EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Maximilian Boal (Name of Case Attorney) 9/27/19 (Date)

in the ORC (RAA) (Office & Mail Code) at 918-1113 (Phone number)

Case Docket Number CAA-01-2019-0020 & EPCRA-01-2019-0030

Site-specific Superfund (SF) Acct. Number _____

✓ This is an original debt ____ This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Gerry O'Neil
Cape Cod Seafoods, Inc.
3 State Fish Pier
Gloucester, MA 01930

Total Dollar Amount of Receivable $ 30,000 Due Date: 10/27/19

SEP due? Yes _____ No ✓ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1ST $ _____ on _____

2nd $ _____ on _____

3rd $ _____ on _____

4th $ _____ on _____

5th $ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____ _____
in the Financial Management Office Phone Number

U. S. ENVIRONMENTAL PROTECTION AGENCY – NEW ENGLAND
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

VIA HAND DELIVERY

September 27, 2019

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: In the Matter of Cape Seafoods, Inc., Docket Numbers CAA-01-2019-0020 and EPCRA-01-2019-0030

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter are an original and one copy of an executed *Consent Agreement and Final Order* ("CAFO") for the above-referenced matter. Also enclosed are an original and one copy of a Certificate of Service.

EPA has sent copies of the CAFO, the Certificate of Service, and this letter to the Respondent by Certified Mail. Thank you for your assistance. Please call me at 617-918-1750 if you have any questions.

Sincerely,

Maximilian Boal
Senior Enforcement Counsel

cc: Barry P. Fogel, Esq., Keegan Werlin LLP
Gerry O'Neill, Cape Seafoods, Inc
Len Wallace, EPA

Enclosures:

1. Original CAFO and copy of CAFO
2. Certificate of Service and copy

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF Cape Seafoods, Inc. 3 State Fish Pier Gloucester, MA 01930 Respondent.	Docket No. CAA-01-2019-0020 and EPCRA-01-2019-0030 **CONSENT AGREEMENT AND FINAL ORDER**

CONSENT AGREEMENT

The United States Environmental Protection Agency, Region 1 ("EPA" or "Complainant") and Respondent Cape Seafoods, Inc. ("Respondent"), enter into this Consent Agreement and Final Order ("CAFO") by mutual consent pursuant to 40 C.F.R § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination, or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). This CAFO resolves Respondent's liabilities for alleged violations of the (a) chemical accident prevention provisions of Section 112(r) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412, and (b) Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11022.

EPA and Respondent agree to settle this matter through this CAFO without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b) and 22.18(b). EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

NOW, THEREFORE, before taking any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

I. STATUTORY AND REGULATORY BASIS

CAA Statutory and Regulatory Authority

1. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty to (a) identify hazards that may result from accidental releases of such substances, using appropriate hazard assessment techniques; (b) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the CAA is referred to as the "General Duty Clause."

2. The extremely hazardous substances listed pursuant to Section 112(r)(3) include, among others, anhydrous ammonia.

3. Section 112(r) of the CAA, 42 U.S.C. § 7412(r), also authorizes EPA to promulgate regulations and programs in order to prevent and minimize the consequences of accidental releases of certain regulated substances. In particular, Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates that EPA promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released. Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5),

requires that EPA establish, for each listed substance, the threshold quantity over which an accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Finally, Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances, including a requirement that owners or operators of certain stationary sources prepare and implement a Risk Management Plan ("RMP").

4. The regulations promulgated pursuant to Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), are found at 40 C.F.R. Part 68.

5. Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), renders it unlawful for any person to operate a stationary source subject to the regulations promulgated under the authority of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), in violation of such regulations.

6. Forty C.F.R. § 68.130 lists the substances regulated under Part 68 ("RMP chemicals" or "regulated substances") and their associated threshold quantities, in accordance with the requirements of Sections 112(r)(3) and (7) of the CAA, 42 U.S.C. §§ 7412(r)(3) and (7). This list includes anhydrous ammonia as an RMP chemical and identifies a threshold quantity of 10,000 pounds.

7. A "process" is defined by 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.

8. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

9. Each process in which a regulated substance is present in more than a threshold quantity ("covered process") is subject to one of three risk management programs. Program 1 is the least comprehensive, and Program 3 is the most comprehensive. Pursuant to 40 C.F.R. § 68.10(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is *less* than the distance to any public receptor. Under 40 C.F.R. § 68.10(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in a specified NAICS code or subject to the Occupational Safety and Health Administration ("OSHA") process safety management ("PSM") standard at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process that meets neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

10. Anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds is subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119.

11. Forty C.F.R. § 68.12 mandates that the owner or operator of a stationary source subject to the requirements of Part 68 submit an RMP to EPA, as provided in 40 C.F.R. § 68.150. The RMP documents compliance with Part 68 in a summary format.

12. Additionally, 40 C.F.R. § 68.190(b) also requires that the owner or operator of a stationary source subject to the requirements of Part 68 must revise and update the RMP submitted to EPA at least once every five years from the date of its initial submission or most recent update. Other aspects of the prevention program must also be periodically updated.

13. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Act Improvements Act of 2015, Section 701 of Public Law 114-74, 129 Stat. 599 (Nov. 2, 2015), provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to $37,500 per day per violation for violations occurring from January 13, 2009 to November 2, 2015. For violations occurring after November 2, 2015, the statutory maximum penalty per day of violation will increase annually depending on when the penalty is assessed (rather than when the violation occurred). The current statutory maximum penalty for CAA violations assessed pursuant to Section 113(d) of the CAA is $47,357 per day per violation.

14. EPA and the United States Department of Justice have determined that this action is an appropriate administrative penalty action under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1).

EPCRA Statutory and Regulatory Authority

15. Under Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.12, 370.20, 370.40, 370.44, and 370.45, the owner or operator of any facility that is required to prepare or have available a safety data sheet ("SDS") for a hazardous chemical under OSHA and the hazard communication standards promulgated thereunder at 29 C.F.R. § 1910.1200(b)(1), must prepare and submit an emergency and hazardous chemical inventory form ("Tier I" or "Tier II" form) to the state emergency response commission ("SERC"), community emergency coordinator for the local emergency planning committee ("LEPC"), and the local fire department with jurisdiction over the facility. Pursuant to 40 C.F.R. §§ 370.40 and 370.45, the Tier I or Tier II form must be submitted annually on or before March 1st of each year and is required to contain information with respect to the preceding calendar year. Facilities in New Hampshire must submit Tier II forms instead of Tier I forms.

16. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. §11045(c), and 40 C.F.R. Part 19, EPA is authorized to assess a civil penalty of up to $32,500 per day for each violation of EPCRA Section 312, 42 U.S.C. § 11022, occurring after March 15, 2004 through January 12, 2009, and $37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015. For violations occurring after November 2, 2015, the statutory maximum penalty per day of violation will increase annually depending on when the penalty is assessed (rather than when the violation occurred). The current statutory maximum penalty for EPCRA violations assessed pursuant to Section 325(c)(1) of EPCRA is $57,317 per day per violation.

III. EPA's GENERAL ALLEGATIONS

17. The Respondent Cape Seafoods, Inc. is a corporation incorporated under the laws of Massachusetts and operates a fresh and frozen seafood processing and distribution facility located at 1 and 3 State Pier, Gloucester, MA 01930 ("the Facility").

18. The Facility is located on the State Fish Pier, which is a publicly accessible pier open to fishermen and tourists. The Facility is located immediately adjacent to other businesses and is located within several hundred feet of residences. According to the U.S. Census data from 2010, several thousand people live near the Facility.

19. Respondent is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), against whom an administrative order assessing a civil penalty may be issued under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1).

