



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

FEB 25 2020

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Timothy K. Webster, Esq.  
Sidley & Austin  
1501 K Street, N.W.  
Washington, D.C. 20005

Re: Peco Foods, Inc.  
Consent Agreement and Final Order  
Docket Number: CAA-04-2019-9960(b)

Dear Mr. Webster:

Enclosed, is an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Clean Air Act (CAA) matter (Docket No. CAA-04-2019-9960(b)) involving Peco Foods, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing. **The penalty payment should be made within 30 days after the receipt of the signed, approved and filed CAFO.**

If you have any questions, please call Ellen Rouch at (404) 562-9575.

Sincerely,

A handwritten signature in black ink that reads "Jason Dressler for".

Todd Russo  
Chief  
Air Enforcement Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 4

In the Matter of:

Peco Foods, Inc.

Respondent.

**EPA Docket No. CAA-04-2019-9960(b)**

2020 FEB 25 AM 7:14  
OFFICE OF REGIONAL  
ADMINISTRATION

**CONSENT AGREEMENT**

**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413(d), and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Administrator of the United States Environmental Protection Agency (EPA). On EPA's behalf, the Director of the Enforcement and Compliance Assurance Division is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
5. Respondent is Peco Foods, Inc., a corporation, doing business in the States of Alabama, Arkansas, and Mississippi. This proceeding pertains to Respondent's facilities located at 3701 Kauloosa Avenue, Tuscaloosa, Alabama, 35401 (Tuscaloosa Facility); 95 Commerce Drive, Bay Springs, Mississippi, 39422 (Bay Springs Facility); 559 West Main Street, Brooksville, Mississippi, 39739 (Brooksville Facility); 1039 West Fulton Street, Canton, Mississippi, 39046

(Canton Facility); and 15292 Highway 21 South, Sebastopol, Mississippi, 39359 (Sebastopol Facility) (collectively referred to as Facilities).

### **III. GOVERNING LAW**

6. Any person who violates Section 112(r) of the CAA, 42 U.S.C. § 7412(r), or rule promulgated thereunder, may be assessed a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19. Each day a violation continues may constitute a separate violation. Civil penalties under Section 113(d) of the Act, 42 U.S.C. § 7413(d), may be assessed by an administrative order.
7. On November 15, 1990, the President signed into law the CAA Amendments of 1990, which added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The stated objective of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), is to prevent an accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.
8. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), also known as the General Duty Clause, the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty in the same manner and the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 et. seq. to identify hazards which may result from accidental releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.
9. Pursuant to Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), the EPA is authorized to promulgate regulations for accidental release prevention. On June 20, 1996, the EPA promulgated rules codified at 40 C.F.R. Part 68, Chemical Accident Prevention Provisions. These regulations are collectively referred to as the "Risk Management Program" (RMProgram) and apply to an owner or operator of a stationary source that has a threshold quantity of a regulated substance in a process. Pursuant to Sections 112(r)(3) and 112(r)(5) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(5), the list of regulated substances and threshold levels are codified at 40 C.F.R. § 68.130.
10. Pursuant to Section 112(r)(7)(B)(iii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(iii), and 40 C.F.R. §§ 68.10 and 68.150, the owner or operator of a stationary source that has a regulated substance in an amount equal to or in excess of the applicable RMProgram threshold in a process as defined in 40 C.F.R. § 68.3, must develop an RMProgram accidental release prevention program, and submit and register a single Risk Management Plan (RMPlan) to the EPA.
11. The EPA and the United States Department of Justice jointly determined that this matter is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

#### IV. FINDINGS OF FACTS

12. Each Facility consists of building, structures, equipment and installations which belong to the NAICS 311615 Poultry Processing industrial group, are under Respondent's control and from which an accidental release may occur.
13. Respondent has registered an RMPlan with EPA for the Bay Springs, Sebastopol, Canton and Tuscaloosa facilities and has developed an RMProgram accidental release prevention program for each of these stationary sources.
14. On November 10, 2016, the EPA issued to Respondent a Notice of Concern letter which informed the Respondent that EPA had concerns that the Respondent was not in compliance with the CAA Section 112(r). The Respondent and EPA met on February 21, 2017, to discuss the Notice of Concern letter. On March 6, 2018, EPA issued a Notice of Potential Violation (NOPV), providing notice that the EPA found that Respondent potentially committed the alleged violations described in Section V of this Agreement and providing Respondent an opportunity to confer with the EPA. On May 3, 2018, representatives of Respondent and the EPA held a meeting to discuss the NOPV. Further discussions were held between July 2, 2018, and June 24, 2019.

##### **Brooksville Facility**

15. For purposes of this Agreement, at the Brooksville Facility:
  - (a) Respondent produces, processes, handles, and stores anhydrous ammonia (ammonia), an extremely hazardous substances within the meaning of Section 112(r)(1) and (3) of the Act;
  - (b) Respondent operates an ammonia refrigerant system which uses approximately 9,241 pounds of ammonia;
  - (c) EPA inspected the Facility on October 3, 2016;
  - (d) During the inspection, the EPA inspection team requested a hazard assessment of the Facility. The Representatives for the Brooksville Facility were unable to produce a hazard assessment;
  - (e) Pursuant to the General Duty Clause, Section 112(r)(1) of the Act, Respondent had a duty to identify hazards which may result from accidental releases of extremely hazardous substances listed pursuant to Section 112(r)(3), using appropriate hazard assessment techniques;
  - (f) During the inspection, the EPA inspection team requested: 1) documents describing the design of the ammonia refrigeration system, including the piping and pressure-relief valves; 2) documentation of operating procedures; 3) documentation of training records; 4) documentation of maintenance reports and safety checks; and 5) documentation of safety features used at the Brooksville Facility such as automatic shutoff machinery and ammonia

alarms on doors entering ammonia machine room. The Representatives for the Brooksville Facility were unable to produce any of the requested documents; and

- (g) Pursuant to the General Duty Clause, Section 112(r)(1) of the Act, Respondent had a duty to design and maintain a safe facility taking such steps as are necessary to prevent releases.

