

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 - NEW ENGLAND

IN THE MATTER OF

Boston North Hockey LLC/
Breakaway Ice Arena
20 Carter Street
Tewksbury, MA 01876

Respondent

Proceeding under Section 113 of the
Clean Air Act, 42 U.S.C. § 7413

NOTICE OF VIOLATION
AND ADMINISTRATIVE
ORDER ON CONSENT

INTRODUCTION

1. The United States Environmental Protection Agency ("EPA") issues this Notice of Violation ("NOV") and Administrative Order on Consent ("AOC") to Boston North Hockey LLC ("Respondent"), to require Respondent to comply with Section 112(r)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(1), at the "Breakaway Ice Arena" ice rink facility at 20 Carter Street in Tewksbury, Massachusetts (the "Facility"). Specifically, the AOC will require Respondent to conduct two Process Hazard Reviews, which identify hazards associated with the use of anhydrous ammonia refrigerant in the Facility's two refrigeration systems.

STATUTORY AND REGULATORY AUTHORITY

2. The NOV and AOC are issued under the authority vested in the Administrator of EPA by Section 113 of the CAA, 42 U.S.C. § 7413. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), provides that EPA may issue an order requiring compliance with the requirements or prohibitions of Subchapter I of the CAA (which include, *inter alia*, the requirements of Section 112(r), 42 U.S.C. § 7412(r)). A copy of the order must be sent to the relevant State air

pollution control agency. An order relating to a violation of Section 112 of the CAA can take effect immediately upon issuance.

3. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to: (a) identify hazards that may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the CAA is referred to as the "General Duty Clause."

4. The extremely hazardous substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), include, among others, anhydrous ammonia.

5. The term "accidental release" is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

6. The term "stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations, or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

7. The term "have a general duty in the same manner and to the same extent as section 654, Title 29 of the United States code" means owners and operators must comply with the General Duty Clause in the same manner and to the same extent as employers must comply with the Occupational Safety and Health Act.

8. Section 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), provide for the assessment of civil penalties for violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

FACTUAL ALLEGATIONS

9. Respondent is a limited liability company organized under the laws of Massachusetts and is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

10. Respondent operates an ice rink facility (the "Breakaway Ice Arena") at 20 Carter Street in Tewksbury, Massachusetts.

11. The Facility is in a suburban area within a half of a mile of residences and commercial businesses.

12. The Facility is a building or structure from which an accidental release may occur and is therefore a "stationary source," as defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

13. At all times relevant to the violations alleged herein, Respondent was the operator of the Facility.

14. At all times relevant to the violation alleged herein, the Facility had two ammonia refrigeration systems, each using approximately 600 pounds of anhydrous ammonia. Accordingly, Respondent "stored" and "handled" anhydrous ammonia in each refrigeration system, which, as indicated in Paragraph 4 above, is an "extremely hazardous substance" subject to the General Duty Clause.

15. Anhydrous ammonia is a clear, colorless gas at atmospheric pressure and temperature with a strong odor. It is often stored and shipped under pressure as a liquid. It presents a significant health hazard because it is corrosive to the skin, eyes, and lungs. Inhalation of ammonia may cause irritation and burns of the respiratory tract, laryngitis, shortness of breath,

high-pitched respirations, chest pain, pulmonary edema, and pneumonia. Exposure to 300 parts per million of ammonia by volume is immediately dangerous to life and health.

16. Ammonia gas is generally regarded as nonflammable but burns at concentrations of approximately 15.5% to 27% by volume in air with strong ignition. It can explode if released in an enclosed space with a source of ignition present or if a vessel containing anhydrous ammonia is exposed to fire. The fire hazard increases in the presence of oil or other combustible materials.

17. Due to the dangers associated with anhydrous ammonia, the ammonia refrigeration industry has developed industry standards to control the risks associated with the use of ammonia. For example, in collaboration with the American National Standards Institute, the International Institute of Ammonia Refrigeration ("IIAR") has issued (and updates), among others Standard 2—*American National Standard for Safe Design of Closed-Circuit Ammonia Mechanical Refrigeration Systems*, Standard 9—*Minimum System Safety Requirements for Existing Closed-Circuit Ammonia Refrigeration Systems*, and the Ammonia Refrigeration Management Program (2005, updated in 2018) ("IIAR ARM Program"), which is intended to provide streamlined guidance to facilities like Respondent's that have less than 10,000 pounds of ammonia. These and other standards are consistently relied upon by refrigeration experts and are sometimes incorporated by reference into state building and mechanical codes.