20. On March 21, 2017, EPA inspectors visited the Facility and performed an inspection ("the Inspection") to assess Respondent's compliance with Section 112(r) of the CAA and EPCRA.

21. At the time of the Inspection, the Facility included seafood processing, freezing, and cold storage areas, including refrigeration equipment, as well as shipping, receiving, and administrative offices.

22. The Facility included an ammonia refrigeration system for cooling the Facility's blast freezers, cold storage rooms, and a refrigerated loading dock.

23. At the time of the Inspection, the Facility was a building or structure from which an accidental release may occur and was therefore a "stationary source," as defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

24. At all times relevant to the violations alleged herein, Respondent was the "operator" of the Facility, as defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).

25. At the time of the Inspection, Respondent used anhydrous ammonia in a refrigeration process ("the Process"), as defined by 40 C.F.R. § 68.3.

26. In 2005, Allied Cold Storage, the previous tenant of the Facility building, filed an RMP with EPA reporting that the capacity of the Facility's ammonia refrigeration system was 17,500 pounds of anhydrous ammonia.

27. In 2005, Allied Cold Storage conducted a Process Hazard Analysis ("PHA") for the Facility.

28. Allied Cold Storage submitted Tier II reports pursuant to Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. §§ 11021 and 11022, reporting that the Facility used the following quantities of ammonia:

a. 15,000 pounds of anhydrous ammonia in reporting year 2004.

b. 15,000 pounds of anhydrous ammonia in reporting year 2005.

29. After Respondent began operating at the Facility, Respondent submitted Tier II reports pursuant to Sections 311 and 312 EPCRA, 42 U.S.C. §§ 11021 and 11022, reporting that the Facility used the following quantities of anhydrous ammonia:

a. 18,500 pounds of anhydrous ammonia in reporting year 2006.

b. 18,500 pounds of anhydrous ammonia in reporting year 2008.

c. 9,999 pounds of anhydrous ammonia in reporting years 2009-2014.

d. 8,000 pounds of anhydrous ammonia in reporting years 2015 and 2016.

e. 8,949 pounds of anhydrous ammonia in reporting year 2017.

f. 9,041 pounds of anhydrous ammonia in reporting year 2018.

30. On February 4, 2010, Respondent deregistered the Facility from the RMP program because Respondent conducted a pump-down of the Facility's ammonia refrigeration system and calculated that it was using less than 10,000 pounds of anhydrous ammonia. Specifically, Respondent determined that the Facility had 7,804 pounds of ammonia as of January 25, 2010.

31. On November 28, 2017, after the Inspection, EPA issued a Notice of Potential Violation to Respondent regarding Respondent's compliance with the requirements of Section 112(r) of the CAA and EPCRA.

32. On January 29, 2018, Respondent met with EPA to respond to EPA's Notice of Potential Violation and report about Respondent's compliance with the requirements of the CAA. At the meeting, EPA indicated that to support Respondent's assessment that the total ammonia capacity of the Facility's system was less than 10,000 pounds, Respondent should perform a full inventory analysis of all the equipment at the Facility, including calculations regarding the minimum level of ammonia necessary to keep the Facility's refrigeration system functioning as well as the general quantity of ammonia necessary to operate the refrigeration system at its normal operating level.

33. In an affidavit submitted to EPA on January 29, 2018, Respondent provided documentation regarding what the company claimed was all of the ammonia purchases between 2013 and 2016 for additional ammonia to be added to the Facility's ammonia refrigeration system. This documentation showed that the Facility purchased 400 pounds of anhydrous ammonia during this time period. Specifically, the Facility added 200 pounds of anhydrous ammonia in 2014, 100 pounds of anhydrous ammonia in 2015, and 100 pounds of anhydrous ammonia in 2016.

34. On April 28, 2018, Respondent submitted information to EPA with its assessment that the total ammonia charge of the Facility's system was 8,949 pounds based on a pump-down of the Facility's ammonia refrigeration system performed in March 2017.

35. On May 16, 2018, EPA provided Respondent with an inventory analysis of all the known equipment at the Facility, including calculations regarding EPA's assessment of the quantity of ammonia present at the Facility during the Inspection and the general quantity of ammonia necessary to operate the refrigeration system at its normal operating level. These calculations indicated that the amount of ammonia at the Facility during the Inspection and during normal operations exceeded 10,000 pounds.

36. In a response dated June 19, 2018, Respondent provided information indicating that its contractor, American Refrigeration, had reviewed and adjusted some numbers in EPA's calculations and concluded that the Facility had a total ammonia charge of 9,056 pounds.

37. On August 17, 2018, EPA issued to Respondent a formal information request pursuant to Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), asking for more information about the previous pump downs performed at the Facility and for a full equipment inventory.

38. In a response dated September 18, 2018, Respondent provided additional information about the Facility's ammonia equipment dimensions and indicated that the total ammonia charge of the Facility was 9,041 pounds, including 0 pounds of ammonia in the Facility's plate freezer and compressor.

39. Based on the ammonia refrigeration system design and operating information provided by Respondent on September 18, 2018, EPA estimated that: (a) the Facility's ammonia refrigeration system, including all pressure vessels, condensers, piping, and evaporators, could contain as much as 22,900 pounds of anhydrous ammonia if filled to capacity; and, (b) under normal operating conditions, the Facility's entire ammonia refrigeration system would contain approximately 12,958 pounds of anhydrous ammonia.

40. Respondent calculates that, at the time of the Inspection to the present, the process at the Facility has contained less than 10,000 pounds of anhydrous ammonia, in which case, as the operator of a stationary source that processes, handles, or stores an "extremely hazardous substance," Respondent would be subject to the General Duty Clause.

41. However, EPA alleges that, the Process was a "covered process" subject to the provisions of Part 68 because Respondent "used," "stored," and "handled" the RMP chemical anhydrous ammonia at the Facility in the process in an amount greater than 10,000 pounds.

42. Modeling performed by EPA indicates that the endpoint for a worst-case release from the Process is greater than the distance to a public receptor.

43. Additionally, EPA alleges that, at the time of the Inspection, the Process was subject to OSHA's PSM requirements at 29 C.F.R. § 1910.119 because it used anhydrous ammonia in an amount over the threshold quantity of 10,000 pounds.

44. Based upon EPA's allegations, in accordance with 40 C.F.R. § 68.10(a)–(d), Respondent's use, storage, and handling of anhydrous ammonia in its Process at the Facility would be subject to the requirements of RMP Program 3.

45. Ammonia presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. Exposure to 300 parts per million is immediately dangerous to life and health. Ammonia is also flammable at concentrations of approximately 16% to 25% by volume in air. It can explode if released in an enclosed space with a source of ignition present, or if a vessel containing anhydrous ammonia is exposed to fire. In light of the potential hazards posed by the mishandling of anhydrous ammonia, industry trade associations have issued standards outlining the recognized and generally accepted good engineering practices ("RAGAGEP") in the ammonia refrigeration industry. In collaboration with the American National Standards Institute ("ANSI"), the International Institute of Ammonia Refrigeration ("IIAR") has issued (and updates) "Standard 2: Equipment, Design, and Installation of Closed-Circuit Ammonia Mechanical Refrigerating Systems," along with other applicable standards and guidance. Also, in collaboration with the American National Standards Institute, the American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") has issued (and updates)

"Standard 15: Safety Standard for Refrigeration Systems." These standards are consistently relied upon by refrigeration experts and are sometimes incorporated into state building, fire, and mechanical codes.

