U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
Ajinomoto Health & Nutrition North America, Inc.	)	**Docket No. MM-07-2024-0139**
	)	
	)	
Respondent.	)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Ajinomoto Health & Nutrition North America, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045(c)(1). Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action and the penalty amount is greater than the statutory limitation, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the Chemical Accident Prevention Provisions in 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and Section 312 of EPCRA, 42 U.S.C. § 11022. Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of the EPA's intent to issue an order assessing penalties for these violations.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is Ajinomoto Health & Nutrition North America, Inc., a corporation doing business in the state of Iowa.

Statutory and Regulatory Background

CAA

5. On November 15, 1990, the President signed into law the CAA Amendments of 1990. The Amendments added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as the Occupational Safety and Health Act (OSHA), 29 U.S.C. § 654 *et. seq.*, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. Section 112(r)(1) of the CAA is known as the "General Duty Clause."

6. Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r), requires the Administrator of the EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates that the Administrator promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the chemical accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7), 42 U.S.C. § 7412(r)(7), requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances.

7. On June 20, 1996, the EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). This rule requires owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and coordination of emergency response activities.

8. The regulations at 40 C.F.R. Part 68, titled Chemical Accident Prevention Provisions, set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a Risk Management Plan ("RMP") that must be submitted to the EPA.

9. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, an RMP must be submitted for all covered processes by the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

10. The regulations at 40 C.F.R. § 68.10 set forth how the Chemical Accident Prevention Provisions apply to covered processes. Pursuant to 40 C.F.R. § 68.10(l), a covered process is subject to Program 3 requirements if the process does not meet the requirements of in 40 C.F.R. § 68.10(g), and it either falls under a specified North American Industry Classification System code or is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

11. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its implementing regulations. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to $57,617 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023.

12. Pursuant to Section 113(d)(2)(B) of the CAA, 42 U.S.C. § 7413(d)(2)(B), the Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

EPCRA

13. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state commissions, local committees, and fire departments in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

14. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility which is required by OSHA to prepare or have available a safety data sheet (SDS) for a hazardous chemical, to prepare and submit to the State Emergency Response Commission, community emergency coordinator for the Local Emergency Planning Committee, and fire department with jurisdiction over the facility annually by March 1, an emergency and hazardous chemical inventory form (“Tier I or “Tier II” as described in 40 C.F.R. Part 370) for the previous calendar year. The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity

designated by EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

15. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including SDS.

16. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes the Administrator to assess a civil penalty of up to $25,000 per day of violation for violations of Section 312 of EPCRA. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to $69,733 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023.

Definitions

CAA

17. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

18. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines "accidental release" as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

19. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source.

20. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), defines "regulated substance" as a substance listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3). These substances are codified in 40 C.F.R. § 68.130.

21. Under the General Duty Cause, the term "extremely hazardous substance" includes, but is not limited to, substances listed pursuant to Sections 112(r)(3) through (5) of the CAA, 42 U.S.C. § 7412(r)(3) through (5). Other "extremely hazardous substances" may include any substance that alone or in combination with other substances or factors may cause death, serious injury, or substantial property damages as a result of a short-term exposures associated with releases to the air. *See* 40 C.F.R. § 1604.2, 84 Fed. Reg. 67899, 67905 (Dec. 12, 2019); 85 Fed. Reg. 10074, 10083 (Feb. 21, 2020); and Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 101-228, at 211, *reprinted in* 1990 U.S.C.C.A.N. 3385, 3596 (1989).

22. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and the regulations at 40 C.F.R. § 68.3, define "stationary source," in part, as any buildings, structures, equipment, installations or substance-emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

23. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, as amended, listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

24. The regulations at 40 C.F.R. § 68.3 define "process" 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. For the purposes of this definition, 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, shall be considered a single process.

EPCRA

25. Section 329(4) of EPCRA, 42 U.S.C. § 11049(3), defines "facility" as all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person.

26. Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), which certain exceptions, defines the term "hazardous chemical" as having the meaning given such term by 29 C.F.R. § 1910.1200(c).

27. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

28. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines "person" as any individual, trust, firm, joint stock company, corporation, partnership association, State, municipality, commission, political subdivision of a State, or interstate body.

General Factual Allegations

29. Respondent is, and at all times referred to herein was, a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

30. Respondent owns and operates two amino acid manufacturing facilities located near each other (the Facilities) in Eddyville, Iowa. One Facility specializes in food and beverage industries (Foods) and is located at 1 Ajinomoto Drive, and the other Facility specializes in animal nutrition (Heartland) and is located at 1116 Highway 137.

31. Respondent is the owner and operator of the Facilities, which are each a "stationary source" pursuant to Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3.

32. At all times relevant to this CAFO, Respondent produced, processed, handled and/or stored hydrogen chloride (hydrochloric acid) < 37% (Chemical Abstract Service [CAS] 7647-01-0) and phosphoric acid (CAS 7664-38-2) at the Facilities; and produced, processed, handled and/or stored sodium hypochlorite (CAS 7681-52-9) at the Heartland Facility.

33. Each of the substances listed in Paragraph 32, above, is an "extremely hazardous substance" within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C § 7412(r)(1), commonly known as the General Duty Clause.

34. Respondent is subject to the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), because it is the owner and operator of stationary sources that are producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), and/or extremely hazardous substances pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

35. On August 21, 2021, a valve on a storage tank at the Foods Facility failed, resulting in a release of approximately 177,256 pounds of hydrochloric acid, employee evacuations, and a shelter-in-place order for the city of Eddyville.

36. Hydrochloric acid is corrosive and can cause eye damage, severe burns, and injury to the mouth, throat, esophagus, and stomach.

37. On September 23, 2022, a delivery truck driver unloading phosphoric acid connected to a sodium hypochlorite fill line pipe at the Heartland Facility. The mixing of phosphoric acid and sodium hypochlorite resulted in a release of approximately 973 pounds of chlorine gas, employee evacuations, a shelter-in-place order for Foods employees, and the treatment and release of approximately 15 Heartland employees at a nearby hospital.

38. Chlorine (CAS 7782-50-5) is a poisonous gas that is corrosive and a strong oxidizing agent that can react explosively with or support the burning of other common materials, and can be lethal and create hydrochloric acid in the lungs.

39. The unanticipated emissions from extremely hazardous substances into the air described in Paragraphs 35 and 37, above, at the Facilities constitute "accidental releases" as defined by Section 112(r)(2)(a) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

40. Respondent uses anhydrous ammonia at the Facilities to manufacture amino acids.

41. Anhydrous ammonia (CAS 7664-41-7) is a "regulated substance" pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, is 10,000 pounds.

42. At all times relevant to this CAFO, Respondent had great than 10,000 pounds of anhydrous ammonia in a process at the Foods and Heartland Facilities.

43. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process at each Facility, Respondent was subject to the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68 because it was an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

44. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process at each Facility, Respondent was subject to Program 3 prevention program requirements because pursuant to 40 C.F.R. § 68.10(l), the covered process at each Facility does not meet the requirements of 40 C.F.R. 68.10(g) and is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119.

45. From the time Respondent first had onsite greater than 10,000 pounds of anhydrous ammonia in a process at each Facility, Respondent was required under Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), to submit an RMP pursuant to 40 C.F.R. § 68.12(a) and comply with the Program 3 requirements provided at 40 C.F.R. § 68.12(d) and detailed in Subpart D.

