

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

Commonwealth Cold Storage, Inc.,

Respondent

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket No. CAA-02-2013-1210

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 SEP 19 A 9:44
REGIONAL HEARING
CLERK

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CA/FO”) is issued pursuant to Section 113(d) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413(d). The Complainant in this action is the Director of the Caribbean Environmental Protection Division (“CEPD”) Environmental Protection Agency (“EPA”), Region 2, who has been delegated the authority to institute this action.

2. EPA and the U.S. Department of Justice have determined, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), that EPA may pursue this matter through administrative enforcement action.

3. Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

4. It has been agreed by the parties that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without litigation.

STATUTORY BACKGROUND

5. Section 113(d) of the Act, 42 U.S.C. § 7413(d), provides for the assessment of penalties for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r).

6. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), requires the owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, to have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, 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.

FINDINGS OF FACT

7. Respondent Commonwealth Cold Storage, Inc. (“Respondent”), was the owner and/or operator of a facility located at Urb. Mario Julia, 918, Escorial Street, in the Puerto Nuevo Ward of San Juan, Puerto Rico (the “Facility”) at the time of the violations addressed in this administrative enforcement action. The Facility is a frozen food storage and distribution facility, which contains anhydrous ammonia refrigeration equipment.

8. On September 15, 16 and 20, 2011, EPA conducted inspections (“the 2011 Inspections”) at the Facility to determine compliance with Section 112(r) of the Act, 42 U.S.C. § 7412(r).

9. The 2011 Inspections revealed a number of safety concerns regarding the physical state of the anhydrous ammonia refrigeration equipment, which created the potential for an accidental release of anhydrous ammonia and/or that could increase and/or exacerbate the harmful effects of such a release.

10. At the time the 2011 Inspections, Respondent subleased the Facility to Quirch Foods Caribbean, Corp.

11. Commonwealth Cold Storage, Inc. had a principal lease agreement with Caparra Realty Associates, LLC.

12. On September 23, 2011, Complainant issued a Compliance Order to Respondent, and also to Quirch Foods Caribbean, Corp., and Caparra Realty Associates, LLC (“the Order”) pursuant to Section 113 of the Act regarding the Facility. The Order required these parties to perform certain activities at the Facility including the performance of repairs to the ammonia equipment.

13. The parties to the Order performed work at the Facility pursuant to the Order and then submitted the Final Report required by the Order to EPA on April 9, 2012.

EPA CONCLUSIONS OF LAW

14. Respondent is, and at all times referred to herein was, a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

15. Respondent is the owner and/or operator of the Facility which is a stationary source, as that term is defined at 42 U.S.C. §7412(r)(2).