46. Based upon the Inspection and EPA's review of subsequently submitted information, EPA alleges that Respondent failed to design and maintain a safe Facility and failed to minimize the consequences of a release. Some of the potentially dangerous conditions allegedly relating to the Process at the Facility, included:

a. Failure to register as an RMP facility in accordance with 40 C.F.R. §§ 68.10, 68.12, 68.150(a), and 68.150(b)(3). As described in Paragraphs 26-29, the previous tenant at the Facility submitted an RMP for the Facility, and Respondent's initial Tier II reporting for the Facility reported that Respondent used greater than 10,000 pounds of ammonia at the Facility. Respondent deregistered the Facility from the RMP program on February 4, 2010 and has not submitted a current RMP for the Facility. Based upon its calculations, EPA alleges that Respondent failed to comply with RMP facility registration requirements by failing to submit its RMP to EPA by the date on which anhydrous ammonia was first present above the threshold quantity of 10,000 pounds in the Process at the Facility, which was at least by 2017, when EPA inspected the Facility. As described in Paragraphs 32-39, EPA's calculations indicate that the Facility's ammonia capacity exceeds 10,000 pounds and that normal operations at the Facility would require the use of greater than 10,000 pounds of ammonia.

b. Failure to maintain and comply with process safety information requirements in accordance with 40 C.F.R. § 68.65. Based upon its calculations, EPA alleges

that Respondent failed to comply with process safety information requirements, including failure to document that either the equipment complied with RAGAGEP or that existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use was designed, maintained, inspected, tested, and operated in a safe manner. For Respondent's Process, at the time of EPA's Inspection, applicable RAGAGEP sources included: Int'l Inst. of Ammonia Refrigeration, Standard 2-2014, Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems (2014), [hereinafter "IIAR 2-2014"]; Int'l Inst. of Ammonia Refrigeration, Bulletin No. 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, [hereinafter "IIAR Bull. 109"]; Int'l Inst. of Ammonia Refrigeration, Bulletin No. 110: Guidelines for: Start-up, Inspection and Maintenance of Ammonia Mechanical Refrigerating Systems [hereinafter "IIAR Bull. 110"]; Int'l Inst. of Ammonia Refrigeration, Bulletin No. 114: Guidelines for Identification of Ammonia Refrigeration Piping and System Components [hereinafter "IIAR Bull. 114"]; Am. Nat'l Standards Inst./Am. Soc'y of Heating, Refrigerating and Air-Conditioning Eng'rs, Standard 15-2013: Safety Standard for Refrigeration Systems, [hereinafter "ASHRAE 15-2013"]; National Fire Protection Association, NFPA 70 National Electrical Code (2011 Edition) [hereinafter "NFPA 70 (2011 ed.)"]; and, National Fire Protection Association, NFPA 1 Fire Code, 2012 Edition [hereinafter "NFPA 1 (2012 ed.)"]. In addition, at the time of the Inspection, significant portions of the ammonia refrigeration system at the Facility did not meet these standards. Normal day-to-day maintenance and inspection was substantially lacking. Specific issues identified, include:

i. Ammonia detection issues: At the time of the Inspection, the ammonia detector in the ammonia machinery room activated an alarm only when the ammonia concentration reached 35 ppm, rather than 25 ppm. The standard industry practice is for ammonia alarms to activate at ammonia concentrations of 25 ppm or greater. *See e.g.*, IIAR 2-2014, supra, § 6.13. Additionally, there were no audio/visual alarms in the ammonia machinery room itself, outside the second entrance to the ammonia machinery room, or any other areas of the Facility containing ammonia. It is standard industry practice for there to be at least one ammonia detector in the ammonia machinery room and for audible and visual alarms to be provided inside the ammonia machinery room to warn that access to the room is restricted to authorized personnel and emergency responders when the alarm is activated. It is standard industry practice for additional audible and visual alarms to be located outside of each entrance to the ammonia machinery room. *See e.g.*, IIAR 2-2014, supra, § 6.13. Furthermore, the exterior orange lights associated with ammonia alarms at the Facility were not marked regarding their function. It is standard industry practice for ammonia leak detection alarms to be identified by signage adjacent to visual and audible alarm devices. *See e.g.*, IIAR 2-2014, supra, §§ 6.15.2 and 17.6. In addition, at the time of the Inspection, there were no ammonia detectors or alarms installed in the blast freezer rooms, cold storage rooms, or outdoor Rooms #1 and #2. It is standard industry practice for level 1 ammonia detection and alarms to be provided for areas where an ammonia refrigeration system or equipment is installed outside of a machinery room. *See e.g.*, IIAR 2-2014, supra, §§ 7.2.3 and 17.7.1. In addition, the ammonia detector located on the wall outside the ammonia machinery room office was located approximately six feet below

the ceiling in a location where a refrigeration leak would not concentrate. It is standard industry practice for ammonia leak detection sensors to be mounted in a position where ammonia from a leak is expected to accumulate. *See e.g.*, IIAR 2-2014, supra, § 17.4.

ii. At the time of the Inspection, the Facility lacked an eyewash station or body shower outside the entrance to the machinery room. The standard industry practice is to maintain an eyewash station and body shower unit located external to the machinery room and readily accessible by an exit. *See e.g.,* IIAR 2-2014, supra, § 6.7 and Bull. 109, supra, § 4.10.10.

iii. At the time of the Inspection, none of the ammonia refrigeration piping, vessels, or valves associated with the outdoor Room #1 ammonia refrigeration vessels and equipment contained labels or tags to identify the purpose of the equipment, contents, physical state, or direction of flow. In addition, ammonia refrigeration piping and equipment in the blast freezers and cold storage rooms did not contain tags or labels to identify the purpose, contents, physical state or direction of flow of ammonia. The standard industry practice is for all piping mains, headers, and branches to be identified as containing ammonia and as to the physical state of the refrigerant (that is, vapor or liquid, etc.), the relative pressure level of the refrigerant, and the direction of flow. The standard industry practice is to use an identification system that is either one established as a standard by a recognized code or standards body or one described and documented by the facility owner. *See e.g.,* IIAR 2-2014, supra, § 5.14.5 and ASHRAE 15-2013, supra, § 11.2.2 and IIAR Bull. 114, supra, and IIAR Bull. 109, supra, § 4.7.6.

iv. At the time of the Inspection, the ammonia machinery room did not contain a legible, permanent sign securely attached and easily accessible in any location on the ammonia refrigeration system that displayed key information about the system, including (a) the name and address of the installer; (b) the refrigerant number and the amount of refrigerant in the system; and, (c) the field test pressure(s) applied. It is standard industry practice to for the person in charge of a facility with an ammonia refrigeration system to provide directions for emergency shutdown of the system in a location that is readily accessible to trained refrigeration system staff and trained emergency responders. The schematic drawings or signage shall include several types of information including: (1) Instructions with details and steps for shutting down the system in an emergency; (2) The name and telephone numbers of the refrigeration operating, maintenance, and management staff, emergency responders, and safety personnel; (3) The names and telephone numbers of all corporate, local, state, and federal agencies to be contacted as required in the event of a reportable incident; (4) Quantity of ammonia in the system; (5) Type and quantity of refrigerant oil in the system; and, (6) Field test pressures applied. *See e.g.,* IIAR 2-2014, supra, § 5.15.

v. At the time of the Inspection, none of the doors entering the fish processing area, blast freezers, cold storage rooms, ice making ammonia machinery room, or the door to access the roof containing ammonia condensers were marked with warning signs indicating the presence of ammonia. In addition, the plywood doors leading to the outdoor Rooms #1 and #2 and to the ice making ammonia machinery room did not include signs to indicate that access is for authorized personnel only. Finally, the high pressure receiver in the

ammonia machinery room did have a NFPA placard indicating the presence of ammonia in the vessel. It is standard industry practice for access to the refrigeration machinery room to be restricted to authorized personnel and for doors to be clearly marked at each entrance to indicate this restriction. *See e.g.*, ASHRAE 15-2013, supra, § 8.11.8 and IIAR 2-2014, supra, § 7.2.2. It is also standard industry practice for buildings and facilities with refrigeration systems to be provided with signage in accordance with NFPA 704, which establishes a standard system for identifying hazardous materials for emergency responders. *See e.g.*, IIAR 2-2014, supra, § 6.15.