### **Bay Springs Facility**

16. For purposes of this Agreement, at the Bay Springs Facility:

- (a) Respondent operates an ammonia refrigeration system which uses ammonia. Ammonia is a regulated, extremely hazardous substance, under Section 112(r)(3) of the CAA and is listed at 40 C.F.R. § 68.130;
- (b) Respondent uses approximately 62,025 pounds of ammonia in its process;
- (c) Respondent has one RMPProgram level 3 covered process, which stores or otherwise uses an extremely hazardous substance in an amount exceeding its applicable threshold of 10,000 pounds;
- (d) On October 4, 2016, the EPA conducted an on-site inspection of the RMPProgram related records and equipment for the purpose of assessing the Respondent's compliance with the RMPProgram requirements, including implemented recognized and generally accepted good engineering practices (RAGAGEP) for its ammonia refrigeration process at its stationary source;
- (e) At the time of inspection, EPA asked the Respondent's representatives for the Bay Springs Facility to provide records of the description of the vessels, rationale for the scenarios, and controls and mitigations used to limit the release quantity for the worst-case scenario. The Respondent's representatives were unable to provide any of these records;
- (f) At the time of inspection, EPA asked the Respondent's representatives for the Bay Springs Facility to provide records of the description of the vessels, rationale for the scenarios, and controls and mitigations used to limit the release quantity for the alternate release scenario. The Respondent's representatives were unable to provide any of these records;
- (g) The Bay Springs Facility's records did not include information about what the maximum intended inventory was for the refrigeration system;
- (h) The Respondents' representatives for the Bay Springs Facility stated that they had not updated the Facility's piping and instrumentation diagram (P&ID) since 2005. They also stated that there had been design changes to the refrigeration system since 2005, and that these changes are not reflected on the 2005 P&IDs;
- (i) During a walk-through of the Respondent's Bay Springs Facility, the EPA inspectors made the following observations:

- (1) Some of the ammonia piping did not have labels indicating the pipe contents, physical state of the refrigerant, relative pressure level of the refrigerant or direction of flow. The International Institute of Ammonia Refrigeration (IIAR) Bulletin 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, Section 4.7.6, indicates, "All ammonia piping should have appropriate pipe markers attached to indicate the use of the pipe and arrows to indicate the direction of flow, such as in IIAR Bulletin 114." The Bay Springs Facility could not provide documentation that the ammonia piping labelling complied with RAGAGEP.
- (2) The thermosyphon vessel did not have a label indicating the identity of the component or its pressure level designation. The IIAR Bulletin 114: Identification of Ammonia Refrigeration Piping and System Components, Section 3.2 defines a thermosyphon vessel as a system component subject to this IIAR Bulletin. Section 4.2 indicates, "component markers will bear the name of the equipment they identify.... e.g., RECEIVER, ACCUMULATOR, RECIRCULATOR, etc. In addition, component markers will be provided with a pressure level designation." The Bay Springs Facility could not provide documentation that the thermosyphon vessel labelling complied with RAGAGEP.
- (3) Some sections of insulated ammonia piping were damaged. There were also some sections of insulation missing from the insulated piping. ANSI/IIAR 2-2014 states: "Insulation . . . 5.10.1 Condensation and Frost Control. Piping and equipment surfaces not intended for heat exchange shall 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." The Bay Springs Facility could not provide documentation that the piping insulation complied with RAGAGEP.
- (4) Some of the piping sections where insulation was missing contained large amounts of ice build-up. Bulletin 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, Section 4.10.7 indicates, "Ice formations that could endanger refrigerant piping or other components should be removed and the condition(s) that cause the ice buildup corrected." The Bay Springs Facility could not provide documentation that the icing on the piping complied with RAGAGEP.
- (5) Some uninsulated ammonia piping on the roof was rusted. IIAR Bulletin 109 indicates, "Uninsulated refrigerant piping should be examined for signs of corrosion. If corrosion exists, the pipe should be cleaned down to bare metal and painted with a rust preventative paint. Badly corroded pipe should be replaced." The Bay Springs Facility could not provide documentation that the rusted piping complied with RAGAGEP.
- (6) The Facility indicated that they have not done any ultrasonic measurements on piping or any ammonia refrigeration equipment at the facility. IIAR Bulletin 110: Guidelines for Start-UP, Inspection and Maintenance of Ammonia Mechanical Refrigeration Systems, Section 6.7.1 Uninsulated Piping, indicates, "Areas affected by slight corrosion should be cleaned off and appropriately treated before reinstating the protective finish. Deeper pitting or loss of metal, where considered by subjective assessment to be greater than

10% of the original wall thickness, should be checked accurately by using techniques such as ultrasonic measurements.”

- (7) Some sections of piping were not secured to the pipe racks to protect against vibration and stress to the piping. IIAR 2-2014, Section 13.4.2 indicates, “Refrigerant piping shall be isolated and supported to prevent damage from vibration, stress, corrosion, and physical impact.” The Bay Springs Facility could not provide documentation that the unsecured piping complied with RAGAGEP.
- (8) There was an open-ended bleed line on ammonia piping on the roof. ASHRAE Standard 15, Section 11.6.1 indicates, “connections to refrigerant containing parts should be capped, plugged, blanked or locked closed when not in use.” The Bay Springs Facility could not provide documentation that the bleed line connections complied with RAGAGEP.
- (9) The king valve on the high-pressure receiver was not labeled. IIAR Bulletin 109, Section 4.10 contains the General Ammonia Refrigeration System Safety Requirements. Section 4.10.3 indicates, “The main shut off valve(s) (king valve(s)) should be identified with a prominent sign having letters sufficiently large to be easily read.” The Bay Springs Facility could not provide documentation that the king valve contained labelling that complied with RAGAGEP.
- (10) The entrances to the refrigeration machinery room did not contain remote control of the mechanical equipment in the refrigeration machinery room. ASHRAE Standard 15, Section 8.12(i) indicates, “remote control of the mechanical equipment in the refrigerating machinery room shall be provided immediately outside the machinery room door solely for the purpose of shutting down the equipment in an emergency.” The Bay Springs Facility could not provide documentation that the entrances to the machinery room complied with RAGAGEP.
- (11) A pressure relief valve header pipe on the roof was positioned so that it discharged at less than 15 feet above ground level. ASHRAE Standard 15, Section 9.7.8 indicates, “pressure relief devices and fusible plugs shall discharge to the atmosphere at a location not less than 15 feet above the adjoining ground level.” The Bay Springs Facility could not provide documentation that the discharge for the relief valve complied with RAGAGEP.
- (12) The EPA inspection team detected a strong smell of ammonia on ammonia equipment outside and inside the engine room. IIAR Bulletin 109, Section 4.10.8 indicates, “if an ammonia leak is observed, the source of the leak should be investigated, and the leak repaired”. The Bay Springs Facility could not provide documentation that it complied with RAGAGEP by investigating the source of the leaks and repairing them;
- (j) The Respondent’s representatives at the Bay Springs Facility performed a process hazard analysis in October 2012, but this hazard analysis did not provide for control of the hazard of leaking ammonia at the Facility. The Facility’s process hazard analysis stated that the consequences of several fault scenarios would be an ammonia release. Even though

