

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. CAA-05-2026-0004
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FGF Brands Inc.) Proceeding to Assess a Civil Penalty
Brownsburg, Indiana) Under Section 113(d) of the Clean Air Act,
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Respondent.)
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Consent Agreement and Final Order**A. Preliminary Statement**

1. This is an administrative penalty assessment proceeding 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) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.1(a)(2), 22.13(b) and 22.18(b).

2. Complainant is the U.S. Environmental Protection Agency (EPA). The EPA Administrator has delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the CAA to the Division Director of the Region 5 Enforcement and Compliance Assurance Division.

3. Respondent is FGF Brands Inc., a corporation doing business in Indiana. Respondent is a "person," as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

4. The EPA and Respondent agree that settling this action is in the public interest and consent to the entry of this Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. § 22.18(b)(2) and (3) without the adjudication of any issues of law or fact.

5. Respondent agrees to comply with the terms of this CAFO.

B. Jurisdiction

6. The alleged violations in this CAFO are pursuant to Section 113(a)(3)(A) of the CAA.

7. The EPA and the United States Department of Justice have jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

8. On April 17, 2024, the EPA issued to Respondent a Finding of Violation (FOV) and provided a copy of the FOV to Indiana Department of Environmental Management (IDEM), providing notice to Respondent and that the EPA found Respondent committed the alleged violations described in Section E of this CAFO and providing Respondent an opportunity to confer with the EPA. On May 31, 2024, representatives of Respondent and the EPA conferred regarding the April 17, 2024 FOV.

9. The Regional Judicial Officer of Region 5 is authorized to ratify the Consent Agreement memorializing the settlement between the EPA and Respondent and to issue the attached Final Order. 40 C.F.R. §§ 22.4(b) and 22.18(b).

C. Statutory and Regulatory Background

Clean Air Act, Subsection 112(r)

10. Section 112(r)(1) of the CAA, 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. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as Section 654, Title 29 of the United States Code, to identify hazards which may result from such releases 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.

11. Section 112(r)(3) of the CAA, 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 ("regulated substances," as defined in § 112(r)(2)(b)).

12. Section 112(r)(7)(A) of the CAA, 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.

13. Section 112(r)(7)(B)(i) of the CAA, 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.

14. Section 112(r)(7)(B)(ii) of the CAA, 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.

15. Pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (Jan. 31, 1994), which is codified, as amended, at 40 C.F.R. § 68.130.

16. Pursuant to Section 112(r)(7)(B)(i) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(i), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 59 FR 31717 (Jan. 31, 1994), which is codified, as amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (Part 68). See 89 FR 17685 (Mar. 11, 2024).

17. Part 68 seeks to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur, by requiring owners and operators of certain stationary sources to, among other things: (1) develop and implement a management system to oversee the implementation of the RMP elements; (2) develop and implement an RMP that includes, but is not limited to, a hazard assessment, a prevention program, and an emergency response program; and (3) submit to EPA a RMP describing the risk management program for the source. See 40 C.F.R. Part 68, Subparts A through G (40 C.F.R. §§ 68.1-68.195).

18. Section 112(r)(7)(E) of the CAA, 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 CAA, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

19. The Administrator of EPA may require any person who is subject to any requirement of the CAA to make reports under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

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

A. Applicability

20. 40 C.F.R. § 68.10(a) 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 this Part no later than the date on which a regulated substance is first present above a threshold quantity in a process.

21. 40 C.F.R. § 68.3 defines “regulated substance” to mean any substance listed pursuant to Section 112(r)(3) of the CAA and identified at 40 C.F.R. § 68.130.

22. 40 C.F.R. § 68.3 defines “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 th[at] 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.”

23. 40 C.F.R. § 68.3 defines “covered process” as “a process that has a regulated substance present in more than a threshold quantity as determined under [40 C.F.R] § 68.155.”

