UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:	:	**EPA Docket No.: CAA-03-2018-0137**
Kenneth O. Lester Company, Inc. **245 North Castle Heights Avenue** **Lebanon, Tennessee 37087,**	:	**Proceeding under Sections 112(r) and 113 of the Clean Air Act, 42 U.S.C. §§ 7412(r) and 7413**
Respondent.	:	
Customized Distribution Center – Elkton **1520 Elkton Road** **Elkton, Maryland 21921,**	:	U.S. EPA-REGION 3-RHC FILED-12SEP2018AM8:25
Facility.	:	

CONSENT AGREEMENT

1. This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 113(d) of the Clean Air Act, as amended (the "CAA"), 42 U.S.C. § 7413(d). The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency ("EPA"), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has re-delegated these authorities to the Director of the Hazardous Site Cleanup Division, EPA Region III ("Complainant"). Further, this Consent Agreement is proposed and entered into under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22.

2. 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.

3. The parties, EPA and Kenneth O. Lester Company, Inc. ("Kenneth O. Lester" or "Respondent"), agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CAFO") as prescribed by the Consolidated Rules of Practice, pursuant to 40 C.F.R. § 22.13(b), 22.18(b)(2) and (3), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2).

5. For the purpose of this proceeding, the parties agree that the Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. § 22.4(b) and 22.18(b)(3).

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

   a. admits that EPA has jurisdiction over the subject matter alleged in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Consent Agreement;

   b. with the exception of Paragraph 6.a., above, neither admits nor denies the specific factual allegations or conclusions of law contained in this Consent Agreement;

   c. consents to the assessment of a civil penalty as stated below;

   d. waives any right to contest the alleged violations of law set forth in this Consent Agreement; and

   e. waives its rights to appeal the Final Order accompanying this Consent Agreement.

STATUTORY AND REGULATORY AUTHORITY

7. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).

8. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The list of regulated substances can be found in 40 C.F.R. § 68.130.

9. On June 20, 1996, EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7). Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and the corresponding regulations require EPA to promulgate requirements for the prevention, detection, and correction of accidental releases of regulated substances. The regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program is described in a risk

management plan ("RMP") that must be submitted to EPA. The RMP must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in response to an accidental release of a regulated substance, so as to protect human health and the environment.

10. 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) of the CAA, 42 U.S.C. § 7412(r), in violation of such regulations.

11. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. § 68.10(a), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity must comply with the requirements of Part 68 no later than the latter of June 21, 1999, three years after the date on which a regulated substance is first listed under § 68.130, or the date on which a regulated substance is first present above the threshold quantity in a process.

12. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines "stationary source," as "any buildings, structures, equipment, installations, or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur."

13. The regulations at 40 C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), in 40 C.F.R. § 68.130.

14. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, 42 U.S.C. § 7412(r)(5), listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

15. The regulations at 40 C.F.R. § 68.3 define "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

16. Section 113(d)(1)(B) of the CAA, as amended by the Debt Collection Improvement Act of 1996, as implemented by the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 83 Fed. Reg. 1190 (January 10, 2018), which is codified at, 40 C.F.R. Part 19, authorizes EPA to commence an administrative action to assess civil penalties of not

more than $46,192 per day per violation for violations of the CAA occurring after November 2, 2015 and assessed on or after January 15, 2018.

EPA's FINDINGS OF FACT

17. Respondent is incorporated in the State of Tennessee. Respondent's corporate headquarters is located at 245 North Castle Heights Avenue, Lebanon, Tennessee 37087.

18. Respondent is a subsidiary of Performance Food Group, Inc.

19. Respondent is the owner and operator of a wholesale food storage and distribution facility located at 1520 Elkton Road, Elkton, Maryland, 21921 ("the Facility").

20. Respondent's Facility includes refrigerated process areas and storage areas with a refrigeration system that uses anhydrous ammonia with a capacity of 14,722 pounds.

21. Anhydrous ammonia, Chemical Abstract Service ("CAS") No. 7664-41-7, is a chemical listed under 40 C.F.R. § 68.130 with a threshold quantity of 10,000 pounds.

22. Respondent uses anhydrous ammonia in a refrigeration "process," as defined by 40 C.F.R. § 68.3, in a typical vapor compression refrigeration cycle with compressors, condensers, and evaporators at the Facility (the "Process").

23. On December 6, 2016, EPA conducted an inspection of the Facility pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, in order to determine the Facility's compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and its regulations, the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68, ("the Inspection"). Based upon the information gathered pursuant to the Inspection, EPA alleges the following violations of 40 C.F.R. Part 68.

