UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

CERTIFIED MAIL
August 17, 2018

Gary O'Neil, President
Cape Seafoods, Inc.
1 State Fish Pier
Gloucester, MA 01930

c/o Barry Fogel, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, MA 02110

Re: Reporting Requirement Pursuant to the Clean Air Act: Cape Seafoods, Inc.
Response Required Within Fourteen Days of Receipt

Dear Attorney Fogel:

EPA is requesting documentation of the total amount of anhydrous ammonia contained within any refrigeration system at the Cape Seafoods, Inc. Facility located at 1 and 3 State Fish Pier, Gloucester, MA 01930 (the "Facility"). As you know, EPA is sending you this information request after EPA performed an inspection at the Facility on March 21, 2017. After the inspection, EPA informed Cape Seafoods that EPA's calculations indicated that the Facility had over 10,000 pounds of anhydrous ammonia in its main refrigeration system, which is the threshold for application of the Agency's chemical accident prevention regulations found at 40 C.F.R. Part 68.

Beginning at a meeting in January 29, 2018 and over the course of several emails and conference calls, EPA has requested documentation from Cape Seafoods regarding the quantity of ammonia at the Facility because the company has argued that the Facility's main refrigeration system has less than 10,000 pounds. Cape Seafoods has provided some information in a piece-meal fashion, but not in an organized manner as requested by EPA. EPA is now sending this information request to Cape Seafoods to remove any ambiguity regarding the information that EPA requires from Cape Seafoods if the company wishes to rebut EPA's calculations that the Facility has over 10,000 pounds of ammonia.

EPA came to the conclusion that the Facility has over 10,000 pounds of ammonia after photographing the major ammonia vessels at the Facility, obtaining information about some of the vessel dimensions, the normal ammonia liquid levels within those vessels, and the operating temperatures of those vessels to estimate the weight of ammonia in each vessel. EPA's calculations, based on an inspection of process equipment and dimensions of the vessels, are conservative because they leave out ammonia contained in some system components including the cold storage evaporators, a portion of the blast freezer evaporators, the floor-warming heat

exchanger and the compressors and the exact dimensions of Facility's piping runs, which are longer and more extensive than normal facilities.

EPA continues to have questions about the quantity of ammonia at the Facility because of several discrepancies in the Facility's reporting regarding the quantity of ammonia over the years and discrepancies in the Facility's pump downs, ammonia purchases, and the company's critiques of some aspects of EPA's engineering calculations.

The quantity of anhydrous ammonia reported by the Facility, including by Cape Seafoods and the previous tenant at the Facility, Allied Cold Storage, fluctuated significantly over the years. In a January 24, 2018 affidavit signed by Paul Nicastro and submitted by Cape Seafoods to EPA, Mr. Nicastro describes himself as the Chief Refrigeration Engineer for Cape Seafoods, and as the Chief Refrigeration Engineer for Allied Cold Storage prior to 2005. During this time period, the Facility reported a decrease from a high of 18,500 pounds down to a level under 10,000 pounds of ammonia. Specifically, in the Tier II Forms submitted by the Facility pursuant to the Emergency Planning, Community Right-to-Know Act, the Facility reported the following information regarding ammonia quantities:

Operating Facility: 1 State Pier, Gloucester, MA	**Reporting Year:**	**Reported Quantity of ammonia:**	**Person submitting report:**	**Date of Submission:**
Allied Cold Storage	2004	15,000 pounds	Lewis C. Shamback	2/10/2005
Allied Cold Storage	2005	15,000 pounds	Lewis C. Shamback	No date.
Cape Seafoods	2006	18,500 pounds	Paul Nicastro	2/15/2007
Cape Seafoods	2008	18,500 pounds	Paul Nicastro	2/17/2009
Cape Seafoods	2009	9,999 pounds	Paul Nicastro	1/30/2010
Cape Seafoods	2015	8,000 pounds	Paul Nicastro	2/18/2016

In addition, Cape Seafoods informed EPA that the company performed a few pump downs in an effort to determine the Facility's ammonia inventory. Cape Seafoods reported that it performed a pump down of the Facility in 2010 and that the total amount of ammonia in the system was 7,804 pounds.[1] Cape Seafoods also provided a description of pump down procedures performed in February 2017 and March 2017, although aspects of the procedures are unclear. Cape Seafoods' contractor, American Refrigeration, reported that the total amount of ammonia in the system was 8,523 pounds, and incorporating an allowance for ammonia vapor, the actual total quantity of ammonia at the Facility was 8,949 pounds. However, after EPA provided Cape Seafoods with EPA's engineering calculations regarding the quantity of ammonia at the Facility, with a conclusion that the Facility had over 10,000 pounds of ammonia, in a response dated June 19, 2018, Cape Seafoods noted that American Refrigeration adjusted some numbers underlying

[1] Cape Seafoods provided documentation regarding what the company claimed was all of the ammonia purchases between 2013 and 2016 for additional ammonia to be added to the Facility's ammonia refrigeration system. This documentation showed that the Facility purchased 400 pounds of anhydrous ammonia during this time period. EPA notes that 7,804 pounds plus 400 pounds equals 8,204 pounds.

EPA's calculations and concluded that the Facility had a total ammonia charge of 9,056 pounds, which is higher than either of Cape Seafoods' pump down conclusions.

EPA understands Cape Seafoods' argument that there are several industry-approved methods for determining inventory amounts, including pump downs of the refrigeration system. For purposes of 40 C.F.R. § 68.10, EPA is trying to assess how much ammonia is present in the refrigeration system with some level of accuracy to determine whether it is more likely than not that Cape Seafoods has more than the regulatory threshold of 10,000 pounds. It is especially important to understand whether the Facility is subject to chemical accident prevention regulations due to the company's location in a populous area next to other businesses, residences, and a busy harbor.

Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), gives EPA the authority to require a company to submit such information as EPA may reasonably require to determine the company's compliance with the CAA. Responses to the enclosed question(s) (Attachment 2 and accompanying Tables 1-7) must be furnished **within fourteen (14) days** of your receipt of this letter.

Compliance with this Reporting Requirement is mandatory. Failure to respond fully and truthfully, or to adequately justify any failure to respond, **within fourteen (14) days of receipt of this letter** can result in an enforcement action by EPA pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. This statute permits EPA to seek the imposition of penalties. This Reporting Requirement is not subject to Office of Management and Budget review under the Paperwork Reduction Act. Please be further advised that provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties.

You may, if you desire, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. § 2.203(b). You should read the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to you.

You are required to submit the above-referenced information <u>in writing and by electronic mail</u> to:

Maximilian Boal, Senior Enforcement Counsel
U. S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code OES 04-5
Boston, Massachusetts 02109-3912
<u>boal.maximilian@epa.gov</u>

As part of your response, please complete the enclosed declaration (Attachment 1) and provide a cover letter answering the question(s) in Attachment 2 and accompanying Tables 1-7. If you have any questions with regard to this Reporting Requirement, please contact Maximilian Boal of my staff at (617) 918-1750.

Sincerely,

for

James Chow, Technical Enforcement Manager
EPA Region 1 Office of Environmental Stewardship

Enclosures

ATTACHMENT 1

Instructions: Complete and Include With Your Response

DECLARATION

I declare under penalty of perjury that I am the

_____ of _____,
[Title] **[Name of Facility]**

that I am authorized to respond on behalf of

_____, and
[Name of Facility]

that the foregoing is a complete, true, and correct response.

Executed on _____ _____
[Date] **[Signature]**

_____
[Type Name and Title]

ATTACHMENT 2
QUESTIONS/INFORMATION REQUESTED

1) **Previous Facility Pump Downs**: Cape Seafoods has provided some information about two-to-three pump downs that the Facility performed in 2010 and in February 2017 and March 2017. In a January 29, 2018 meeting with EPA and over several conference calls, EPA has explained that the specific procedures followed during a pump down can impact the accuracy of a pump down's results and that, for inventory calculation purposes, the proper way to perform a pump down is to shut down the whole refrigeration system so that all the ammonia flows back to the receiver(s). Although Cape Seafoods provided some descriptions of the procedures followed in 2017, EPA needs additional information about the specific procedures performed during each of these pump downs. For example, from Cape Seafoods' description of the pump downs performed in 2017, it is unclear if Cape Seafoods completely shut down the Facility when performing the pump down because Cape Seafoods reported performing some aspects of the pump down (i.e., shutting down only one part of the system) in February 2017 and other aspects of the pump down in March 2017.

   Please provide a step-by-step description of the specific procedures performed during each pump down, including what parts of the refrigeration system were shut down. When describing the pump down procedures performed by Cape Seafoods, refer to the procedures outlined by the ammonia refrigeration industry standards of the International Institute of Ammonia Refrigeration ("IIAR"), specifically in IIAR 8 (Decommissioning of Close-Circuit Ammonia Refrigeration Systems) and IIAR Bulletin No. 107 (Guidelines for Suggested Safety and Operating Procedures When Making Ammonia Refrigeration Plan Tie-ins).

2) **Full Equipment Inventory**: EPA is requesting documentation of the total amount of anhydrous ammonia contained within each component of the main ammonia refrigeration system at the Cape Seafoods, Inc. Facility located at 1 and 3 State Pier, Gloucester, MA 01930 by having Cape Seafoods fill out the attached Tables 1-7. The reasons for this request are explained below.

   Forty C.F.R. § 68.65(c)(iii) requires Cape Seafoods to have information about maximum intended inventory. EPA's General Guidance on Risk Management Programs for Chemical Accident Prevention, Chapter 1, at 11 (April 2004), issued pursuant to Congressional direction in 42 U.S.C. § 7412(r)(7)(B)(ii), and available at https://www.epa.gov/rmp/guidance-facilities-risk-management-programs-rmp, explains that to determine if you have the threshold quantity of a regulated substance in an interconnected system, you need to determine the maximum quantity for each vessel and the connecting pipes or hoses. The maximum for each individual vessel and pipe is added together to determine the maximum for the process. The ammonia refrigeration industry standards documented in the IIAR Process Safety Management & Risk Management Program Guidelines ("PSM Manual"), Chapter 3 (2012 ed.) explain how estimating the ammonia inventory of a refrigeration system is a standard

process based on design full-load, steady-state operation of each of the major components of an ammonia refrigeration system, and the PSM Manual informs the operators of ammonia refrigeration systems that OSHA and EPA may ask to see detailed inventory calculations for each vessel or process unit at a facility.

Since January 29, 2018, EPA has requested that Cape Seafoods perform a full equipment inventory analysis for the Facility, including providing information about the ammonia charge of each piece of equipment at both normal operating levels and at minimum operating levels. As EPA has informed Cape Seafoods, the Cape Seafoods Facility is unique because of the Facility's large size and extensive piping. From January 2018 to July 2018, Cape Seafoods provided some information about certain pieces of equipment, but the company expressed uncertainty about what information EPA was requesting and why this information would be relevant. On a conference call on July 12, 2018, Cape Seafoods' contractor, American Refrigeration, informed EPA that Cape Seafoods and American Refrigeration have more information about the Facility's ammonia refrigeration system, how the system is run, and UA forms for every vessel within the Facility's ammonia refrigeration system---all of which are the types of information and documentation that EPA has been requesting from Cape Seafoods.

In order to provide Cape Seafoods with greater clarity regarding what information EPA is seeking, EPA has put together the attached Tables 1-7 which include blank spaces for Cape Seafoods to fill-in information regarding the Facility's pressure vessels, evaporators, heat exchanger, piping, and condenser components. Please provide all of the information requested in the blank sections of the attached Tables 1-7.