

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

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REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	EPA DOCKET NO.
	§	CAA-06-2019-3310
PILGRIM'S PRIDE CORPORATION	§	
GREELEY, COLORADO	§	ADMINISTRATIVE ORDER
	§	ON CONSENT
RESPONDENT	§	
Mount Pleasant, Texas	§	

ADMINISTRATIVE ORDER ON CONSENT

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency ("EPA"), Region 6 ("Complainant") and Pilgrim's Pride Corporation ("Respondent") in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Administrative Order on Consent ("AOC"). The authority to issue orders pursuant to Section 113(a)(3) of the CAA has been delegated to EPA Region 6's Regional Administrator, and in turn to the Director of EPA Region 6's Compliance Assurance and Enforcement Division.

I. INTRODUCTION

1. The following findings are made and an Order issued pursuant to Section 113(a)(3) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(3), for the Respondent's alleged violation of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the relevant regulations promulgated thereunder, found at 40 C.F.R. Part 68.

2. Respondent neither admits nor denies any of the factual or legal determinations made by the EPA in this Order. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law.

3. This Order is entered into upon mutual agreement by the parties. Accordingly, Respondent consents to and agrees not to contest EPA's jurisdiction to either issue this Order or to enforce its terms.

4. Respondent will not contest EPA's jurisdiction to either (a) compel compliance with this Order in any subsequent enforcement proceedings, whether administrative or judicial, (b) require Respondent's full compliance with the terms of this Order, or (c) impose sanctions for violations of this Order. Respondent consents to the terms of this Order.

II. STATUTORY AND REGULATORY BACKGROUND

5. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes EPA to issue compliance orders for violations of specific sections of the CAA, including violations of Section 112(r), 42 U.S.C. § 7412(r). A copy of the order must be sent to the relevant state air pollution control agency. An order relating to a violation of Section 112 of the CAA can take effect immediately upon issuance.

6. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

7. Pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements.

8. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA.

9. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines person as an “individual, corporation, partnership, association [. . .] and any officer, agent, or employee thereof.”

10. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source” as:

any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

11. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68. It also establishes requirements that apply to an owner or operator based on whether the stationary source operates processes subject to one of three “Programs” -- Program 1, Program 2, and Program 3.

12. “Covered process” is defined in 40 C.F.R. § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

13. “Owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

14. “Process” is defined in 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. 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.

15. “Regulated substance” is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in § 68.130.

16. "Threshold quantity" is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA as amended, listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part.

17. Pursuant to 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process (Covered Process), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68.

18. Pursuant to 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan (RMP) as provided in 40 C.F.R. Part 68, Subpart G (§§ 68.150-68.185) that reflects all covered processes at the stationary source.

19. Pursuant to 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the "Program 3" requirements of the Part 68 regulations, as determined pursuant to 40 CFR § 68.10(d), must comply with the chemical accident prevention requirements of 40 C.F.R. Part 68, Subpart D (§§ 68.65-68.87).

III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

20. Respondent is a corporation formed under the laws of Delaware and registered to do business in the State of Texas on November 12, 1986.

21. Respondent is a "person" as that term is defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

22. Respondent's facility is a poultry processing facility and is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

23. Respondent is the owner or operator of the facility located at 1000 Pilgrim Road, Mount Pleasant, Texas 75455.

24. Ammonia (anhydrous), CAS No. 7664-41-7, is a regulated toxic substance under Section 112(r) of the CAA, 42 U.S.C. § 7412, listed under Table 1 to 40 C.F.R. § 68.130, and has a threshold quantity of 10,000 pounds.

25. Respondent uses 145,000 pounds of ammonia (anhydrous), a regulated substance in an amount that exceeds the threshold quantity as part of its covered process.

26. Respondent's poultry processing process is a Program Level 3 covered process, as provided by 40 C.F.R. § 68.10(d).

27. On January 9, 2018 at 8:37 a.m., Respondent's employee was removing a pressure gauge from the oil pot for P-R-1 when the gauge blew off and released ammonia through the fitting.

28. Respondent's employee misidentified the gauge valve and closed the ¼" plugged valve and not the gauge valve prior to removing the gauge. The technician believed he had closed the gauge valve, but was unaware that there was a second valve that remained open. When the gauge was being removed, it blew out under pressure and released approximately 3,977 pounds of liquid anhydrous ammonia as a vapor.

29. At 8:45 a.m. it was estimated that the release would exceed the reportable quantity and reports were made to required agencies. The plant was evacuated and the HAZMAT team made entry to stop the leak by closing the appropriate valve.

30. At 9:41 a.m., the correct gauge valve was closed, putting an end to the release.

IV. VIOLATION

Violation 1: Training

31. 40 C.F.R. § 68.71(a) requires each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, be

trained in an overview of the process and in the operating procedures as specified in §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.

32. Respondent's employee misidentified the gauge valve and closed wrong valve prior to attempting to removing the pressure gauge.

33. Respondent's employee was not properly trained on proper procedures for changing out a pressure gauge.

34. EPA finds Respondent did not sufficiently train employees involved in operating a process in an overview of the process and in the operating procedures in violation of 40 C.F.R. § 68.71(a).