24. 40 C.F.R. § 68.3 defines “public receptor” as “offsite residences, institutions (e.g., schools, hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time without restriction by the stationary source where members of the public could be exposed to toxic concentrations, radiant heat, or overpressure, as a result of an accidental release.”

25. Table 1 at 40 C.F.R. § 68.130(a) lists anhydrous ammonia as a regulated toxic substance with a threshold quantity of 10,000 pounds.

26. 40 C.F.R. § 68.10(j) provides, in part, that a covered process is subject to Program 1 requirements if the distance to a toxic or flammable endpoint for a worst-case release assessment conducted under 40 C.F.R. § 68.22 and 40 C.F.R. § 68.25 is less than the distance to any public receptor.

27. 40 C.F.R. § 68.10(l) provides, in part, that a covered process is subject to Program 3 requirements if the process does not meet the Program 1 eligibility requirements at 40 C.F.R. § 68.10(j) and if either of the following conditions is met: (1) the process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or (2) the process is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 C.F.R. § 1910.119.

28. 40 C.F.R. §§ 68.12(a) and (d) identify the requirements that the owner or operator of a stationary source with a process subject to Program 3 must meet, which include, among other provisions,

- a. developing and implementing a management system as provided in 40 C.F.R. § 68.15;
- b. conducting a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42;
- c. implementing the prevention requirements of Sections 68.65 through 68.87;
- d. coordinating response actions with local emergency planning and response agencies as provided in 40 C.F.R. § 68.93;
- e. developing and implementing an emergency response program, as provided in 40 C.F.R. §§ 68.90 through 68.96;
- f. submitting a single RMP, as provided in 40 C.F.R. §§ 68.150 to 68.185, that includes a registration that reflects all covered processes; and
- g. submitting as part of the RMP the data on prevention program elements for Program 3 processes, as provided in 40 C.F.R. § 68.175.

B. Process Safety Information

29. 40 C.F.R. § 68.65 requires the owner or operator of a stationary source with a process subject to Program 3 to complete a compilation of written process safety information before conducting any process hazard analysis required by the rule. It requires process safety information to include information pertaining to the hazards of the regulated substances used or produced by the process, information on the technology of the process, and information pertaining to the equipment in the process.

30. 40 C.F.R. § 68.65(d)(2) requires the owner or operator to document that equipment complies with recognized and generally accepted good engineering practices (RAGAGEP).

C. Operating Procedures

31. 40 C.F.R. § 68.69(a) requires the owner or operator to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the elements found in Section 68.69(a)(1) of the CAPP.

32. 40 C.F.R. § 68.69(a)(4) requires the owner or operator to create operating procedures that address the safety systems and their functions.

D. Mechanical Integrity

33. 40 C.F.R. § 68.73 requires the owner or operator to have a Mechanical Integrity program including written procedures, training, inspections and testing, corrections of equipment deficiencies, and quality assurance for all equipment listed under Section 68.73 for the covered process.

34. 40 C.F.R. § 68.73(a) lists the process equipment as (1) pressure vessels and storage tanks; (2) piping systems; (3) relief and vent systems and devices; (4) Emergency shutdown systems; (5) controls (including monitoring devices and sensors, alarms, and interlocks); and (6) pumps.

35. 40 C.F.R. § 68.73(b) requires the owner or operator to establish and implement written procedures to maintain the on-going integrity of process equipment.

36. 40 C.F.R. § 68.73(c) requires the owner or operator to train each employee involved in maintaining the on-going integrity of process equipment.

37. 40 C.F.R. § 68.73(d)(2) requires inspection and testing procedures to follow recognized and generally accepted good engineering practices.

38. 40 C.F.R. § 68.73(d)(3) requires the owner or operator to inspect and test the process equipment on a basis that is consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

39. 40 C.F.R. § 68.73(d)(4) requires the owner or operator to document each inspection and test that had been performed on process equipment.

40. 40 C.F.R. § 68.73(f)(2) requires the owner or operator to perform appropriate checks and inspections to assure that equipment is installed properly and consistent with design specifications and the manufacturer's instructions.

