



FILED

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

2019 AUG 15 AM 11:39

REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of:

Safeway Inc., Boise, Idaho  
(Tom Thumb Alliance Distribution  
Center, Roanoke, Texas)

Respondent

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EPA Docket No.  
CAA-06-2019-3313

**CONSENT AGREEMENT AND FINAL ORDER**

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (“EPA”), Region 6 (“Complainant”) and Safeway Inc. (Tom Thumb Alliance Distribution Center) (“Respondent”) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (“CAFO”).

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Sections 113(a)(3) and 113(d)(1)(B) of the Clean Air Act, as amended (“Act” or “CAA”), 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations contained herein; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

3. Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth herein, and waives all defenses, which have

been raised or could have been raised to the claims set forth in this CAFO.

4. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for federal civil monetary penalties for those violations and facts alleged in this CAFO.

5. Respondent consents to the issuance of this CAFO and to the assessment and payment of the stated civil penalty in the amount and by the method set forth in this CAFO.

## II. ALLEGATIONS

6. Respondent is a corporation authorized to do business in the State of Texas.

7. Respondent owns a distribution center located at 743 Henrietta Creek Road, Roanoke, Texas ("Facility"). The Facility receives, stores, and ships fresh and frozen foods. A refrigeration system is used at the facility to maintain cooling and freezing areas for food storage.

8. Anhydrous ammonia is used as a refrigerant in the refrigeration system at the Facility. There is one refrigeration system at the Facility.

9. Respondent produces, processes, stores, or handles more than 10,000 pounds of anhydrous ammonia in one process (refrigeration) throughout the Facility.

10. Ammonia (anhydrous) is identified at 40 C.F.R. Part 68.130 as a toxic regulated substance with a threshold quantity of 10,000 pounds.

11. Respondent's Facility includes a covered process regulated by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the implementing regulations at 40 C.F.R. Part 68 and from which an accidental release of regulated or other extremely hazardous substances could occur. Respondent's Facility is a stationary source.

12. On Thursday, August 16, 2018, at 2:45 pm, a scheduled 5-year valve replacement was initiated on Hi-Pressure Recirculator #HPR-1.

13. Recirculator #HPR-1 is protected by two safety relief valves. At the time of the incident, both safety relief valves were removed simultaneously in contradiction of the standard operating procedures (“SOP”), thus releasing anhydrous ammonia vapor.

14. Respondent’s incident review identified contributing factors, such as unclear SOPs and insufficient training of personnel.

15. Respondent’s incident review concluded the Standard Operating Procedure did not address in sufficient detail how to safely isolate the safety relief valves utilizing a 3-way valve.

16. Because the replacement action occurs only once every 5 (five) years technicians were not currently trained on the procedure.

17. When the valves were removed, 228 pounds of anhydrous ammonia was released. A refrigeration contractor present at the site corrected the configuration of the valves and the release ended within approximately 30 minutes. Monitoring at the time of the event recorded a high reading of 138 parts per million.

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

19. The Facility 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).

20. Respondent is the “owner or operator” of the Facility, a stationary source.

21. At the Facility, Respondent produces, processes, handles, or stores substances listed in, or pursuant to, Section 112(r)(3) of the CAA, 42 U.S.C. §§ 7412(r)(3), or other

extremely hazardous substances identified as such due to toxicity, reactivity, flammability, volatility, or corrosivity.

22. The release of anhydrous ammonia at the Facility on August 16, 2018, constituted an “accidental release” as that term is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

23. Respondent failed to prepare a sufficiently detailed SOP to correctly isolate the safety relief valves utilizing a 3-way manifold as required by 40 C.F.R. § 68.69(a)(1)(iii), Temporary Operations (valve changes). 40 C.F.R. § 68.69(b) requires that written Operating Procedures should be readily accessible to employees who work in or maintain a process.

24. Respondent failed to establish procedures and train employees to safely isolate the pressure relief valves in violation of 40 C.F.R. § 68.71(a) and (b), initial and refresher training.

