

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:)
)
Save-A-Lot, Ltd.)
)
)
Respondent.)
_____)

**Docket No.
CAA-04-2018-8011(b)**

2018 MAY -8 PM 3:02
HEARINGS CLERK
USE ONLY FOR REGIONAL OFFICE OF THE ADMINISTRATOR

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region 4 (the "EPA"). The Director of the Air, Pesticides and Toxics Management Division, EPA Region 4, is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.
3. Respondent is Save-A-Lot, Ltd., a company doing business in the Commonwealth of Kentucky. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of any issue of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

B. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22. The alleged violations in this Consent Agreement are of Section 112(r)(7).
6. 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 initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

7. On August 23, 2017, the EPA issued to Respondent a Notice of Potential Violation (“NOPV”), providing notice that the EPA found that Respondent potentially committed the alleged violations described in Section E of this Agreement and providing Respondent an opportunity to confer with the EPA. On October 10, 2017 and October 26, 2017, representatives of Respondent and the EPA discussed the August 23, 2017 NOPV.

8. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes settlement between Complainant and Respondent. 40 C.F.R. § 22.4(b) and 22.18(b).

9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

10. Section 112(r) of the Act, 42 U.S.C. § 7412(r), addresses the prevention of releases of substances listed pursuant to Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3). 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.

11. 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.

12. 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 register a single Risk Management Plan (RMPlan) with the EPA.

D. FACTUAL ALLEGATIONS

13. Respondent operates a “stationary source” as that term is defined by Section 302(z) of the Act, 42 U.S.C. § 7602(z). The Respondent’s stationary source is located at 4000 Corporate Office Drive, Winchester, Kentucky (stationary source).

14. Respondent has submitted and registered an RMPlan to the EPA for its stationary source and has developed an RMProgram accidental release prevention program for the stationary source.

15. For the purpose of this Agreement:

- (a) At its stationary source, the Respondent operates a cold food storage facility.
- (b) At its stationary source, the Respondent has on-site for use, 14,000 pounds of ammonia for cold food storage purposes.
- (c) At its stationary source, the Respondent has one RMProgram level 3 covered process, which stores or otherwise uses ammonia in an amount exceeding its applicable threshold of 10,000 pounds.

16. For the purpose of this Agreement, the Complainant:

(a) On March 29, 2017, the EPA conducted an onsite inspection of the RMProgram related records and equipment for the purpose of assessing the Respondent's compliance with the RMProgram requirements and the implemented recognized and generally accepted good engineering practices (RAGAGEP) for its covered process at its stationary source.

(b) A review of the piping and instrument diagram, dated February 5, 2016, for the Respondent's engine room identified a valve labeled HV12/VR2 on the piping and instrument diagram that was not located during the walk-through inspection.

(c) There was no National Fire Protection Association (NFPA) placards indicating the degrees of hazards in the machinery room. The American National Standards Institute/ International Institute of Ammonia Refrigeration 2-2014 American National Standard for Safe Design of Closed-Circuit Ammonia Refrigeration Systems (ANSI/IIAR 2-2014), Section 6.15.1 indicates "Buildings and facilities with refrigeration systems shall be provided with placards [in] accordance with NFPA 704 and the Mechanical Code."

(d) There was no restricted access signage on the engine room door. ANSI/IIAR 2-2014, Section 6.15.3., indicates "Each machinery room entrance door shall be marked with a permanent sign to indicate that only authorized personnel are permitted to enter the room."

(e) No eyewash stations and showers were present outside the engine room. ANSI/IIAR 2-2014, Section 6.7.1., requires each machinery room to "have access to a minimum of two eyewash/safety shower units, one located inside the machinery room and one located outside of the machinery room, each meeting the requirements in Section 6.7.3."

(f) Recommendation item 16.13 "Verify new stairs are secured" was prioritized as a task to be completed within 6 months of the completion date of the September 21, 2016 PHA. There was no date of completion nor resolution for this recommendation.

