

Sylvia Quast
Regional Counsel

David H. Kim
Assistant Regional Counsel (ORC-3)
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3882

****FILED****
16 JULY 2021
U.S. EPA - REGION IX

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

In the Matter of:	)	Docket No. CAA (112r)-09-2021-0048
	)	
Dreyer's Grand Ice Cream, Inc.	)	
	)	CONSENT AGREEMENT AND FINAL
	)	ORDER PURSUANT TO
	)	40 C.F.R. §§ 22.13 AND 22.18
Respondent.	)	
_____	)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA"), and Dreyer's Grand Ice Cream, Inc. ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

- I. This is a civil administrative action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(3)(A) and (d), and Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), for the assessment of a civil administrative penalty against Respondent for violations of Section 112(r) of the CAA and Section 312 of EPCRA.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a company incorporated in Delaware whose principal offices are located at 5929 College Avenue in Oakland, California.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

CAA § 112(r)

4. Pursuant to Section 112(r) of the CAA, EPA established a “threshold quantity” (“TQ”) for each “regulated substance,” above which a facility shall be subject to the requirements of Section 112(r) of the CAA. For substances designated as “regulated toxic substances” or “regulated flammable substances,” the TQs are specified at 40 C.F.R. § 68.130.
5. Ammonia (anhydrous) is a “regulated toxic substance” listed under CAA § 112(r)(3) with a TQ of 10,000 pounds. *See* 40 C.F.R. § 68.130, Table 3.
6. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.12(a), the owner or operator of a covered stationary source must submit a Risk Management Plan, as provided in 40 C.F.R. §§ 68.150 - 68.185.
7. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.10(i), the owner or operator of a covered stationary source with a process in an NAICS code listed in 40 C.F.R. § 68.10(i)(1) or subject to the Occupational Health and Safety Act (“OSHA”) process safety management standard set forth in 29 C.F.R. § 1910.119 is subject to the “Program 3” requirements set forth in 40 C.F.R. § 68.12(d).
8. Under Section 112(r)(7) of the CAA and 40 C.F.R. § 68.12(d), facilities subject to the Program 3 requirements are required to implement the prevention requirements set forth

in 40 C.F.R. §§ 68.65 through 68.87 and the emergency response program requirements set forth in 40 C.F.R. §§ 68.90 through 68.96.

9. Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3), define “stationary source” as “any building, structure, facility, or installation which emits or may emit any air pollutant.”
10. Section 302(g) of the CAA, 42 U.S.C. § 7602(g), defines “air pollutant” as “any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air.”
11. The Administrator of EPA may assess against any person who violates any provision of CAA § 112(r) a civil penalty of up to \$48,762 per day for each offense that occurred after November 2, 2015. *See* Section 113(d)(1) of CAA, 42 U.S.C. § 7413(d)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 85 Fed. Reg. 83818 (December 23, 2020).
12. 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. *See* 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

EPCRA § 312

13. Section 312 of EPCRA, 42 U.S.C. § 11022, requires the owner or operator of a facility which is required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under OSHA, 29 U.S.C. §§ 651 *et seq.*, to submit an annual emergency and hazardous chemical inventory form (“Inventory Form”) containing

information on hazardous chemicals present at the facility during the preceding calendar year above threshold planning quantities established in 40 C.F.R. § 370.20(b). This Inventory Form must be submitted by March 1 of each year to the State Emergency Response Commission, the Local Emergency Planning Committee, and the fire department with jurisdiction over the facility. 40 C.F.R. § 370.25.

