

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 4

FILED

Aug 26, 2024

3:57 pm

U.S. EPA REGION 4
HEARING CLERK

In the Matter of:

Airgas USA, LLC,

Respondent.

Docket No. **CAA-04-2024-0306(b)**

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 Respondent's admission of violation or any adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 113(d) of the Act.
5. Respondent is **Airgas USA, LLC**, a limited liability company doing business in the Commonwealth of Kentucky. This proceeding pertains to Respondent's facility located at 4891 Pembroke Rd, Hopkinsville, Kentucky 42240 (Facility).

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. Section 112(r) of the Act 42 U.S.C. § 7412(r), addresses the prevention of release of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), and other extremely hazardous substances. The purpose of this section is to prevent the accidental release of extremely hazardous substances and to minimize the consequences of such releases. 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.
8. Pursuant to Sections 112(r)(3) and 112(r)(7) of the Act, 42 U.S.C. §§ 7412(r)(3) and 7412(r)(7), 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.
9. 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.
10. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

IV. FINDINGS OF FACTS

11. Respondent is the owner and/or operator of the Facility, which is a “stationary source” as that term is defined by Section 112(r)(2)(C) of the Act, 42 U.S.C. § 7412(r)(2)(C).
12. Respondent has registered an RMPlan with the EPA for its Facility and has developed an RMProgram accidental release prevention program for the Facility.
13. On March 21, 2023, the EPA issued to Respondent a Notice of Potential Violation and Opportunity to Confer (“NOPVOC”), 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 25, 2023, representatives of Respondent and the EPA held a meeting to discuss the NOPVOC.

14. At its Facility:

- a. Respondent operates an ammonia refrigeration plant.
- b. Respondent has on-site for use, 16,000 pounds of anhydrous ammonia.
- c. Respondent has one RMPProgram level 3 covered process, which stores or otherwise uses anhydrous ammonia in an amount exceeding its applicable threshold of 10,000 pounds.

15. On July 26, 2022, 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 and the implemented recognized and generally accepted good engineering practices (RAGAGEP) for its covered process at its Facility.

16. At the time of the inspection, EPA observed the following:

- a. The Respondent failed to document that equipment complies with RAGAGEP because:
 - i. The ammonia detectors were in the process of being replaced but were not functional at the time of the inspection and had not been functioning for weeks prior. As the detectors were not functioning, the machinery room alarm system was in a state of yellow fault alarm. Section 6.2.1.3 of American National Standards Institute/International Institute of Ammonia Refrigeration (ANSI/IIAR) 2 (1999) states "*A supervised alarm system shall be activated when the ammonia leak detector is activated or when the mechanical ventilation system fails so that corrective action can be taken.*" Also, section 6.2.3.1 of ANSI/IIAR-2 (1999) states "*The machinery room shall be provided with an independent mechanical ventilation system actuated automatically by vapor detector(s) and also operable manually.*"
 - ii. Anhydrous ammonia piping throughout the machinery room was not adequately labeled to indicate contents, direction of flow, physical state (i.e., liquid or vapor), or pressure level (i.e., high or low). Section 7.1.14 of ANSI/IIAR-2 (1999) states, "*All piping mains, headers and branches shall be identified as to the physical state of the refrigerant (that is, vapor, liquid, etc.), the relative pressure level of the refrigerant, and the direction of flow. The identification system used shall either be one established as a standard by a recognized code or standards or one described and documented by the facility owner.*"
 - iii. The ammonia machinery room is connected to the adjacent processing area via an interior door. The rooms are not air-tight from one another. Section 4.4.8 of ANSI/IIAR-2 (1999) states, "*Ammonia machinery rooms shall have tight-fitting doors which open outward and are provided with panic type hardware. They shall be adequate in number to ensure freedom for persons to escape in an emergency. Any doors communicating with the building shall be approved, self-closing fire doors. At least one exit door shall open directly to the outer air or through a vestibule type exit equipped with self-closing, tight-fitting doors.*"