E. Pre-Startup Safety Review (PSSR)

41. 40 C.F.R. § Section 68.77(a) requires the owner or operator to perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

42. 40 C.F.R. § 68.77(b) defines what is covered in the pre-startup safety review prior to the introduction of regulated substances to a process.

43. 40 C.F.R. § 68.77(b)(2) requires that the PSSR confirm that safety, operating, maintenance, and emergency procedures are in place and adequate.

F. Compliance Audits

44. 40 C.F.R. § 68.79(a) requires the owner or operator to certify that they have evaluated compliance with the provisions of 40 C.F.R. Part 68 at least every three years to verify that procedures and practices developed under this Part are adequate and are being followed.

45. 40 C.F.R. § 68.79(d) requires the owner or operator to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

G. Incident Investigation

46. 40 C.F.R. § 68.81(a) requires the owner or operator to investigate each incident that resulted in or could reasonably have resulted in a catastrophic release of a regulated substance.

47. 40 C.F.R. § 68.81(g) requires the owner or operator to retain incident investigation reports for at least five years.

H. Contractors

48. 40 C.F.R. § 68.87(c) states the requirements set forth for the responsibilities of the contract owner or operator.

49. 40 C.F.R. § 68.87(c)(4) requires the contract owner or operator shall assure that each contract employee follows the safety rules of the stationary source including the safe work practices required by 40 C.F.R. § 68.69(d).

Recognized and Generally Accepted Good Engineering Practices

A. International Institute of All-Natural Refrigeration (IIAR)

50. IIAR-6 is the Standard for Inspection, Testing, and Maintenance of Closed-Circuit Ammonia Refrigeration Systems.

51. IIAR-6 states that equipment and piping shall be kept free from excessive ice buildup.

52. IIAR-6 Section 5.1.1.1 states that the frequency of inspections and testing shall be consistent with applicable manufacturers' recommendations and operating history.

53. IIAR-6 Section 7 Refrigerant pumps, Section 8 Condensers, Section 9 Evaporators, Section 12 Safety Systems, requires weekly inspections of the refrigerant pumps, condensers, evaporators, and safety systems.

54. IIAR-9 is the Minimum System Safety Requirements for Existing Closed-Circuit Ammonia Refrigeration Systems.

55. IIAR-9 Section 7.3.9.2 requires that machinery room doors shall be self-closing and tight fitting. Doors that are part of the means of egress shall be equipped with panic hardware and shall be side hinged to swing in the direction of egress for occupants leaving the machinery room.

56. IIAR-9 Section 7.3.11.2 states that a clearly identified control switch for emergency ventilation with a tamper-resistant cover shall be located outside the machinery room and adjacent to the designated principal machinery room door unless the continuous ventilation operates at a rate at or above that required for emergency ventilation. The switch shall provide "ON/AUTO" override capability for emergency situations. The function of the switch shall be clearly marked by signage near the controls.

57. IIAR-9 Section 7.3.12.1(3) states that audible and visual alarms shall be provided inside the room. Additional audible and visual alarms shall be located outside of each entrance to the machinery room.

58. IIAR-9 Section 7.3.12.6 states that ammonia leak detection alarms shall be identified by signage adjacent to visual and audible alarm devices.

59. IIAR-9 Section 7.4.2.3 states that the termination of pressure relief device discharge piping to the atmosphere shall be permitted to terminate not less than 7.25 feet (2.2 m) above

platform surfaces, such as upper condenser catwalks, that are occupied solely during service and inspection.

D. Stipulated Facts

60. FGF Brands, Inc., formerly known as WB Frozen LLC, owns and operates an ammonia refrigeration system at its bakery located at 50 Maplehurst Drive, Brownsburg, Indiana 46112 (the Facility).