(g) Multiple recommendations from the April 10, 2014 PHA were incomplete and there were no assigned completion dates. Some of the boxes in the "Date Completed" column contained check marks but there were no dates of completion. These findings include, but are not limited to, the following:

- Item 9.23 Verify with sensor manufacturer that the ammonia sensors are failsafe.
- Item 12.16 CIMCO to review emergency stop station with trained operator and other Save-A-Lot personnel that interface with the outside responders.
- Item 16.19 Review accessibility requirement door eye wash and shower outside the equipment room.

(h) During the inspection, EPA requested annual certifications for their operating procedures for 2016, 2015, 2014 and 2013, but the Respondent could not provide the information. The Respondent indicated the March 28, 2017 certification was the first certification performed at the facility. An electronic notification for the inspection was sent March 22, 2017.

(i) The Respondent could not provide information that an ammonia system operator had initial training in an overview of the process and/or any operating procedure specific training for the process.

(j) The Respondent could not provide information that they trained each employee involved in maintaining the on-going integrity of process equipment.

(k) Recommendations for the Mechanical Integrity Audit were not completed: the columns for assignment, date assigned, proposed due date and date completed were all left blank.

(l) The Respondent could not provide documentation that the findings of the July 31, 2013 compliance audit, were appropriately responded to and that the deficiencies were corrected.

(m) The facility did not promptly determine and document an appropriate response to several findings in the compliance audit dated September 20, 2016. These findings include, but are not limited to, the Respondent's need to:

- Obtain the correct U1A forms for pressure vessels;
- Include bloc flow with Process Safety Information;
- Keep a copy of the standard operating procedures in the engine room; and
- Update RMP contact information

(n) The Respondent could not provide information that they obtained and evaluated information regarding their contractor's safety performance and programs before selecting them to work on the process prior to the date of the inspection notice on March 22, 2017. The contractor qualification form was signed March 24, 2017.

(o) The Respondent could not provide information that they informed contractors working on or near the process of the known potential fire, explosion or toxic release hazards prior to the date of the inspection notice on March 22, 2017. The contractor site evaluation form was signed March 28, 2017.

(p) The Respondent could not provide information indicating that they explained the applicable provisions of their emergency response to contractors working on or near the process.

E. ALLEGED VIOLATIONS OF LAW

17. Based on EPA's compliance monitoring investigation, the EPA alleges that the Respondent violated the codified rules governing the Act's Chemical Accident Prevention Provisions, because Respondent did not adequately implement provisions of 40 C.F.R. Part 68 when it:

Failed to compile written process safety information for the equipment in the process including a piping and instrument diagram, as required by 40 C.F.R. § 68.65(d)(1)(ii);

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);

Failed to establish a system to promptly address the team's findings and recommendations of the Process Hazard Analysis (PHA); assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; and communicate the actions to operating, maintenance and other employees whose work assignments are in the

process and who may be affected by the recommendations or actions, as required by 40 C.F.R. § 68.67(e);

Failed to review operating procedures as often as necessary and to annually certify that the operating procedures are current and accurate, as required by 40 C.F.R. § 68.69(c);

Failed to initially train each employee in an overview of the process and in the operating procedures before being involved in operating a newly assigned process, as required by 40 C.F.R. § 68.71(a)(1);

Failed to train each employee involved in maintaining the ongoing integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner, as required by 40 C.F.R. § 68.73(c);

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);

Failed to promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected, as required by 40 C.F.R. § 68.79(d);

Failed to obtain and evaluate information regarding contract owner or operators' safety performance and programs when selecting a contractor, as required by 40 C.F.R. § 68.87(b)(1);

Failed to inform the contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process, as required by 40 C.F.R. § 68.87(b)(2); and

Failed to explain to the contractor owner or operator the applicable provisions of the facility's emergency response, as required by 40 C.F.R. § 68.87(b)(3).

F. TERMS OF CONSENT AGREEMENT

18. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits that the EPA has jurisdiction over the subject matter alleged in this Agreement;
- (b) neither admits nor denies the factual allegations stated above;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this Agreement;
- (f) waives any rights to contest the alleged violations of law set forth in Section E of this Consent Agreement; and

(g) waives its rights to appeal the Order accompanying this Agreement.

19. For the purpose of this Agreement:

- (a) agrees that this Agreement states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for the Eastern District of Kentucky;
- (e) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and
- (f) certifies that as of its execution of this Agreement, it is in compliance with all relevant requirements of 40 C.F.R. Part 68.