46. Respondent's Facilities consist of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and are owned or operated by the same person, and therefore, are each a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

47. During at least one period of time during calendar year 2021, the following chemicals and amounts were present at the Heartland Facility:

CAS	Chemical Name	Amount (pounds)
72195	AjiLys - Liquid Lysine	2,919,045
No CAS	AjiPro-L	533,645
No CAS	AMIX C (Betaine Solution)	74,567,789
No CAS	AntiFoam (Trimisil 30S Silicon)	46,448,819
No CAS	AntiFoam (XFO-3AJ {organic})	55,119,762
68476788	Beet Molasses	3,961,655
8029434	Glucose (unrefined Liquid Dextrose)	2,411,208
8016704	Hydrogenated Soybean Oil	115,056
9015547	LAH-1 Liquid Acid (HCl)	4,006,755
5934292	L-Histidine Monohydrochloride	81,341
72195	L-Threonine	564,320
1305620	Lime (Calcium Hydroxide)	30,749,692
8030760	Lecithin	52,910
7487889	Magnesium Sulfate (Liquid)	89,632,314
No CAS	Mameno	19,019

CAS	Chemical Name	Amount (pounds)
59518	Methionine (DL)	43,099,930
9004675	Methyl Cellulose	8,994,768
9016459	Nonylphenol, Ethoxylated (Ultra Kleen III)	36,184,640
68424851	Quorum Clear – Sanitizer	13,300,151
1310732	Sodium Sulfite Solution 15%	101,199
7440440	SA-2- Activated Carbon	41,887
73223	Tryptophan	276,139

48. The chemicals identified in Paragraph 47, above, are each classified as a physical or health hazard, a simple asphyxiant, combustible gas, or hazard not otherwise classified and are therefore each a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e) and 29 C.F.R. § 19.1200(c), with a minimum threshold level of 10,000 pounds, as set forth in Section 312 of EPCRA and 40 C.F.R. § 370.10(a)(2).

49. OSHA requires Respondent to prepare, or have available, a SDS for each hazardous chemical listed in Paragraph 47, above.

50. On or about November 8-9, 2022, EPA inspected the Facilities to determine Respondent's compliance with Section 112(r) of the CAA, the chemical accident prevention provisions of 40 C.F.R. Part 68, and EPCRA hazardous chemical reporting requirements.

Alleged Violations

51. Complainant hereby states and alleges that Respondent has violated the CAA, EPCRA, and federal regulations promulgated thereunder as follows:

Failure to Identify Hazards

52. The facts stated in Paragraphs 29 through 50 above are herein incorporated.

53. Section 112(r)(1) of the CAA requires owners and operators of stationary sources producing, processing, handling, or storing substances listed in 40 C.F.R. Part 68 or any other extremely hazardous substance to identify hazards which may result from accidental releases using appropriate hazard techniques.

54. The EPA inspection revealed that Respondent did not identify hazards which may result from releases using appropriate hazard assessment techniques at the Heartland Facility, including the failure to identify hazards associated with the incompatible mixing of sodium hypochlorite and phosphoric acid, which when mixed react and produce chlorine gas. Recognizing the hazards associated with mixing sodium hypochlorite and phosphoric acid is an industry standard identified by the Chlorine Institute, Pamphlet 96, Sodium Hypochlorite Manual, 4th ed.; The Chlorine Institute: Arlington, VA, October 2011 – Appendix D Accidental Mixing Guidance.

55. Respondent's failure to identify hazards which may result from accidental releases using appropriate hazard techniques is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Failure to Design and Maintain Safe Facilities

56. The facts stated in Paragraphs 29 through 50 above are herein incorporated.

57. Section 112(r)(1) of the CAA requires owners and operators of stationary sources producing, processing, handling, or storing substances listed in 40 C.F.R. Part 68 or any other extremely hazardous substance to design and maintain a safe facility taking such steps as are necessary to prevent releases.