V. ORDER ON CONSENT

35. Accordingly, pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), it is hereby ordered that Respondent, which has consented to the terms of this Order, shall comply with the obligations identified in § 112(r) of the CAA, 42 U.S.C. § 7412(r) and the implementing regulations found at 40 C.F.R. § 68.71 by completing the compliance actions described below:

- a) Respondent shall conduct additional training for personnel at Respondent's Mount Pleasant facilities. Personnel to receive the training shall consist of all refrigeration technicians, PSM Coordinators, and Refrigeration Management. The Mount Pleasant facilities consist of a prepared foods facility, a commercial facility, a small bird facility, and a pet food facility.
- b) Respondent will conduct additional training on the following topics:
 - i. Lockout/tagout authorized training, ammonia awareness and group lockout/tagout training. This additional training shall be conducted twice.

- c) Respondent will conduct enhanced training for the following: line break procedures, and the standard operating procedures (SOPs) for vessels, pumps and oil pots. This enhanced training will be conducted by a third party that is knowledgeable and qualified in installation, operation, and maintenance of ammonia refrigeration systems, and familiar with the ammonia refrigeration systems for the Mount Pleasant facilities. The instructors for the third party shall have at a minimum, the following credentials: Garden City Ammonia Program Operator 1 or Operator 2 certification, or Refrigeration Engineers and Technicians Association Certified Industrial Refrigeration Operator or Certified Assistant Refrigeration Operator certification, or equivalent documented experience. This enhanced training shall be conducted once.

36. Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), Respondent shall comply with the terms of this Order as expeditiously as practicable, but in no event longer than one year after the date the order was issued.

37. Within thirty (30) days of the completion of the training described above, Respondent shall provide a report to EPA on such training. The report shall include the following:

- a) Dates of the training;
- b) Copy of training agenda and materials;
- c) Attendee sign in logs; and
- d) Means of understanding test or assessment to demonstrate comprehension of the procedures and materials presented.

38. Respondent will provide an itemized cost analysis or an estimate of its costs it

expended under Paragraph 35 to come into compliance with the applicable regulations.

39. Failure to meet the terms of the Order identified below will be deemed a violation of the Order, subject to federal civil penalties and enforcement under 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3). The terms include abiding by the timelines and certification requirements. Failure to abide by the timelines and certification will be deemed a violation of the Order.

40. Upon completion of all the requirements described in Paragraph 35, Respondent shall send a notice certifying that such requirements have been completed, and an itemized cost analysis of compliance described in Paragraph 38, in accordance with the instructions in Paragraph 41.

41. Notifications:

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

U.S. Environmental Protection Agency - Region 6
Attn: Mr. Don Smith (6EN-AS)
1445 Ross Avenue - Suite 1200
Dallas, Texas 75202-2733
Smith.Donald-M@epa.gov

- b) EPA will send all written communications to the following representative for

Respondent:

Nicholas M. White, General Counsel
Pilgrim's Pride Corporation
1770 Promontory Circle
Greeley, Colorado 80634

42. Unless EPA, Region 6 objects in writing within sixty (60) days of EPA's receipt of Respondent's certification, this AOC is terminated on the basis of Respondent's certification.

43. All documents submitted to EPA in the course of implementing this Order 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.

VI. GENERAL PROVISIONS

44. The provisions of this Order shall be transferrable to any other party, upon sale or other disposition of the corporation. Upon such action, the provisions of this Order shall then apply to and be binding upon any new owner/operator, and any successor(s) in interest and assigns.

45. Nothing in this Order shall be construed to affect EPA's authority under Section 114 of the CAA, 42 U.S.C. § 7414.

46. Nothing contained in this Order shall affect the responsibility of Respondent to comply with all applicable federal, state, or local laws or regulations, including Section 303 of the CAA, 42 U.S.C. § 7603.

47. Any and all information required to be maintained or submitted pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501 et seq., because it seeks to collect information from specific individuals or entities to assure compliance with this administrative action.

48. This Order is not intended to be nor shall it be construed to be a permit. Compliance by Respondent with the terms of this Order shall not relieve Respondent of Respondent's obligations to comply with the CAA or any other applicable local, state, or federal laws and regulations.

49. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with

any of the requirements of this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any statutory, regulatory, or common law authority of the United States.

50. This Order does not resolve any civil or criminal claims of the United States for the violation alleged in this Order. Federal civil liability for the alleged violation was resolved by the entry of a Consent Agreement and Final Order ("CAFO") (Docket No. CAA-06-2019-3309). Further, this Order does not limit the rights of the United States to obtain penalties or injunctive relief under the CAA or other applicable federal law or regulations with respect to violation other than those alleged in the Order or the CAFO.

51. Respondent waives any right to judicial review of this Order.

52. Parties shall bear their own costs and fees in this action, including attorney's fees.

53. Failure to comply with this Order may result in an enforcement action for appropriate injunctive relief and penalties pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) or, in appropriate cases, criminal penalties.

VII. ENFORCEMENT

54. This Order does not in any way impair EPA's rights to enforce the CAA.

55. Be advised that issuance of this Order does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law in this or any other matter.

VIII. EFFECTIVE DATE

56. This Order shall become effective upon the date of signature by EPA.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS
ADMINISTRATIVE ORDER ON CONSENT:**

FOR THE RESPONDENT:

December 27, 2018

Date




Pilgrim's Pride Corporation

FOR THE COMPLAINANT:

2-5/19

Date



Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2019, the original and a copy of the foregoing Administrative Order on Consent (AOC) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the AOC was placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 701515200003399089408

Nicholas M. White, General Counsel
Pilgrim's Pride Corporation
1770 Promontory Circle
Greeley, Colorado 80634

02-06-2019
Date

Lori Jackson
U.S. EPA, Region 6
Dallas, Texas