Respondent recognized this hazard, the process hazard analysis did not provide ways or methods to control this hazard. The Respondent had evidence that ammonia leaks were occurring because it was recharging the ammonia process on an annual basis with amounts that exceeded at least 16 percent of the reported inventory. The RMPlan reported inventory of the ammonia system is 62,065 pounds. In 2012, the Facility added 12,920 pounds, indicating 21 percent of the ammonia was lost in the system; in 2013, the Facility added 18,140 pounds, indicating 29 percent of the ammonia was lost; in 2014, the Facility added 17,960 pounds, of ammonia indicating 29 percent of the ammonia was lost; in 2015, the Facility added 13,905 pounds, indicating 22 percent of the ammonia was lost; and in 2016, the Facility added 10,000 pounds, indicating 16 percent of the ammonia was lost;

- (k) The Respondent's representatives at the Bay Springs Facility could not provide operating procedures for general activities of the covered process; specifically, draining the oil pot, replacing relief valves, and charging the system;
- (l) During the inspection, EPA asked the Respondent's representatives at the Bay Springs Facility for copies of its operating procedures for control of hazardous chemical inventory levels. The Respondent's representatives could not produce these procedures;
- (m) At the time of the inspection, the Respondent's representatives at the Bay Springs Facility provided documentation that the operating procedures had been certified on July 3, 2015, but had not been certified since that date;
- (n) At the time of the inspection the Respondent's representatives at the Bay Springs Facility could not provide evidence of site-specific process training; and
- (o) During the inspection, EPA requested the ammonia sensor calibrations. The Respondent's representatives at the Bay Springs Facility indicated that they calibrate their ammonia sensor every two years. ANSI/IIAR 2-2014, Section 17.3 identifies a minimum test frequency of annually or more often if according to manufacturer's recommendations.

### **Canton Facility**

17. For purposes of this Agreement, at the Canton Facility:

- (a) Respondent operates an ammonia refrigeration system which uses ammonia. Ammonia is a regulated, extremely hazardous substance, under Section 112(r)(3) of the CAA and is listed at 40 C.F.R. §68.130;
- (b) Respondent uses approximately 56,100 pounds of ammonia in its process;
- (c) Respondent has one RMProgram level 3 covered process, which stores or otherwise uses an extremely hazardous substance in an amount exceeding its applicable threshold of 10,000 pounds;
- (d) On October 6, 2016, the EPA conducted an on-site inspection of the RMProgram related records and equipment for the purpose of assessing the Respondent's compliance with the



RMP program requirements, including implemented RAGAGEP for its ammonia refrigeration process at its stationary source;

- (e) At the time of inspection, EPA asked the Respondent's representatives for the Canton Facility to provide records of the description of the vessels, rationale for the scenarios, and controls and mitigations used to limit the release quantity for the worst-case scenario. The Respondent's representatives were unable to provide any of these records;
- (f) At the time of inspection, EPA asked the Respondent's representatives for the Canton Facility to provide records of the description of the vessels, rationale for the scenarios, and controls and mitigations used to limit the release quantity for the alternate release scenario. The Respondent's representatives were unable to provide any of these records;
- (g) The Canton Facility's records did not include information about what the maximum intended inventory was for the refrigeration system;
- (h) During a walk-through of the Respondent's Canton Facility, the EPA inspectors made the following observations:
  - (1) Some of the ammonia piping did not have labels indicating the pipe contents, physical state of the refrigerant, relative pressure level of the refrigerant or direction of flow. The IIAR Bulletin 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, Section 4.7.6, indicates, "All ammonia piping should have appropriate pipe markers attached to indicate the use of the pipe and arrows to indicate the direction of flow, such as in IIAR Bulletin 114." The Canton Facility could not provide documentation that the ammonia piping labelling complied with RAGAGEP.
  - (2) Some sections of insulated ammonia piping were damaged. There were also some sections of insulation missing from the insulated piping. ANSI/IIAR 2-2014 states: "Insulation . . . 5.10.1 Condensation and Frost Control. Piping and equipment surfaces not intended for heat exchange shall 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." The Canton Facility could not provide documentation that the piping insulation complied with RAGAGEP.
  - (3) Some of the piping sections where insulation was missing contained large amounts of ice build-up. Bulletin 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, Section 4.10.7 indicates, "Ice formations that could endanger refrigerant piping or other components should be removed and the condition(s) that cause the ice buildup corrected." The Canton Facility could not provide documentation that the icing on the piping complied with RAGAGEP.
  - (4) Some uninsulated ammonia piping on the roof was rusted. IIAR Bulletin 109 indicates, "Uninsulated refrigerant piping should be examined for signs of corrosion. If corrosion exists, the pipe should be cleaned down to bare metal and painted with a rust preventative

paint. Badly corroded pipe should be replaced.” Additionally, IIAR Bulletin 110: Guidelines for Start-Up, Inspection and Maintenance of Ammonia Mechanical Refrigeration Systems, Section 6.7.1 Uninsulated Piping, indicates, “Areas affected by slight corrosion should be cleaned off and appropriately treated before reinstating the protective finish. Deeper pitting or loss of metal, where considered by subjective assessment to be greater than 10% of the original wall thickness, should be checked accurately by using techniques such as ultrasonic measurements.” The Peco Foods representatives for the Canton Facility indicated they had not done any wall thickness measurements on piping or any ammonia refrigeration equipment at the Facility. The Canton Facility could not provide documentation that the rusted piping complied with RAGAGEP.

