



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone: 800-227-8917
<http://www.epa.gov/region08>

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FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2016-0008

IN THE MATTER OF:

Norbest, LLC
300 West 350 South
Moroni, Utah 84646

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 29th DAY OF September, 2016.

Elyana Sutin
Regional Judicial Officer

2016 SEP 28 PM 2:38

UNITED STATES
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Docket No.:CAA-08-2016-0008

IN THE MATTER OF:)
)
Norbest, LLC)
300 West 350 South)
Moroni, Utah)
)
Respondent)
)

COMBINED COMPLAINT AND
CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region 8 (EPA). On the EPA's behalf, Suzanne J. Bohan, Assistant Regional Administrator for the Office of Enforcement, Compliance and Environmental Justice, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is Norbest, a limited liability company organized under the laws of Utah and authorized to do business in the state of Utah.
4. Respondent is a "person" as defined in Section 302(c) of the Act, 42 U.S.C. § 7602(c).
5. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this combined complaint and consent agreement (CCCA or Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this CCCA.

B. JURISDICTION

6. This CCCA is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this CCCA are pursuant to section 113(a)(3)(A), 42 U.S.C. § 7413(a)(3)(a).
7. The EPA and the United States Department of Justice 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. The Regional Judicial Officer is authorized to ratify this CCCA which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(a) and 22.18(b).
9. This CCCA and approval in a final order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorizes the Administrator to promulgate regulations regarding the prevention and detection of accidental releases of designated chemicals. Section 112(r)(7)(B) of the CAA, 42 U.S.C. § 7412(r)(7)(B), requires the Administrator to promulgate regulations requiring the owners or operators of stationary sources where a regulated substance is present above a threshold quantity to prepare a risk management plan (RMP) to prevent or minimize risks of accidental releases of those designated substances. The regulations, promulgated by the EPA pursuant to CAA section 112(r)(7), are set forth in 40 C.F.R. part 68.
11. Under 40 C.F.R. § 68.3, the following definitions apply:
 - (a) "Stationary source" means "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.”

(b) “Regulated substance” means “any substance (listed pursuant to section 112(r)(3) of the Clean Air Act) in 40 C.F.R. § 68.130.” Threshold quantities for the regulated substances are included in 40 C.F.R. § 68.130.

D. STIPULATED FACTS

12. Respondent is a limited liability company, and therefore a person, and thus subject to regulation under section 112 of the CAA, 42 U.S.C. § 7412.
13. Respondent is the owner and/or operator of a poultry processing facility, a stationary source, located at 300 West 350 South in Moroni, Utah (Facility).
14. The Facility uses, handles, and/or stores more than a threshold quantity of anhydrous ammonia, which is a regulated substance, listed under 40 C.F.R. § 68.130.
15. Pursuant to section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), Respondent is required to prepare and implement a RMP to detect and prevent or minimize accidental releases of such substances.
16. Pursuant to 40 C.F.R. § 68.10, Respondent meets the Program 3 eligibility requirements.
17. On December 10, 2013, an authorized representative of the EPA conducted an inspection (EPA inspection) of the Facility, with the consent of Respondent, to determine compliance with CAA section 112(r)(7). During the inspection, the EPA representative observed alleged violations of the CAA section 112(r)(7). The alleged violations are described in paragraphs 18-25.

E. ALLEGED VIOLATIONS OF LAW

18. Respondent failed to comply with safety information requirements under 40 C.F.R. § 68.65(d)(2). This section provides that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices (RAGAGEP). Applicable RAGAGEP includes ANSI/HAR 2 (2008) *American National Standard for*

Equipment, Design, and Installation of Closed-Circuit Ammonia Refrigeration Systems. Section 13.3.3 of ANSI/IIAR 2 (2008) identifies the requirements for access and egress to the machinery room. The machinery room at the Facility did not have a self-closing door equipped with panic type hardware in accordance with ANSI/IIAR 2 (2008). Therefore, at the time of the EPA inspection, Respondent had not documented that all equipment at the Facility complies with RAGAGEP.

19. Respondent failed to comply with safety information requirements under 40 C.F.R. § 68.65(d)(2). This section provides that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices (RAGAGEP). Applicable RAGAGEP includes IIAR 114 *Identification of Ammonia Refrigeration Piping and System Components*. Respondent did not have all piping at the Facility marked in accordance with IIAR Bulletin 114. Therefore, at the time of the EPA inspection, Respondent had not documented that all equipment at the Facility complies with RAGAGEP.
20. Respondent failed to comply with process hazard analysis (PHA) requirements under 40 C.F.R. § 68.67(f). This section provides that the owner or operator shall update the PHA at least every five years after the completion of the initial PHA to assure that the PHA is consistent with the current process. Respondent completed a PHA revalidation on or around June 11, 2002, and did not revalidate the PHA until 2009. Therefore, at the time of the EPA inspection, Respondent had not met the five year frequency requirement for PHA revalidation.
21. Respondent failed to comply with the operating procedures requirements under 40 C.F.R. § 68.69(a)(2)(ii). This section provides that the operating procedures shall address steps to correct or avoid deviation. At the time of the EPA inspection, Respondent had not created operating procedures that address steps to correct or avoid deviation.
22. Respondent failed to comply with operating procedures requirements under 40 C.F.R. § 68.69(a)(3). This section provides that the operating procedures shall address safety and health

considerations. At the time of the EPA inspection, Respondent's operating procedures did not address the safety and health considerations required by 40 C.F.R. § 68.69(a)(3).