18. On May 4, 2023, EPA sent Respondent an Information Request requiring, among other things, Respondent to submit the Process Hazard Reviews that it had performed for the refrigeration systems at the Facility. Respondent's responses to the Information Request on May 8, 2023, and May 24, 2023, and subsequent communications with EPA revealed that it had not performed Process Hazard Reviews for the refrigeration systems.

NOTICE OF VIOLATION

Count I: Failure to Identify Hazards in Violation of the CAA's General Duty Clause

19. The allegations in Paragraphs 1 through 18 are hereby realleged and incorporated herein by reference.

20. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty, in the same manner and to the same extent as Section 654 of Title 29, to identify hazards that may result from accidental releases of such substances, using appropriate hazard assessment techniques.

21. The recommended industry practice and standard of care for identifying, analyzing, and evaluating potential hazards associated with ammonia refrigeration systems of the same size and type as Respondent's refrigeration system is, *inter alia*, to use standard, industry-developed hazard identification checklists or more formalized techniques such as a "What If" analysis. IIAR has developed checklists for this purpose. See, e.g., U.S. Env'tl. Prot. Agency, Guidance for Implementation of the General Duty Clause Clean Air Act Section 112(r)(1) § 2.3.1 (2000), available at <https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf>; IIAR ARM Program § 10 (2005) and § 3 (2018).

22. By failing to conduct an adequate Process Hazard Review of each refrigeration system using appropriate hazard assessment techniques, Respondent failed to identify hazards that may result from accidental releases, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

ADMINISTRATIVE ORDER ON CONSENT

23. As soon as possible, but no later than **ninety (90) days** after the effective date of the AOC, Respondent shall:

- a. Prepare a Process Hazard Review for each refrigeration system, using standard industry checklists developed by the ammonia refrigeration industry for hazard reviews, with the help of a third-party consultant. The consultant must have on his or her team a person (or people) with:
 - i. experience conducting Process Hazard Reviews under Section 112(r) of the CAA;
 - ii. knowledge of the industry codes, standards, and bulletins that apply to ammonia refrigeration facilities; and
 - iii. experience designing refrigeration systems to meet such codes, standards, and bulletins (or access to someone who does have such design experience).
- b. Coordinate with relevant off-site emergency responders to plan for the event of an accidental release.
- c. Submit to EPA at the email address provided in Paragraph 24, the following documents:
 - i. Resumes for the members of the consultant's team;
 - ii. The Process Hazard Reviews performed according to this AOC, including their recommendations;
 - iii. Certification that Respondent has coordinated with relevant off-site emergency responders on plans in event of an accidental release; and

- iv. A list of expenditures associated with implementing the requirements of this AOC.

24. Notice: All notices and submission shall be considered effective upon receipt.

Respondent shall submit all documentation required by this AOC by electronic mail to Christine Foot, Enforcement Counsel, at foot.christine@epa.gov.

STIPULATED PENALTIES

25. Respondent must pay the following stipulated penalties on the United States for violations of this AOC, subject to the limitations of CAA Section 113(d)(1), 42 U.S.C. § 7413(d)(1), on EPA's administrative penalty authority.

26. For failure to perform the work and submit the documents required by Paragraph 23 above, in a manner consistent with the terms of this AOC, or within the time required by this AOC; \$500 per day for the first fifteen (15) days of such violation; \$1,000 per day for the sixteenth (16th) through thirtieth (30th) days of such violation; and \$1,500 per day for each day of such violation thereafter.

27. Penalties shall begin to accrue on the day after complete performance is due or a violation occurs and shall continue to accrue through the day the violation is corrected. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this AOC. Penalties shall continue to accrue regardless of whether EPA has notified Respondent of a violation.

28. All penalties owed to the United States under this Section shall be due and payable within thirty (30) days of Respondent's receipt from EPA of a written demand for payment of the penalties. Such written demand will describe the violation and indicate the amount of penalties

due. EPA may, in its sole discretion, decide not to seek stipulated penalties or waive any portion of the stipulated penalties that accrue.