14. Section 312 of EPCRA and its implementing regulations at 40 C.F.R. § 370.42 requires facility operators to report the maximum and average daily amount of the hazardous chemical present at the facility in its Inventory Form for each reporting year.
15. Ammonia is an "extremely hazardous chemical" as defined in Sections 311(e) and 312(c) of EPCRA, 42 U.S.C. § § 11021(e) and 11022(c), with a threshold planning quantity ("TPQ") of 500 pounds. 40 C.F.R. Part 355, App. A & B.
16. The Administrator of EPA may assess against any person who violates any provision of EPCRA § 312 a civil penalty of up to \$59,017 for each offense that occurred after November 2, 2015. *See* Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 85 Fed. Reg. 83818 (December 23, 2020).

C. GENERAL ALLEGATIONS

17. At all times relevant to this CAFO, Respondent was a corporation and therefore a "person" as defined in Section 302(c) of CAA, 42 U.S.C. § 7602(c), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
18. At all times relevant to this CAFO, Respondent operated a facility (the "Facility") located at 7301 District Boulevard in Bakersfield, California, to manufacture, store and distribute ice cream and other food products.

19. The real property and improvements thereto located at the Facility are a “stationary source” as defined by Sections 111(a)(3) and 112(a)(3) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7412(a)(3).
20. At all times relevant to this CAFO, Respondent produced, used or stored more than 10,000 pounds of ammonia (anhydrous) at the Facility and was subject to the requirements of CAA § 112(r)(7).
21. At all times relevant to this CAFO, Respondent was subject to Program 3 requirements because it was subject to the OSHA process safety management standard set forth in 29 C.F.R. § 1910.119.
22. On September 10 and 11, 2019, EPA performed an inspection of the Facility pursuant to Section 112(r) of CAA, 42 U.S.C. § 7412(r), Sections 304–12 of EPCRA, 42 U.S.C. §§ 11004–12, and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9603(a) (the “Inspection”). Based upon the information gathered during the Inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of the CAA and EPCRA.

D. ALLEGED VIOLATIONS

Count 1

(Failure to Comply with Process Safety Requirements)

23. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
24. 40 C.F.R. § 68.65(d)(2) requires owners or operators to document that process equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).

25. Pursuant to 40 C.F.R. § 68.65(d)(3), if any process equipment was designed and constructed in accordance with codes, standards, or practices no longer in general use, then the owner or operator must determine and document that such equipment is designed, maintained, inspected, tested, and operating in a safe manner.
26. EPA determined that Respondent did not document the design, maintenance, inspection, testing and operation of secondary entry doors to Ammonia Machinery Rooms ("AMR") 1 and 2 in a manner consistent with RAGAGEP.
27. EPA determined that Respondent did not document the design, maintenance, inspection, testing and operation of audible and visual ammonia leak detection alarms located at the entrance to AMRs 1 and 2 in a manner consistent with RAGAGEP.
28. EPA determined that Respondent did not document the design, maintenance, inspection, testing and operation of primary and secondary exit doors from AMR 1 in a manner consistent with RAGAGEP.
29. EPA determined that Respondent did not document the design, maintenance, inspection, testing and operation of an eyewash station and safety shower outside the primary entrance door to AMR 1 in a manner consistent with RAGAGEP.
30. EPA determined that Respondent did not document the design, maintenance, inspection, testing and operation of ammonia piping associated with the glycol chillers in AMR 1, the roof, and spiral freezers in a manner consistent with RAGAGEP.
31. EPA determined that Respondent did not document the design, maintenance, inspection, testing and operation of piping supports below the glycol chillers in AMR 1 in a manner consistent with RAGAGEP.

32. EPA determined that Respondent did not document the design, maintenance, inspection, testing and operation of ammonia detectors near the ceiling of AMRs 1 and 2 in a manner consistent with RAGAGEP.
33. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.65(d)(2) and (3) by failing to document the design, maintenance, inspection, testing and operation of process equipment in a manner consistent with RAGAGEP.