61. The Facility maintains an amount of anhydrous ammonia within its system that is above the 10,000 lbs threshold quantity that is set forth in Table 1 at 40 C.F.R. § 68.130.

62. The ammonia refrigeration system at the Facility is a “covered process,” as that term is defined at 40 C.F.R. § 68.3.

63. The covered process at the Facility is subject to the OSHA process safety management standard because it contains greater than the threshold quantity of 10,000 pounds of anhydrous ammonia that is a highly hazardous chemical as defined in 29 C.F.R. § 1910.119(b).

64. The Facility is subject to the requirements of the CAPP in accordance with 40 C.F.R. § 68.1 et seq.

65. The covered process at the Facility does not meet the Program 1 requirements at 40 C.F.R. § 68.10(j).

66. The Facility is subject to Program 3 because the covered process is subject to the OSHA process safety management standard, 29 C.F.R. § 1910.119, in accordance with 40 C.F.R. § 68.10(l), and does not meet the Program 1 eligibility requirements at 40 C.F.R. § 68.10(j).

67. On August 11, 2022, the Facility had a release of anhydrous ammonia during routine maintenance that led to the evacuation of the building (2022 Incident).

68. On December 6 through December 8, 2023, EPA conducted an announced inspection of the Facility (December Inspection).

69. On April 17, 2024, EPA sent a Finding of Violation (FOV) Letter to FGF Brands, Inc. alleging violations seen onsite during the December Inspection as well as noted during further review of documents received from the company. Violations included portions of the Process Safety Information, Operating Procedures, Training, Mechanical Integrity, Management of Change, Pre-Startup Safety Review, Compliance Audits, Incident Investigations, and Contractors.

70. On May 31, 2024, representatives of the Facility met with EPA to discuss the alleged violations from the FOV Letter (FOV Meeting).

71. On May 31, 2024, FGF Brands, Inc. provided documentation that had been unable to be reviewed during the inspection (Post-FOV Documents).

72. On May 31, 2024, the Facility provided documentation of the following actions that were performed in response to the inspection findings and follow-up documentation to the FOV Letter:

- a. Process Safety Information: Extended PRV vents to appropriate height and created a second means of egress within the Engine Room as required by IIAR regulations.
- b. Operating Procedures: Provided the updated Lockout/Tagout procedure and proof that they had recertified it.
- c. Mechanical Integrity: Created a new training for employees in regard to the software system used and trained affected employees, created an annual piping inspection and completed it for 2024, created a tracker and a way for recommendations to be completed following the annual piping inspection, modified the Daily Rounds routine to better align with requirements for daily

and weekly inspection set forth by IIAR, and adjusted the original routine for completing inspections to include a requirement for the inspector/tech to manually interact with the forms to include notes and comments.

- d. Pre-Safety Startup Review: Created a letter of comment and understanding that the missing initiation document was unable to be recovered following software transitions following efforts to recover the documentation and filed it with the current paperwork on file.
- e. Compliance Audits: Found the spreadsheet that was tracking the open items from the 2019 audits and completed the outstanding item, and addressed and completed all open items in the 2022 audits.
- f. Incident Investigation: Created a letter of comment and understanding that the missing incident investigation supporting documentation was lost during a software transition following efforts to find the documentation and filed it with the current paperwork on file.
- g. Contractors: Found documentation regarding contractor evaluations completed from 2017 through 2023 and completed the pre-qualification for the 3rd party contractors for 2024 and added an online evaluation for the contractors.

E. Alleged Violations of Law

A. Process Safety Information

- 73. During the December 2023 Inspection, the following observations were made:
 - h. The door between the Engine Room and the Electrical Room did not contain panic hardware exiting from the Engine Room.

- i. The door between the Engine Room and the Electrical Room swung into the Engine Room.
- j. The door between the Engine Room and the Electrical Room did not contain an ammonia monitor or visual alarm, but did contain an audible alarm.
- k. The Pressure Relief Valves (PRVs) were vented from the equipment to the roof through a single piping system.
- l. The PRV vent exhaust was within five feet of the condenser walkways.