58. The EPA inspection revealed that Respondent's design and maintenance of the chemical unloading area at the Heartland Facility were inadequate to prevent the truck unloading phosphoric acid from connecting to the sodium hypochlorite fill line pipe and tank. The sodium hypochlorite unloading pipe connection was located directly next to the phosphoric acid unloading pipe connection, there was inadequate legible signage to identify the chemical unloading pipe, and inadequate operating procedures for truck unloading. Appropriate design for chemical unloading bulkheads, tank citing and spacing, legible signage and unloading procedures for these chemicals are industry standards identified by the American Institute of Chemical Engineers, Center for Chemical Process Safety: Mixing Incompatible Materials in Storage Tanks, February 2017; and Chemical Safety Board Case Study No. 2917-01-I-KS, December 2017: Key Lessons for Preventing Inadvertent Mixing During Chemical Unloading Operations.

59. The EPA inspection revealed that Respondent failed to ensure that maintenance materials, spare parts, and equipment were suitable for the process application for which they were used at the Foods Facility. Respondent's investigation into the August 2021 hydrochloric acid release found that the original valve on the hydrochloric acid tank had been replaced with a used valve without reviewing information on the valve's remaining service life or its compatibility with the tank. Regularly inspecting and maintaining the mechanical integrity of tanks and equipment are industry standards identified in the American Petroleum Institute Standard 653, Tank Inspection, Repair, Alteration, and Reconstruction, and Standard 574, Inspection Practices for Piping System Components.

60. Respondent's failures to design and maintain the chemical identify hazards which may result from accidental releases using appropriate hazard techniques are violations of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Program 3 Violations

61. The facts stated in Paragraphs 29 through 50 above are herein incorporated.

62. The regulation at 40 C.F.R. § 68.12(d)(3) requires the owner or operator of a stationary source with a process subject to Program 3 to implement the Program 3 prevention requirements of 40 C.F.R. §§ 68.65 through 68.87.

63. The EPA inspection revealed that Respondent failed to implement the Program 3 prevention requirements of 40 C.F.R. §§ 68.65 through 68.87, as required by 40 C.F.R. § 68.12(d)(3). Specifically:

a. At both Facilities, the process hazard analyses (PHA) failed to address engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases and the consequences of failure of engineering and administrative controls, in violation of 40 C.F.R. § 68.67(c)(3) and (4). Specifically, the PHAs referenced standards that do not exist and did not identify any associated controls or the consequences of failure of those controls.

b. At both Facilities, failures to comply with the mechanical integrity requirements of Program 3 at 40 C.F.R. § 68.73. The Heartland Facility failed to implement written procedures to maintain the on-going integrity of the ammonia vent line to the vent tank, which was expired, in violation of 40 C.F.R. § 68.73(b). The Foods Facility failed to perform and/or document mechanical integrity inspections of the anhydrous ammonia distribution process piping, in violation of 40 C.F.R. § 68.73(d).

c. At both Facilities, failures to include the date each investigation began in the incident investigation reports for the August 2021 hydrochloric acid release and September 2023 chlorine release, in violation of 40 C.F.R. § 68.81(d)(2).

d. At the Heartland Facility, failure to establish management of change procedures that address the necessary time period for the change, in violation of 40 C.F.R. § 68.75(b)(4).

e. At the Foods Facility, failure to ensure and document that equipment complies with recognized and generally accepted good engineering practices for the emergency shower and eyewash locations, in violation of 40 C.F.R. § 68.65(d)(2). In particular, the American National Standards Institute (ANSI) provides that emergency showers and eyewash stations shall be installed within 10 seconds walking time from the location of a hazard (approximately 55 feet). At the Foods Facility, an emergency shower and eyewash station were located downstairs from a process injection point that could lead to employee exposure. Respondent did not ensure and document that the equipment complied with the ANSI standard.

64. Respondent's failures to comply with Program 3 prevention requirements of 40 C.F.R. §§ 68.65 through 68.87, as required by 40 C.F.R. § 68.12(d)(3), are violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Emergency Response Violations

65. The facts stated in Paragraphs 29 through 50 above are herein incorporated.

66. The regulation at 40 C.F.R. § 68.93 requires the owner or operator of a stationary source to coordinate at least annually response needs with local emergency planning and response organizations to determine how the stationary source is addressed in the community emergency response plan and to ensure that local response organizations are aware of the regulated substances at the stationary source, their quantities, the risks presented by covered processes, and the resources and capabilities at the stationary source to respond to an accidental release of a regulated substance.