vi. At the time of the Inspection, the Facility lacked design calculations to show that the opening above the plywood walls to Rooms #1 and #2 was large enough to provide appropriate natural ventilation necessary to exhaust ammonia in the event of a release. It is standard industry practice for a facility to include appropriate natural ventilation that meets industry standard calculations for free-aperture cross section, *see e.g.*, IIAR 2-2014, supra, § 7.3.2, or for the facility to provide appropriate mechanical ventilation. *See e.g.*, ASHRAE 15-2013, supra, §§ 8.11.2, 8.11.3, 8.11.4, and 8.11.5.

vii. At the time of the Inspection, the ammonia system's pressure relief valves discharged through pipes extended above the roof of the Facility; however, the vent headers were less than 7.25 feet above the roof height. In addition, the pressure relief vents for the condensers on the roof discharged at an elevation below an adjacent roof level located within 20 feet horizontally from the pressure relief valves. It is standard industry practice for the termination of pressure relief devices to discharge to atmosphere not less than 7.25 feet above a

roof that is occupied solely during service and inspection. And where a higher adjacent roof level is within 20 feet horizontal distance from the relief discharge, the discharge termination shall not be less than 7.25 feet above the height of the higher adjacent roof. *See e.g.*, IIAR 2-2014, supra, § 15.5.1.3 and ASHRAE 15-2013, supra, § 9.7.8. In addition, the ammonia machinery room's ventilation exhaust vents discharged horizontally on the roof, within five feet of the roof access door, rather than discharge vertically upward. It is standard industry practice for machinery room exhaust vents to discharge vertically upward. *See e.g.*, IIAR 2-2014, supra, §§ 6.14.3.4 and 6.14.3.5. Finally, the administrative office windows open to the Facility's third roof, where the ammonia condensers are located approximately 20 feet from the windows. In the event of an ammonia release, if the windows were open, ammonia could enter the office areas. It is standard industry practice for any ammonia refrigeration machinery, other than piping, that is installed outdoors shall be located not less than 20 feet from building openings, with certain exceptions. *See e.g.*, IIAR 2-2014, supra, § 4.2.2.

viii. At the time of the Inspection, the roll-up entry door to the ammonia machinery room was located beneath three air intakes for the ammonia machinery room. If an ammonia release occurred in the ammonia machinery room while the roll-up door was open, ammonia would be drawn back into the three air intakes. It is standard industry practice for intakes for make-up air for the ammonia machinery room should be positioned to draw in uncontaminated outdoor air and avoid recirculation. *See e.g.*, IIAR 2-2014, supra, § 6.14.5.4 and ASHRAE 15-2013, supra, § 8.11.4.

ix. At the time of the Inspection, the door between the ammonia machinery room and the high voltage electrical room lacked a tight seal at the bottom. It is standard industry practice for the ammonia machinery room to be separated from the remainder of the building by tight-fitting construction with a one-hour fire-resistance rating. *See e.g.*, IIAR 2-2014, supra, §§ 6.2.1 and 7.2.1. Specifically, it is standard industry practice for machinery room doors to be self-closing and tight fitting. *See e.g.*, IIAR 2-2014, supra, § 6.10.2.

x. At the time of the Inspection, an oil pot for the ammonia refrigeration equipment in outdoor Room #1 at the Facility did not have a self-closing "dead-man" shut-off valve to automatically close the pot when the valve is released. The standard industry practice is for ammonia refrigeration equipment used for oil removal to have a shut-off valve in a series with a self-closing shut-off valve. *See e.g.*, IIAR 2-2014, supra, §§ 5.9.3.2 and 5.9.3.3.

xi. At the time of the Inspection, the ammonia machinery room did not have a list of emergency contact numbers for state or federal agencies to contact in the event of a reportable incident or instructions for how to report such an incident. The standard industry practice is to provide directions for the emergency shutdown of the ammonia refrigeration system in a readily accessible location as well as schematics or signage including instructions for how to shut down the system in the event of an emergency and the names and telephone numbers for the personnel involved with operating, maintaining, and managing the system as well as emergency responders, safety personnel, and the corporate, local, state, and federal agencies to be contacted in the event of a reportable incident. *See e.g.*, IIAR 2-2014, supra, § 5.15.

xii. At the time of the Inspection, the manual king valve in the ammonia machinery room was located approximately eight feet above the ground above the high pressure receiver and was not readily accessible from the ground via a permanent ladder or a platform, and the valve was not operated by a chain. The standard industry practice is for all manually operated valves that are inaccessible from floor level to be operable from portable platforms, fixed platforms, ladders, or to be chain-operated. Isolation valves identified as being part of an emergency shutdown procedure should be directly operable or chain-operated from a permanent work surface. *See* IIAR 2-2014, supra, §§ 5.14.3, 6.3.3.2, and 13.3.7. In addition, at the time of the Inspection, the ammonia refrigeration system's remote emergency stop did not have a tamper-resistant cover or identifying labels to indicate what systems would be shut-down or if the king valves would close when the emergency stop was activated. It is standard industry practice for the emergency shut-off switch to have a tamper-resistant cover and to be marked by clear signage near the controls regarding its function. *See e.g.*, IIAR 2-2014, supra, § 6.12.1. Similarly, the emergency stop for the icemaking system was not labeled regarding its function. The standard industry practice is for main shut-off valves (king valves); hot gas defrost line main shut-off valves; and ammonia pump liquid main shut-off valves and/or disconnects of the ammonia system should be readily accessible and identified with a prominent sign having letters sufficiently large to be easily read. *See e.g.*, IIAR Bull. 109, supra, § 4.10.3. Finally, the ammonia machinery room office lacked an emergency ventilation switch with on/override capability and a tamper-resistant cover. It is standard industry practice for a facility to have a clearly identified control switch for emergency ventilation with a tamper-resistant cover to be

located outside the machinery room and adjacent to the designated principal machinery room door. *See e.g.*, IIAR 2-2014, supra, § 6.12.2. And it is standard industry practice for the emergency ventilation switch to be powered independently of equipment within the machinery room and for the ventilation switch to continue to operate regardless of whether emergency shutdown controls for the machinery room have been activated. *See e.g.*, IIAR 2-2014, supra, § 6.14.7.3.

xiii. At the time of the Inspection, several sets of piping and valves were not properly supported, including, but not limited to: an ammonia pipe and valve beneath the flash tank outside Room #1; two oil pots containing oil drain piping and valves in Room #1; an oil pot containing oil drain piping and a valve outside Room #2; ammonia piping suspended from the ceiling in the fish processing area that was unprotected from traffic, such as fork lifts; and the site gage and associated piping for the high pressure receiver in the ammonia machinery room was unprotected and unsupported. The standard industry practice is for piping hangers and supports to be able to carry the weight of the piping, as well as any other anticipated loads and to prevent damage from vibrations, stress, corrosion, and physical impact. *See e.g.*, IIAR 2-2014, supra, §§ 5.11 and 13.4.2. In addition, the evaporators and associated ammonia piping in the cold storage room were not provided with physical protection from equipment, such as fork lifts. The standard industry practice is for ammonia piping to be inspected throughout a facility to determine that no piping is exposed to possible physical damage through traffic hazards, for example, fork lifts. *See* e.g., IIAR Bull. 109, supra, §§ 4.42 and 4.7.3. Furthermore, it is standard industry practice for equipment to be protected where there is a risk of physical damage. For

example, where equipment containing ammonia is located in an area with heavy vehicular traffic during normal operations and a risk of impact exists, it is standard industry practice to provide vehicle barriers or alternative protection in accordance with the fire code. *See e.g.,* IIAR 2-2014, supra, § 7.2.4.