### **III. TERMS OF SETTLEMENT**

#### **A. CIVIL PENALTY**

25. Pursuant to the authority granted in Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), and taking into consideration the size of the Respondent’s business, the economic impact of the penalty on the Respondent’s business, the Respondent’s full compliance history and good faith efforts to comply, the duration of the violation, the economic benefit of noncompliance, and the seriousness of the violation, as well as other factors which justice may require, EPA and Respondent agree that an appropriate penalty to settle this matter is \$32,500.

Complainant has also taken into consideration Respondent's entry into an Administrative Compliance Order ("ACO") that will require Respondent to undertake additional training of certain employees.

26. Respondent shall pay the assessed penalty of \$32,500 within thirty (30) days of the effective date of this CAFO. Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA – Region 6." Payment shall be remitted in one of three ways: regular U.S. Postal mail (including certified mail), or U.S. Postal Service express mail - the check should be remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service), the check should be remitted to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account No. 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

**PLEASE NOTE: Docket number CAA-06-2019-3313 shall be clearly typed on the**

**check to ensure proper credit.** If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. If payment is made by wire service, the wire transfer instructions shall reference the Respondent's name and address, the case name, and the docket number of this CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter or wire transfer instructions to the following:

Samuel Tates  
Chief, Chemical Accident Enforcement Section (ECDAC)  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, Texas 75270-2102

Lorena Vaughn  
Regional Hearing Clerk (ORC)  
U.S. EPA, Region 6  
1201 Elm Street, Suite 500  
Dallas, Texas 75270-2102

Respondent's adherence to these instructions will ensure that proper credit is given when penalties are received in the Region.

27. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

28. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the due date.

Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

29. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

#### **B. PARTIES BOUND**

30. The provisions of this CAFO shall apply to and be binding upon the parties to this action, their officers, directors, agents, employees, successors, and assigns. The undersigned representative of each party to this CAFO certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to execute and to legally bind that party to it.

#### **C. RETENTION OF ENFORCEMENT RIGHTS**

31. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondent of federal or state laws, regulations, or permitting conditions other than the violations specifically alleged in this CAFO.

32. Nothing in this CAFO shall relieve the Respondent of the duty to comply with all applicable provisions of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and

40 C.F.R. Part 68.

33. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Facility. Except with respect to the claims resolved pursuant to this CAFO, nothing in this CAFO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other federal, state, or local agencies or departments to obtain penalties or injunctive relief under federal, state, or local laws or regulations.

34. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to the claims that have been specifically resolved pursuant to this CAFO.

#### **D. COSTS**

35. Each party shall bear its own costs and attorney's fees. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

#### **E. EFFECTIVE DATE**


36. This CAFO becomes effective upon filing with the Regional Hearing Clerk. This CAFO terminates upon payment of the penalty as set forth in Paragraph 26.



**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS  
CONSENT AGREEMENT AND FINAL ORDER:**


**FOR THE RESPONDENT:**

8/13/19  
Date

  
Safeway Inc. (Tom Thumb Alliance  
Distribution Center)

**FOR THE COMPLAINANT:**

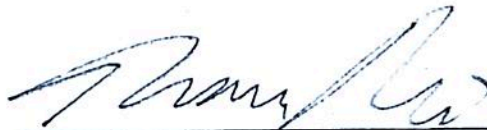
8/14/19  
Date \_\_\_\_\_

  
\_\_\_\_\_  
Cheryl T. Seager  
Director  
Enforcement and Compliance  
Assurance Division

**FINAL ORDER**

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 8/15/19

  
Thomas Rucki  
Regional Judicial Officer



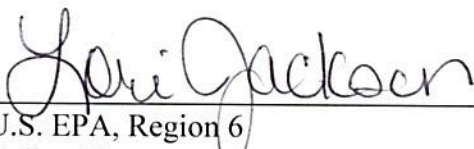
**CERTIFICATE OF SERVICE**

I hereby certify that the original and a copy of the foregoing Consent Agreement and Final Order (CAFO) was hand-delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy of the CAFO was placed in the United States Mail, to the following by the method indicated:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: # 7016301000004984912E

Jeryl L. Olson, Esq.  
Seyfarth Shaw LLP  
233 S. Wacker Drive, Suite 8000  
Chicago, Illinois 60606-6448  
jolson@seyfarth.com

Date: 8-15-2019

  
\_\_\_\_\_  
U.S. EPA, Region 6  
Dallas, Texas