Count 2

(Failure to Comply with Process Hazard Analysis Requirements)

34. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
35. Under 40 C.F.R. § 68.67, the owner or operator must perform a Process Hazard Analysis (“PHA”) on processes covered by the CAA § 112(r) requirements to identify, evaluate, and control the hazards involved in the process.
36. Under 40 C.F.R. § 68.67(e), the owner or operator must establish a system to promptly address the PHA findings and recommendations and assure that the recommendations are resolved in a timely manner and that the resolution is documented.
37. Respondent failed to address two “Prompt Attention” recommendations from its April 2014 PHA by the time of the Inspection.
38. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.67(e), by not promptly addressing the PHA findings and recommendations and assuring that the recommendations are resolved in a timely manner.

Count 3

(Failure to Correct Deficient Equipment)

39. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
40. Under 40 C.F.R. § 68.73, the owner or operator must perform inspections and tests on process equipment and correct deficiencies in equipment that are outside acceptable limits before further use, or in a safe and timely manner when necessary means are taken to assure safe operation.
41. During the Inspection, EPA identified several pieces of equipment with deficiencies that were outside acceptable limits (collectively, "Deficient Equipment").
42. Respondent had not corrected the issues with the Deficient Equipment before putting them to further use and did not take necessary means to assure the Deficient Equipment's safe operation.
43. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.73(e), by failing to perform inspections and tests on process equipment and correct deficiencies in equipment that are outside acceptable limits before further use, or in a safe and timely manner when necessary means are taken to assure safe operation.

Count 4

(Failure to Comply with Management of Change ("MOC") Requirements)

44. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
45. Under 40 C.F.R. § 68.75(a), the owners or operator must establish and implement written procedures to manage changes to process chemicals, technology, equipment, and

procedures, and changes to stationary sources that affect a covered process.

46. During the Inspection, EPA determined that Respondent failed to implement its own written MOC procedure for approving extensions of deadlines.
47. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.75(a), by failing to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures, and changes to stationary sources that affect a covered process.

Count 5

(Failure to Comply with Compliance Audit Requirements)

48. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
49. Under 40 C.F.R. § 68.79, the owner or operator must certify that they have evaluated compliance with the regulatory requirements for each covered process at least every three years to verify that the process procedures and practices are adequate and are being followed.
50. Under 40 C.F.R. § 68.79(d), the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.
51. EPA determined that Respondent did not correct deficiencies identified during its December 2016 compliance audit until after the Inspection.
52. Accordingly, EPA alleges that Respondent violated CAA § 112(r) and 40 C.F.R. § 68.79(d), in that it did not promptly determine and document an appropriate response to

each of the findings of the compliance audit and document that deficiencies had been corrected.

Count 6

(Failure to Submit Correct Tier II Reports)

53. Paragraphs 1 through 22 above are incorporated herein by this reference as if they were set forth here in their entirety.
54. The Facility is required to prepare or have available an MSDS for a hazardous chemical under OSHA, and thus is subject to Section 312 reporting requirements of EPCRA for hazardous chemicals present at the Facility during the preceding calendar year above threshold levels established in 40 C.F.R. § 370.20(b).
55. For reporting years 2016 through 2018, the Facility managed and/or stored anhydrous ammonia in quantities exceeding the applicable TPQ.
56. For reporting years 2016 through 2018, Respondent failed to report the correct maximum and average daily amount of the hazardous chemical anhydrous ammonia present at the Facility in its Inventory Forms.
57. Accordingly, EPA alleges that Respondent violated EPCRA § 312 and 40 C.F.R. § 370.42 by failing to report the maximum and average daily amount of anhydrous ammonia at the Facility in 2016 through 2018.