xiv. At the time of the Inspection, the chain-link fence gate to access Room #1 with the Facility's blast freezers did not contain panic hardware, was pad-locked, and the gate was not wide enough for emergency responders. It is standard industry practice for doors that are part of the means of egress to be equipped with panic hardware. *See e.g.,* IIAR 2-2014, supra, § 6.10.2.

c. Failure to comply with the mechanical integrity requirements for a Covered Process, in accordance with 40 C.F.R. § 68.73. Based upon its calculations, EPA alleges that Respondent failed to establish a program to perform appropriate checks and inspections of the entire covered process to ensure that equipment was installed properly and maintained consistent with design specifications, the manufacturer's instructions, and RAGAGEP in effect at the time of the Inspection. Respondent also failed to correct equipment deficiencies in accordance with 40 C.F.R § 68.73. Normal day-to-day maintenance and inspection was substantially lacking. Specific issues identified, include:

i. At the time of the Inspection, sections of piping and system components exhibited signs of insulation problems, including surface corrosion, frosted piping, damaged and exposed insulation, and cursory repairs of insulation using only duct tape. Frosted piping indicates a breach in the insulation that could result in corrosion. In addition, poorly

maintained insulation can increase the potential for corrosion related problems. The standard industry practice is to inspect ammonia piping for damage to insulation, damage to lagging, and for corrosion and to make timely corrective actions. *See e.g.,* IIAR Bull. 109, supra, § 4.7 and IIAR Bull. 110, supra, § 6.7 and Appendix G—Typical Schedule for Inspection and Maintenance and IIAR 2-2014, supra, § 13.4.2. The standard industry practice is for piping and equipment surfaces not intended for heat exchange to be insulated, treated, or otherwise protected to mitigate condensation and excessive frost buildup where the surface temperature is below the dew point of the surrounding air during normal operation and in an area where condensation and frost could develop and become a hazard to occupants or cause damage to the structure, electrical equipment, or refrigeration system. *See e.g.*, IIAR 2-2014, supra, § 5.10.1. In addition, the standard industry practice is to check piping for signs of corrosion and to treat corroded piping with rust preventative paint and to replace badly corroded pipe. *See e.g.,* IIAR Bull. 109, supra, §§ 4.7.4 and 4.7.5

ii. The ammonia detector meter located within the ammonia machinery room was measuring less than "0" during the Inspection, indicating that the system was not operating properly. It is standard industry practice to follow the manufacturer's specifications regarding the testing, inspecting, and calibrating of detectors. *See e.g.,* IIAR Bull. 110, supra, § 6.64 and ASHRAE 15-2013, supra, § 11.6.3.

iii. At the time of the Inspection, electrical code violations were identified. It is standard industry practice for electrical equipment and wiring to be installed in accordance with the Electrical Code. *See e.g.*, IIAR-2-2014, supra, § 6.8.1. It is standard

industry practice for mechanical refrigeration systems to comply with electrical fire safety requirements of the Electrical Code. *See e.g.*, NFPA 1 (2012 ed.), supra, § 53.2.3.4.3 citing § 11.1 At the time of the Inspection, electrical code violations that were identified, included: electrical box covers had been removed, which exposed electrical wiring and connectors; an electrical conduit was corroded and broken, with exposed electrical wiring; and, corroded electrical shut-off boxes were observed. It is standard industry practice for the integrity of electrical equipment and connections to be maintained such that there are no damaged parts that may adversely affect safe operation or mechanical strength of the equipment such as parts that are broken, bent, cut, or deteriorated by corrosion, chemical action, or overheating. *See e.g.*, NFPA 70 (2011 ed.), supra, § 110.12. Also, an extension cord was used to provide power to moored vessels outside of the Facility. It is standard industry practice for extension cords not to be used as a substitute for permanent wiring. *See e.g.*, NFPA 1 (2012 ed.), supra, § 11.7.6.

iv. At the time of the Inspection, a small ammonia leak was detected in the ammonia refrigeration equipment portion of the ice making system at the Facility. It is standard industry procedure to find the source of an ammonia leak if it is observed and to investigate and repair the leak. *See e.g.*, IIAR Bull. 109, supra, § 4.10.8.

IV. ALLEGED VIOLATIONS

47. A final determination has not been made about the quantity of anhydrous ammonia present in the Process. Respondent is subject to 40 C.F.R. Part 68 if it has more than 10,000 pounds of the chemical in the Process, whereas Respondent is only subject to the General Duty

Clause if the Process has fewer than 10,000 pounds. Accordingly, this CAFO cites to both 40 C.F.R. Part 68 and the General Duty Clause.

Count 1: Failure to register as an RMP facility in accordance with 40 C.F.R. §§ 68.10, 68.12, 68.150(a), and 68.150(b)(3).

48. Complainant realleges and incorporates by reference Paragraphs 1 through 47.

49. Pursuant to 40 C.F.R. § 68.10, the owner or operator of a facility that has more than a threshold quantity of a regulated substance in a process shall comply with the requirements of 40 C.F.R. Part 68 no later than the latest of: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present about a threshold quantity in a process.

50. Pursuant to 40 C.F.R. § 68.12, the owner or operator of a facility that is subject to 40 C.F.R. Part 68 shall submit a single RMP, as provided by 40 C.F.R. §§ 68.150 to 68.185, including a registration that reflects all covered processes at the facility.

51. As described in Paragraph 46(a), EPA alleges that Respondent failed to comply with the RMP facility registration requirements of 40 C.F.R. §§ 68.10 and 68.12 by failing to submit its RMP to EPA by the date on which anhydrous ammonia was first present above the threshold quantity of 10,000 pounds in the Process at the Facility. As described in Paragraphs 26-29, the previous tenant at the Facility submitted an RMP for the Facility, and Respondent's initial Tier II reporting for the Facility reported that Respondent used greater than 10,000 pounds of ammonia at the Facility. EPA alleges that Respondent deregistered the Facility from the RMP program on February 4, 2010 and has failed to submit a current RMP for the Facility. Respondent failed to

comply with RMP facility registration requirements by failing to submit its RMP to EPA by the date on which anhydrous ammonia was first present above the threshold quantity of 10,000 pounds in the Process at the Facility, which was at least by 2017, when EPA inspected the Facility. As described in Paragraphs 32-39, EPA's calculations indicate that the Facility's ammonia capacity exceeds 10,000 pounds and that normal operations at the Facility would require the use of greater than 10,000 pounds of ammonia.

52. Accordingly, if the Process at the Facility contains at least 10,000 pounds of ammonia, then Respondent failed to comply with RMP registration requirements in violation of 40 C.F.R. §§ 68.10, 68.12, 68.150(a), and 68.150(b)(3) and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E), from at least 2017, when the Facility's Process included over 10,000 pounds of ammonia, until the present.

Count 2: Failure to Comply with Process Safety Information Requirements

53. Complainant realleges and incorporates by reference paragraphs 1 through 52 of this document.

54. Pursuant to 40 C.F.R. § 68.65, the owner or operator of a Program 3 process is required, among other things, to compile written process safety information before completing the PHA, in order to perform an adequate PHA and to enable proper maintenance of process equipment. This includes documenting information pertaining to the hazards of the RMP chemical in the process and information pertaining to the technology and equipment of the process. This compilation of process safety information enables appropriate identification and understanding of hazards posed by regulated substances in the process and the technology and

equipment of the process. In addition, the owner or operator must document that equipment complies with RAGAGEP, and that any equipment that was designed according to outdated standards is designed, maintained, and inspected, tested, and operated in a safe manner. 40 C.F.R. § 68.65(d)(2) and (3).