67. At both Facilities, Respondent did not coordinate at least annually response needs with local emergency planning and response organizations.

68. Respondent's failures to coordinate at least annually response needs with local emergency planning and response organizations, as required by 40 C.F.R. § 68.93, are violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Risk Management Plan Violations

69. The facts stated in Paragraphs 29 through 50 above are herein incorporated.

70. The regulation at 40 C.F.R. § 68.195(b) requires the owner or operator of a stationary source for which a RMP was submitted shall correct the emergency contact information in the RMP within one month of any change to the name, title, telephone number, 24-hour telephone number, and email address of the emergency contact.

71. The EPA inspection revealed that Respondent had not updated the 24-hour telephone number for the Facilities' emergency contact within one month of a change to the emergency contact.

72. Respondent's failures to correct the emergency contact information within one month of any change to that information, as required by 40 C.F.R. § 68.195(b), are violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7).

Failure to Submit Tier II Forms

73. The facts stated in Paragraphs 29 through 50 above are herein incorporated.

74. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility which is required by

OSHA to prepare or have available a SDS for a hazardous chemical, to prepare and submit to the SERC, community emergency coordinator for the LEPC, and fire department with jurisdiction over the facility annually by March 1, an emergency and hazardous chemical inventory form for the previous calendar year. The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds.

75. The EPA inspection revealed that Respondent did not submit an emergency and hazardous chemical inventory form to the three response entities for the twenty-two hazardous chemicals identified in Paragraph 47, above, for calendar year 2021 at the Heartland Facility.

76. Respondent's failures to submit an emergency and hazardous chemical inventory form to the SERC, community emergency coordinator for the LEPC, and fire department with jurisdiction over the facility for each of the twenty-two chemicals identified in Paragraph 47, above, for calendar year 2021 at the Heartland Facility, as required by 40 C.F.R. § 370.40(a), are violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

CONSENT AGREEMENT

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

a. admits the jurisdictional allegations set forth herein;

b. neither admits nor denies the specific factual allegations and alleged violations stated herein;

c. consents to the assessment of a civil penalty, as stated herein;

d. consents to the issuance of any specified compliance or corrective action order;

e. consents to any conditions specified herein;

f. consents to any stated Permit Action;

g. waives any right to contest the allegations set forth herein; and

h. waives its rights to appeal the Final Order accompanying this Consent Agreement.

78. By signing this consent agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

79. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein and to completion of the Supplemental Environmental Project described below.

80. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

81. The parties consent to service of this Consent Agreement and Final Order electronically at the following e-mail addresses: *barton.kasey@epa.gov* (for Complainant) and *gschmittgens@rousepc.com* (for Respondent). Respondent understands that the Consent Agreement and Final Order will become publicly available upon filing.

Penalty Payment

82. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of $458,265 as set forth below.

83. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at *http://www.epa.gov/financial/makepayment*.

84. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Kasey Barton, Attorney
barton.kasey@epa.gov.

85. Respondent understands that its failure to timely pay any portion of the civil penalty or any portion of a stipulated penalty as stated in Paragraph 103, below, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717.

Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

86. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (IRS) annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any administrative settlement that require a payor to pay an aggregate amount equal to or in excess of $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a copy of IRS Form 1098-F to each payor. Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent agrees that:

a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf;

b. Respondent shall certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at weidner.lori@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall notify EPA of this fact within 30 days after the Effective Date of this Consent Agreement and Final Order, and email EPA with Respondent's TIN within 5 days of Respondent's issuance and receipt of the TIN.

