

ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED

2017 MAR -9 AM 11:41

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Reddy Ice Corp.,

Respondent

El Paso, Texas

CONSENT AGREEMENT AND FINAL
ORDER

EPA DOCKET NO. CAA-06-2017-3336

CONSENT AGREEMENT AND FINAL ORDER

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 (EPA or Complainant), and Reddy Ice Corp., located in El Paso, Texas (Respondent), in the above referenced action, have agreed to simultaneously commence and resolve this matter, through issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

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

2. This CAFO serves as notice pursuant to CAA § 113(d)(2)(A), 42 U.S.C. § 7413(d)(2)(A).

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

4. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

5. Respondent does not waive any rights or defenses which have been raised or could be raised in any state law proceeding. This CAFO may not be used in any Federal or state proceeding except proceedings by EPA to enforce this CAFO.

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

7. Respondent consents to the issuance of this CAFO, and consents to the assessment and payment of the stated Federal civil monetary penalty in the amount and by the method set out in this CAFO.

8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

9. Nothing in this CAFO shall be construed to prevent or limit EPA's civil, injunctive, and criminal authorities, or that of other Federal, state, or local agencies or departments to obtain penalties or injunctive relief under Federal, state, or local laws or regulations.

10. Respondent represents that the undersigned representative is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

11. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

II. STATUTORY AND REGULATORY BACKGROUND

12. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

13. Pursuant to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), an owner/operator of a stationary source 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, has a general duty to: (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility, taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur.

14. Anhydrous ammonia is an “extremely hazardous substance” listed in 40 CFR § 68.130.

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

16. Respondent is the “owner or operator” as those terms are defined by section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of a stationary source.

17. The facility is a “stationary source” as that term is defined by section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

18. “Stationary source” is defined in Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more

contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

19. Respondent is a corporation authorized to conduct business in the state of Texas.

20. Respondent owns and operates a facility located at 1621 Texas Ave., El Paso, Texas ("the facility").

21. The facility produces, processes, handles, and/or stores a regulated extremely hazardous substance, anhydrous ammonia.

22. The facility uses anhydrous ammonia in a closed-circuit refrigeration system to produce and store ice. Though the ice maker process runs continually, employees are not normally present at the facility outside of business hours.

23. On March 15, 2016, at 22:53, the City of El Paso Fire Department was notified of a potential release at the facility. Fire fighters who responded to the facility believed there had been an anhydrous ammonia release and confirmed that ammonia was in the air by using atmospheric monitoring.

24. The Fire Department notified Respondent's operations manager of the release from the facility. Respondent's employees came to the facility and worked with the Fire Department to stop the release. Following Fire Department protocol, fire fighters donned HAZMAT suits to enter the Facility and shut down the compressor. Fire fighters remained on site monitoring the air until 05:57 on March 16.

25. Following a root cause analysis, Respondent determined that a housing seal on a reciprocating compressor had failed, allowing the release. Respondent calculated a release of 51 pounds of anhydrous ammonia over 196 minutes.

26. Following its analysis, Respondent replaced the faulty compressor and implemented additional improvements to the process and increased inspection regularity.

27. By failing to identify or prevent the warped seal and then allowing the process to run interrupted as it released anhydrous ammonia, Respondent violated the requirement of CAA § 113(r)(1) for owners and operators of stationary sources to design and maintain a safe facility, taking such steps as are necessary to prevent releases.

IV. CIVIL PENALTY AND TERMS OF SETTLEMENT

28. Under Sections §§ 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) & 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA, 42 U.S.C. § 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A), the Administrator may issue an order assessing a civil administrative penalty.

29. Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1), authorizes the Administrator to assess a penalty up to \$44,539 for each violation of any requirement of Section 112(r) of CAA, 42 U.S.C. § 7412(r).¹

30. Upon consideration of the entire record herein and upon consideration of 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, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the

¹ The maximum penalty under Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1) was increased by the Federal Civil Penalties Inflation Adjustment Act Improvements Act (2015), 28 C.F.R. § 85, to up to \$44,539 per day for violations occurring after November 2, 2015.

seriousness of the violation, specific facts and equities, litigation risks, and other factors as justice may require, the parties agree that **\$40,000** is an appropriate penalty to resolve this matter.

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

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

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

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

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

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact – Jesse White (301) 887-6548

For On Line Payment:

WWW.PAY.GOV
Enter sfb 1.1 in search field
Open form and complete required fields.

PLEASE
NOTE:

The docket number **CAA 06-2017-3336** shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Bridget Weir
Enforcement Officer (6EN-AS)
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue Suite 1200
Dallas, Texas 75202-2733;

Lorena Vaughn
Region 6 Hearing Clerk (6RC-D)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

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

33. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by

law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

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

35. Pursuant to CAA § 113(d)(5), 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten (10) percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

36. This CAFO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

37. This document constitutes a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior such violations."

V. RETENTION OF ENFORCEMENT RIGHTS

38. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or state laws, regulations, statutes, or permitting programs.

39. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA.

40. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or regulated or other extremely hazardous substances at, on, or from the Respondent's facility. Furthermore, nothing in this CAFO shall be construed to prevent or limit

41. EPA's civil, injunctive, or criminal authorities, or that of other Federal, state, or local agencies or departments to obtain penalties or injunctive relief under other Federal, state, or local laws, regulations, or subparts thereof.

VI. COSTS

42. Each party shall bear its own costs and attorney's fees.

FOR RESPONDENT:


Date: 3/1/2017



Reddy Ice

FOR COMPLAINANT:

Date: 3/8/17



Cheryl T. Seager
Director
Compliance Assurance and
Enforcement Division
U.S. EPA Region 6

FINAL ORDER

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

Dated

3-9-17



Thomas Rucki
Regional Judicial Officer
U.S. EPA, Region 6

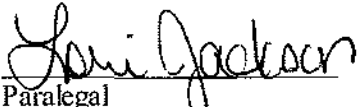
CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of March, 2017, the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED and ELECTRONIC COPY

Johnathan D. Judy
Risk Compliance Manager
PO Box 2217
610 Pleasant Valley Rd.
Harrisonburg, VA 22801

Ken Fernandez
Attorney for Respondent
Reddy Ice Holdings, Inc.
5720 LBJ Freeway; Suite 200
Dallas, TX 75240


Paralegal
U.S. EPA Region 6, Dallas, Texas