

FILED

Sep 27, 2024

11:08 am

**U.S. EPA REGION 8
HEARING CLERK**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)

Associated Milk Producers, Inc.,)
315 N Broadway PO Box 455)
New Ulm, MN 56073)

Respondent.)

CONSENT AGREEMENT

Docket No. CAA-08-2024-0017

Docket No. EPRCA-08-2024-0003

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. The U.S. Environmental Protection Agency, having determined that settlement of this action is in the public interest, and Associated Milk Producers Inc. (AMPI or Respondent) consent to the entry of this Consent Agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

3. This Agreement is issued under the authority vested in the Administrator of the EPA by section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045. The undersigned EPA official has been duly authorized to institute this action.
4. The EPA and the U.S. Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for administrative penalty assessment. 42 U.S.C. § 7413(d).

5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The Final Order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

CLEAN AIR ACT SECTION 112(r) GENERAL DUTY CLAUSE

7. Sections 112(r) of the CAA, 42 U.S.C. § 7412(r), aims to prevent the accidental release of the regulated substances listed pursuant to section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or of any other extremely hazardous substance, and to minimize the consequences of any such release that does occur.
8. On November 15, 1990, Congress amended the CAA and added section 112(r)(1), commonly known as the General Duty Clause. Pursuant to section 112(r)(1), the owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty, in the same manner and to the same extent as section 654, Title 29 of the United States Code, to identify hazards which may result from such 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 sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 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, the General Duty Clause, or a requirement or prohibition of any rule promulgated under the CAA, but 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.
10. Pursuant to section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and as adjusted by the Civil Monetary Penalty Inflation Adjustment, 88 Fed. Reg. at 89309 (December 27, 2023), and 40 C.F.R. § 19.4, the Administrator may assess a civil penalty of up to \$57,617 per violation per day of violation occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023.

11. The term “regulated substance” means any substance listed pursuant to section 112(r)(3) of the CAA as amended, in 40 C.F.R. § 68.130. 40 C.F.R. § 68.3.
12. The term “extremely hazardous substance” means an extremely hazardous substance within the meaning of section 112(r)(1) of the CAA, including any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability or corrosivity.¹ The term includes, but is not limited to, regulated substances listed in CAA section 112(r)(3) and in 40 C.F.R. § 68.130. In addition, the release of any substance that causes death or serious injury because of its acute toxic effect or as a result of an explosion or fire or that causes substantial property damage by blast, fire, corrosion or other reaction would create a presumption that such substance is extremely hazardous.² Under section 112(r)(3) of the CAA, the term “extremely hazardous substance” also includes, without limitation and in addition to substances listed in 40 C.F.R. § 68.130, those substances listed in 40 C.F.R. part 355, appendices A and B, published under section 302 of the EPCRA, 42 U.S.C. § 11002.
13. The term “owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).
14. The term “person” includes any individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof. 42 U.S.C. § 7602(e).
15. The term “stationary source” means, in pertinent part, any buildings, structures, equipment, installations, or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur. 42 U.S.C. § 7412(r)(2)(C).

¹ Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101st Congress, 1st Session 211 (1989).

² Id.

EMERGENCY PREPAREDNESS AND COMMUNITY RIGHT TO KNOW ACT

16. Section 312 of the EPCRA, 42 U.S.C. § 11022, and the regulations at 40 C.F.R. part 370, require the owner or operator of a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., to prepare and submit a Tier II form containing the required data for each hazardous chemical stored in excess of its respective threshold level to the appropriate state emergency response commission (SERC), local emergency planning committee (LEPC), and fire department having jurisdiction over the facility.
17. Pursuant to section 325(c)(1) of the EPCRA, 42 U.S.C. § 11045(c)(1), and as adjusted by the Civil Monetary Penalty Inflation Adjustment, 88 Fed. Reg. at 89309 (December 27, 2023), and 40 C.F.R. part 19, the Administrator may assess a civil penalty of up to \$69,733 for each violation of section 312 of the EPCRA, 42 U.S.C. § 11022, occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023.
18. The term “hazardous chemical,” with certain exceptions, has the meaning given such term by the Occupational Safety and Health Act and its implementing regulations. Pursuant to those regulations, “hazardous chemical” means any chemical which is classified as a physical hazard, health hazard, simple asphyxiant, combustible dust, or hazard not otherwise classified by 29 C.F.R. § 1900.1200(c).
19. The term “person” means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body. 42 U.S.C. § 11049(7).
20. The term “facility” means, in pertinent part, all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person. 42 U.S.C. § 11049(4).