- (5) Some sections of piping were not secured to the pipe racks to protect against vibration and stress to the piping. IIAR 2-2014, Section 13.4.2 indicates, “Refrigerant piping shall be isolated and supported to prevent damage from vibration, stress, corrosion, and physical impact.” The Canton Facility could not provide documentation that the pipe rack supports complied with RAGAGEP.
- (6) A rollup door to the ammonia refrigerating machine room was rolled up (open to the outside). ASHRAE Standard 15, Section 8.11.7, indicates, “There should be no airflow to or from an occupied space through a machinery room unless the air is ducted and sealed in such a manner as to prevent any refrigerant leakage from entering the airstream.” The Canton Facility could not provide documentation that the rolled up doors complied with RAGAGEP.
- (7) The piping leaving the high-pressure receiver which feeds into the engine room was clearly vibrating more intensely than other piping at the facility. The Respondent’s representatives for the Canton Facility had not investigated why the pipe was experiencing excessive vibrations. IIAR Bulletin 109, Section 4.10.9 indicates abnormal sounds and/or vibrations of piping, fans, pumps, pressure actuate pumping systems and hydraulic pipe pressure surges should be investigated and corrected. The Canton Facility could not provide documentation that the vibrating piping off the high-pressure receiver complied with RAGAGEP.
- (8) The EPA inspection team detected a strong smell of ammonia on ammonia equipment outside and inside the engine room. IIAR Bulletin 109, Section 4.10.8 indicates, “if an ammonia leak is observed, the source of the leak should be investigated and the leak repaired”. The Canton Facility could not provide documentation that it complied with RAGAGEP by investigating the source of the leaks and repairing them;
- (i) The Respondent’s representatives at the Canton Facility performed a process hazard analysis in October 2014, but this hazard analysis did not provide for control of the hazard of leaking ammonia at the Facility. The Facility’s process hazard analysis stated that the consequences of several fault scenarios would be an ammonia release. Even though Respondent recognized this hazard, the process hazard analysis did not provide ways or methods to control this hazard. The Respondent had evidence that ammonia leaks were occurring because it was recharging the ammonia process on an annual basis with amounts

that exceeded at least 15 percent of the reported inventory. The RMPlan reported inventory of the ammonia system is 56,100 pounds. In 2012, the Facility added 8,202 pounds, indicating 15 percent of the ammonia was lost in the system; in 2013, the Facility added 8,465 pounds, indicating 15 percent of the ammonia was lost; in 2014, the Facility added 11,440 pounds, of ammonia indicating 20 percent of the ammonia was lost; in 2015, the Facility added 9,942 pounds, indicating 18 percent of the ammonia was lost; and in 2016, the Facility added 12,940 pounds, indicating 23 percent of the ammonia was lost;

- (j) The Respondent's representatives at the Canton Facility could not provide operating procedures for general activities of the covered process; specifically, draining the oil pot, replacing relief valves, and charging the system;
- (k) During the inspection, EPA asked the Respondent's representatives at the Canton Facility for copies of its operating procedures for control of hazardous chemical inventory levels. The Respondent's representatives could not produce these procedures;
- (l) At the time of the inspection, the Respondent's representatives at the Canton Facility could not demonstrate that the operating procedures had been annually certified;
- (m) The Respondent's representatives at the Canton Facility could not demonstrate that they developed and implemented safe work practices for confined space entry and opening process equipment and piping;
- (n) At the time of the inspection the Respondent's representatives at the Canton Facility could not provide evidence of site-specific process training;
- (o) During the inspection, EPA requested the ammonia sensor calibrations and the vibration analysis for the compressor conducted for the previous two years. The Respondent's representatives at the Canton Facility could only provide a vibration analysis from April 2016. The manufacturer's recommendation for the compressor at the Facility indicate that vibration analysis should be done every 6000 hours of operation or once per calendar year, whichever comes first. The Respondent's representatives at the Canton Facility indicated that they calibrate their ammonia sensor every two years. ANSI/IIAR 2-2014, Section 17.3 identifies a minimum test frequency of annually or more often if according to manufacturer's recommendations;
- (p) The Facility's April 2016 vibration analysis indicated that there was a problem detected with compressor HS-7. The recommendation was to "overhaul the motor during your next available opportunity. Perform next vibration survey after maintenance is complete." At the time of the inspection, the Respondent's representatives at the Canton Facility could not confirm or provide information that the deficiency had been corrected;
- (q) The EPA inspection team reviewed the Facility's procedures for managing changes and observed that the procedures contained authorization requirements. The Facility's Management of Change procedures require that the plant manager approve the proposed change before any such change is implemented. A review of the Management of Change

records indicated that the plant manager did not sign and approve MOC 2015-8, which was completed on July 10, 2015, prior to the change being implemented; and

- (r) The Respondent's representatives for the Canton Facility provided compliance audits that were performed at the Facility in 2013 and in 2016. Items on the tracking form of the 2013 compliance audit had not been completed by the time the 2016 audit was conducted and were still listed as "open" on the 2016 audit.

### **Sebastopol Facility**

18. For purposes of this Agreement, at the Sebastopol Facility:

- (a) Respondent operates an ammonia refrigeration system which uses ammonia. Ammonia is a regulated, extremely hazardous substance, under Section 112(r)(3) of the CAA and is listed at 40 C.F.R. §68.130;
- (b) Respondent uses approximately 52,350 pounds of ammonia in its process;
- (c) Respondent has one RMPProgram level 3 covered process, which stores or otherwise uses an extremely hazardous substance in an amount exceeding its applicable threshold of 10,000 pounds;
- (d) On October 5, 2016, the EPA conducted an on-site inspection of the RMPProgram related records and equipment for the purpose of assessing the Respondent's compliance with the RMPProgram requirements, including implemented RAGAGEP for its ammonia refrigeration process at its stationary source;
- (e) At the time of inspection, EPA asked the Respondent's representatives for the Sebastopol Facility to provide records of the description of the vessels, rationale for the scenarios, and controls and mitigations used to limit the release quantity for the worst-case scenario. The Respondent's representatives were unable to provide any of these records;
- (f) At the time of inspection, EPA asked the Respondent's representatives for the Sebastopol Facility to provide records of the description of the vessels, rationale for the scenarios, and controls and mitigations used to limit the release quantity for the alternate release scenario. The Respondent's representatives were unable to provide any of these records;
- (g) The Sebastopol Facility's records did not include information about what the maximum intended inventory was for the refrigeration system;
- (h) During a walk-through of the Respondent's Sebastopol Facility, the EPA inspectors made the following observations:
  - (1) Some of the ammonia piping did not have labels indicating the pipe contents, physical state of the refrigerant, relative pressure level of the refrigerant or direction of flow. IIAR Bulletin 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, Section 4.7.6, indicates, "All ammonia piping should have appropriate pipe markers

attached to indicate the use of the pipe and arrows to indicate the direction of flow, such as in IIAR Bulletin 114.” The pipe labeling was an issue identified in both the July 2011 and July 2016 independent Mechanical Integrity Audits. The Sebastopol Facility could not provide documentation that the ammonia piping labelling complied with RAGAGEP;