23. Respondent failed to comply with the operating procedures requirements under 40 C.F.R. § 68.69(a)(2)(ii). This section provides that the owner or operator shall certify annually that the operating procedures are current and accurate and that the procedures have been reviewed as often as necessary. At the time of the EPA inspection, Respondent's operating procedures had not been certified annually.
24. Respondent failed to comply with the management of change requirements under 40 C.F.R. § 68.75(a). This section provides that the owner or operator shall establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process. At the time of the EPA inspection, Respondent did not implement a management of change program.
25. Respondent failed to comply with employee participation requirements under 40 C.F.R. § 68.83. This section provides that the owner or operator shall develop a written employee participation plan. At the time of the EPA inspection, Respondent has not developed a written employee participation plan.

F. TERMS OF CONSENT AGREEMENT

26. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
 - (b) neither admits nor denies the alleged violations of law stated above;
 - (c) consents to the assessment of a civil penalty;
 - (d) consents to the issuance of any specified compliance or corrective action order;
 - (e) consents to the conditions specified in this CCCA;
 - (f) waives any right to contest the alleged violations of law set forth in Section E of this CCCA;and,

(g) waives its rights to appeal the Final Order which approves this CCCA.

27. For the purpose of this proceeding, Respondent:

(a) certifies that it has corrected the alleged violations listed in Section E of this CCCA;

(b) agrees that this CCCA states a claim upon which relief may be granted against Respondent;

(c) acknowledges that this CCCA constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

(d) 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 CCCA, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

(e) consents to personal jurisdiction in any action to enforce this CCCA in the United States District Court for the District of Utah or other venue, at the discretion of the case team; 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 this CCCA and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

G. CIVIL PENALTY

28. Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. part 19 authorize the assessment of a civil penalty of up to \$37,500 per day of violation for each violation of the implementing regulations associated with the "Prevention of Accidental Releases" requirements of 42 U.S.C. § 7412(r). To determine the amount of the civil penalty to be assessed pursuant to section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), the EPA took into account, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence (including evidence other

than the applicable test method), the economic benefit of noncompliance, and the seriousness of the violations.

29. Penalty Payment. Respondent agrees to:

(a) pay the civil penalty of fifty-four thousand, six hundred dollars (\$54,600) within sixty (60) calendar days of the Effective Date of this Agreement.

(b) Respondent shall make a payment by cashier's check or certified check, or by wire transfer in the amount of \$54,600 and shall include the case name and docket number on the face of the check or wire transfer confirmation. A check should be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox No. 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: US Environmental Protection Agency

(c) In addition, at the time of payment, Respondent shall forward notice of payment of the civil penalty as well as copies of the payment check or payment receipt to:

Greg Bazley, Technical Enforcement Program
U.S. Environmental Protection Agency (8ENF-AT)
1595 Wynkoop Street
Denver, Colorado 80202-1129

30. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:
- (a) request that the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
 - (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and,
 - (d) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

H. EFFECT OF CCCA

31. The provisions of this CCCA shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
32. By signing this CCCA, Respondent acknowledges that this CCCA will be available to the public and agrees that this CCCA does not contain any confidential business information or personally identifiable information.

33. By signing this CCCA, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CCCA and has the legal capacity to bind the party he or she represents to this CCCA.
34. By signing this CCCA, both parties agree that each party's obligations under this CCCA constitute sufficient consideration for the other party's obligations.
35. By signing this CCCA, Respondent certifies that 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 are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
36. Except as qualified by Paragraph 30, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
37. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CCCA resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
38. Penalties paid pursuant to this CCCA shall not be deductible for purposes of federal taxes.
39. This CCCA 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 the subject matter hereof.
40. The terms, conditions, and compliance requirements of this CCCA may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.
41. Any violation of this CCCA may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Section 113(b)(2) of the

Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CCCA in an administrative, civil judicial, or criminal action.

42. Nothing in this CCCA shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
43. Nothing herein shall be construed to limit 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.
44. The EPA reserves the right to revoke this CCCA and settlement penalty if and to the extent that the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

I. EFFECTIVE DATE

45. Respondent and Complainant agree to issuance of a final order. Upon filing, the EPA will transmit a copy of the filed CCCA to the Respondent. This CCCA and subsequently issued Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** in the matter of **Norbest, LLC; DOCKET NO.: CAA-08-2016-0008** was filed with the Regional Hearing Clerk on September 28, 2016. The **FINAL ORDER** was filed with the Regional Hearing Clerk on 9/30/16.

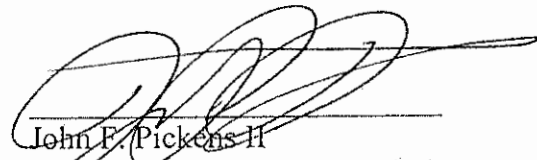
Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on 9/30/16, to:

Respondent

Matthew T. Cook
Norbest, LLC
P.O. Box 368, 15 East 1900 South
Moroni, Utah 84646

And emailed to:

Jessica Farmer
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268


John F. Pickens II
Acting Regional Hearing Clerk