- iv. The ammonia machinery room was not placarded with National Fire Protection Association (NFPA) 704 diamonds. In addition, the NFPA 704 diamond on the ammonia receiver tank outside the machinery room was worn and not clearly visible. Section 6.1.8.2.1 of NFPA 400 (2022) states, *“NFPA 704 Placard. Visible hazard identification sign in accordance with NFPA 704 shall be placed at the following locations, except where the [authority having jurisdiction (AHJ)] has received a hazardous materials management plan and a hazardous materials inventory statement in accordance with section 1.11 and 1.12 and has determined that omission of such signs is consistent with safety:*
 - 1. *On stationary aboveground tanks*
 - 2. *On stationary aboveground containers*
 - 3. *At entrance to locations where hazardous materials are stored, dispensed, used, or handled in quantities requiring a permit*
 - 4. *At other entrances and locations designated by the AHJ”*

- v. Anhydrous ammonia visual alarms outside the machinery room were not properly labeled or indicated otherwise as ammonia leak detection alarms. Section 8.11.2.1 of ANSI/ASHRAE-15 (2004) states, *“Each refrigerating machinery room shall contain a detector, located in an area where refrigerant from a leak will concentrate, that actuates an alarm and mechanical ventilation in accordance with 8.11.4 at a value not greater than the corresponding TLV-TWA (or toxicity measure consistent therewith). The alarm shall annunciate visual and audible alarms inside the refrigerating machinery room and outside each entrance to the refrigerating machinery room. The alarms required in this section shall be of the manual reset type with reset located inside the refrigerating machinery room. Alarms set at other levels (such as IDLH) and automatic reset alarms are permitted in addition to those required by this section. The meaning of each alarm shall be clearly marked by signage near the annunciators.”*

- vi. The emergency stop switches were not present outside of the machinery room door. Section 8.12(i) of ANSI/ASHRAE-15 (2004) states, *“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. Ventilation fans shall be on a separate electrical circuit and have a control switch located immediately outside the machinery room door.”*

- vii. The ammonia refrigeration system contained more than 55 lbs (25 kg) of refrigerant but emergency shutdown documentation was not posted outside each ammonia machinery room door. Section 11.7 of ANSI/ASHRAE-15 (2004) states, *“It shall be the duty of the person in charge of the premises on which a refrigerating system containing more than 55 lb (25 kg) of refrigerant is installed to provide a schematic drawing or panel giving directions for the operation of the system at a location that is convenient to the operators of the equipment. Emergency shutdown procedures, including precautions to be observed in case of a breakdown or leak, shall be displayed on a conspicuous card located as near as possible to the refrigerant compressor. These precautions shall address:*
 - a. *instructions for shutting down the system in case of emergency;*
 - b. *the name, address, and day and night telephone numbers for obtaining service;*

and
c. the names, addresses, and telephone numbers of all corporate, local, state, and federal agencies to be contacted as required in the event of a reportable incident. When a refrigerating machinery room is used, the emergency procedures shall be posted outside the room, immediately adjacent to each door."

- viii. An eye-wash and body shower unit was not located outside the machinery room. Section 6.3.1.4 of ANSI/IIAR-2 (1999) states, "*An eye-wash and body shower unit shall be located just outside the machinery room exit door and it is recommended that one be located centrally inside the machinery room.*"
- b. The Respondent had not generated management of change documentation for operating the ammonia process without the presence of ammonia detectors, nor for the installation of the replacement detectors being replaced at the time of the inspection.
- c. The Respondent's emergency contact information changed on June 13, 2022, when the new plant manager started but had not been updated to reflect this change until July 22, 2022, more than one month later.

V. ALLEGED VIOLATIONS

- 17. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
- 18. Based on EPA's compliance monitoring investigation, 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 document that equipment complies with RAGAGEP, as required by 40 C.F.R. § 68.65(d)(2);
 - b. Failed to establish and implement written procedures to manage changes (except for "replacement in kind") to process chemicals, technology, equipment, and procedures; and changes to stationary sources that affect a covered process, as required by 40 C.F.R. § 68.75(a); and failed to assure that certain considerations are addressed prior to any changes as required by 40 C.F.R. § 68.75(b); and
 - c. Failed to update its emergency contact information within one month of its change, as required by 40 C.F.R. § 68.195(b).

VI. STIPULATIONS

- 19. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
- 20. 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.

21. 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 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 this CAFO.