- (2) Some sections of insulated ammonia piping were damaged. There were also some sections of insulation missing from the insulated piping. The Occupational Safety and Health Standards for Storing and Handling of Anhydrous Ammonia indicates at 1910.111(d)(15): “refrigerated containers and pipelines which are insulated shall be covered with a material of suitable quality and thickness for the temperatures encountered. Insulation shall be suitably supported and protected against the weather”. ANSI/IIAR 2-2014 states: “Insulation . . . 5.10.1 Condensation and Frost Control. Piping and equipment surfaces not intended for heat exchange shall 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.” The Sebastopol Facility could not provide documentation that the piping insulation complied with RAGAGEP;
- (3) Some of the piping sections where insulation was missing contained large amounts of ice build-up. IIAR Bulletin 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, Section 4.10.7 indicates, “Ice formations that could endanger refrigerant piping or other components should be removed and the condition(s) that cause the ice buildup corrected.” The Sebastopol Facility could not provide documentation that the icing on the piping complied with RAGAGEP;
- (4) Some of the damaged insulated piping sections contained algae growth, an indication of moisture buildup. IIAR 2-2014 indicates, “Piping and equipment surfaces not intended for heat exchange shall 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.” The Sebastopol Facility could not provide documentation that the algae growth on the piping complied with RAGAGEP;
- (5) Some uninsulated ammonia piping on the roof was rusted. IIAR Bulletin 109 indicates, “Uninsulated refrigerant piping should be examined for signs of corrosion. If corrosion exists, the pipe should be cleaned down to bare metal and painted with a rust preventative paint. Badly corroded pipe should be replaced.” The Sebastopol Facility could not provide documentation that the rusted piping complied with RAGAGEP;
- (6) The doors entering the ammonia engine room did not have visual or audible alarms to alert of an ammonia release. ASHRAE Standard 15, Section 8.11.2.1, indicates, “The [ammonia] alarm shall announce visual and audible alarms inside the refrigerating machinery room and outside each entrance to the refrigerating machinery room. The

meaning of each alarm shall be clearly marked by signage near the annunciators.” The Sebastopol Facility could not provide documentation that the non-alarming doors complied with RAGAGEP;

- (7) Some sections of piping were not secured to the pipe racks to protect against vibration and stress to the piping. IIAR 2-2014, Section 13.4.2 indicates, “Refrigerant piping shall be isolated and supported to prevent damage from vibration, stress, corrosion, and physical impact.” The Sebastopol Facility could not provide documentation that the unsecured piping complied with RAGAGEP;
- (8) There was an open-ended bleed line on ammonia piping on the roof. ASHRAE Standard 15, Section 11.6.1 indicates, “connections to refrigerant containing parts should be capped, plugged, blanked or locked closed when not in use.” The Sebastopol Facility could not provide documentation that the bleed line connections complied with RAGAGEP;
- (9) The EPA inspection team detected a strong smell of ammonia on ammonia equipment outside and inside the engine room. IIAR Bulletin 109, Section 4.10.8 indicates, “if an ammonia leak is observed, the source of the leak should be investigated and the leak repaired”. The Sebastopol Facility could not provide documentation that it complied with RAGAGEP by investigating the source of the leak and repairing it;
- (i) The Respondent’s representatives at the Sebastopol Facility performed a process hazard analysis in July 2016, but this hazard analysis did not provide for control of the hazard of leaking ammonia at the Facility. The Facility’s process hazard analysis stated that the consequences of several fault scenarios would be an ammonia release. Even though Respondent recognized this hazard, the process hazard analysis did not provide ways or methods to control this hazard. The Respondent had evidence that ammonia leaks were occurring because it was recharging the ammonia process on an annual basis with amounts that exceeded at least 17 percent of the reported inventory. The RMPlan reported inventory of ammonia system is 52,250 pounds. In 2014, the Facility added 19,280 pounds, indicating 37 percent of the ammonia was lost in the system; in 2015, the Facility added 8,860 pounds, indicating 17 percent of the ammonia was lost; and in 2016, the Facility added 10,600 pounds, of ammonia indicating 20 percent of the ammonia was lost;
- (j) The Respondent’s representatives at the Sebastopol Facility could not provide operating procedures for general activities of the covered process; specifically, draining the oil pot, replacing relief valves, and charging the system;
- (k) During the inspection, EPA asked the Respondent’s representatives at the Sebastopol Facility for copies of its operating procedures for control of hazardous chemical inventory levels. The Respondent’s representatives could not produce these procedures;
- (l) At the time of the inspection, the Respondent’s representatives at the Sebastopol Facility could not demonstrate that the operating procedures had been annually certified;

- (m) The Respondent's representatives at the Sebastopol Facility could not demonstrate that they developed and implemented safe work practices for confined space entry and opening process equipment and piping;
- (n) At the time of the inspection the Respondent's representatives at the Sebastopol Facility could not provide evidence of site-specific process training;
- (o) During the inspection, EPA requested the ammonia sensor calibrations and the vibration analysis for the compressor conducted for the previous two years. The Respondent's representatives at the Sebastopol could only provide a vibration analysis from April 2016. The manufacturer's recommendation for the compressor at the Facility indicate that vibration analysis should be done every 6000 hours of operation or once per calendar year, whichever comes first. The Respondent representatives at the Sebastopol Facility indicated that they calibrate their ammonia sensor every two years. ANSI/IIAR 2-2014, Section 17.3 identifies a minimum test frequency of annually or more often if according to manufacturer's recommendations; and
- (p) The Respondent's representatives for the Sebastopol Facility provided compliance audits that were performed at the Facility in in 2012 and in 2015. Items on the tracking form of the 2012 compliance audit had not been completed by the time the 2015 audit was conducted and were still listed as "open" on the 2015 audit.

#### **Tuscaloosa Facility**

19. For purposes of this Agreement, at the Tuscaloosa Facility:

- (a) Respondent operates an ammonia refrigeration system which uses ammonia. Ammonia is a regulated, extremely hazardous substance, under Section 112(r)(3) of the CAA and is listed at 40 C.F.R. §68.130;
- (b) Respondent uses approximately 24,900 pounds of ammonia in its process;
- (c) Respondent has one RMProgram level 3 covered process, which stores or otherwise uses an extremely hazardous substance in an amount exceeding its applicable threshold of 10,000 pounds;
- (d) On March 4, 2015, and August 24, 2016, the EPA conducted on-site inspections of the RMProgram related records and equipment for the purpose of assessing the Respondent's compliance with the RMProgram requirements, including implemented RAGAGEP for its ammonia refrigeration process at its stationary source;
- (e) The Tuscaloosa Facility's records did not include information about what the maximum intended inventory was for the refrigeration system;
- (f) During a walk-through of the Respondent's Tuscaloosa Facility, the EPA inspectors made the following observations:

- (1) Some of the ammonia piping did not have labels indicating the pipe contents, physical state of the refrigerant, relative pressure level of the refrigerant or direction of flow. The IIAR Bulletin 109: IIAR Minimum Safety Criteria for a Safe Ammonia Refrigeration System, Section 4.7.6, indicates, "All ammonia piping should have appropriate pipe markers attached to indicate the use of the pipe and arrows to indicate the direction of flow, such as in IIAR Bulletin 114." The Tuscaloosa Facility could not provide documentation that the ammonia piping labelling complied with RAGAGEP.
- (2) At the time of the inspection, the Respondent's representatives for the Tuscaloosa Facility indicated there was no alarm if the ventilation system failed. IIAR 2 - 2014 Section 6.14 contains ventilation requirements for ammonia refrigeration systems. Section 6.14.3. provides, "machinery rooms shall be vented to the outdoors by means of a mechanical exhaust ventilation system" and Section 6.14.3.1 provides, "mechanical exhaust ventilation systems shall be automatically activated by leak detection ... or temperature sensors and shall be manually operable." The Tuscaloosa Facility could not provide documentation that its ventilation system complied with RAGAGEP.
- (3) The EPA inspection team detected a strong smell of ammonia on ammonia equipment outside and inside the engine room. IIAR Bulletin 109, Section 4.10.8 indicates, "if an ammonia leak is observed, the source of the leak should be investigated and the leak repaired". The Tuscaloosa Facility could not provide documentation that it complied with RAGAGEP by investigating the source of the leak and repairing it;
- (g) The Respondent's representatives at the Tuscaloosa Facility could not provide operating procedures for general activities of the covered process; specifically, draining the oil pot, replacing relief valves, and charging the system;
- (h) During the inspection, EPA asked the Respondent's representatives at the Tuscaloosa Facility for copies of its operating procedures for control of hazardous chemical inventory levels. The Respondent's representatives could not produce these procedures.;
- (i) At the time of the inspection, the Respondent's representatives at the Tuscaloosa Facility could not demonstrate that the operating procedures had been annually certified;
- (j) The Respondent's representatives at the Tuscaloosa Facility produced training records which indicated that six operators received initial training more than six months after becoming an operator;
- (k) During the inspection, the EPA inspection team requested a copy of annual ammonia system safety checks. The Respondent's representatives for the Tuscaloosa Facility stated that they had not conducted annual safety checks. IIAR Bulletin 109 contains a section discussing the frequency of safety inspections. The Bulletin provides in Section 5.2: "Each owner should ensure an ammonia system safety check is conducted annually"; and
- (l) The Respondent's representatives for the Tuscaloosa Facility provided compliance audits that were performed at the Facility in 2012 and in 2015. Items on the tracking form of the 2012 compliance audit had not been completed by the time the 2015 audit was conducted,



and were still listed as “open” on the 2015 audit. Two audit recommendations were closed out on March 3, 2015, a few days after EPA announced its 2015 inspection. There were numerous deficiencies identified with both audits, but the follow up action sheets for each did not include all the identified deficiencies.

## V. ALLEGED VIOLATIONS

20. As a corporation, Respondent is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).
21. Each one of Respondent’s Facilities is a “stationary source” as that term is defined in Section 112(r)(2)(C) of the Act, 42 U.S.C. 7412(r)(2)(C) and 40 C.F.R. § 68.3.
22. At all times relevant to the violations alleged herein, Respondent was the “owner or operator” of each Facility, as defined at Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9).
23. Based on EPA’s compliance monitoring investigation at the Brooksville Facility, the EPA alleges that the Respondent violated 42 U.S.C. § 7412(r)(1), the CAA General Duty Clause by failing to identify hazards associated with its ammonia refrigeration system and by failing to design and maintain a safe ammonia refrigeration facility.
24. Based on EPA’s compliance monitoring investigation at the Bay Springs Facility, the EPA alleges that the Respondent violated 40 C.F.R. Part 68, the codified rules governing the Act’s Chemical Accident Prevention Provisions and Section 112(r) of the Act, 42 U.S.C. § 7412(r), when it:
  - (a) Failed to maintain records pertaining to the worst case scenario for the offsite consequence analyses, as required by 40 C.F.R. § 68.39(a);
  - (b) Failed to maintain records pertaining to alternative release scenarios, as required by 40 C.F.R. § 68.39(b);
  - (c) Failed to compile written process safety information documentation for the technology of the process which shall include the maximum intended inventory, as required by 40 C.F.R. § 68.65(c)(1)(iii);
  - (d) Failed to compile written process safety information documentation for the equipment of the process which shall include a P&ID as required by 40 C.F.R. § 68.65(d)(1)(ii);
  - (e) Failed to document that equipment complies with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2);
  - (f) Failed to identify, evaluate and control the hazards involved in the process in the process hazard analysis, as required by 40 C.F.R. § 68.67(a);

- (g) Failed to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information, as required by 40 C.F.R. § 68.69(a);
- (h) Failed to develop and implement operating procedures that address quality control for raw materials and control of hazardous chemical inventory levels, as required by 40 C.F.R. § 68.69(a)(3)(iv);
- (i) Failed to review operating procedures as often as necessary to assure that they reflect current operating practice and to certify annually that these operating procedures are current and accurate, as required by 40 C.F.R. § 68.69(c);
- (j) Failed to train each employee involved in operating a process in overview of the process and in the operating procedures as specified in § 68.69, as required by 40 C.F.R. § 68.71(a); and
- (k) Failed to conduct inspections and tests of process equipment at a frequency consistent with applicable manufacturer's recommendations and good engineering practices, as required by 40 C.F.R. § 68.73(d)(3).

25. Based on EPA's compliance monitoring investigation at the Canton Facility, the EPA alleges that the Respondent violated 40 C.F.R. Part 68, the codified rules governing the Act's Chemical Accident Prevention Provisions and Section 112(r) of the Act, 42 U.S.C. § 7412(r), when it:

- (a) Failed to maintain records pertaining to the worst case scenario for the offsite consequence analyses, as required by 40 C.F.R. § 68.39(a);
- (b) Failed to maintain records pertaining to alternative release scenarios, as required by 40 C.F.R. § 68.39(b);
- (c) Failed to compile written process safety information documentation for the technology of the process which shall include the maximum intended inventory information, as required by 40 C.F.R. § 68.65(c)(1)(iii);
- (d) Failed to document that equipment complies with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2);
- (e) Failed to identify, evaluate and control the hazards involved in the process in the process hazard analysis, as required by 40 C.F.R. § 68.67(a);
- (f) Failed to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information, as required by 40 C.F.R. § 68.69(a);
- (g) Failed to develop and implement operating procedures that address quality control for raw materials and control of hazardous chemical inventory levels, as required by 40 C.F.R. § 68.69(a)(3)(iv);