55. As described in Paragraph 46(b) above, Respondent failed to document that the Process equipment complied with applicable RAGAGEP or that any equipment that was designed according to outdated standards is designed, maintained, inspected, tested, and operated in a safe manner.

56. Accordingly, if the Process at the Facility contained at least 10,000 pounds of anhydrous ammonia, Respondent violated 40 C.F.R. § 68.65 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E) by failing to comply with process safety information requirements. However, if the Process contained fewer than 10,000 pounds of anhydrous ammonia, the failures to maintain this critical information and to comply with recognized and generally accepted good engineering practices for the Process are a violation of the requirement to design and maintain a safe facility and/or a violation of the requirement to minimize the consequences of a release as required by the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).[1]

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[1] The following paragraphs describe violations of the requirement to design and maintain a safe facility: 46(b) subparagraphs (i), (iii), (iv), (v), (vi), (x), (xi), (xii), and (xiii). The following paragraphs describe violations of the requirement to minimize the consequences of a release: 46(b) subparagraphs (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi),(xii), and (xiv).

Count 3: Failure to Comply with Mechanical Integrity Requirements for the Covered Process

57. Complainant realleges and incorporates by reference paragraphs 1 through 56 of this document.

58. Pursuant to 40 C.F.R. § 68.73, the owner or operator of a Program 3 process must establish and implement written procedures to maintain the ongoing integrity of certain process equipment and train employees accordingly. The owner or operator must inspect and test the equipment either in accordance with the manufacturer's recommendations and good engineering practices, or more frequently if needed based on prior operating experience. The owner or operator must also document the inspections or tests on process equipment, correct deficiencies, ensure that any new equipment is installed properly, and ensure that maintenance materials and spare parts are suitable for the process application.

59. As described in Paragraph 46(c), at the time of the Inspection, Respondent failed to comply with the mechanical integrity requirements for the Process, including failing to establish a program to perform appropriate checks and inspections of the entire covered Process to ensure that equipment was installed properly and consistently with design specifications, the manufacturer's instructions, and RAGAGEP, and failing to correct deficiencies in equipment that are outside acceptable limits.

60. Accordingly, if the Process at the Facility contained at least 10,000 pounds of anhydrous ammonia, Respondent violated 40 C.F.R. § 68.73 and Section 112(r)(7)(E) of the CAA, 42 U.S.C. § 7412(r)(7)(E) by failing to establish and implement a sufficient mechanical

integrity program and by not correcting equipment deficiencies before further use or in a safe and timely manner. However, if the Process at the Facility contained fewer than 10,000 pounds of anhydrous ammonia, then the failure to establish and implement a sufficient mechanical integrity program and to correct deficiencies in a timely manner is a violation of the requirement to design and maintain a safe facility and a violation of the requirement to minimize the consequences of a release as required by the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).[2]

Count 4: Failure to Design and Maintain a Safe Facility

61. Complainant realleges and incorporates by reference paragraphs 1 through 60 of this document.

62. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances also have a general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases.

63. If the Process at the Facility contains fewer than 10,000 pounds of ammonia, then the deficiencies identified above in Paragraphs 46(b) and 46(c) constitute violations of the General Duty Clause. Respondent's failure: to maintain process safety information for the Facility's Process; to comply with recognized and generally accepted good engineering practices for the Process; and, to establish and implement a sufficient mechanical integrity program and to correct

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[2] The following paragraphs describe violations of the requirement to design and maintain a safe facility: 46(c) subparagraphs (i), (ii), and (iii). The following paragraph describes violations of the requirement to minimize the consequences of a release: 46(c) subparagraph (iv).

deficiencies in a timely manner constitute a violation of the requirement to design and maintain a safe facility as required by the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Count 5: Failure to Minimize the Consequences of a Release

64. Complainant realleges and incorporates by reference paragraphs 1 through 63 of this document.

65. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances also have a general duty to design and maintain a safe facility, taking such steps as are necessary to prevent releases.

66. If the Process at the Facility contains fewer than 10,000 pounds of ammonia, then the deficiencies identified above in Paragraphs 46(b) and 46(c) constitute violations of the General Duty Clause. Respondent's failure: to maintain process safety information for the Facility's Process; to comply with recognized and generally accepted good engineering practices for the Process; and, to establish and implement a sufficient mechanical integrity program and to correct deficiencies in a timely manner constitute a violation of the requirement to minimize the consequences of a release as required by the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

Counts 6-8: EPCRA Tier II Reporting Violations

67. Complainant realleges and incorporates by reference paragraphs 1 through 66 of this document.

68. Ammonia is an extremely hazardous substance as defined by 40 C.F.R. § 370.66 and as listed in Appendices A and B of 40 C.F.R. Part 355, with a minimum threshold quantity of 500 pounds.

69. As described above, Respondent used greater than 500 pounds of ammonia at the Facility for the last several years, including reporting years 2015, 2016, and 2017.

70. Therefore, Respondent was required pursuant to OSHA and regulations promulgated thereunder to prepare or have available onsite SDS for the extremely hazardous chemical present onsite, ammonia.

71. Pursuant to Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.12, 370.20, 370.40, 370.44, and 370.45, the owner or operator of any facility that is required to prepare or have available a SDS for a hazardous chemical under OSHA and the hazard communication standards promulgated thereunder at 29 C.F.R. § 1910.1200(b)(1), must prepare and submit an emergency and hazardous chemical inventory form ("Tier I" or "Tier II" form) to the LEPC, the SERC, and the local fire department with jurisdiction over the facility. Pursuant to 40 C.F.R. §§ 370.40 and 370.45, the Tier I or Tier II form must be submitted annually on or before March 1st of each year and is required to contain information with respect to the preceding calendar year. Facilities in Massachusetts must submit Tier II forms instead of Tier I forms.

72. As described in Paragraph 29, Respondent's Tier II reporting for the Facility changed over time, with notable decreases and later increases in the reported quantities of anhydrous

ammonia in reporting years 2009, 2015, 2017, and 2018. Specifically, Respondent reported the following:

a. 18,500 pounds of anhydrous ammonia in reporting year 2006.

b. 18,500 pounds of anhydrous ammonia in reporting year 2008.

c. 9,999 pounds of anhydrous ammonia in reporting year 2009.

d. 9,999 pounds of anhydrous ammonia in reporting year 2010.

e. 9,999 pounds of anhydrous ammonia in reporting year 2011.

f. 9,999 pounds of anhydrous ammonia in reporting year 2012.

g. 9,999 pounds of anhydrous ammonia in reporting year 2013.

h. 9,999 pounds of anhydrous ammonia in reporting year 2014.

i. 8,000 pounds of anhydrous ammonia in reporting year 2015.

j. 8,000 pounds of anhydrous ammonia in reporting year 2016.

k. 8,949 pounds of anhydrous ammonia in reporting year 2017.

l. 9,041 pounds of anhydrous ammonia in reporting year 2018.

73. As described in Paragraph 39, based on the ammonia refrigeration system design and operating information provided by Respondent on September 18, 2018, EPA's technical contractor estimated that: (a) the Facility's ammonia refrigeration system, including all pressure vessels, condensers, piping, and evaporators, could contain as much as 22,900 pounds of anhydrous ammonia if filled to capacity; and, (b) under normal operating conditions, the

Facility's entire ammonia refrigeration system would contain approximately 12,958 pounds of anhydrous ammonia.