E. RESPONDENT'S ADMISSIONS

58. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO

and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives, for the purpose of this proceeding in Docket Nos. CAA-09-2021-0048, any right to contest the allegations contained in Section I.D of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

F ADMINISTRATIVE PENALTY

59. Respondent agrees to the assessment of a civil penalty of THREE HUNDRED ONE THOUSAND, AND SIXTY-SIX DOLLARS (\$301,066) for the claims set forth herein as final settlement of the civil claims against Respondent as alleged in Section I.D of the CAFO.
60. Respondent shall pay the assessed penalty according to the terms of this CAFO within thirty (30) days of the Effective Date of the CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. Regular or Certified Mail:

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

b. Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York

City with the following information:

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

Field Tag 4200 of the Fedwire message should read "D 68010727

Environmental Protection Agency."

c. Overnight Mail:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Craig Steffen (513) 487-2091

d. ACH (also known as REX or remittance express):

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, MD 20737
Remittance Express (REX): 1-866-234-5681

c. Online Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sfo1.1" in the search field
Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send by e-mail a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Armsey.steven@epa.gov

Cyntia Steiner
Enforcement and Compliance Assurance Division (ENF-4-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Steiner.cyntia@epa.gov

61. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
62. In the event Respondent fails to meet any requirement set forth in this CAFO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CAFO in a manner acceptable to EPA and within the specified time schedules in and approved under this CAFO.
63. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section E of this CAFO.

64. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CAFO or with the CAA or EPCRA and the implementing regulations.
65. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CAFO.

G. CERTIFICATION OF COMPLIANCE

66. In executing this CAFO, Respondent certifies that, to its knowledge, it is currently in compliance with any CAA § 112(r) and EPCRA requirements that may apply to its ongoing operations.

H. RETENTION OF RIGHTS

67. In accordance with 40 C.F.R. § 22.18(c), Respondents' full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.D of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.D of the CAFO.

68. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

I. MISCELLANEOUS

69. This CAFO may be amended or modified only by written agreement executed by both EPA and Respondent.
70. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.
71. Each party to this action shall bear its own costs and attorneys' fees.
72. Respondent consents to entry of this CAFO without further notice.

J. EFFECTIVE DATE

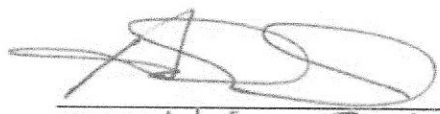
73. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed with the Regional Hearing Clerk.

K. BINDING EFFECT

74. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
75. 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.

FOR RESPONDENT, DREYER'S GRAND ICE CREAM, INC.

6/10-2021
DATE


NAME: Heidi Zuber
TITLE: CLU/CHRO

FOR COMPLAINANT, EPA REGION IX:

DATE

**AMY MILLER-
BOWEN**

Digitally signed by AMY
MILLER-BOWEN
Date: 2021.06.25
12:37:00 -07'00'

Amy C. Miller-Bowen
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

Complainant and Respondent, Dreyer's Grand Ice Cream, Inc., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. CAA (112r)-09-2021-0048) be entered, and that Respondent shall pay a civil administrative penalty in the amount of THREE HUNDRED ONE THOUSAND AND SIXTY-SIX DOLLARS (\$301,066), and comply with the terms and conditions set forth in the Consent Agreement.

STEVEN JAWGIEL

Digitally signed by STEVEN
JAWGIEL

Date: 2021.07.15 08:13:55 -07'00'

DATE

Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Dreyer's Grand Ice Cream, Inc.* [CAA(112r)-09-2021-0048], signed by the Regional Judicial Officer, has been filed and served on Respondent and Complainant as indicated below:

VIA E-MAIL:

Respondent:

Heidi Zuber
Chief Legal Officer/Chief HR Officer
Dreyer's Grand Ice Cream, Inc.
heidi.zuber@us.nestle.com

John F. Cermak, Jr.
Partner
Cermak & Inglin LLP
jcermak@cermaklegal.com

Complainant:

David Kim
Office of Regional Counsel
Environmental Protection Agency, Region IX
Kim.David@epa.gov

Armsey,
Steven

Digitally signed by
Armsey, Steven
Date: 2021.07.16

14:55:25 -07'00'

Steven Armsey
Regional Hearing Clerk
Environmental Protection Agency, Region IX