- (h) Failed to review operating procedures as often as necessary to assure that they reflect current operating practice and to certify annually that these operating procedures are current and accurate, as required by 40 C.F.R. § 68.69(c);
- (i) Failed to develop and implement safe work practices to provide for control of hazards, as required by 40 C.F.R. § 68.69(d);
- (j) Failed to train each employee involved in operating a process in overview of the process and in the operating procedures as specified in § 68.69, as required by 40 C.F.R. § 68.71(a);
- (k) Failed to conduct inspections and tests of process equipment at a frequency consistent with applicable manufacturer's recommendations and good engineering practices, as required by 40 C.F.R. § 68.73(d)(3);
- (l) Failed to correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation as required by 40 C.F.R. § 68.73(e);
- (m) Failed to establish and implement written procedures to manage change that assure the authorization requirements for the proposed change are addressed prior to the change as required by 40 C.F.R. § 68.75(b)(5); and
- (n) Failed to promptly determine and document responses to compliance audit findings and correct deficiencies as required by 40 C.F.R. § 68.79(d).

26. Based on EPA's compliance monitoring investigation at the Sebastopol Facility, the EPA alleges that the Respondent violated 40 C.F.R. Part 68, the codified rules governing the Act's Chemical Accident Prevention Provisions and Section 112(r) of the Act, 42 U.S.C. § 7412(r), when it:

- (a) Failed to maintain records pertaining to the worst case scenario for the offsite consequence analyses, as required by 40 C.F.R. § 68.39(a);
- (b) Failed to maintain records pertaining to alternative release scenarios, as required by 40 C.F.R. § 68.39(b);
- (c) Failed to compile written process safety information documentation for the technology of the process which shall include the maximum intended inventory information, as required by 40 C.F.R. § 68.65(c)(1)(iii);
- (d) Failed to document that equipment complies with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2);
- (e) Failed to identify, evaluate and control the hazards involved in the process in the process hazard analysis, as required by 40 C.F.R. § 68.67(a);

- (f) Failed to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information, as required by 40 C.F.R. § 68.69(a);
- (g) Failed to develop and implement operating procedures that address quality control for raw materials and control of hazardous chemical inventory levels, as required by 40 C.F.R. § 68.69(a)(3)(iv);
- (h) Failed to review operating procedures as often as necessary to assure that they reflect current operating practice and to certify annually that these operating procedures are current and accurate, as required by 40 C.F.R. § 68.69(c);
- (i) Failed to develop and implement safe work practices to provide for control of hazards, as required by 40 C.F.R. § 68.69(d);
- (j) Failed to train each employee involved in operating a process in overview of the process and in the operating procedures as specified in § 68.69, as required by 40 C.F.R. § 68.71(a);
- (k) Failed to conduct inspections and tests of process equipment at a frequency consistent with applicable manufacturer's recommendations and good engineering practices, as required by 40 C.F.R. § 68.73(d)(3); and
- (l) Failed to promptly determine and document responses to compliance audit findings and correct deficiencies as required by 40 C.F.R. § 68.79(d).

27. Based on EPA's compliance monitoring investigation at the Tuscaloosa, the EPA alleges that the Respondent violated 40 C.F.R. Part 68, the codified rules governing the Act's Chemical Accident Prevention Provisions and Section 112(r) of the Act, 42 U.S.C. § 7412(r), when it:

- (a) Failed to compile written process safety information documentation for the technology of the process which shall include the maximum intended inventory information, as required by 40 C.F.R. § 68.65(c)(1)(iii);
- (b) Failed to document that equipment complies with recognized and generally accepted good engineering practices, as required by 40 C.F.R. § 68.65(d)(2);
- (c) Failed to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information, as required by 40 C.F.R. § 68.69(a);
- (d) Failed to develop and implement written operating procedures that address quality control for raw materials and control of hazardous chemical inventory levels, as required by 40 C.F.R. § 68.69(a)(3)(iv);

- (e) Failed to review operating procedures as often as necessary to assure that they reflect current operating practice and to certify annually that these operating procedures are current and accurate, as required by 40 C.F.R. § 68.69(c);
- (f) Failed to train each employee involved in operating a process in overview of the process and in the operating procedures as specified in § 68.69, as required by 40 C.F.R. § 68.71(a);
- (g) Failed to conduct inspections and tests of process equipment at a frequency consistent with applicable manufacturer's recommendations and good engineering practices, as required by 40 C.F.R. § 68.73(d)(3); and
- (h) Failed to promptly determine and document responses to compliance audit findings and correct deficiencies as required by 40 C.F.R. § 68.79(d).

## VI. STIPULATIONS

28. The issuance of this CAFO simultaneously commences and concludes this proceeding 40 C.F.R. § 22.13(b).
29. 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 CAFO;
  - (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
  - (c) consents to the assessment of a civil penalty as stated below;
  - (d) consents to the conditions specified in this CAFO;
  - (e) waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
  - (f) waives its rights to appeal the Final Order accompanying this CAFO.
30. For the purpose of this proceeding, Respondent:
- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
  - (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
  - (c) waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;

- (d) by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance at the Facilities with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- (e) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
- (f) agrees to comply with the terms of the CAFO.

31. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding.

### VII. TERMS OF PAYMENT

32. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **ONE HUNDRED-SIX THOUSAND TWO HUNDRED FIFTY DOLLARS (\$106,250)**, which is to be paid within thirty (30) days of date of the Effective Date of this CAFO.
33. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York

ABA: 021030004  
Account Number: 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"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: John Schmid, (202) 874-7026  
REX (Remittance Express): 1-866-234-5681

34. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

Gopal Timsina  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
Timsina.gopal@epa.gov

35. "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 EPA requirements, in the amount due, and identified with the Facility name and Docket No. CAA-04-2019-9960(b).

36. Pursuant to 42 U.S.C. § 7413(d)(5), if Respondent fails to timely pay any portion of the penalty assessed under the CAFO, EPA may recover, in addition to the amount of the unpaid penalty assessed, the following amounts on any amount overdue:

(a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days, Interest is waived. However, if the civil

penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest is paid. Interest will be assessed at the rates established pursuant to 26 U.S.C. § 6621(a)(2)(c);

- (b) Non-Payment Penalty. A 10 percent quarterly non-payment penalty pursuant to 42 U.S.C. § 7413(d)(5); and
- (c) Attorneys' Fees and Costs of Collection. The United States enforcement expenses, including, but not limited to, attorneys' fees and cost of collection.

37. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- (a) refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13 and 13.14;
- (b) 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;
- (c) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
- (d) request that the Attorney General bring a civil action in an appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

38. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

39. Supplemental Environmental Project.

- (a) Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Respondent shall expend no less than **THREE HUNDRED NINETY-EIGHT THOUSAND FOUR HUNDRED THIRTY-EIGHT (\$398,438.00)**. Respondent must purchase and donate the following to the recipient selected by the Respondent as identified below:

Recipient: **Bay Springs Fire Department (Bay Springs, MS)**

<u>Quantity</u>	<u>Description</u>
6	Air cylinders for Self-contained Breathing Apparatus (SCBA)



Recipient: **Sebastopol Fire Department (Scott County, Sebastopol, MS)**

<u>Quantity</u>	<u>Description</u>
143	Motorola APX900 Portable Radios
1	MCC 7500E Radio Console
1	Radio Console Installation, Configuration, Testing

Recipient: **Tuscaloosa Fire Department (Tuscaloosa, AL)**

<u>Quantity</u>	<u>Description</u>
2	Remote wireless sensors for NH3, etc., AREARAE Pro, Wireless, Wi-Fi, Mesh 900MHz, 10.6eV PID, LEL, O2, H2S, CO, CL2, NH3, Gamma Sensor, Wind Sensor
2	RAE S01-3000-000 ProRae Guardian Licenses for Tier 3 Instruments
7	MSA A-ALT5XANK0100C010 Altair 5X Multigas Detectors for Methane, O2, CO, H2S

- (b) Respondent agrees, in the event that Respondent's actual purchase of equipment deviates from the equipment specified above, Respondent shall provide information to EPA explaining the reason(s) for any such deviation. So long as the amount that Respondent spends equals or exceeds **\$398,438**, and the explanation for the deviation is acceptable to EPA, this provision shall be deemed to be satisfied.
- (c) This CAFO shall not be construed to constitute EPA endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this CAFO.
- (d) Respondent certifies the truth and accuracy of each of the following:
- (1) That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is **\$398,438**;
  - (2) That, as of the effective date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation, permit, order or agreement and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;
  - (3) That the SEP is not a project the Respondent was planning or intending to construct, perform or implement other than in settlement of the claim resolved in this CAFO;

- (4) That Respondent has not received and will not receive credit for the SEP in any other enforcement action of any kind;
  - (5) That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
  - (6) That for federal income tax purposes, Respondent agrees it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
  - (7) That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and
  - (8) That Respondent has inquired of Sebastopol Fire Department, Tuscaloosa Fire Department and Bay Springs Fire Department whether any of this is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP, and has been informed by Sebastopol Fire Department, Tuscaloosa Fire Department and the Bay Springs Fire Department that neither is a party to such a transaction.
- (e) Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 39(a). If Respondent does not fully and timely complete the SEP, it shall be required to pay stipulated penalties pursuant to Paragraph 39(i).
  - (f) Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
  - (g) Respondent shall submit to EPA a SEP Completion Report, no later than sixty (60) calendar days after the effective date of this CAFO. The Report shall be sent to the Enforcement and Compliance Assurance Division, to the attention of Gopal Timsina at the address provided in Paragraph 34. The Report shall include the following:
    - (1) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
    - (2) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than **\$398,438** was spent on the Emergency Planning and Preparedness SEP described in Paragraph 39(a).

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

- (h) In making any reference to the SEP, any public statement, oral or written, Respondent shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental protection Agency for violations of Section 112(r)(7) of the Clean Air Act (CAA) and implementing regulations at 40 C.F.R. Part 68.”

- (i) Respondent shall pay to the United States a stipulated penalty of the difference between **\$398,438** and the actual SEP expenditure if Respondent fails to timely and fully complete the activities described in Paragraph 39(a), including failure to spend the minimum amount of **THREE HUNDRED NINETY-EIGHT THOUSAND FOUR HUNDRED THIRTY-EIGHT (\$398,438)**.
- (j) For purposes of Paragraph 39(e), whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.
- (k) Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late if Respondent fails to timely submit a SEP Completion Report as required by this CAFO.

### **VIII. EFFECT OF CAFO**

- 40. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
- 41. Full payment of the civil penalty, as provided in Section VII (Terms of Payment) 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. 40 C.F.R. § 22.18(c).
- 42. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), 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 CAFO in an administrative, civil judicial, or criminal action.
- 43. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict 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, except as expressly provided herein.
- 44. 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 as provided under the Act.
- 45. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
- 46. 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.

47. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
48. By signing this Consent Agreement, 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.
49. By signing this Consent Agreement, the 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.
50. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
51. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, 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.
52. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that 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 EPA. If such false or inaccurate material was provided, 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.
53. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
54. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

#### **IX. EFFECTIVE DATE**

55. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

**[Complainant and Respondent will Each Sign on Separate Pages]**

The foregoing Consent Agreement in the Matter of Peco Foods, Inc., CAA-04-2019-9960(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

William W. Griffith  
Signature

02/14/20  
Date

Printed Name: William W. Griffith

Title: COO - Peco Foods, Inc.

Address: 1101 Greensboro Ave., Tuscaloosa, AL 35401

The foregoing Consent Agreement in the Matter of Peco Foods, Inc., CAA-04-2019-9960(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

2/20/2020  
DATE

Carol L. Kemker

Carol L. Kemker  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Peco Foods, Inc.

Respondent.

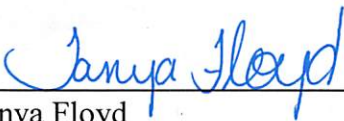
Docket No. CAA-04-2019-9960(b)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent, 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 24<sup>th</sup> day of February, 2020.

  
\_\_\_\_\_  
Tanya Floyd  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of **Peco Foods, Inc., Docket No. CAA-04-2019-9960(b)** were filed and copies of the same were mailed to the parties as indicated below.

### Via United Parcel Service:

Timothy K. Webster, Esq.  
Sidley & Austin  
1501 K Street, N.W.  
Washington, D.C. 20005

### Via EPA's internal email:

Ellen Rouch  
Office of Regional Counsel  
U.S EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
[rouch.ellen@epa.gov](mailto:rouch.ellen@epa.gov)

Jason Dressler  
Air Enforcement Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
[Dressler.jason@epa.gov](mailto:Dressler.jason@epa.gov)

Gopal Timsina  
Chemical Safety Section  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
[timsina.gopal@epa.gov](mailto:timsina.gopal@epa.gov)

2-25-2020

DATE



Patricia A. Bullock, Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960