74. As described in Paragraph 30, Respondent argued that the Facility contained 7,804 pounds of ammonia in January 25, 2010. As described in Paragraph 33, Respondent admitted adding additional anhydrous ammonia to the Facility's Process: 200 pounds of anhydrous ammonia in 2014; 100 pounds of anhydrous ammonia in 2015; and 100 pounds of anhydrous ammonia in 2016. If Respondent's calculations regarding ammonia at the Facility in 2010 were correct, and assuming that there was no loss of ammonia over the course of the three-year period of 2014-2016, the total quantity of anhydrous ammonia at the Facility in 2015 and 2016 would have exceeded 8,000 pounds. Based upon EPA's assumption of no loss of ammonia, EPA alleges that Respondent's reports of the quantity of ammonia present at the Facility in its Tier II filings for the years 2015 and 2016 were underestimated.

75. Furthermore, as described in Paragraphs 34, 36, and 38, Respondent continued to increase its own calculations for the quantity of anhydrous ammonia at the Facility despite not purchasing any additional anhydrous ammonia to add to the Facility's system. On its 2017 Tier II filing, Respondent had reported 8,949 pounds of ammonia based on a 2017 pump-down that Respondent contends was performed in accordance with IIAR standards. In 2018, Respondent revised its inventory calculations to 9,056 then 9,041 pounds after reviewing EPA's calculations, and after having its consultant perform a series of engineered charge calculations to evaluate EPA's calculations. Respondent contends that its report of the quantity of anhydrous ammonia at the Facility in its Tier II filing for 2017 was accurate.

76. Respondent's failure to submit accurate Tier II reports to the appropriate reporting authorities by the reporting deadlines of March 1st of the subsequent year for calendar years 2015, 2016, and 2017 constituted three violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40 and 370.42.

77. Respondent is therefore subject to an assessment of penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and 40 C.F.R. Part 19.

V. TERMS OF SETTLEMENT

A. General Settlement Provisions

78. The provisions of this CAFO shall apply to and be binding on the Parties, their officers, directors, agents, servants, employees, successors, and assigns.

79. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that the CAFO states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying the factual and legal allegations contained herein, consents to the terms of this CAFO.

80. Respondent hereby waives its rights to a judicial or administrative hearing on any issue of law or fact set forth in this CAFO and waives its rights to appeal the Final Order.

81. Respondent consents to the issuance of this CAFO hereinafter recited and consents for purposes of settlement and avoidance of further litigation expense to the performance of the compliance actions described below.

B. Compliance

82. As a condition of settlement, Respondent agrees to come into compliance and conduct a pump-down of its ammonia refrigeration system, as described in Paragraphs 83-85 below.

83. Respondent certifies that it will be operating the Facility in compliance with the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), once Respondent achieves the Key Safety Measures identified in Paragraph 84 below.

84. Within 120 days of the effective date of this CAFO, Respondent shall submit to EPA a certification that it has achieved the following key safety measures, which EPA has determined should be present at every facility with an ammonia refrigeration system. These measures also may be viewed at https://www.epa.gov/enforcement/safety-standards-ammonia-refrigeration:

Identifying Hazards

- Hazard Addressed: Releases or safety deficiencies that stem from a failure to identify hazards in design/operation of system
    - Facility has completed a process hazard analysis or review.

Operating Activities:

- Hazard Addressed: High risk of release from operating or maintenance activity
    - System has self-closing/quick closing valves on oil pots.
    - Facility has written procedures for maintenance and operation activities.
    - Only authorized persons have access to machinery room and the ability to alter safety settings on equipment.

Maintenance/Mechanical Integrity:

- Hazard Addressed: Leaks/releases from maintenance neglect
    - A preventative maintenance program is in place to, among other things, detect and control corrosion, deteriorated vapor barriers, ice buildup, and pipe hammering, and to inspect integrity of equipment/pipe supports.
    - All piping system openings except the relief header are plugged or capped, or valve is locked.

- Equipment, piping, and emergency shutdown valves are labeled for easy identification, and pressure vessels have legible, accessible nameplates.
- All atmospheric pressure relief valves have been replaced in the last five years with visible confirmation of accessible pressure relief valves.

Machinery Room and System Design

- Hazard Addressed: Inability to isolate and properly vent releases
  - The System(s) has/have emergency shut-off and ventilation switches outside each machinery room.
  - The machinery room(s) has/have functional, tested, ventilation. Air inlets are positioned to avoid recirculation of exhaust air and ensure sufficient inlet air to replace exhausted air.
  - Documentation exists to show that pressure relief valves that have a common discharge header have adequately sized piping to prevent excessive backpressure on relief valves, or if built prior to 2000, have adequate diameter based on the sum of the relief valve cross sectional areas.

Emergency Actions

- Hazard Addressed: Inability to regain control and reduce release impact
  - Critical shutoff valves are accessible, and a schematic is in place to show responders where to access them.
  - EPCRA Tier II reporting is up to date.

85. Within two years of the effective date of this CAFO, Respondent shall conduct a complete pump-down of its Process, using IIAR-approved methodology for ensuring that all ammonia is removed from the process. Respondent shall notify EPA 14 days before the pump-down and provide its written pump-down plan. Within seven days of the pump-down, Respondent shall provide notification to EPA of the amount of ammonia pumped down. Should the pump-down yield over 10,000 pounds of ammonia, Respondent shall, within 120 days of receipt of the pump-down report, implement an RMP program and submit to EPA an RMP following the RMP*eSubmit procedures at https://www.epa.gov/rmp/how-submit-risk-management-plan-rmp-epa. The parties' goal is to obtain a definitive ammonia inventory while

minimizing cost and business disruptions associated with the pump-down. To achieve that goal, the parties may agree to change the deadlines in this paragraph pursuant to the modification procedures in Paragraph 100. Likewise, if there is a technical alternative to a full pump-down that would meet the goal, the parties may use the modification procedures in Paragraph 100 to define the alternative, obtain advance EPA approval, and complete the work.

86. Notifications: All notices and submissions shall be considered effective upon receipt. Respondents shall submit all notifications, certifications, and documentation required by Paragraphs 82-85 by e-mail and mail to:

Leonard B. Wallace IV, Environmental Scientist
Waste and Chemical Compliance Section
Enforcement and Compliance Assurance Division
EPA Region 1
5 Post Office Square, Suite 100 (Mail Code 05-4)
Boston, MA 02109-3912
wallace.len@epa.gov

with a copy by electronic mail to:

Maximilian Boal, Senior Enforcement Counsel
Office of Regional Counsel
EPA Region 1
boal.maximilian@epa.gov.

87. If Respondent fails to comply with the provisions of Paragraphs 82-85, it shall be subject to stipulated penalties as follows:

a. For failure to perform the work and submit the documents required by Paragraphs 82 through 85 above, in a manner consistent with the terms of this CAFO, or within the time required by this CAFO: $500 per day for the first fifteen (15) days of such

violation; $1,000 per day for the sixteenth (16th) through thirtieth (30th) days of such violation; and $1,500 per day for each day of such violation thereafter.

b. Penalties shall begin to accrue on the day after complete performance is due or a violation occurs and shall continue to accrue through the day the violation is corrected. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this CAFO. Penalties shall continue to accrue regardless of whether EPA has notified Respondent of a violation.

c. All penalties owed to the United States under this Section shall be due and payable within thirty (30) days of Respondent's receipt from EPA of a written demand for payment of the penalties. Such written demand will describe the violation and indicate the amount of penalties due. EPA may, in its sole discretion, decide not to seek stipulated penalties or waive any portion of the stipulated penalties that accrue.

d. All penalties shall be made payable by certified or cashier's check to the United States of America and shall be remitted to:

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

e. All such checks shall contain "*In the matter of Cape Seafoods, Inc.*, Docket No. CAA-01-2019-0020 and EPCRA-01-2019-0030" in the reference line. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the EPA contacts in Paragraph 86 above.

f. The payment of stipulated penalties shall in no way alter Respondent's obligations to comply with the terms and conditions of this CAFO.

g. The stipulated penalties set forth in this Paragraph do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the terms or conditions of this CAFO.

h. No payments under this Paragraph shall be tax deductible for federal tax purposes. However, for the purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of the actions in Paragraphs 82-85 is restitution or required to come into compliance.

C. Civil Penalty Payment

88. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Act Improvements Act of 2015 ("FCPIAIA"), Section 701 of Public Law 114-74, 129 Stat. 599 (Nov. 2, 2015), provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in amounts up to $37,500 per day per violation for violations occurring from January 13, 2009 to November 2, 2015, and up to $46,192 per day per violation for violations occurring after November 2, 2015. For violations occurring after November 2, 2015, the statutory maximum penalty per day of violation will increase annually depending on when the penalty is assessed (rather than when the

violation occurred). The current statutory maximum penalty for CAA violations assessed pursuant to Section 113(d) of the CAA is $47,357 per day per violation.

89. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as adjusted for inflation by the DCIA, FCPIAIA, and 40 C.F.R. Part 19, prescribes a $295,000 penalty limit for violations from January 12, 2009 through December 6, 2013, and a penalty limit of $320,000 for violations from December 7, 2013 to November 2, 2015, a penalty limit of $362,141 for violations from November 3, 2015 to January 14, 2018, and a penalty limit of $369,532 for violations thereafter, and a twelve-month duration limitation on EPA's authority to initiate an Administrative Penalty Order. However, these limitations may be waived where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty or a longer period of violation is appropriate for an administrative penalty action. EPA and the United States Department of Justice have determined that an administrative penalty action is appropriate in this case.

90. In determining the amount of the CAA penalty to be assessed, EPA took into account the statutory factors listed in Section 113(e) of the CAA, 42 U.S.C. § 7413(e). These factors include 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 violation as established by any credible evidence, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice may require.

91. An appropriate CAA penalty was derived pursuant to the "Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68" ("Enforcement

Policy") dated June 2012. This policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors identified above to a particular case. When calculating penalties under the Enforcement Policy, EPA takes into account the potential for harm for violating a particular Part 68 requirement and the extent of deviation of Respondent's conduct from the particular Part 68 requirement. The appropriate penalty for violations of the reporting requirements of Section 312 of EPCRA was derived pursuant to "Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act" dated September 30, 1999.

92. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), Sections 113(d)(2)(B) and (e) of the CAA, 42 U.S.C. § 7413(d)(2)(B) and (e), and taking into account the relevant statutory penalty criteria, the applicable penalty policies, Respondent's cooperation in agreeing to perform the non-penalty obligations in this CAFO, the facts alleged in this CAFO, Respondent's limited ability to pay, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of thirty thousand dollars (**$30,000**) for the violations alleged in this matter. The total penalty shall be apportioned in the following manner: 84% of the penalty ($25,254) for the alleged CAA violations and 16% of the penalty ($4,746) for the alleged EPCRA violations.

93. Within thirty (30) calendar days of the effective date of this CAFO, Respondent shall pay the total penalty of $30,000 according to the following instructions:

a. Respondent shall pay the penalty by submitting a company, bank, cashier's or certified check, 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:
U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

b. Respondent may make payment by electronic funds transfer instead of check as follows:

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

94. Respondent shall include the case name and docket numbers ("*In the Matter of Cape Seafoods, Inc.* Docket Nos. CAA-01-2019-0020 and EPCRA-01-2019-0030") on the face of the check or wire transfer confirmation. In addition, within 24 hours of payment, Respondent shall forward notice of payment of the civil penalty as well as a copy of the payment check or payment receipt by first class mail or other delivery service to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 Mail Code ORC 04-6
Boston, MA 02109-3912,

with a copy by electronic mail to: Maximilian Boal, EPA Senior Enforcement Counsel, at boal.maximilian@epa.gov.

95. Collection of Unpaid Civil Penalty:

i. CAA Penalty: Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay the CAA civil penalty referenced in Paragraph 92 in full, it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid within thirty (30) calendar days of the effective date of this CAFO. In that event, interest will accrue from the effective date of this CAFO at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorneys' fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10

percent of the aggregate amount of Respondent's outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter.

ii. EPCRA Penalty: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that any portion of the civil penalty amount relating to the alleged EPCRA violation is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

iii. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. There are other actions EPA may take if Respondent fails to timely pay: 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; 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; suspend or revoke Respondent's licenses or other privileges;

or 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.

96. All penalties, interest, and other charges shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not deductible for purposes of federal, state or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

D. Effect of Consent Agreement and Attached Final Order

97. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

98. By signing this Agreement, all parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other parties' obligations.

99. This Agreement 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.

100. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer, except that the Chief of EPA Region 1's Waste and Chemical

Compliance Section may approve modifications to the compliance provisions in Paragraphs 82-85 for good cause without further approval by the Regional Judicial Officer.

101. Respondent agrees that the time period from the Effective Date of this CAFO until all of the Conditions specified in Paragraphs 82-85 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Counts 1 through 5 for alleged CAA violations. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

102. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this CAFO until the end of the Tolling Period, as set out in Paragraph 101 above, Respondent must give written notice and a copy of this CAFO to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CAFO unless the EPA has provided written approval of the release of said obligations or liabilities.

103. By signing this CAFO, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

104. By signing this CAFO, 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 CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

105. By signing this CAFO, 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.

106. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties 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). EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

107. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and EPCRA and other federal, state, or local laws or statutes, nor shall it restrict 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.

108. Nothing herein shall be construed to limit the power of 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.

109. 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 EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

110. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

111. Each party shall bear its own costs and fees in this proceeding including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

112. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will transmit a copy of the filed Consent Agreement to Respondent. In accordance

with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

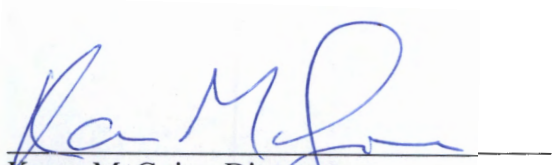
113. Each undersigned representative of the parties certifies that he or she is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

For Respondent:

Gerry O'Neill, President
Cape Seafoods, Inc.

9/23/19.
Date

For EPA:



Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 1—New England

9-25-19
Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF Cape Seafoods, Inc. 3 State Pier Gloucester, MA 01930 Respondent.	Docket No. CAA-01-2019-0020 and EPCRA-01-2019-0030

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) and (c) of EPA's Consolidated Rules of Practice; Section 113(d)(1) and (d)(2)(B) of the Clean Air Act, 42 U.S.C. § 7413(d)(1) and (d)(2)(B); and EPCRA Section 325(c), 42 U.S.C.§ 11045(c),the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with the terms of the above Consent Agreement, effective on the date is filed with the Regional Hearing Clerk.

Date: 9/26/19

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region I

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF	
Cape Seafoods, Inc.	Docket No. CAA-01-2019-0020 and EPCRA-01-2019-0030
3 State Pier Gloucester, MA 01930	**Certificate of Service**
Respondent.	

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and One Copy
(Hand-Delivered):

Wanda Santiago, Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100 (ORC 04-6)
Boston, Massachusetts 02109-3912

Copy (certified mail)

Gerry O'Neill, President
Cape Seafoods, Inc.
3 State Pier
Gloucester, MA 01930

Barry P. Fogel
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, MA 02110

Dated: 9-27-2019

Maximilian Boal, Senior Enforcement Counsel
U.S. EPA, Region I
5 Post Office Square, Suite 100 (04-2)
Boston, Massachusetts 02109-3912