. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

73. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: wagner.william@epa.gov (for Complainant), and shane.dood@kqf.com (for Respondent).

74. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

75. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

76. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 74, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

77. Respondent certifies that it is complying fully with Section 112(r) of the Act, 42 U.S.C. § 7412(r) and the implementing regulations at 40 C.F.R. Part 68.

78. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

79. The terms of this CAFO bind Respondent, its successors and assigns.

80. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

81. Each party agrees to bear its own costs and attorney's fees in this action.

82. This CAFO constitutes the entire agreement between the parties.

Kent Quality Foods, Inc., Respondent

9/27/2021
Date



Steve Soet, President
Kent Quality Foods, Inc.

United States Environmental Protection Agency, Complainant

**Harris,
Michael**

Digitally signed by
Harris, Michael
Date: 2021.09.29
15:30:20 -05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: Kent Quality Foods, Inc.
Docket No. CAA-05-2021-0038**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2021.09.30
11:59:42 -05'00'

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Kent Quality Foods, Inc.
Docket Number: **CAA-05-2021-0038**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2021-0038, which was filed on September 30, 2021, in the following manner to the following addressees:

Copy by E-mail to Respondent: Shane Dood
shane.dood@kqf.com

Copy by E-mail to Attorney for Complainant: William Wagner
wagner.william@epa.gov

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Copy by E-mail to State Contacts: Jenine Camilleri
camillerij@michigan.gov

Heidi Hollenbach
hollenbachh@michigan.gov

Dated: _____

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5