

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2022-0180
)	
SMITH FROZEN FOODS, INC.,)	CONSENT AGREEMENT
)	
Weston, Oregon,)	
)	
Respondent.)	
)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d).

1.2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Smith Frozen Foods, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, 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 action.

2.4. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its implementing regulations at 40 C.F.R. Part 68, require the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity (TQ) in a single process to develop and implement a risk management plan (RMP) and program to detect and prevent or minimize accidental releases of such substances from the stationary source and to provide a

prompt emergency response to any such releases in order to protect human health and the environment.

3.2. Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), defines an “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

3.3. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines “person” to include, inter alia, a corporation.

3.4. 40 C.F.R. § 68.3 defines “stationary source” in relevant part as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

3.5. “Threshold quantity” is the quantity specified for regulated substances pursuant to CAA Section 112(r)(5), listed in 40 C.F.R. § 68.130 and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

3.6. 40 C.F.R. § 68.3 defines “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), and 40 C.F.R. § 68.130.

3.7. Anhydrous ammonia is a regulated substance with a TQ of 10,000 pounds, as listed in 40 C.F.R. § 68.130.

3.8. 40 C.F.R. § 68.3 defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

3.9. 40 C.F.R. § 68.3 defines “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or a combination of these activities. For purposes of this definition, any group of vessels that are

interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

3.10. 40 C.F.R. § 68.3 defines “covered process” as a “process” that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.

3.11. The regulations at 40 C.F.R. Part 68 classify covered processes into three program levels, designated as Program 1, Program 2, and Program 3, which contain specific requirements for owners and operators of stationary sources to ensure that risk management program requirements appropriately match the size and risks of regulated processes.

3.12. Pursuant to 40 C.F.R. § 68.10(i), a covered process is subject to Program 3 requirements if the process does not meet all of the Program 1 eligibility requirements set forth in 40 C.F.R. § 68.10(g) and if either the process is identified in the referenced North American Industrial Classification System Codes listed in 40 C.F.R. § 68.10(i)(1), or is subject to the United States Occupational Safety and Health Administration (“OSHA”) process safety management standard set forth in 29 C.F.R. § 1910.119.

3.13. Under 40 C.F.R. §§ 68.12(a), (d) and 68.150, the owner or operator of a subject stationary source must submit to EPA a single RMP that includes the information required by 40 C.F.R. §§ 68.155 through 68.185 for all covered processes in the method and format to the central point specified by EPA as of the date of submission.

3.14. 40 C.F.R. § 68.12(a) and (d) require that, in addition to submitting a single RMP as provided in 40 C.F.R. §§ 68.150 to 68.185, the owner or operator of a stationary source with a Program 3 covered process shall develop and implement a management system as provided in 40 C.F.R. § 68.15; conduct a hazard assessment as provided in 40 C.F.R. §§ 68.20 through 68.42; implement the prevention requirements of 40 C.F.R. §§ 68.65 through 68.87; coordinate response actions with local emergency planning and response agencies as provided in § 68.93;

develop and implement an emergency response program, and conduct exercises, as provided in 40 C.F.R. §§ 68.90 through 68.96; and submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in 40 C.F.R. § 68.175.

3.15. Under 40 C.F.R. § 68.10(a), except in circumstances not relevant to this action, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 C.F.R. § 68.115, shall comply with the requirements of Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; (3) the date on which a regulated substance is first present above a threshold quantity in a process; or (4) for any revisions to Part 68, the effective date of the final rule that revises Part 68.

3.16. Respondent is a corporation organized and doing business in the State of Oregon.

3.17. Respondent has at all relevant times been the owner and operator of a frozen foods processing facility located at 101 Depot Street in Weston, Oregon (“the Weston Facility”).

3.18. The Weston Facility includes anhydrous ammonia storage tanks, valves, piping, compressors, freezer tunnels, and other buildings, structures, equipment, installations, or substance-emitting stationary activities from which an accidental release of anhydrous ammonia may occur; which belong to the same industrial group; which are located on one or more contiguous properties; and which are under the control of Respondent. The Weston Facility is therefore a single “stationary source” as defined in 40 C.F.R. § 68.3.

3.19. The Weston Facility has an anhydrous ammonia refrigeration system that has at all relevant times contained more than 10,000 pounds of anhydrous ammonia and constitutes a single “covered process” under 40 C.F.R. § 68.3 (“the Weston Facility Process”).

3.20. The Weston Facility Process exceeded the 10,000-pound TQ for anhydrous ammonia on or about June 21, 1999, became a “covered process” within the meaning of 40

C.F.R. § 68.3 at that time, and became subject to the requirements of 40 C.F.R. Part 68 at that time.

3.21. On June 28, 2019, Respondent filed an updated RMP that identifies the Weston Facility Process as a Program 3 covered process with a maximum intended inventory of 85,000 pounds of ammonia, which is above the threshold quantity of 10,000 pounds in a single process.