74. At the time of inspection, Facility personnel stated that current RAGAGEP was to use IIAR Standards.

75. FGF Brands, Inc. failed to document that equipment complies with recognized and generally accepted good engineering practices, in violation of 40 C.F.R. § 68.65(d)(2).

B. Operating Procedures

76. At the time of inspection and during follow-up review of documentation, EPA noted that the Line and Operating Permit did not adequately cover emergency operations and the safety systems implemented at the Facility prior to the 2022 Incident. FGF Brands updated the Operating Procedures within the months following to the 2022 Incident fill in the gaps.

77. FGF Brands, Inc. failed to develop and implement safe operating procedures prior to the August 2022, in violation of 40 C.F.R. § 68.69(a)(4).

C. Mechanical Integrity

78. The Facility uses a software system (APSM Catalyst) to manage the Standard Operating Procedures (SOPs), the Management of Changes (MOCs), the Process Safety Information (PSI), the Mechanical Integrity (MI) program, and to create and maintain their work orders.

79. The Facility has not documented that each employee involved in maintaining the on-going integrity of process equipment has been trained on how to use APSM Catalyst to follow the procedures applicable to their job tasks to assure that the employee can perform the job tasks in a safe manner.

80. FGF Brands, Inc. 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).

81. During the December 2023 Inspection, inspectors learned that the facility follows IIAR-6 Standard for Inspection, Testing, and Maintenance of Closed-Circuit Ammonia Refrigeration Systems for the inspection, testing, and maintenance of its ammonia system.

82. At the time of inspection, the facility was missing some weekly Testing/Inspection/Preventative Maintenance (TIPM) Inspections.

83. FGF Brands, Inc. failed to have inspection and testing procedures that followed recognized and generally accepted good engineering practices, in violation of 40 C.F.R. § 68.73(d)(2).

84. During the December 2023 Inspection, inspectors discovered that the facility was missing results of an Annual Inspection for evaporator CG SS1.

85. FGF Brands, Inc. 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).

D. Pre-Startup Safety Review (PSSR)

86. At the time of inspection, the RMP documents contained a Pre-Startup Safety Review procedure that was required to be used by the facility in the event that there was a modification to an

existing facility that necessitated a change in the process safety information in order to ensure that adequate safety measures were in place and operational.

87. The Pre-startup Safety Review was not completed for the 2021 installation of the alarm system.

88. FGF Brands, Inc. failed to complete a Pre-Safety Startup Review to confirm, in relevant part, safety procedures are in place and adequate when the modification is significant enough to require a change in the process safety information, in violation of 40 C.F.R. § 68.77(b)(2).

E. Compliance Audits

89. The 2019 Compliance Audit created 18 recommendations, one of which had not been closed out at the time of the December 2023 Inspection.

90. The 2022 Compliance Audit still had 5 outstanding recommendations that had not been initiated and 5 outstanding recommendations that were initiated but not completed.

91. FGF Brands, Inc. failed to promptly determine and document an appropriate response to some of the findings of the compliance audit and document that deficiencies have been corrected, in violation of 40 C.F.R. § 68.79(d).

F. Incident Investigation

92. During the December 2023 Inspection, the RMP documents did not contain the investigation report for the incident that occurred on June 14, 2022.

93. FGF Brands, Inc. failed to retain incident investigation reports for at least five years, in violation of 40 C.F.R. § 68.81(g).

G. Contractors

94. Based on the witness statement, an employee of the contractor company was conducting maintenance on a piece of equipment when the incident occurred. The contractor

employee contacted his supervisor for assistance, who arrived 18 minutes later to aid in the recovery process.

95. FGF Brands, Inc. failed to require that the contract owner or operator shall assure that each contract employee follows the safety rules of the stationary source including the safe work practices required by 40 C.F.R. § 68.69(d), in violation of 40 C.F.R. § 68.87(c)(4).

