

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 7
 11201 RENNER BOULEVARD
 LENEXA, KANSAS 66219

UNITED STATES
 ENVIRONMENTAL PROTECTION
 AGENCY REGION 7
 2018 JUN -6 PM 12: 39

BEFORE THE ADMINISTRATOR

In the Matter of:)	
)	
Daybreak Foods, Inc.)	Docket No. CAA-07-2018-0153
)	EPCRA-07-2018-0154
Respondent.)	CERCLA-07-2018-0155
)	
Proceeding under Section 113(d) of the CAA,)	
42 U.S.C. § 7413(d), Section 325 of EPCRA,)	
42 U.S.C. § 11045, and Section 109 of)	
<u>CERCLA, 42 U.S.C. § 9609</u>)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and Daybreak Foods, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding resolves administratively the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d); Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045; and Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9609.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated:

- (a) the General Duty Clause set forth in Section 112(r) of the CAA, 42 U.S.C. § 7412(r);
- (b) the emergency release notification requirements of Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 355;

- (c) the reporting requirements of Sections 311(a) and 312 of EPCRA, 42 U.S.C. §§ 11021(a) and 11022, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 370, Subpart C; and
- (d) the emergency release notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and codified at 40 C.F.R. Part 302.

3. Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), Section 325 of EPCRA, 42 U.S.C. § 11045(b), and Section 109 of CERCLA, 42 U.S.C. § 9609(a), of the EPA's intent to issue an order assessing penalties for these alleged violations.

Parties

4. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Air and Waste Management Division, EPA, Region 7.

5. Respondent is Daybreak Foods, Inc., a business entity authorized to do business and in good standing under the laws of the State of Iowa, and which owns and operates an egg production facility located at 3159 Buchanan Avenue in Eagle Grove, Iowa.

Statutory and Regulatory Background

CAA 112(r)-General Duty Clause

6. On November 15, 1990, the President signed into law the CAA Amendments of 1990, which added Section 112(r) to Title I of the CAA, 42 U.S.C. § 7412(r). The stated objective of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), is to prevent an accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance.

7. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), also known as the General Duty Clause, the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty in the same manner and the same extent as the Occupational Safety and Health Act, 29 U.S.C. § 654 *et. seq.* to identify hazards which may result from accidental releases using appropriate hazard assessment techniques, to design and maintain a safe facility, taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

8. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), defines "person" to include any individual, corporation, partnership, association, State, municipality, political subdivision of a

State, and any agency department, or instrumentality of the United States and any officer, agent, or employee thereof.

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

10. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source” 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.

11. Pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), EPA promulgated a list of regulated substances found at 40 C.F.R. § 68.130, Tables 1, 2, 3 and 4.

12. Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), defines “accidental release” as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

13. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of Section 112(r)(7)(1) of the CAA, 42 U.S.C. § 7412(r)(7)(1), and its implementing regulations. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day for violations that occurred from January 12, 2009, through November 2, 2015; to \$45,268 per day for violations that occurred after November 2, 2015 and for which penalties were assessed on or after January 15, 2017 but before January 15, 2018; and to \$46,192 per day for violations that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018.

EPCRA

14. Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations set forth at 40 C.F.R. Part 355, Subpart C, require the owner or operator of a facility at which a hazardous chemical is produced, used, or stored and at which there is a release of a reportable quantity of any EPCRA extremely hazardous substance or CERCLA hazardous substance to immediately notify the State Emergency Response Commission (“SERC”) of any State likely to be affected by the release and the emergency coordinator for the Local Emergency Planning Committee (“LEPC”) for any area likely to be affected by the release.

15. Section 311 of EPCRA, 42 U.S.C. § 10021, and the regulations set forth at 40 C.F.R. Part 370, require the owner or operator of a facility that is required to prepare or have available a material safety data sheet (“MSDS”), also known as a safety data sheet, for a hazardous chemical in accordance with the Occupational Safety and Health Act (“OSHA”), 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, to submit within 3 months after required by OSHA, an MSDS for each such chemical, or a list of such chemicals as described in 42 U.S.C. § 11021(a)(2), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

16. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations set forth at 40 C.F.R. Part 370, require the owner or operator of a facility that is required to prepare or have available an MSDS for a hazardous chemical in accordance with OSHA, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including a hazardous chemical which also qualifies as an “extremely hazardous substance”) is present at any one time during a calendar year in a quantity equal to or greater than its applicable threshold planning quantity (“TPQ”), to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form (“Chemical Inventory Form”) for the previous calendar year identifying the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

17. Pursuant to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2), extremely hazardous substances are listed in 40 C.F.R. Part 355, Appendices A and B, which include ammonia.

18. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), defines “facility” to mean all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person).

19. Section 329(8) of EPCRA, 42 U.S.C. § 11049(8), defines “release” as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any hazardous chemical, extremely hazardous substance, or toxic chemical.

20. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), authorizes the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of the requirements of Section 304 of EPCRA, 42 U.S.C. § 11004. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of the requirements of Section 312 of EPCRA, 42 U.S.C. § 11022. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred after December 6, 2013, and before November 2, 2015; to

\$54,789 for violations that occurred after November 2, 2015 and for which penalties were assessed on or after January 15, 2017 but before January 15, 2018; and to \$55,907 for violations that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018.

21. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes the EPA Administrator to assess a civil penalty of up to \$10,000 for each violation of the requirements of Section 311 of EPCRA, 42 U.S.C. § 11021. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$16,000 for violations that occurred after December 6, 2013, and before November 2, 2015; to \$21,916 for violations that occurred after November 2, 2015 and for which penalties were assessed on or after January 15, 2017 but before January 15, 2018; and to \$22,363 for violations that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018.

CERCLA

22. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulation set forth at 40 C.F.R. § 302.6 requires any person in charge of a vessel or an onshore or offshore facility, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than the reportable quantity established pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, to immediately notify the National Response Center (“NRC”) of such release.

23. Section 101(9)(A) of CERCLA, 42 U.S.C. § 9601(9)(A), defines “facility” as any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft.

24. Section 101(14)(B) of CERCLA, 42 U.S.C. § 9601(14)(B), defines “hazardous substance” as any element, compound, mixture, solution, or substance designated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, as designated by 40 C.F.R. § 302.4.

25. Subject to certain exclusions, Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), defines “release” as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

26. Under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), “person” means, *inter alia*, a municipality.

27. Section 109 of CERCLA, 42 U.S.C. § 9609, authorizes the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C.

§ 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred after December 6, 2013, and before November 2, 2015; to \$54,789 for violations that occurred after November 2, 2015 and for which penalties were assessed on or after January 15, 2017 but before January 15, 2018; and to \$55,907 for violations that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018.

General Factual Allegations and Conclusions of Law

28. Respondent is the owner or operator of an egg production facility, located at 3159 Buchanan Avenue in Eagle Grove, Iowa (the “Facility”).

29. Respondent is, and at all times referred to herein was, a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

30. At all times relevant to this action, the Facility was and is a “stationary source” as defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C) and a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

31. The Facility employs a refrigeration process using anhydrous ammonia (“ammonia”) in its egg production system. As a result, Respondent handles anhydrous ammonia at the Facility.

32. Ammonia is a regulated substance pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3) and 40 C.F.R. § 68.130.

33. Ammonia is an extremely hazardous substance as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3) and as designated pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and listed in 40 C.F.R. Part 355, Appendix A, with a reportable quantity of 100 pounds, and a TPQ of 500 pounds, as listed in 40 C.F.R. Part 355, Appendix A.

34. Ammonia is a hazardous substance as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with a reportable quantity of 100 pounds as designated by 40 C.F.R. § 302.4.

35. On or about January 25, 2016, there was an accidental release of ammonia from the Facility (“release”).

36. On or about April 22, 2016, as part of the EPA investigation into Respondent’s Facility and the release (“EPA investigation”), the EPA sent Respondent a Chemical Release Questionnaire (“CRQ”).

37. Respondent's response to the CRQ indicated that the release began on January 25, 2016 at 6:20 a.m. and ended at approximately at 8:30 a.m. or 9:00 a.m.

38. An Areal Locations of Hazardous Atmospheres model of the release was conducted using weather conditions on January 25, 2016, and estimated the ammonia release at 2,000 pounds, which is greater than the reportable quantity of 100 pounds under EPCRA and CERCLA and their implementing regulations.

39. According to the EPA investigation, a report of the release was made to the NRC at approximately 10:41 a.m. on January 25, 2016.

40. According to the EPA investigation, Respondent never informed the SERC nor the LEPC of the release.

41. The EPA investigation revealed that Respondent had a maximum inventory of 7,585 pounds of ammonia since at least 2011.

42. On or about March 1, 2016, Respondent filed its first Tier II Chemical Inventory Form pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, showing a maximum inventory of 7,585 pounds of ammonia for 2015, more than ten times the TPQ listed in 40 C.F.R. Part 355, Appendix A.

43. The EPA investigation further revealed that at the time of the release, the LEPC was not aware Respondent's Facility had ammonia above the TPQ of 500 pounds.

Allegation of Violation

44. The Complainant hereby states and alleged that Respondent has violated the CAA, EPCRA, and CERCLA as follows:

Count 1

45. The facts stated in Paragraphs 28 through 43 above are herein incorporated.

46. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 112(r)(1), Respondent has a general duty: (1) to identify hazards which may result from accidental releases of a regulated substance or other extremely hazardous substance, using appropriate hazard assessment techniques; and (2) to minimize the consequences of accidental releases of regulated substances or other extremely hazardous substances which do occur.

47. The EPA investigation revealed that Respondent: (1) failed to develop an adequate hazard assessment of the ammonia refrigeration system and failed to identify chemical or process hazards which may result in accidental release; and (2) failed to minimize the consequences of the January 25, 2016 release by failing to train employees on how to safely

respond to an ammonia release and failing to include in its Emergency Action Program a mitigation process for planning for an ammonia release.

48. Respondent's failures to identify hazards and to minimize the consequences of the accidental release of ammonia violate Section 112(r)(1) of the CAA, 42 U.S.C. § 112(r)(1).