3.22. The Weston Facility Process is a “Program 3” covered process because it does not meet all of the Program 1 eligibility requirements in 40 C.F.R. § 68.10(g) and it is subject to the United States OSHA process safety management standard set forth in 29 C.F.R. § 1910.119.

3.23. On August 2, 2016, EPA conducted an inspection of the Weston Facility under the authority of Section 114 of the CAA, 42 U.S.C. § 7414 (“the 2016 Inspection”).

Violation of Process Safety Information Requirements

3.24. Under 40 C.F.R. § 68.65, the owner or operator of a subject stationary source with processes subject to Program 3 shall complete a compilation of written process safety information before conducting any process hazard analysis required by 40 C.F.R. Part 68 and must keep process safety information up to date. Such information must include information pertaining to the technology of the process and to equipment in the process.

3.25. At the time of the 2016 Inspection, Respondent had failed to compile complete process safety information regarding safe upper and lower limits for such items as temperatures, pressures, flows or compositions pertaining to the technology of the Weston Facility Process, as required by 40 C.F.R. § 68.65(c)(1)(iv).

3.26. At the time of the 2016 Inspection, Respondent had failed to complete an evaluation of the consequences of deviations from safe upper and lower limits for the Weston Facility Process, as required by 40 C.F.R. § 68.65(c)(1)(v).

3.27. At the time of the 2016 Inspection, Respondent had failed to compile complete process safety information pertaining to the electrical classification of the equipment in the Weston Facility Process, as required by 40 C.F.R. § 68.65(d)(1)(iii).

3.28. At the time of the 2016 Inspection, Respondent had failed to compile complete process safety information pertaining to the relief system design and design basis of equipment in the Weston Facility Process, as required by 40 C.F.R. § 68.65(d)(1)(iv).

3.29. At the time of the 2016 Inspection, Respondent had failed to compile complete process safety information pertaining to the ventilation system design of equipment in the Weston Facility Process, as required by 40 C.F.R. § 68.65(d)(1)(v).

3.30. At the time of the 2016 Inspection, Respondent had failed to compile complete process safety information pertaining to the safety systems for equipment in the Weston Facility Process, as required by 40 C.F.R. § 68.65(d)(1)(viii).

3.31. At the time of the 2016 Inspection, Respondent had failed to document that equipment in the Weston Facility Process complies with recognized and generally accepted good engineering practices as required by 40 C.F.R. § 68.65(d)(2).

3.32. Respondent therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.65.

Violation of Process Hazard Analysis Requirements

3.33. Under 40 C.F.R. § 68.67, the owner or operator of a subject stationary source with a Program 3 covered process must perform an initial process hazard analysis (i.e., hazard evaluation) on its covered process(es). Section 68.67(e) requires the owner or operator to establish a system to promptly address findings and recommendations resulting from the process hazard analysis; 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.

3.34. At the time of the 2016 Inspection, Respondent had not established a system to promptly address findings and recommendations resulting from process hazard analyses performed at the Weston Facility, resolve recommendations from a 2012 process hazard analysis in a timely manner, or document recommendations that were resolved, as required by 40 C.F.R. § 68.67(e).

3.35. Respondent therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.67.

Violation of Operating Procedure Requirements

3.36. Under 40 C.F.R. § 68.69, the owner or operator of a subject stationary source with processes subject to Program 3 must develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information. The owner or operator must make these operating procedures readily accessible to employees who work in or maintain a process; review them as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources; and certify annually that these operating procedures are current and accurate.

3.37. At the time of the 2016 Inspection, Respondent had failed to develop and implement written operating procedures providing clear instructions for safely operating Compressor BC-14, Compressor BC-34, Freezer Tunnel No. 6 and Freezer Tunnel No. 10, which are part of the Weston Facility Process. As a result, operating procedures for this equipment were not readily accessible to employees who work in or maintain the Weston Facility Process, and Respondent had not reviewed the operating procedures associated with this equipment as often

as necessary nor did Respondent annually certify that they are current and accurate, all of which is required by 40 C.F.R. § 68.69(a)-(c).

3.38. In addition, the written operating procedures for all other activities and equipment involved in the Weston Facility Process were partially incomplete at the time of the 2016 Inspection, as they did not address safety systems and their functions, as required by 40 C.F.R. § 68.69(a)(4).

3.39. Respondent therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.69.

Violation of Training Requirements

3.40. The owner or operator of a subject stationary source with processes subject to Program 3 must ensure that each employee presently involved in operating a process and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures as specified in 40 C.F.R. § 68.69, pursuant to 40 C.F.R. § 68.71(a); must ensure that each employee involved in operating a process receive refresher training as required by 40 C.F.R. § 68.71(b), and must document that each employee received and understood the required training as provided in 40 C.F.R. § 68.71(c).

3.41. At the time of the 2016 Inspection, Respondent had failed to provide initial and refresher training to each employee involved in operating the Weston Facility Process and lacked documentation of such initial and refresher training.

3.42. Respondent therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.71.

Violation of Mechanical Integrity Requirements

3.43. Under 40 C.F.R. § 68.73, the owner or operator of a subject stationary source with processes subject to Program 3 must establish and implement written procedures to maintain the on-going integrity of the process equipment specified in 40 C.F.R. § 68.73(a); train each employee involved in maintaining the on-going integrity of such process equipment in an

overview of that process and its hazards and in the procedures applicable to the employee's job; perform and document inspections and tests of such process equipment using procedures that follow recognized and generally accepted good engineering practices, at a frequency consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience; and correct deficiencies in equipment that are outside acceptable limits (as defined by the process safety information in 40 C.F.R. § 68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

3.44. At the time of the 2016 Inspection, Respondent had failed to establish and implement written procedures to maintain the ongoing integrity of the subject equipment in the Weston Facility Process—including pressure vessels and storage tanks, piping systems (including piping components such as valves), relief and vent systems and devices, emergency shutdown systems, controls (including monitoring devices and sensors, alarms, and interlocks), and pumps—and had not trained each of its employees involved in maintaining the equipment's ongoing integrity.

3.45. At the time of the 2016 Inspection, Respondent had not performed inspections and tests on the subject equipment in the Weston Facility Process at the required frequency and following recognized and generally accepted good engineering practices, nor did Respondent document inspections and tests performed on such equipment in the Weston Facility Process.

3.46. At the time of the 2016 Inspection, Respondent had failed to correct all deficiencies in the subject equipment in the Weston Facility Process identified in the report from the 2017 “5 year Mechanical Integrity Inspection” performed for Respondent by Kemper Northwest before further equipment use or in a safe and timely manner.

3.47. Respondent therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.73.

Violation of Employee Participation Requirements

3.48. Under 40 C.F.R. § 68.83, the owner or operator of a subject stationary source with processes subject to Program 3 must consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management under 40 C.F.R. Part 68; develop a written plan of action regarding the implementation of employee participation; and provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under 40 C.F.R. Part 68.

3.49. At the time of the 2016 Inspection, Respondent had failed to consult with its employees and their representatives as required under 40 C.F.R. § 68.83(b) and had not provided access to process hazard analyses and to all other required information pursuant to 40 C.F.R. § 68.83(c).

3.50. Respondent therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.83.

Violation of Contractor Requirements

3.51. Under 40 C.F.R. § 68.87, when selecting a contractor to perform maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process, the owner or operator of a subject stationary source with processes subject to Program 3 must obtain and evaluate information regarding the contract owner or operator's safety performance and programs, and periodically evaluate the performance of the contract owner or operator in fulfilling their obligations as specified in 40 C.F.R. § 68.87(c).

3.52. At the time of the 2016 Inspection, Respondent had hired the contractors PermaCold Engineering, Inc., Applied Process Cooling Corporation, Kemper Refrigeration, Wyatt Refrigeration, and Will H. Knox to perform maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to Respondent's ammonia refrigeration process, but

failed to obtain and evaluate information regarding each of its contractor's safety performance and programs, as required under 40 C.F.R. § 68.87.

3.53. At the time of the 2016 Inspection, Respondent had failed to periodically evaluate each contractor's performance of its responsibilities under 40 C.F.R. § 68.87(c), as is required of Respondent under 40 C.F.R. § 68.87.

3.54. Respondent therefore violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.87.

ENFORCEMENT AUTHORITY

3.55. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$51,796 per day of violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$100,000 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's

check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk	Javier Morales
U.S. Environmental Protection Agency	U.S. Environmental Protection Agency
Region 10	Region 10
R10_RHC@epa.gov	morales.javier@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the

Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certify that they are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

5/20/22

FOR RESPONDENT:

Gary Crowder

[Gary Crowder \(May 20, 2022 20:48 PDT\)](#)

GARY CROWDER, President and CFO
Smith Frozen Foods, Inc.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2022-0180
)	
SMITH FROZEN FOODS, INC.,)	FINAL ORDER
)	
Weston, Oregon,)	
)	
Respondent.)	
)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall 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. This Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this _____ day of _____, 2022.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Smith Frozen Foods, Inc., Docket No.: CAA-10-2022-0180**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered electronically to:

Danielle Meinhardt
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
meinhardt.danielle@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered electronically to:

Gary Crowder
President and CFO
Smith Frozen Foods, Inc.
101 Depot Street
Weston, Oregon 97886

gary_crowder@smithfrozenfoods.com

DATED this ____ day of _____ 2022.

Regional Hearing Clerk
EPA Region 10