20. Penalty Payment. Respondent agrees to:

- (a) pay the civil penalty of **FORTY-THREE THOUSAND ONE HUNDRED EIGHTY-FOUR DOLLARS (\$43,184)** ("EPA Penalty") within 30 calendar days of the Effective Date of this Agreement;
- (b) pay the EPA Penalty by forwarding a cashier's or certified check payable to the "Treasurer, United States of America," or by electronic transfer to one of the following addresses:

For payment sent via electronic transfer

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, New York 10045

Beneficiary: "U.S. Environmental Protection Agency";

For payment sent via standard delivery

U.S. Environmental Protection Agency

Cincinnati Finance Center Box 979077

St. Louis, MO 63197-9000; or

For payment sent for signed receipt confirmation (FedEx, DSL, UPS, USPS Certified)
U.S. Environmental Protection Agency
Cincinnati Finance Center Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(Delivery Location Phone Number: 314-425-1819).

The check shall reference on its face the name and the Docket Number of the CAFO. Within 24 hours of payment of the EPA Penalty, send a separate copy of the check or confirmation of electronic transfer, and a written statement that payment has been made in accordance with this Agreement, to the following persons at the following addresses:

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

Jordan Noles
Chemical Management and Emergency
Planning Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

21. 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 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 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 Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

22. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

23. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

24. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

25. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission 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.

26. Except as qualified by Paragraph 21, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

G. EFFECT OF CONSENT AGREEMENT AND ATTCHED FINAL ORDER

27. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

28. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

29. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

30. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon written agreement of both parties, and approval of the Regional Judicial Officer.

31. Any violation of this Order may result in a civil judicial action for an injunction or civil penalties as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and pursuant to 40 C.F.R. Part 19, as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

32. 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 or statutes, 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.

33. 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.

34. The EPA reserves the right to revoke this Agreement and settlement penalty if and to the extent that 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, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

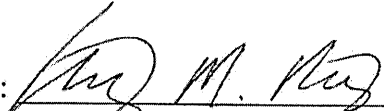
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H. EFFECTIVE DATE

35. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk. The foregoing Consent Agreement in the Matter of Save-A-Lot, Ltd. Docket No. CAA-04-2018-8011(b), is Hereby Stipulated, Agreed, and Approved for Entry.

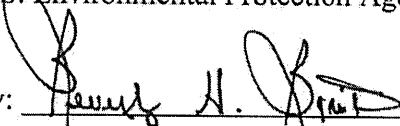
FOR RESPONDENT:

Save-A-Lot, Ltd.

By:  Date: 4-2-18
Name: Anthony M. Botos (Typed or Printed)
Title: VP of Distribution (Typed or Printed)

FOR COMPLAINANT:

U.S. Environmental Protection Agency

By:  Date: 4/20/18
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)

Save-A-Lot, Ltd.)

Respondent.)
_____)

Docket No.
CAA-04-2018-8011(b)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective on the date that the Consent Agreement and Final Order are filed by the Regional Hearing Clerk.

SO ORDERED this 17th day of May, 2018.

Tanya Floyd

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of Custom Foods of America, Incorporated, CAA-04-2018-8009(b), on the parties listed below in the manner indicated:

Robert W. Bookman
U. S. EPA, Region 4
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Lucia Mendez
U. S. EPA, Region 4
Office of Regional Counsel
61 Forsyth Street
Atlanta, GA 30303

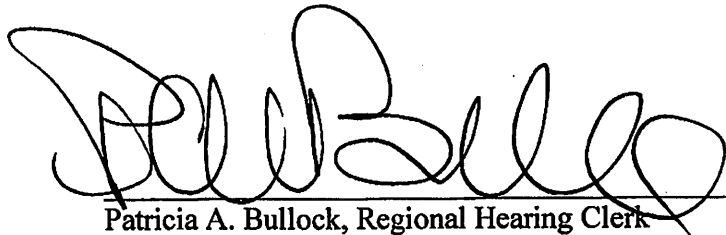
(Via EPA's internal mail)

Drew Goddard
Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201

(Via Certified Mail -
Return Receipt Requested)

Date:

5-8-18



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511