

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

	)	
IN THE MATTER OF:	)	
	)	
Tyson Poultry, Inc.	)	
Clarksville, Arkansas	)	ADMINISTRATIVE
	)	COMPLIANCE ORDER
	)	
Respondent	)	Docket No. CAA-06-2020-3330
	)	
	)	

I. INTRODUCTION

1. The following Findings are made and an Administrative Compliance Order (“Order”) issued pursuant to Section 113(a)(3) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(a)(3), for failure to comply with Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7) and the implementing regulations found at 40 C.F.R. § 68, regarding Tyson Poultry, Inc. located at 103 East Cherry Street, Clarksville, Arkansas 72830 (“Facility”). The parties to this Order are the United States Environmental Protection Agency, Region 6 (“EPA” or “Region 6” or “Complainant”) and Tyson Poultry, Inc. (“Respondent”).

2. This Order is entered into upon mutual agreement by the parties. Accordingly, Respondent consents to and agrees not to contest EPA’s jurisdiction to issue this Order or enforce its terms. Further, Respondent will not contest EPA’s jurisdiction to compel compliance with this Order in any subsequent enforcement proceedings, either administrative or judicial; require Respondent’s full compliance with the terms of this Order; or impose sanctions for violations of this Order. Respondent consents to the terms of this Order.

3. This Order shall apply to and be binding upon Respondent, its agents, successors and

assigns and upon all persons, contractors, and consultants acting under or for Respondent.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. Respondent is a corporation operating a poultry slaughter and processing facility.

Respondent is authorized to do business in the State of Arkansas.

5. Respondent owns and operates a poultry slaughter and processing facility, which includes the Marination Holding Tank #4. The Facility is located at 103 East Cherry Street in Clarksville, Arkansas 72830.

6. Respondent is a “person” as that term is defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

7. The Facility is a “stationary source” as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

8. Respondent’s Facility includes a refrigeration and freezer system that uses more than 100,000 pounds of anhydrous ammonia in this system.

9. Respondent produces, processes, stores, or handles more than 10,000 pounds of anhydrous ammonia.

10. Ammonia (anhydrous) is identified at 40 C.F.R. § 68.130 as a toxic regulated substance with a threshold quantity of 10,000 pounds.

11. The covered process is subject to the “Program 3” requirements of the Risk Management Program (“RMP”) regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D

12. On September 16, 2019, the drain valve on the Marination Holding Tank jacketed tank heat exchanger experienced a release of ammonia.

13. Respondent’s Marination Holding Tank #4 was moved so Respondent could perform

maintenance. When the tank was relocated, the pump out valve, a globe valve, was not fully seated. The operator visually checked the manually controlled valve. However, Respondent's Standard Operating Procedure (SOP) requires more than a visual check of the valve. Respondent had, prior to the incident, determined that the manual valve had "play" and could conceivably appear closed but not actually hold the pressure of the process.

14. The release of ammonia was due to SOP not being adequately executed. Specifically, the operator did not fully implement SOP-76.

15. The leak resulted in a release of 2.5 lbs. within the processing room of the Facility. 11 employees were injured. The ammonia was vented to the roof of the facility and out into the ambient air.

16. Once the leak was identified, an evacuation was initiated with on-site nursing staff responding.

III. VIOLATIONS

Operating Procedures 40 C.F.R. § 68.69(a)(1)(vii).

17. Pursuant to 40 C.F.R. § 68.69(a)(1)(vii), the owner or operator shall develop or implement written procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address and shall include the steps for each operating phase, including startup following a turnaround, or after emergency shutdown.

18. Respondent's ammonia release was due to SOPs not being adequately executed.

19. Complainant alleges that Respondent's failure to develop or implement written procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information constituted a violation of 40

C.F.R. § 68.69(a)(1)(vii).

IV. ORDER

20. Accordingly, pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), it is hereby ordered that Respondent, which has consented to the terms of this Order, shall comply with the general and specific obligations identified in Section 112(r) of the CAA, 42 U.S.C. § 7412(r) and the implementing regulations found at 40 C.F.R. § 68 as follows:

- a. Within thirty days of the effective date of this Order, Respondent shall resolve the violation identified in this document by examining their SOPs to ensure their adequacy and Respondent shall train, or retrain, relevant employees to ensure an adequate understanding of the SOPs.

EPA acknowledges that Respondent may have already instituted some, or all, of the requirements of this Order.

21. Notifications:

- a. Submissions required by this Order shall be in writing and shall be mailed to the following address with a copy also sent by electronic mail:

Attention: Charese Simpson
U.S. Environmental Protection Agency
EPA Region 6 (Mail Code: ECDAC)
1201 Elm Street
Dallas, Texas 75270-2102
simpson.charese@epa.gov

- b. EPA will send all written communications to the following representative(s) for Respondent:

Savannah Stuart-Dahl
Complex Environmental Manager
Tyson Poultry, Inc.
103 East Cherry Street
Clarksville, Arkansas 72830

Savannah.Stuart-dahl@tyson.com

22. All documents submitted to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 C.F.R. Part 2, Subpart B and determined by EPA to merit treatment as confidential business information (“CBI”) in accordance with applicable law.

V. GENERAL PROVISIONS

23. The provisions of this Order shall apply to and be binding upon Respondent, its officers, directors, agents, and employees.

24. The provisions of this Order shall be transferrable to any other party, upon sale or other disposition of the facility. Upon such action, the provisions of this Order shall then apply to and be binding upon any new owner/operator, its officers, directors, agents, employees, and any successor(s) in interest.

25. Nothing in this Order shall be construed to affect EPA’s authority under Section 114 the CAA, 42 U.S.C. § 7414.

26. Nothing contained in this Order shall affect the responsibility of Respondent to comply with all applicable federal, state, or local laws or regulations.

27. Any and all information required to be maintained or submitted pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501 et seq., because it seeks to collect information from specific individuals or entities to assure compliance with this administrative action.

28. This Order is not intended to be, nor shall it be construed to be, a permit. Compliance by Respondent with the terms of this Order shall not relieve Respondent of their obligations to comply with the CAA or any other applicable local, state, or federal laws and regulations.

29. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal, which EPA has under any statutory, regulatory, or common law authority of the United States.

30. This Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Order; nor does it limit the rights of the United States to obtain penalties or injunctive relief under the CAA or other applicable federal law or regulation.

31. Respondent does not admit any of the factual or legal determinations made by the EPA and waives its right to contest EPA's jurisdiction to issue or enforce this Order and its right to contest the terms of this Order. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law. Respondent consents to the terms of this Order.

32. Respondent waives any right to judicial review of this Order.

33. The parties shall bear their own costs and fees in this action, including attorney's fees.

VI. FAILURE TO COMPLY

34. Failure to comply with this Order may result in an enforcement action, administrative or judicial, for appropriate injunctive relief, including civil penalties pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b) or, in appropriate cases, criminal penalties.

VII. ENFORCEMENT

35. Except to the matters set forth herein, this Order does not in any way impair EPA's rights to appropriately enforce the CAA.

36. Be advised that issuance of this Order does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law.

VIII. EFFECTIVE DATE

37. This Order shall become effective upon the date of signature by EPA.

RESPONDENT:

DATE: 7/22/2020 BY: Chin Gunn
Tyson Poultry, Inc.

COMPLAINANT:

DATE: _____

BY:  Digitally signed by CHERYL SEAGER
DN: c=US, o=U.S. Government, ou=Environmental Protection Agency,
cn=CHERYL SEAGER, o.5.2342.19200300.100.1.1=68001003651793
Date: 2020.07.23 14:44:22 -05'00'

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA Region 6

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate electronic copy of the foregoing Administrative Compliance Order was electronically mailed to the following by the method indicated:

ELECTRONIC MAIL:

Savannah Stuart-Dahl
Complex Environmental Manager
Tyson Poultry, Inc.
103 East Cherry Street
Clarksville, Arkansas 72830
Savannah.Stuart-dahl@tyson.com

Date: _____

JEFFREY CLAY

Digitally signed by JEFFREY CLAY
DN: c=US, o=U.S. Government,
ou=Environmental Protection Agency,
cn=JEFFREY CLAY,
0.9.2342.19200300.100.1.1=68001003652675
Date: 2020.07.23 15:18:21 -05'00'

Office of Regional Counsel
U.S. EPA, Region 6
Dallas, Texas