F. Terms of Consent Agreement

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

- a. admits to the jurisdictional allegations in this CAFO;
- b. admits to the stipulated facts stated above and neither admits nor denies the alleged violations of law stated above;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to any conditions specified in this CAFO;
- e. waives any right to contest the allegations set forth in Section E of this CAFO; and
- f. waives its right to appeal this CAFO.

97. For the purposes of this proceeding, Respondent:

- a. agrees this CAFO states a claim upon which relief may be granted against Respondent;
- b. acknowledges this proceeding constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c. 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 judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- d. waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c);
- e. 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; and

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

98. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C.

§ 7413(e) and the facts of this case, the EPA has determined that an appropriate civil penalty to settle this action is \$133,857.

99. Respondent agrees to pay a civil penalty in the amount of \$133,857 ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Consent Agreement is filed with the Regional Hearing Clerk ("Filing Date").

100. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:

<https://www.epa.gov/financial/makepayment>. For additional instructions see:

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

101. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this CAFO, CAA-05-2026-0004,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

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

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
R5airenforcement@epa.gov

James Bonar-Bridges

Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
BonarBridges.James@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

102. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately owing, and the EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7413(d)(5), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is, the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.
- b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of handling collection.
- c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.

103. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and

penalties per this CAFO, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalty and Final Order shall not be subject to review.

104. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

105. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

106. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to annually send to the Internal Revenue Service (“IRS”), a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be 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 written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Respondent's 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 shall complete the following actions as applicable:

- 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 therein 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 Division at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Consent Agreement is filed, or within 7 days after the Final Order ratifying this Consent Agreement is filed should that happen between December 15 and December 31 of the calendar year. 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 does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

107. By signing this CAFO, Respondent consents to the release of any information in this CAFO to the public and agrees this CAFO does not contain business information that is entitled to confidential treatment under 40 C.F.R. Part 2.

108. By signing this CAFO, the undersigned representative of the EPA and the undersigned representative of Respondent each certify that they are fully authorized to execute and enter into the terms and conditions of this CAFO and have the legal authority to bind the party they represent to this CAFO.

109. By signing this CAFO, Respondent certifies the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there may be significant penalties for knowingly submitting false information, including the possibility of fines and/or imprisonment under 18 U.S.C. § 1001 and § 1519 .

110. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, except in the case of a civil action brought by the Attorney General of the United States to recover unpaid penalties as described above.

G. Effect of Consent Agreement and Attached Final Order

111. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: bonarbridges.james@epa.gov (for the EPA), and mchambers@boselaw.com and joshua.gorrell@fgfbrands.com (for Respondent).

112. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations specifically alleged in this CAFO.

113. This CAFO constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to this matter.

114. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties and approval of the Regional Judicial Officer.

115. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, authorized representatives, successors, and assigns.

116. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties of up to \$124,426 per day per violation, or both, as provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. § 19.4, as well as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

117. Nothing in this CAFO relieves Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor does it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor is it a ruling on, or determination of, any issue related to any federal, state, or local permit.

118. Nothing in this CAFO limits the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

119. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and to assess and collect any civil penalties permitted by statute for any violation described herein. The EPA will give Respondent written notice of its intent to revoke this CAFO, which will not be effective until received by Respondent.

H. Effective Date

120. This CAFO will be effective on the date of filing with the Regional Hearing Clerk. Upon filing, the EPA will transmit a copy of the filed CAFO to Respondent.

FGF Brands Inc., Respondent

Date

Greg Taylor, VP Area General Manager USA
FGF Brands Inc.

Consent Agreement in the Matter of FGF Brands, Inc, Docket No. CAA-05-2026-0004.

United States Environmental Protection Agency, Complainant

Carolyn Persoon
Acting Division Director
Enforcement and Compliance Assurance Division
U. S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order
In the Matter of: FGF Brands Inc.
Docket No. CAA-05-2026-0004**

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