22. 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 and the parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

23. Respondent agrees to pay a civil penalty in the amount of **\$8,025.40** ("Assessed Penalty") within thirty (30) calendar days after the Effective Date of this CAFO.

24. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

25. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, Docket No. **CAA-04-2024-0306(b)**, and

- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
r4_regional_hearing_clerk@epa.gov

and

Justin Stark
North Air Enforcement Section
Air Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4
Stark.Justin@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or 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 appropriate docket number and Respondent’s name.

26. Interest, Charges, and Penalties on Late Payments. Pursuant to 42 U.S.C. § 7413(d)(5), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Effective Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.
- b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of handling collection.

- c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.
27. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 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 government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 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, per 40 C.F.R. § 13.17.
 - d. Request that the Attorney General bring a civil action in the appropriate district court to enforce the Final Order and recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 42 U.S.C. § 7413(d)(5). In any such action, the validity, amount, and appropriateness of the Assessed Penalty and Final Order shall not be subject to review.
28. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
29. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

- 30. In response to the alleged violations of CAA Section 112(r) and in settlement of this matter, although not required by CAA Section 112(r) or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project (SEP).
- 31. Respondent shall complete an Emergency Planning and Preparedness SEP consisting of the purchase and donation of emergency response equipment to the Hopkinsville Fire Department. The SEP is more specifically described in Appendix A and incorporated herein by reference.

32. Respondent shall spend no less than \$33,518.25 on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. If Respondent's implementation of the SEP as described in Appendix A does not expend the full amount set forth in this paragraph, and if EPA determines that the amount remaining reasonably could be applied toward the purchase of additional emergency response equipment, Respondent will purchase the additional equipment and donate it to the Hopkinsville Fire Department.
33. Respondent shall complete the SEP by the deadline(s) in Appendix A.
34. Identification of SEP Recipient:
- a. Respondent has selected Hopkinsville Fire Department to receive SEP donations of emergency response equipment.
 - b. The EPA had no role in the selection of the SEP Recipient or specific equipment identified in the SEP, nor shall this CAFO be construed to constitute EPA approval or endorsement of the SEP Recipient or specific equipment identified in this CAFO.
35. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). The SEP advances at least one of the objectives of the CAA Section 112(r), Prevention of Accidental Releases, and the implementing regulations contained in 40 C.F.R. Part 68 Chemical Accident Prevention Provisions, by helping to reduce risks to the public associated with potential chemical accidents by better equipping the Hopkinsville Fire Department to respond to such accidents. The SEP is not inconsistent with any provision of either CAA Section 112(r) or 40 C.F.R. Part 68. The SEP relates to the alleged violations and is designed to reduce the adverse impact to the public health and environment to which the alleged violations contribute, specifically by reducing risks from potential chemical accidents by better equipping the SEP Recipient to respond to any chemical accident.
36. Respondent certifies the truth and accuracy of each of the following:
- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is at least \$33,518.25;
 - b. That Respondent will not include administrative costs, or costs of employee oversight of the implementation of the SEP, in calculating the amount it spent to implement the SEP;
 - c. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation 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;
 - d. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
 - e. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;

- f. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- g. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
- h. 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
- i. That Respondent has inquired of the SEP Recipient whether it 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 the Recipient that it is not a party to such a transaction.

37. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP from the date of its execution of this CAFO 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 alleged violations of the federal laws."

38. SEP Completion Report.

- a. Respondent shall submit a SEP Completion Report to EPA no later than 30 days after donation of equipment to the SEP Recipient. The SEP Completion Report shall contain the following information, with supporting documentation:
 - i. A detailed description of the SEP as implemented, including dates;
 - ii. A description of any problems encountered in implementing the SEP and the solutions thereto;
 - iii. Itemized costs;
 - iv. Certification, as set forth in the next paragraph, that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
 - v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- b. Respondent agrees that failure to submit a SEP Completion Report that meets the requirements of this paragraph, shall be a violation of this CAFO and Respondent shall become liable for stipulated penalties as set forth herein.
- c. Respondent shall submit all notices and reports required by this CAFO to Justin Stark at Stark.Justin@epa.gov.
- d. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

39. Respondent shall submit the following certification in the SEP Completion Report, signed by a responsible corporate official:

I certify that I have examined and am familiar with the information in the SEP Completion Report, including all attachments. Based on my direct knowledge or personal inquiry of those individuals with direct knowledge or primary responsibility for implementing the SEP, I certify that the SEP has been fully implemented pursuant to the provisions of this CAFO and that the information in the SEP Completion Report, including all attachments, to the best of my knowledge and belief, is true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information including the possibility of fines or imprisonment.

