



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

December 20, 2017

Via Overnight Mail

David R. Beane, Esquire
BEANE LLC
Swanona at Historic Centre Park
606 North 5th Street, Suite 7
Reading, Pennsylvania 19603

Re: **In the Matter of Birdsboro Kosher Farm Corporation**
U.S. EPA Docket No. EPCRA-03-2018-0002

Enclosed please find a file-stamped copy of the Consent Agreement and Final Order, along with a certificate of service. Please contact me with any questions regarding the penalty payment.

Sincerely yours,

A handwritten signature in cursive script that reads "Cynthia T. Weiss".

Cynthia T. Weiss
Senior Assistant Regional Counsel

Enclosures

cc: Theresa Gallagher (3HS61)





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029

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 REGIONAL HEARING CLERK
 EPA REGION III, PHILA. PA

In the Matter of:)	US EPA Docket No.: EPCRA-03-2018-0002
)	
)	
Birdsboro Kosher Farm Corporation)	
1100 Lincoln Road)	
Birdsboro, Pennsylvania, 19508,)	
)	
Respondent.	)	Proceedings Pursuant to Sections 312 and
	)	325 of the Emergency Planning and
	)	Community Right-to-Know Act,
	)	42 U.S.C. §§ 11022 and 11045
Birdsboro Kosher Farm Corporation)	
1100 Lincoln Road)	
Birdsboro, Pennsylvania, 19508,)	
)	
Facility.)	
)	

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045. The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency ("EPA"), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has re-delegated this authority to the Director of the Hazardous Site Cleanup Division, EPA Region III ("Complainant"). Further, this Consent Agreement is proposed and entered into under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CAFO") as prescribed by the Consolidated Rules of Practice, pursuant to 40 C.F.R. § 22.1(a)(8), 22.13(b), and 22.18(b)(2) and (3), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.



JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. § 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement or the Final Order, or enforcement of this CAFO.
4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

FACTUAL ALLEGATIONS

5. Birdsboro Kosher Farm Corporation ("Respondent") is a Pennsylvania corporation with its headquarters located at 1100 Lincoln Road, in Birdsboro, Pennsylvania 19508.
6. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.
7. Respondent is the owner and operator of poultry slaughtering and processing facility located at 1100 Lincoln Road in Birdsboro, Pennsylvania ("the Facility").
8. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.
9. Since 2012, Respondent has been the "owner or operator" of the Facility within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.2.
10. Respondent is engaged in a business at the Facility where chemicals are either used, distributed, or are produced for use or distribution.
11. Respondent is an "employer" at the Facility as that term is defined at 29 C.F.R. § 1910.1200(c).
12. On July 6, 2016, EPA conducted an inspection of the Facility to ascertain Respondent's compliance with the emergency planning and community right-to-know requirements of Sections 302, 303, 311 and 312 of EPCRA; 42 U.S.C. §§ 11002, 11003, 11021, 11022 ("the Inspection"). During the Inspection, and in the aftermath of the Inspection, Respondent submitted information to EPA regarding the Facility and its compliance with EPCRA.

COUNT I
FINDINGS OF FACT RELATING TO THE
VIOLATION OF SECTION 312 OF EPCRA – 2015

13. The factual allegations contained in Paragraphs 5 through 12 of this CAFO are incorporated by reference herein as though fully set forth at length.

14. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (“MSDS”) or Safety Data Sheet (“SDS”) for a hazardous chemical in accordance with Occupational Safety and Health Administration (“OSHA”) Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous substance (“EHS”)) is present at any one time during a calendar year in a quantity equal to or greater than its applicable minimum threshold level for reporting (“MTL”) or threshold planning quantity (“TPQ”) established by 40 C.F.R. § 370.10, 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 State Emergency Response Commission (“SERC”), the Local Emergency Planning Committee (“LEPC”), and local fire department with jurisdiction over the facility.

15. According to information supplied to EPA by Respondent, approximately 2,400 pounds of anhydrous ammonia and approximately 1,386 to 1,540 pounds of sulfuric acid were present at the Facility during calendar year 2015.

16. Anhydrous ammonia and sulfuric acid are “hazardous chemicals” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66, and EHSs as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 370.66, and are subject to Section 312 of EPCRA, 42 U.S.C. § 11022, pursuant to Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

17. Pursuant to 40 C.F.R. § 370.10(a)(1), the TPQ for anhydrous ammonia is 500 pounds and the TPQ for sulfuric acid is 500 pounds.

18. Respondent had present at the Facility during calendar year 2015 anhydrous ammonia and sulfuric acid in amounts exceeding each chemical’s respective TPQ.

19. The SERC for the Facility is, and at all times relevant to this CAFO has been, the Pennsylvania Department of Labor and Industry, Bureau of Occupational & Industrial Safety, Pennsafe Program, located at 651 Boas Street, in Harrisburg, Pennsylvania 19137.

20. Respondent is the owner of a facility that is required to prepare or have available MSDSs or SDSs for any hazardous chemicals present at the Facility under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

21. Respondent failed to submit to the SERC a Chemical Inventory Form for calendar year 2015 by March 1, 2016, identifying anhydrous ammonia and sulfuric acid as present at the Facility in a

quantity equal to or greater than their respective MTL or TPQ, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – 2015**

22. Respondent's failure to submit to the SERC a Chemical Inventory Form for the Facility for calendar year 2015 constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNT II
**FINDINGS OF FACT RELATING TO THE
VIOLATION OF SECTION 312 OF EPCRA – 2014**

23. The factual allegations contained in Paragraphs 5 through 22 of this CAFO are incorporated by reference herein as though fully set forth at length.