COUNT 1: FAILURE TO DOCUMENT THAT THE FACILITY'S EQUIPMENT COMPLIED WITH RECOGNIZED AND GENERALLY ACCEPTABLE GOOD ENGINEERING PRACTICES

24. The findings of fact contained in Paragraphs 17 through 23 of this CAFO are incorporated by reference herein as though fully set forth at length.

25. The Chemical Accident Prevention Provisions require an owner or operator to complete a compilation of written process safety information which shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process. 40 C.F.R § 68.65(a). Information pertaining to the equipment in the process shall include design codes and standards employed. 40 C.F.R § 68.65(d)(1)(vi). Specifically, the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices. 40 C.F.R.

§ 68.65(d)(2).

26. Applicable industry standards for anhydrous ammonia refrigeration systems include the American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers 15 ("ANSI/ASHRAE 15"), *Safety Standard for Refrigeration Systems and Designation and Classification of Refrigerants* (2013). ANSI/ASHRAE 15 is recognized and generally accepted as good engineering practices for safeguards pertaining to anhydrous ammonia refrigeration systems.

27. Section 8.12(f) of ANSI/ASHRAE 15 states "All pipes piercing the interior walls, ceiling, or floor of such rooms shall be tightly sealed to the walls, ceiling, or floor through which they pass."

28. During the Inspection, EPA observed several pipes inside the ammonia refrigeration mechanical room that pierced interior walls and continued into other areas of the Facility, but the openings where the pipes pierced the mechanical room wall were not tightly sealed to the walls.

COUNT 2: FAILURE TO COMPLY WITH OPERATING PROCEDURE REQUIREMENTS

29. The findings of fact contained in Paragraphs 17 through 28 of this CAFO are incorporated by reference herein as though fully set forth at length.

30. The Chemical Accident Prevention Provisions require an owner or operator to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process. 40 C.F.R. § 68.69(a).

31. Additionally, an owner or operator must review operating procedures as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. 40 C.F.R § 68.69(c). The owner or operator must certify annually that the operating procedures are current and accurate. *See id.*

32. At the time of Inspection, Respondent did not have annual certifications that the Facility's standard operating procedures for the ammonia refrigeration process were current and accurate.

COUNT 3: FAILURE TO COMPLY WITH REFRESHER TRAINING REQUIREMENTS

33. The findings of fact contained in Paragraphs 17 through 32 of this CAFO are incorporated by reference herein as though fully set forth at length.

34. Pursuant to 40 C.F.R. § 68.71(b), refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to

assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator is obligated to ascertain that each employee involved in operating a process has received and understood the refresher training and shall maintain a record which contains the identity of the employee, the date of the training, and the means used to verify that the employee understood the training. *See* 40 C.F.R. § 68.71(c). The records should be retained for five years. *See* 40 C.F.R. § 68.200.

35. At the time of the Inspection, Respondent had maintained records to demonstrate that it provided refresher training to three employees involved in operating a process in September 2016, February 2017, and February 2018, respectively. However, Respondent failed to maintain records to demonstrate that Respondent provided those same three employees refresher trainings at some point during the three years preceding the most recent refresher trainings (i.e., since September 2013, February 2014, and February 2015, respectively).

COUNT 4: FAILURE TO MAINTAIN UPDATED PROCESS SAFETY INFORMATION

36. The findings of fact contained in Paragraphs 17 through 35 of this CAFO are incorporated by reference herein as though fully set forth at length.

37. Pursuant to 40 C.F.R. § 68.75, the owner or operator must 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. *See* 40 C.F.R. § 68.75(a). If such a change results in a change in the process safety information required by 40 C.F.R § 68.65, such information shall be updated accordingly. *See* 40 C.F.R. § 68.75(d). Process safety information required under 40 C.F.R § 68.65 includes information pertaining to the equipment in the process, such as piping and instrument diagrams ("P&IDs"). *See* 40 C.F.R. § 68.65(d)(1)(ii).

38. At the time of Inspection, Respondent had made process changes at the Facility, however, Respondent failed to update corresponding P&IDs to reflect those process changes.

COUNT 5: FAILURE TO CERTIFY COMPLIANCE AUDIT

39. The findings of fact contained in Paragraphs 17 through 38 of this CAFO are incorporated by reference herein as though fully set forth at length.

40. Pursuant to 40 C.F.R. § 68.79(a), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

41. At the time of Inspection, Respondent had conducted an audit in 2012 and 2015. However, the owner or operator failed to certify that the 2015 compliance audit had been evaluated and that the procedures and practices developed as a result of the audit were adequate and being followed.

COUNT 6: FAILURE TO PROMPTLY DETERMINE AND DOCUMENT AN APPROPRIATE RESPONSE TO EACH OF THE FINDINGS OF THE COMPLIANCE AUDIT AND DOCUMENT THAT DEFICIENCIES HAVE BEEN CORRECTED

42. The findings of fact contained in Paragraphs 17 through 41 of this CAFO are incorporated by reference herein as though fully set forth at length.

43. A compliance audit shall be conducted at a stationary source at which a regulated substance is present in more than a threshold quantity, by at least one person knowledgeable in the process at least every three years. *See* 40 C.F.R. § 68.79(a)-(b).

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

45. Following the Inspection, Respondent provided documentation that the 2012 and 2015 compliance audits were conducted at the Facility pursuant to 40 C.F.R. § 68.79(b); however, Respondent failed to demonstrate that all deficiencies from the 2012 audit had been corrected as required under 40 C.F.R. § 68.79(d). Some of the findings from the 2012 compliance audit were carried over to the findings of the 2015 compliance audit without indication that the deficiencies had been corrected.

COUNT 7: FAILURE TO TIMELY SUBMIT A CORRECTION FOR EMERGENCY CONTACT INFORMATION IN RISK MANAGEMENT PLAN

46. The findings of fact contained in Paragraphs 17 through 45 of this CAFO are incorporated by reference herein as though fully set forth at length.

47. Pursuant to 40 C.F.R. § 68.195, the owner or operator of a stationary source for which an RMP was submitted shall submit a correction of the RMP within one month of any change in the emergency contact information required under 40 C.F.R. § 68.160(b)(6) (i.e., the name, title, telephone number, 24-hour telephone number, and the email address (if an email address exists) of the emergency contact). *See* 40 C.F.R. § 68.195(b).

48. At the time of Inspection, Respondent had not submitted a correction of the RMP with the Facility's designated emergency contact, and the contact's corresponding emergency contact information, even when the emergency contact information had changed several months prior to the Inspection. Respondent noted that it had experienced difficulty accessing eRMP to submit the correction during this time period.

CONCLUSIONS OF LAW RELATED TO THE ALLEGED VIOLATIONS OF SECTION 112(r)(7) OF THE CLEAN AIR ACT

49. The findings of fact contained in Paragraphs 17 through 48 of this CAFO are incorporated by reference herein as though fully set forth at length.

50. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

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

52. The Facility is a building or structure from which an accidental release may occur and is 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.

53. Therefore, Respondent is the owner and operator of the "stationary source," as the term is defined at 40 C.F.R. § 68.3.

54. Anhydrous ammonia is a regulated substance pursuant to Section 112(r)(2) and (3) of the CAA, 42 U.S.C. § 7412(r)(2) and (3), because it is identified in the initial list of substances in Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and listed under 40 C.F.R. § 68.130, with a threshold quantity of 10,000 pounds.

55. At all times relevant to this Consent Agreement, anhydrous ammonia has been present in a process at the Facility in an amount exceeding its threshold quantity.

56. Respondent is subject to the requirements of Section 112(r)(7) of the CAA, 40 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68, because it is the owner and/or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process.

57. The Facility is a Program 3 Facility under the Chemical Accident Prevention Provisions, in accordance with 40 C.F.R. § 68.10(d).

58. Respondent failed to document that all of its equipment complied with recognized and generally accepted good engineering practices as required by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R § 68.65(d)(2) because pipes piercing the interior walls of the ammonia refrigeration mechanical room were not tightly sealed to the walls through which they passed, in contradiction with Section 8.12(f) of ANSI/ASHRAE 15.

59. Respondent failed to annually certify that its operating procedures for the ammonia refrigeration process were current and accurate, as required by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.69(c).

60. Respondent failed to maintain a record to demonstrate that it provided refresher training to each employee involved in operating a process at least every three years, which contains the identity of the employee, the date of the training, and the means used to verify that the employee understood the training, as required by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.71(c), by not maintaining records of refresher trainings allegedly provided to its three employees during the three years preceding the most recent refresher trainings provided in September 2016, February 2017, and February 2018, respectively.

61. Respondent failed to update process safety information, namely P&IDs, following process changes at the Facility, as required by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.75(d).

62. Respondent failed to certify that it had evaluated compliance pursuant to a compliance audit at least every three years, as required by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.79(a), by failing to certify the Facility's 2015 compliance audit.

63. Respondent failed to promptly determine and document an appropriate response to each of the findings of the compliance audit required pursuant to 40 C.F.R. § 68.79(a)-(b) and document that deficiencies have been corrected, as required by Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.79(d), by failing to demonstrate that all deficiencies identified in the Facility's 2012 compliance audit were corrected by the time of the Facility's 2015 compliance audit.

64. Respondent failed to submit a correction for the emergency contact information included in the Facility's RMP within one month of any change in the emergency contact information, as required by Section 112(r)(7) of the CAA, 42 U.S.C.§ 7412(r)(7), and 40 C.F.R. § 68.195(b), by failing to submit a correction to the RMP until several months after the Facility's designated emergency contact had changed.

65. Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations at 40 C.F.R. §§ 68.65(d)(2), 68.69(c), 68.71(c), 68.75(d), 68.79(a), 68.79(d), and 68.195(b). Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

SETTLEMENT

66. Respondent certifies that it has corrected the violations alleged in this Consent Agreement.

67. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violations of Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), in the amount of **$65,502** ("EPA Civil Penalty").

68. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

PAYMENT TERMS

69. The EPA Civil Penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CAFO, Respondent shall pay the EPA Civil Penalty of **$65,502** no later than thirty (30) days after the effective date of this CAFO as follows:

a. Respondents shall pay the EPA Civil Penalty using any method, or combination of methods, provided on the websites https://www.epa.gov/financial/makepayment and http://www2.epa.gov/financial/additional-instructions-making-payments-epa, and identifying the payment with "Docket No.: CAA-03-2018-0137."

b. Within 24 hours of payment of the EPA Civil Penalty, Respondent shall send proof of payment to:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
R3_Hearing_Clerk@epa.gov

and

Lauren E. Ziegler (3RC42)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Ziegler.Lauren@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with "Docket No.: CAA-03-2018-0137."

70. The EPA Civil Penalty of **$65,502** stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012).

71. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the EPA Civil Penalty as specified in Paragraph 69 or to comply with the conditions in this CAFO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

72. Interest on the EPA Civil Penalty assessed in this CAFO will begin to accrue on the date that a copy of this fully executed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the EPA Civil Penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

73. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of Resources Management Directives - Cash Management, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after penalties become due and payable and an additional $15.00 for each subsequent thirty (30) day period the penalties remain unpaid.

74. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the EPA Civil Penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

75. Failure by Respondent to make timely payment of the EPA Civil Penalty assessed by the Final Order in full may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

76. For the purpose of this proceeding only, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2).

77. The provisions of the CAFO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below,

the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

78. This CAFO resolves the civil penalty claims for the specific violations and facts alleged in this Consent Agreement. Complainant reserves the right to commence action against any person, including Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nothing in this CAFO shall be construed to limit the United States authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the CAA or the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

79. This Consent 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.

80. Each party to this action shall bear its own costs and attorney's fees.

FOR KENNETH O. LESTER COMPANY, INC.

Signature

7/23/18
DATE

Name (Print): CRAIG H. HOSKINS

Title: PRESIDENT & CEO
Kenneth O. Lester Co

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Karen Melvin

AUG 22 2018

Karen Melvin, Director
Hazardous Site Cleanup Division

DATE

BEFORE THE UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION III

In the Matter of:	:	**EPA Docket No.: CAA-03-2018-0137**
Kenneth O. Lester Company, Inc. **245 North Castle Heights Avenue** **Lebanon, Tennessee 37087,**	:	**Proceeding under Sections 112(r) and 113 of the Clean Air Act, 42 U.S.C. §§ 7412(r) and 7413**
Respondent.	:	
Customized Distribution Center – Elkton **1520 Elkton Road** **Elkton, Maryland 21921,**	:	U.S. EPA-REGION 3-RHC FILED-12SEP2018AM8:25
Facility.	:	

FINAL ORDER

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Kenneth O. Lester Company, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (June 2012), and the statutory factors set forth in Section 113(e) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(e).

NOW, THEREFORE, PURSUANT TO Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **SIXTY-FIVE THOUSAND FIVE HUNDRED AND TWO DOLLARS ($65,502),** plus any applicable interest, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Sept. 11, 2018
Date

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:	:	**EPA Docket No.: CAA-03-2018-0137**
Kenneth O. Lester Company, Inc. **245 North Castle Heights Avenue** **Lebanon, Tennessee 37087,**	:	**Proceeding under Sections 112(r) and 113 of the Clean Air Act, 42 U.S.C. §§ 7412(r) and 7413**
Respondent.	:	
Customized Distribution Center – Elkton **1520 Elkton Road** **Elkton, Maryland 21921,**	:	
Facility.	:	

CERTIFICATE OF SERVICE

I certify that on SEP 1 2 2018, the original and one (1) copy of foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copies served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Bob Barrett
Associate General Counsel
Performance Food Group, Inc.
12500 West Creek Parkway
Richmond, Virginia 23238

Laura K. McAfee
Beveridge & Diamond, P.C.
201 North Charles Street, Suite 2210
Baltimore, Maryland 21201

(Attorneys for Respondent)

Copy served via **Hand Delivery or Inter-Office Mail** to:

Lauren E. Ziegler
Assistant Regional Counsel
Office of Regional Counsel (3RC42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

(Attorney for Complainant)

Dated: SEP 1 2 2018

Bevin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

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