29. All penalties shall be made payable by certified mail or cashier's check to the United States of America and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

All such checks shall contain "*In the Matter of Boston North Hockey LLC/Breakaway Ice Arena, Clean Air Act Administrative Order on Consent, EPA Region I*" and Respondent's name and address in the reference line. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the EPA contact in Paragraph 24 above.

30. The payment of stipulated penalties shall in no way alter Respondent's obligation to comply with the terms and conditions of this AOC.

31. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the terms or conditions of this AOC.

32. No stipulated penalty payments shall be tax deductible for federal tax purposes. However, for purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of the actions in Paragraph 23, and any subsequent work to address the hazards found by the Process Hazard Reviews, is restitution or required to come into compliance with law.

EFFECT OF SETTLEMENT, RESERVATION OF RIGHTS, AND JUDICIAL REVIEW

33. EPA reserves all 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 AOC. This AOC 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 other statutory, regulatory, or common law authority of the United States.

34. This AOC does not resolve any civil or criminal claims of the United States for the violations alleged in this AOC, 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. *See* CAA Section 113(a)(4), 42 U.S.C. § 7413(a)(4). 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.

35. This AOC is not intended to be nor shall it be construed to be a permit. Further, the parties acknowledge and agree that EPA's approval of this AOC does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of CAA Section 112(r), 42 U.S.C. § 7412(r). Compliance by Respondent with the terms of this AOC shall not relieve Respondent of its obligations to comply with the CAA or any other applicable local, State, or federal laws and regulations. Nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations or be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

36. Respondent has entered into this AOC in good faith without any trial or adjudication of any issue of fact or law. Respondent reserves all rights and defenses it may have regarding

liability or conditions at the Facility, except that, for the purpose of this proceeding, Respondent admits the jurisdictional allegations in this AOC; neither admits nor denies specific factual allegations made in the AOC; consents to compliance actions and conditions specified in the AOC; and waives any rights to contest the allegations or to appeal the final AOC.

37. Respondent 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 AOC, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

38. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive or other appropriate relief relating to the Facility, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been raised in the present matter.

39. Neither EPA nor the United States, by issuance of this AOC, assumes any liability for any acts or omissions by Respondent or its employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this AOC. Nor shall the EPA or the United States be held as a party to any contract entered into by Respondent or by its employees, agents, contractors, or consultants.

40. The Parties shall bear their own costs and fees in this action, including attorneys' fees.

MODIFICATION

41. This AOC may only be modified by mutual agreement of the Parties. Any agreed-upon modifications shall be in writing, be signed by both Parties, shall have as their effective date the

date on which they are signed by EPA, and shall be incorporated into this AOC. Changes to scheduling may be approved by EPA's Manager for the Waste and Chemical Compliance Unit, instead of the Director for the Enforcement and Compliance Assurance Division.

SEVERABILITY

42. If any provision or authority of this AOC or the application of this AOC to any Party or circumstance is held by any judicial or administrative authority to be invalid, the remainder of the AOC shall remain in force and shall not be affected thereby.

EFFECTIVE DATE

43. The NOV and AOC shall take effect immediately upon receipt by Respondent of a fully executed copy of the NOV and AOC.

44. The AOC shall apply to and be binding upon Respondent, its officers, agents, trustees, servants, employees, authorized representatives, successors and assigns, and to all persons, firms, and corporations acting under, through or for Respondent. From the Effective Date of this AOC until the Termination Date as set out Paragraph 47 below, Respondent must give written notice and a copy of this AOC to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this AOC unless the EPA has provided written approval of the release of said obligations or liabilities.

45. This action is not subject to Office of Management and Budget review under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

46. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this AOC to execute and bind legally the Parties to this document.

TERMINATION

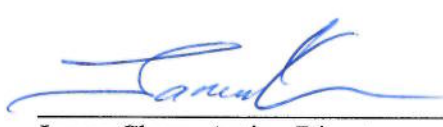
47. This AOC shall termination on the earlier of the following (the "Termination Date") at which point Respondent shall operate in compliance with the CAA:

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- a. One (1) year after the Effective Date of this AOC;
 - b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this AOC; or
 - c. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.



David Hughes, Owner
Boston North Hockey/Breakaway Ice Arena

7/26/23
Date



James Chow, Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 1 – New England

8/3/23
Date