24. According to the information submitted to EPA by Respondent, Respondent had present at the Facility during the 2014 calendar year approximately 2,400 pounds of anhydrous ammonia and approximately 1,386 to 1,540 pounds of sulfuric acid, amounts that exceeded each chemical's respective TPQ.

25. Respondent failed to submit to the SERC a Chemical Inventory Form for calendar year 2014 by March 1, 2015, identifying anhydrous ammonia and sulfuric acid as present at the Facility in a quantity equal to or greater than their respective MTL or TPQ, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – 2014**

26. Respondent's failure to submit to the SERC a Chemical Inventory Form for the Facility for calendar year 2014 constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNT III
**FINDINGS OF FACT RELATING TO THE
VIOLATION OF SECTION 312 OF EPCRA – 2013**

27. The factual allegations contained in Paragraphs 5 through 26 of this CAFO are incorporated by reference herein as though fully set forth at length.

28. According to the information submitted to EPA by Respondent, Respondent had present at the Facility during the 2013 calendar year approximately 2,400 pounds of anhydrous ammonia and approximately 1,386 to 1,540 pounds of sulfuric acid, amounts that exceeded each chemical's respective TPQ.

29. Respondent failed to submit to the SERC a Chemical Inventory Form for the Facility for calendar year 2013 by March 1, 2014, identifying anhydrous ammonia and sulfuric acid as present at the Facility in a quantity equal to or greater than their respective MTL or TPQ, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

**CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – 2013**

30. Respondent's failure to submit to the SERC a Chemical Inventory Form for the Facility for calendar year 2013 constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

SETTLEMENT

31. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violation of Section 312 of EPCRA, 42 U.S.C. § 11022, set forth above, in the amount of **\$15,233**.

32. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

PAYMENT TERMS

33. The Civil Penalty shall become due and payable on the date on which a copy of the CAFO is mailed or hand-delivered to Respondent. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CAFO, Respondent shall pay the EPCRA civil penalty of **\$15,233** no later than thirty (30) days after the date on which a copy of the CAFO is mailed or hand-delivered to Respondent, by either cashier's check, certified check, or electronic wire transfer, as set forth in the following paragraphs.

34. Payment of the EPCRA civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, **EPCRA-03-2018-0002**;
- b. All checks shall be made payable to **United States Treasury**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell (513-487-2044)

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

U.S. EPA
Cincinnati Finance Center
26 W. Martin Luther King Drive, MS-002
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX /Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Randolph Maxwell 202-874-3720
or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV
Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

35. Respondent shall submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

36. The EPCRA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C): the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. The penalty is also consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

37. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment in accordance with this CAFO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

38. In accordance with 40 C.F.R. § 13.11(a), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this fully executed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

39. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the date on which a copy of the CAFO is mailed or hand-delivered to Respondent and an additional \$15.00 for each subsequent thirty (30) day period the penalties remain unpaid.

40. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain delinquent more than ninety (90) calendar days in accordance with 40

C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

41. Failure by Respondent to pay the EPCRA civil penalty assessed by the Final Order in full in accordance with this CAFO may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

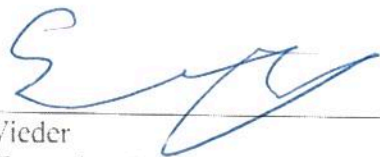
42. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 325 of EPCRA, 42 U.S.C. § 11045.

43. The provisions of the CAFO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

44. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. §22.18(c). Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

45. Each party to this action shall bear its own costs and attorney's fees.

FOR BIRDSBORO KOSHER FARM CORPORATION



Sam Wieder
Chief Executive Officer

12-7-17
DATE

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Karen Melvin, Director
Hazardous Site Cleanup Division

DEC 19 2017

DATE

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:)	
Birdsboro Kosher Farm Corporation	)	U.S. EPA Docket No.: EPCRA-03-2018-0002
1100 Lincoln Road)	
Birdsboro, Pennsylvania, 19508,)	
)	
Respondent.	)	Proceedings Pursuant to Sections 312
	)	and 325 of the Emergency Planning and
	)	Community Right-to-Know Act,
Birdsboro Kosher Farm Corporation	)	42 U.S.C. §§ 11022 and 11045
1100 Lincoln Road)	
Birdsboro, Pennsylvania, 19508,)	
)	
Facility.)	

FINAL ORDER

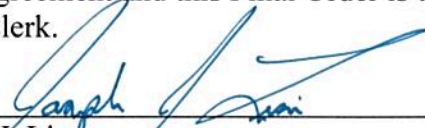
Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Birdsboro Kosher Farm Corporation, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999), and the Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c).

NOW, THEREFORE, PURSUANT TO Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***FIFTEEN THOUSAND TWO HUNDRED THIRTY-THREE DOLLARS (\$15,233)*** in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Dec. 20, 2017
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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)	
Birdsboro Kosher Farm Corporation)	
1100 Lincoln Road)	
Birdsboro, Pennsylvania, 19508)	
)	
Respondent.)	
)	
)	
Birdsboro Kosher Farm Corporation	)	Certificate of Service
1100 Lincoln Road)	
Birdsboro, Pennsylvania, 19508,)	
)	
Facility.)	

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via overnight mail

David R. Beane, Esquire
BEANE LLC
Swanona at Historic Centre Park
606 North 5th Street, Suite 7
Reading, Pennsylvania 19603

12/20/17
Date

Cynthia T. Weiss
Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel