



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 23 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Tim Jones
Senior Counsel
Tyson Fresh Meats
2210 West Oaklawn Drive
Springdale, Arizona 72762

EPCRA-05-2011-0011

CERCLA-05-2011-0008

Re: Tyson Fresh Meats, Logansport, Indiana
Consent Agreement and Final Order – Docket No: **MM-05-2011-0005**

Dear Mr. Jones:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on February 23, 2011

Please pay the CERCLA civil penalty in the amount of \$21,125 in the manner prescribed in paragraphs 59 and 61, and reference your check with the number BD 2751130B008 and docket number CERCLA-05-2011-0008.

Please pay the EPCRA civil penalty in the amount of \$42,250 in the manner prescribed in paragraphs 60 and 61, and reference your check with the number BD 2751144E011 and docket number EPCRA-05-2011-0011.

Your payments are due on March 25, 2011.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jeffery Trevino, Associate Regional Counsel, at (312) 886-6729. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Silvia Palomo".

Silvia Palomo, Acting Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: John Steel
IN SERC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

MM-05-2011-0005

EPCRA-05-2011-0011

In the Matter of:

Tyson Fresh Meats, Inc.,
Logansport, Indiana,

Respondent.

RECEIVED
FEB 23 2011
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Docket No. CERCLA-05-2011-0008

Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation,
and Liability Act, and Section 325(b)(2), (c)(1)
and (c)(2) of the Emergency Planning and
Community Right-to-Know Act of 1986

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section(s) 325(b)(2), (c)(1), (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(b)(2), (c)(1), (c)(2), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the 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. The Complainant is, by lawful delegation, the Director, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. Respondent is Tyson Fresh Meats, Inc., 2125 S. County Road 125 West, Logansport, Indiana, a Delaware Corporation doing business in the State of Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and conclusions of law in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, require any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals

are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Section 304(a)(2) of EPCRA, 42 U.S.C. § 11004(a)(2), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release occurred in a manner which would require notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

13. Section 304(a)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of a hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

14. Section 304(a)(3)(B)(ii) of EPCRA, 42 U.S.C. § 11004(a)(3)(B)(ii), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of a hazardous substance in quantities of one pound or more occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

15. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local

emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency planning commission (SERC) of any state likely to be affected by a release.

16. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

17. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

18. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and conclusions of law in this CAFO.

Factual Allegations and Alleged Violations

19. At all times relevant to this CAFO Respondent was a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

20. At all times relevant to this CAFO Respondent was a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

21. At all times relevant to this CAFO Respondent was an owner or operator of the facility located at 2125 S. County Road West, Logansport, Indiana, (“the facility”).

22. At all times relevant to this CAFO Respondent was an employer at the facility.

23. At all time relevant to this CAFO Respondent was in charge of the facility.

24. Respondent's facility consisted of buildings, structures, installations, and equipment, where a hazardous substance had been placed, stored, disposed of, or otherwise came to be located.

25. Respondent's facility was a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

26. Respondent's facility also consisted of buildings, equipment, structures, and other stationary items which were located on a single site or on contiguous or adjacent sites, and which were owned or operated by the same person.

27. Respondent's facility was a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

28. Anhydrous ammonia, CAS # 7446-09-5, was a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

29. Anhydrous ammonia, CAS # 7446-09-5, had a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

30. Anhydrous ammonia, CAS # 7446-09-5, was listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

31. Anhydrous ammonia, CAS # 7446-09-5, was a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

32. Anhydrous ammonia, CAS # 7446-09-5, was produced, used or stored at Respondent's facility.

33. Anhydrous ammonia, CAS # 7446-09-5, was an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

34. Anhydrous ammonia, CAS # 7446-09-5, had a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

35. Anhydrous ammonia, CAS # 7446-09-5, was a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

36. Anhydrous ammonia, CAS # 7446-09-5, had a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

37. At 4:46 p.m., Monday, April 28, 2008, a release occurred from Respondent’s facility of approximately 3,923 pounds of anhydrous ammonia, CAS # 7446-09-5, (the release).

38. In a 24 hour time period, the release of anhydrous ammonia, CAS # 7446-09-5, exceeded the RQ for this chemical.

39. Approximately 3,923 pounds of anhydrous ammonia, CAS # 7446-09-5, was emitted into the air.

40. The release was a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

41. The release was a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

42. Respondent had knowledge of the release at 4:46 a.m. (Eastern Time), Monday, April 28, 2008.

43. The release required notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

44. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

45. The release was likely to affect Indiana.

46. At all times relevant to this CAFO, the Indiana State Emergency Response Commission was the SERC for Indiana under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

47. The release was likely to affect Cass County.

48. At all times relevant to this CAFO the Cass County Local Emergency Planning Committee was the LEPC for Cass County under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

49. Respondent notified the NRC of the release at 10:06 a.m. (EST), Monday, April 28, 2010.

50. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

51. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

52. Respondent notified the Indiana SERC of release at 10:08 a.m. (EST), Monday, April 28, 2010.

53. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

54. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

55. Respondent notified the LEPC of the release at 10:05 a.m. (EST), Monday, April 28, 2010.

56. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

57. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and conclusions of law in this CAFO.

Civil Penalty

58. In consideration of the civil penalty factors listed at Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), U.S. EPA has determined that an appropriate civil penalty to settle this action is \$63,375.00.

59. Within 30 days after the effective date of this CAFO, Respondent must pay a \$21,125.00 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending, via regular U.S. Postal Service, a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

The check must note the following: the case title, the docket number of this CAFO, and the billing document number **2751130B008**.

60. Within 30 days after the effective date of this CAFO, Respondent must pay a \$42,250.00 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending, via regular U.S. Postal Service, a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note the following: the case title, the docket number of this CAFO and the billing document number **2751144E011**.

61. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check(s) and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3511

Ruth McNamara, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Jeffery M. Trevino, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

62. This civil penalty is not deductible for federal tax purposes.

63. If Respondent does not timely pay the civil penalty U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

64. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

65. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

66. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and conclusions of law in this CAFO.

67. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

68. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

69. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA and other applicable federal, state and local laws, and regulations.

70. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA.

71. The terms of this CAFO bind Respondent and its successors, and assigns.

72. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

73. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

74. This CAFO constitutes the entire agreement between the parties.

**In the Matter of: Tyson Fresh Meats, Inc., Logansport, Indiana
Docket No.**

Tyson Fresh Meats, Inc., Logansport, Indiana, Respondent

2-7-11
Date

T. I. 2-7-11
NOEL WHITE
Noel White, Senior Group Vice-President Fresh Meats
Tyson Fresh Meats, Inc.

U.S. Environmental Protection Agency, Complainant

2-16-11
Date

Richard C. Karl
Richard C. Karl, Director
Superfund Division

In the Matter of: Tyson Fresh Meats, Inc., Logansport, Indiana

Docket No. **MM-05-2011-0005**

CERCLA-05-2011-0008

EPCRA-05-2011-0011

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2-18-11

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

RECEIVED

FEB 23 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of: Tyson Fresh Meats, Inc., Logansport, Indiana
Docket No. MM-05-2011-0005

CERCLA-05-2011-0008

EPCRA-05-2011-0011

Certificate of Service

RECEIVED

FEB 23 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number _____ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Timothy Jones, Counsel to Respondent by placing them in the custody of the United States Postal Service addressed as follows:

Timothy Jones
Senior Counsel
Tyson Foods, Inc.
2200 Don Tyson Parkway, CP004
Springdale, AR 72762

on the 23rd day of February, 2011

Ruth McNamara

Ruth McNamara
U.S. Environmental Protection Agency
Region 5