IV. FACTUAL BASIS FOR EACH ALLEGED VIOLATION

21. Respondent is a corporation authorized to do business in the state of South Dakota and is therefore a “person” as defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e) and section 329(4) of the EPCRA, 42 U.S.C. § 11049(4), and therefore is subject to the assessment of civil penalties for the violations alleged herein.
22. Anhydrous ammonia is a “regulated substance” as defined in 40 C.F.R. § 68.3, an “extremely hazardous substance” as listed in appendices A and B of 40 C.F.R. part 355, and a “hazardous chemical” as defined in section 311 of the EPCRA, 42 U.S.C. § 11021.
23. At all times relevant to the allegations in section V of this Agreement, below:
 - a. Respondent was the owner or operator of the AMPI production facility located at 127 Commercial Street West, Hoven, South Dakota (the Facility).
 - b. The Facility was a “stationary source” as defined in section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and a “facility” as defined in section 329(4) of the EPCRA, 11049(4).
 - c. The Facility’s North American Industry Classification System (NAICS) code was 31153, Cheese Manufacturing.
 - d. The Facility used anhydrous ammonia in its refrigeration processes.
 - e. Respondent was required to have a material safety data sheet for anhydrous ammonia under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., and its associated regulations.
 - f. By performing the activities in paragraph 23(d), above, Respondent produced, processed, handled, or stored a regulated substance and was therefore subject to section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).
 - g. Respondent was subject to the reporting requirements of section 312 of the EPCRA, 42 U.S.C. § 11022.
24. From December 20, 2021, to May 17, 2022, authorized representatives of the EPA conducted an offsite compliance monitoring investigation of the Facility.
25. During that investigation, the EPA representatives identified alleged violations of section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) and section 312 of the EPCRA,

42 U.S.C. § 11022. The investigation report was sent to AMPI on May 9, 2023. The alleged violations are described in section V of this Agreement, below.

26. On March 13, 2024, Respondent notified the EPA that it had removed all anhydrous ammonia from the refrigeration processes at the Facility on February 29, 2024. Thereafter, Respondent sold the Facility to an unrelated entity.

V. EPA'S ALLEGED VIOLATIONS OF LAW

COUNT I – FAILURE TO IDENTIFY HAZARDS

27. Section 112(r)(1) of the CAA provides that the owner or operator of a stationary source producing, processing, handling, or storing a regulated substance has a general duty to identify hazards which may result from accidental releases using appropriate hazard assessment techniques. 42 U.S.C. § 7412(r)(1).
28. Respondent failed to conduct a hazard assessment to identify the hazards that may result in accidental release of anhydrous ammonia using recognized and appropriate hazard assessment techniques as described in “*Guidelines for Hazard Evaluation Procedures*” by the Center for Chemical Process Safety (CCPS), or hazard review checklists developed by ammonia refrigeration industry organizations such as the *Ammonia Refrigeration Management Program*.
29. By failing to meet its general duty to identify hazards which may result from accidental releases, Respondent violated section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

COUNT II – FAILURE TO DESIGN AND MAINTAIN A SAFE FACILITY

30. Section 112(r)(1) of the CAA provides that the owner or operator of a stationary source producing, processing, handling, or storing a regulated substance has a general duty to design and maintain a safe facility by taking such steps as are necessary to prevent accidental releases. 42 U.S.C. § 7412(r)(1).
31. To prevent accidental releases, EPA guidance indicates that owners and operators should (1) base design considerations upon applicable design codes, federal and state regulations, and recognized industry practices and (2) develop and implement standard operating procedures, preventive maintenance programs, personnel training programs, management of change practices, incident investigation

procedures, and self-auditing procedures. See U.S. EPA, *Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1)* (May 2000).

32. Respondent failed to design and maintain a safe facility by taking such steps as are necessary to prevent a release of a regulated substance, as evidenced by the conditions described below:
- a. The Facility's boiler was in the same machinery room as the anhydrous ammonia equipment, creating an ignition source if an ammonia leak were to occur. Industry codes and standards, such as those found at section 7.3.5 of ANSI/IIAR-9, provide that fuel-burning appliances like boilers should not be installed in ammonia machinery rooms.
 - b. The Facility did not have fire-rated doors on the ammonia machinery room. Industry codes and standards, such as those found in section 7.3.9.2 of ANSI/IIAR-9, require facilities to install fire-rated doors in ammonia machinery rooms.
 - c. Respondent failed to maintain documentation for certain ammonia equipment and system components on file at the Facility. Industry codes and standards, such as those found in chapter 4 of ANSI/IIAR-9, require facilities to maintain manufacturer documentation, data reports, and materials of construction information on file.
 - d. Respondent failed to maintain legible nameplates on ammonia equipment including the high-pressure receiver, accumulator, and southern chiller. Industry codes and standards, such as those found in section 5.14.5.1 of ANSI/IIAR-2, require facilities to maintain legible nameplates on certain ammonia refrigeration equipment.
 - e. Respondent failed to maintain U-1A forms and ASME stamps on equipment at their facility. Industry codes and standards, such as those found in chapter 5 of ANSI/IIAR-6 and chapter 12 of ANSI/IIAR-2, require facilities to maintain a copy of the U-1A forms and ASME stamps for certain equipment.

f. Respondent failed to maintain a five-year pressure-relief valve replacement schedule. Industry codes and standards, such as those found in section 3.3 of ANSI/IIAR-9 and section 13.1.1 of ANSI/IIAR-6, require that all pressure-relief valves (PRVs) be recertified or replaced each five years, and that no PRV shall exceed five years of service once installed in the pressure relief system.

33. By failing to meet its general duty to design and maintain a safe facility, Respondent violated section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

**COUNT III – INACCURATE REPORTING OF ANHYDROUS AMMONIA
INVENTORY (2019)**

34. Section 312 of the EPCRA requires the owner or operator of a facility to prepare and submit a Tier II form containing, among other data, an estimate (in ranges) of the maximum amount of the hazardous chemical(s) present at the facility during the preceding calendar year. 42 U.S.C. § 11022.
35. On or around February 10, 2020, Respondent submitted a Tier II form indicating a maximum inventory of 750 pounds of anhydrous ammonia for reporting year 2019.
36. During the offsite compliance monitoring investigation, the Respondent submitted to the EPA an engineering study commissioned by the Respondent indicating that approximately 3,936 pounds of anhydrous ammonia was estimated to reside in the Facility's ammonia refrigeration system during normal operating conditions.
37. By failing to accurately report the maximum amount of anhydrous ammonia at the Facility in 2019, Respondent violated section 312 of the EPCRA, 42 U.S.C. § 11022.

**COUNT IV – INACCURATE REPORTING OF ANHYDROUS AMMONIA
INVENTORY (2020)**

38. Section 312 of the EPCRA requires the owner or operator of a facility to prepare and submit a Tier II form containing, among other data, an estimate of the maximum amount of the hazardous chemical(s) present at the facility during the preceding calendar year. 42 U.S.C. § 11022.
39. On or around February 1, 2021, Respondent submitted a Tier II form indicating a maximum inventory of 750 pounds of anhydrous ammonia for reporting year 2020.

40. During the offsite compliance monitoring investigation, the Respondent submitted to the EPA an engineering study commissioned by the Respondent indicating that approximately 3,936 pounds of anhydrous ammonia was estimated to reside in the Facility's ammonia refrigeration system during normal operating conditions.
41. By failing to accurately report the maximum amount of anhydrous ammonia at the Facility in 2020, Respondent violated section 312 of the EPCRA, 42 U.S.C. § 11022.

VI. TERMS OF CONSENT AGREEMENT

42. For the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations in section II of this Agreement;
 - b. neither admits nor denies the EPA's factual allegations stated in section IV of this Agreement or the alleged violations of law stated in section V of this Agreement;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the conditions specified in this Agreement; and
 - e. waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.
43. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B) authorizes the EPA to assess an administrative civil penalty per day of violation for each violation of section 112(r) of the CAA, 42 U.S.C. § 7412(r).
44. Pursuant to section 113(e) of the CAA, 42 U.S.C. § 7413(e), the EPA is required to consider, in addition to such other factors as justice may require the size of Respondent's business, the economic impact of the penalty on the business, the Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by the Respondent of penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violations.
45. Section 325(c)(1) of the EPCRA, 42 U.S.C. § 11045(c)(1), as amended authorizes EPA to assess a civil penalty for each violation of section 312 of the EPCRA, 42 U.S.C. § 11022.

46. In determining the amount of the penalty to be assessed, the EPA is required to consider, in addition to such other factors as justice may require the nature, circumstances, extent and gravity of the violations alleged, any of Respondent's history of prior violations of the EPCRA, or lack thereof, ability to pay, economic benefit or savings (if any) resulting from the violation, and degree of culpability, and any voluntary disclosure, or lack thereof.
47. Based on the violations of law alleged in section V, above, and after consideration of the statutory factors in paragraphs 44 and 46, above, the EPA has determined a civil penalty of \$178,934 is appropriate to settle this matter.
48. Penalty Payment. Respondent agrees to:
 - a. pay a civil penalty in the amount of \$178,934 within 30 calendar days of the Effective Date of this Agreement;
 - b. pay the civil penalty using any method provided on the following websites:
<https://www.epa.gov/financial/makepayment> and
<https://www.epa.gov/financial/additional-instructions-making-payments-epa>;
 - c. identify the payment with the docket number that appears on the final order;
and
 - d. within 2 business days of payment, email proof of payment to EPA contacts ("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 payment has been made according to the EPA requirements, in the amount due, and identified with the docket number that appears on the Final Order).
49. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:
 - a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; "and a 10% quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);"

- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.
50. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
51. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service (IRS) annually, a completed IRS Form 1098-F (entitled "Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, the EPA requires, and Respondent agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
 - b. Respondent shall certify on its completed IRS Form W-9 that this form includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
 - c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at Chalifoux.Jessica@epa.gov, no later than 30 days after the due date under paragraph 48, above, for payment of the penalty, and EPA recommends encrypting IRS Form W-9 in email correspondence; and
 - d. If Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five days after Respondent's receipt of a TIN issued by the IRS.
52. Respondent certifies, by signing this Agreement, that it has removed all anhydrous ammonia from the refrigeration processes and ceased its operations at the Facility. Accordingly, there are no present CAA or EPCRA compliance concerns regarding anhydrous ammonia at the Facility.
53. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
54. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
55. The parties consent to service of a final order by e-mail at the following valid e-mail addresses: stanton.noah@epa.gov (for EPA) and tepalmer@michaelbest.com (for Respondent).

56. Except as qualified by paragraph 49, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

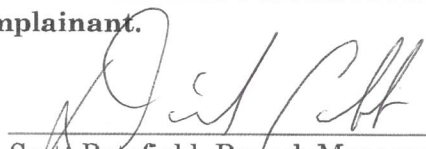
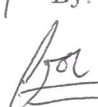
VII. EFFECT OF CONSENT AGREEMENT

57. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations alleged in section V of this Agreement, above.
58. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other delegatee.
59. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties as provided in section 113(b), 42 U.S.C. § 7413(b) and adjusted for inflation pursuant to 40 C.F.R. part 19. The EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
60. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
61. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
62. If and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.

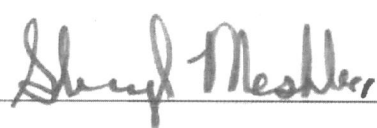
VIII. EFFECTIVE DATE

63. This Agreement shall become effective on the date the Final Order is filed by the hearing clerk.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.**

Date: 9/27/2024 By: 
 Scott Patefield, Branch Manager
Air and Toxics Enforcement Branch
Enforcement and Compliance Assurance Division

Respondent.

Date: Sept 26 24 By: 
Print: Sheryl Meshke
Title: Pres and CEO