40. After receipt of the SEP Completion Report, EPA will notify the Respondent, in writing, regarding: (a) any deficiencies in the SEP Completion Report itself, along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies, (b) indicate that EPA concludes that the project has been completed satisfactorily, or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties as set forth herein.

41. Stipulated Penalties

- a. Except as provided in subparagraphs (b) and (c) below, for each day the Respondent fails to meet a SEP requirement by the deadline(s) in Appendix A, the following stipulated penalties shall apply:
 - i. \$500 per day for days 1-15;
 - ii. \$1,000 per day for days 16 – 30; and
 - iii. \$2,500 per day for 31st day and beyond.
- b. If Respondent fails to submit a SEP Completion Report meeting the requirements of Paragraph 38, Respondent shall pay a stipulated penalty in the amount of \$500 for each day after the report was originally due, until a SEP Completion Report meeting the requirements of Paragraph 38, is submitted.
- c. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP, as set forth herein, Respondent shall pay a stipulated penalty to the United States in the amount of \$36,870. "Satisfactory completion" of the SEP is defined as Respondent spending no less than \$33,518.25 and donating equipment described in Appendix A to SEP Recipient. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.
- d. Stipulated penalties in subparagraphs (a) and (b) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

42. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with

the provisions of Paragraph 24 herein. The Respondent shall send proof of payment in accordance with Paragraph 25 herein.

43. The EPA may, in its unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

IX. EFFECT OF CAFO

44. 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.
45. Full payment of the civil penalty, as provided in Section VII (Terms of Payment) and completion of the SEP, as provided in Section VIII (Supplemental Environmental Project), shall satisfy the requirements of this CAFO; but, 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).
46. 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.
47. 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.
48. 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.
49. 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, except that the Regional Judicial Officer need not approve written agreements between the parties modifying the SEP schedule described in Appendix A. The Director of Enforcement and Compliance Assurance Division shall have the authority to extend the deadline in Appendix A for good cause.
50. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.
51. 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.

52. 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.
53. 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.
54. 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.
55. 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.
56. 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.
57. 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.
58. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

X. EFFECTIVE DATE

59. 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.

Remainder of Page Intentionally Left Blank

Complainant and Respondent will Each Sign on Separate Pages

The foregoing Consent Agreement In the matter of **Airgas USA, LLC, Docket No. CAA-04-2024-0306(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



8/15/2024

Signature

Date

Printed Name: _____ Thomas R. Stringer _____

Title: _____ Vice President _____

Address: _____ 259 N. Radnor-Chester Road, Radnor, PA 19087 _____

The foregoing Consent Agreement In the matter of **Airgas USA, LLC, Docket No. CAA-04-2024-0306(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

for Keriema S. Newman
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Airgas USA, LLC,

Respondent.

Docket No. **CAA-04-2024-0306(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.

Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **Airgas USA, LLC**, **Docket No. CAA-04-2024-0306(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Timothy A. Wilkins, Managing Partner
Bracewell LLP
Timothy.Wilkins@bracewell.com
111 Congress Avenue, Suite 2300
Austin, Texas 78701
(512) 542-2134

To EPA: Justin Stark, Case Development Officer
Stark.Justin@epa.gov
(404) 562-8305

Ellen Rouch, Attorney-Advisor
Rouch.Ellen@epa.gov
(404) 562-9575

Shannon L. Richardson, Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov

Appendix A

Supplemental Environmental Project for Airgas USA, LLC

The Respondent will purchase and donate the following equipment to the SEP Recipient no later than six months from the Effective Date of this CAFO:

1. 2025 Polaris Ranger Crew XP 1000 Premium Utility Task Vehicle, (1)
2. 77x16 Tandem Axle Trailer, (1)
3. SENSIT Gold G2 Multi-Gas Detector, LEL, CO, (1)
4. MSA ALTAIR 4XR Multigas Detector [LEL, O2, CO, H2S], (2)