Conditions

87. Respondent certifies by the signing of this Consent Agreement and Final Order that, during the week of July 26, 2024, it conducted a third-party audit of the Facilities to evaluate compliance with Section 112(r) of the CAA and the chemical accident prevention provisions at 40 C.F.R. Part 68, including review of Respondent's written RMP procedures, interviewing key facility personnel, and conducting field observations.

88. Respondent and EPA have agreed, in compromise of the civil penalty that otherwise may be imposed herein, that Respondent shall provide EPA with the Final Audit Report resulting from the third-party audit within 15 days of the Effective Date of the Final Order. The Final Audit Report shall include:

a. a summary of the audit process and activities;

b. findings of compliance or non-compliance;

c. recommendations for addressing and improving program performance; and

d. references to applicable regulations, Recognized and Generally Accepted Good Engineering Practices, or best practices documents for each finding or recommendation.

89. Respondent and EPA have further agreed, in compromise of the civil penalty that otherwise may be imposed herein, that Respondent shall correct all findings of non-compliance resulting from the third-party audit and shall submit to EPA a Final Audit Completion Report within 180 days of receipt of the Final Audit Report. The Final Audit Completion Report shall include:

a. documentation to confirm correction of any findings of non-compliance, including date of completion and any relevant supporting information, such as photographs and copies of updated RMP procedures; and

b. documentation to confirm implementation of any recommendations for addressing and improving program performance or an explanation as to why any recommendations were not implemented, including the technical basis for such decision.

c. Schedule for implementation of any outstanding findings of non-compliance and recommendations from the Audit, including the date by when all actions shall be completed.

90. These Reports shall be submitted to: Lynelle Ladd, Enforcement Officer, at *ladd.lynelle@epa.gov*.

Supplemental Environmental Project

91. In response to the violations of the CAA and EPCRA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by the CAA, EPCRA, or any other federal, state, or local law, Respondent shall complete the SEP described in this Consent Agreement and Final Order, which the parties agree is intended to secure significant environmental or public health protection and improvement.

92. Respondent shall complete the following SEP: Install and operate an anhydrous ammonia water deluge system with an upgraded sump basin and pump to contain high water flow from the system at its anhydrous ammonia Program 3 covered process at the Foods Facility. Respondent shall spend no less than $227,589 on implementing the SEP. Respondent agrees that the SEP shall be completed on or before July 31, 2025.

93. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy (March 10, 2015).

94. The SEP advances at least one of the objectives of Section 112(r) of the CAA and EPCRA by minimizing the consequences of accidental releases and reducing the risks to local emergency responders because the water deluge system will dilute, contain and reduce the potential for future ammonia gas releases to the environment. The SEP is not inconsistent with any provision of Section 112(r) of the CAA or EPCRA. This pollution reduction SEP relates to the alleged violations, and is designed to reduce the adverse impact and overall risk to public health and the environment to which the alleged violations contribute by increasing safety and lowering the risk of exposure to the public from the dangerous effects of ammonia gas at Respondent's Foods Facility, which is where the alleged violations occurred, near the town of Eddyville, Iowa.

95. Respondent selected the SEP identified in this Consent Agreement and Final Order. This Consent Agreement and Final Order shall not be construed to constitute EPA approval or endorsement of the equipment or technology purchased and installed by Respondent in connection with the SEP.

96. This SEP shall be performed in accordance with the requirements of this Consent Agreement and Final Order.

97. On or before August 31, 2025, Respondent shall submit a SEP Completion Report to the EPA contact identified in Paragraph 90, above. The SEP Completion Report shall be subject to EPA review and approval as provided in Paragraph 100, below. The SEP Completion Report shall contain the following information:

a. detailed description of the SEP as implemented, including documentation of costs, including copies of all purchase and delivery orders;

b. description of any problems encountered in implementation of the projects and the solution thereto;

c. description of the specific environmental and/or public health benefits resulting from implementation of the SEP; and

d. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

98. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all SEP costs. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