Count 2

49. The facts stated in Paragraphs 28 through 43 above are herein incorporated.

50. Pursuant to Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations set forth at 40 C.F.R. § 355.40, Respondent was required to immediately notify the SERC and LEPC of the January 25, 2016 release.

51. The EPA investigation revealed that Respondent failed to immediately notify the SERC and LEPC of the release.

52. Respondent's failure to immediately notify the SERC and LEPC of the January 25, 2016 release is a violation of Section 304 of EPCRA, 42 U.S.C. § 1104, and of the requirements of 40 C.F.R. § 355.40.

Count 3

53. The facts stated in Paragraphs 28 through 43 above are herein incorporated.

54. Section 311 of EPCRA, 42 U.S.C. § 10021, as implemented by 40 C.F.R. Part 370, required Respondent to submit, in 2011, an MSDS for ammonia to the LEPC, SERC, and the fire department with jurisdiction over the Facility.

55. The EPA investigation revealed that Respondent failed to submit an MSDS for ammonia to the LEPC, SERC, and the fire department with jurisdiction over the Facility until after the January 25, 2016 release.

56. Respondent's failure to timely submit an MSDS for ammonia to the LEPC, SERC, and the fire department with jurisdiction over the Facility is a violation of Section 311 of EPCRA, 42 U.S.C. § 10021, as implemented by 40 C.F.R. Part 370.

Count 4

57. The facts stated in Paragraphs 28 through 43 above are herein incorporated.

58. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, required Respondent to submit a Chemical Inventory Form for ammonia annually, starting on March 1, 2012, to the SERC, LEPC, and local fire department with jurisdiction over the Facility.

59. The EPA investigation revealed that Respondent failed to submit a Chemical Inventory Form for ammonia to the LEPC, SERC, and the fire department with jurisdiction over the Facility until March 1, 2016.

60. Respondent's failure to timely submit a Chemical Inventory Form for ammonia annually, starting on March 1, 2012, to the SERC, LEPC, and local fire department with jurisdiction over the Facility, constitutes four separate violations of Section 312 of EPCRA, 42 U.S.C. § 10022, as implemented by 40 C.F.R. Part 370.

Count 5

61. The facts stated in Paragraphs 28 through 43 above are herein incorporated.

62. Pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603, and the regulation set forth at 40 C.F.R. § 302.6, Respondent was required to immediately notify the NRC of the January 25, 2016 release.

63. The EPA investigation revealed that Respondent failed to immediately notify the NRC of the January 25, 2016 release.

64. Respondent's failure to immediately notify the NRC of the January 25, 2016 release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603, and of the requirements of 40 C.F.R. § 302.6.

CONSENT AGREEMENT

65. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the facts stipulated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and

(h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

66. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

67. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

68. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Seventy Thousand Dollars (\$70,000).

69. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket numbers and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

70. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Britt Bieri
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

71. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will

be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%) per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

72. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of CAA, EPCRA, CERCLA, or any other applicable law.

73. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

74. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of the CAA, EPCRA, and CERCLA, and their respective implementing regulations.

75. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA, EPCRA, CERCLA, and regulations promulgated thereunder.

76. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

77. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

78. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.


79. Respondent's signature on this Consent Agreement is not intended to be, nor shall it be deemed, an admission of liability in any proceeding or litigation brought by a person or entity that is not a party to this Consent Agreement and Final Order.

80. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

81. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT:
DAYBREAK FOODS, INC.**

Date: 5-24-18



Signature

STEVEN A. BUESNER
Name

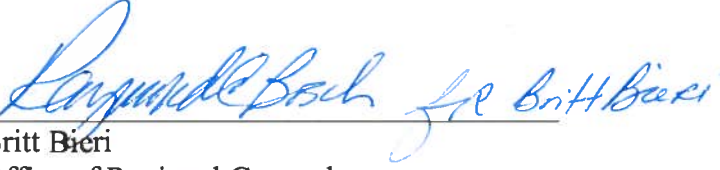
ASST VP OPERATIONS
Title

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 6/16/18


Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency, Region 7

Date: 5/31/2018


Britt Bieri
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), Section 325 of EPCRA, 42 U.S.C. § 11045, Section 109 of CERCLA, 42 U.S.C. § 9609, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

June 6, 2018
Date

CERTIFICATE OF SERVICE

I certify that on the date below, I hand delivered the original and one true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that a true and correct copy of the foregoing order was sent this day in the following manner to the addressees:

Copy delivered to Attorney for Complainant:

Britt Bieri (e-copy)

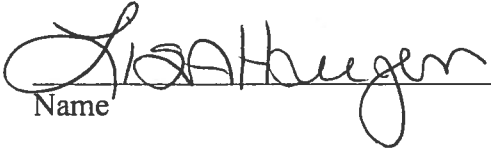
Copy to Respondent via U.S. Mail:

Steven A. Bliesner
Asst. VP of Operations
Daybreak Foods, Inc.
P.O. Box 800
Lake Mills, Wisconsin 53551

Copy to Respondent via electronic mail to:

Steven A. Bliesner (e-copy)

Dated this 6th day of June, 2018.


Name _____