99. The SEP Completion Report shall include the statement of Respondent, through an officer, signed and certifying under penalty of law the following:

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

100. SEP Completion Report Approval: The SEP Completion Report shall be reviewed in accordance with the procedures outlined in this paragraph. EPA will review the SEP Completion Report and may approve, approve with modifications, or disapprove and provide comments to Respondent. If the SEP Completion Report is disapproved with comments, Respondent shall incorporate EPA's comments and resubmit the SEP Completion Report within thirty (30) days of receipt of EPA's comments. If Respondent fails to revise the SEP Completion Report in accordance with EPA's comments, Respondent shall be subject to the stipulated penalties as set forth below.

101. Any public statement, oral or written, in print, film, internet, or other media, made by Respondent making reference to the SEP under this Consent Agreement and Final Order from the date of its execution of this Consent Agreement and Final Order shall include the following language:

> This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency to enforce federal laws.

102. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is $227,589;

b. That, as of the date of executing this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal,

state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement and Final Order;

d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;

e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;

f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and

g. Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 92.

103. Stipulated penalties for failure to complete SEP.

a. In the event Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP, including to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i. If a SEP has not been completed satisfactorily and timely pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the EPA in the amount of $250,500.

ii. For failure to submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of $250 for each day after the report was originally due until the report is submitted.

b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity or other resolution under this Consent Agreement and Final Order.

d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of the Penalty Payment section above. Interest and late charges shall be paid as stated in Paragraph 85 herein.

e. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

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

Effect of Settlement and Reservation of Rights

104. Full payment of the penalty proposed and performance of the conditions in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the CAA, EPCRA, or any other applicable law.

105. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph directly below.

106. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA, EPCRA, and their respective implementing regulations.

107. Full payment of the penalty proposed and performance of the conditions in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA, EPCRA, and regulations promulgated thereunder.

108. This Consent Agreement and Final Order constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Combined Enforcement Response Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* to determine Respondent's "full

compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

109. The EPCRA allegations in this Consent Agreement and Final Order constitute "prior violations" as that term is used in EPA's *Enforcement Response Policy for Sections 304, 311, and 312 of EPCRA and Section 103 of CERCLA* to determine Respondent's "prior enforcement history."

110. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

111. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and have the legal capacity to bind the party they represent to this Consent Agreement.

112. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

113. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, or local taxes.

114. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Paragraphs 87 through 89, above, are restitution, remediation, or required to come into compliance with the law.

115. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT:
AJINOMOTO HEALTH & NUTRITION NORTH AMERICA, INC.

N Kirihara
Signature

November 14, 2024
Date

Masakazu Kirihara
Printed Name

Executive Vice President and CTO
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

DAVID COZAD Digitally signed by DAVID COZAD
Date: 2024.11.20 15:38:45 -06'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

KASEY BARTON Digitally signed by KASEY BARTON
Date: 2024.11.22 11:57:12 -06'00'

Kasey Barton
Senior Assistant Regional Counsel
Office of Regional Counsel

Date

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

KARINA BORROMEO

Digitally signed by KARINA BORROMEO
Date: 2024.12.02 09:57:48 -06'00'

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE
(to be completed by EPA)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via E-mail to Complainant:

Kasey Barton, EPA, *barton.kasey@epa.gov*

Lynelle Ladd, EPA, *ladd.lynelle@epa.gov*

Dave Hensley, EPA, *hensley.dave@epa.gov*

Milady Peters, EPA, *peters.milady@epa.gov*

Copy via E-mail to Attorney for Respondent:

Gene Schmittgens, Attorney
Rouse Frets White Goss Gentile Rhodes, P.C.
PO Box 7147
Chesterfield, Missouri 63006
gschmittgens@rousepc.com

Dated this _____ day of _____, _____.

AMY GONZALES Digitally signed by AMY GONZALES
Date: 2024.12.03 08:18:16 -06'00'

Signed