

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

| | |
|---|--|
| In the Matter of: | : |
| | : |
| KERRY STOCK & BROTH COMPANY INC. | : U.S. EPA Docket No. |
| | : CAA-EPCRA-03-2023-0069 |
| | : |
| | : Proceeding under Sections 112(r) and 113 of |
| | : the Clean Air Act, 42 U.S.C. §§ 7412(r) and |
| | : 7413; and Sections 304 and 325 of the |
| | : Emergency Planning and Community Right-to- |
| 1711 NORTH LIBERTY STREET | : Know Act, 42 U.S.C. §§ 11004 and 11045 |
| HARRISONBURG, VIRGINIA 22802 | : |
| | : |
| Respondent. | : |
| | : |

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Kerry Stock & Broth Company, Inc. (“Respondent”) (collectively the “Parties”), 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 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. Section 113(d) of the CAA authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA”) to assess penalties and undertake other actions required by this Consent Agreement. Section 325 of EPCRA authorizes the Administrator of EPA to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under the CAA and EPCRA for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. EPA has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(2) and (a)(8).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in **this Consent Agreement and Final Order** and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Administrator and the Attorney General, each through their respective delegates, have jointly determined that this administrative penalty action is appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference

14. Respondent is a stock corporation organized under the laws of the State of Delaware, with its principal place of business located at 3400 Millington Road in Beloit, Wisconsin 53511.
15. As a stock corporation, Respondent is 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 40 C.F.R. § 355.61, and is subject to the assessment of civil penalties for the violations alleged herein.
16. Respondent is, and at all times relevant to this Consent Agreement and Final Order, has been the owner and operator of the facility, located at 1711 North Liberty Street, Harrisonburg, Virginia 22802 (the “Facility”).
17. Respondent is an “owner or operator” of the Facility, as referenced in Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.2.
18. The Facility is a “facility” as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), 40 C.F.R. § 355.61.
19. At all times relevant to this Consent Agreement and Final Order, Respondent produced, used, or stored anhydrous ammonia, a hazardous substance, at the Facility.
20. On April 25, 2019, EPA conducted an inspection to determine compliance with the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) Section 103, 42 U.S.C. § 9603, and the Emergency Planning and Community Right-to-Know Act (“EPCRA”) Sections 302 through 312, 42 U.S.C. §§ 11002-11022
21. On August 10, 2021, EPA issued an Information Request pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, and Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), to Kerry to determine compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (“EPA’s IRL”).

Count I
Failure to Design and Maintain a Safe Facility

22. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference
23. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).
24. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), requires that the 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, a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from the release of such substances 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 (“the General Duty Clause”).

25. The General Duty Clause applies to any stationary source producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, or other extremely hazardous substances.
26. The Facility is a “stationary source” as defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.
27. At the time of the Inspection, EPA observed that the Facility has two (2) ammonia refrigeration systems onsite, each with a capacity of approximately two thousand (2,000) pounds. Therefore, the Facility stores approximately four thousand (4,000) pounds of anhydrous ammonia onsite.
28. Anhydrous ammonia is a substance listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3); a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3; and an extremely hazardous substance (“EHS”) as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61, with a Reportable Quantity (“RQ”) of 100 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B, and 40 C.F.R. § 302.4.
29. As the owner and operator of a stationary source, with respect to the use and storage of anhydrous ammonia, Respondent has a duty under the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to identify hazards that may result from releases of regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or of any other extremely hazardous substances, design and maintain a safe facility to prevent the accidental release of these substances to the air, and minimize the consequences of accidental releases should they occur.
30. Relevant industry standards for the use and storage of ammonia include, but are not limited to, the International Institute of Ammonia Refrigeration Standards (“IIAR”).
31. Sections 5.1, 5.2, and 5.4 of IIAR 7 advise owners and operators of anhydrous ammonia refrigeration facilities to develop and maintain standard operating procedures. Operating procedures that should be developed and maintained include initial startup, normal operations, temporary operations, normal shutdown, emergency shutdown, emergency operations, and startup following a turnaround or after an emergency shutdown.
32. EPA requested a copy of the Facility’s standard operating procedures in EPA’s August 10, 2021 IRL. In its response dated September 21, 2021, Respondent provided EPA with standard operating procedures dated September 16, 2021. Respondent was unable to provide any standard operating procedures that were in effect prior to September 16,

2021.

33. Sections 5.1 through 5.6 of IIAR 6 require an owner of anhydrous ammonia refrigeration processes develop an inspection, testing, and maintenance program based on manufacturer recommendations, equipment and system operating and maintenance history, and the minimum safety requirements of IIAR 6 to reduce the probability of an ammonia release.
34. Section 5.3 of IIAR 6 require an owner of anhydrous ammonia refrigeration processes to establish and maintain a record keeping system to provide evidence that the provisions of Sections 5.1 through 5.6 of IIAR 6 have been implemented and to address identified deficiencies.
35. Section 5.4 of IIAR 6 require an owner of anhydrous ammonia refrigeration processes to develop and maintain an inspection program.
36. In response to EPA's IRL requesting, among other things, inspection reports for Respondent's ammonia refrigeration systems for the past five years, Respondent provided EPA with inspection records for only September 2021. Respondent was unable to produce inspection records for the time period prior to September 2021.
37. Section 15.3.7 of IIAR 2 advises owners and operators of anhydrous ammonia refrigeration facilities to perform relief valve design calculations to assure sufficient mass flow carrying capacity to limit the pressure rise in protected equipment to prevent catastrophic failure.
38. EPA requested a copy of the Facility's relief valve design calculations in EPA's IRL. Respondent was unable to provide any relief valve design calculations.
39. By failing to have standard operating procedures in place at the Facility prior to September 16, 2021, by failing to maintain inspection or maintenance schedules for the time period prior to September 2021, and by failing perform relief design calculations, Respondent failed to comply with the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to design and maintain a safe facility taking such steps as are necessary to prevent the release of substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substances.
40. In failing to comply with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

Count II
Failure to Immediately Notify the SERC and the LEPC of a Release; Failure to Submit Follow-up Report to the SERC

41. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
42. Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored to notify the State Emergency Response Commission (“SERC”) and Local Emergency Planning Committee (“LEPC”) immediately following the release of an EHS for which notification is also required under CERCLA Section 103, 42 U.S.C. § 9603.
43. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored to provide, as soon as practicable after a release, a written follow-up emergency notice to the SERC and LEPC that includes information relating to actions taken to respond to and contain said release.
44. The SERCs for the Facility are, and at all times relevant to this Consent Agreement and Final Order have been, the Virginia Department of Environmental Quality, SARA Title III Program, 1111 East Main Street, Suite 1400, Richmond, Virginia 23219 (for release follow-up reports); and the Virginia Department of Emergency Management, 9711 Farrar Court, Richmond, Virginia 23236 (for release notifications).
45. The LEPC for the Facility is, and at all times relevant to this Consent Agreement and Final Order has been, Harrisonburg-Rockingham County Joint LEPC, 101 North Main Street, 3rd Floor, Harrisonburg, Virginia 22802.
46. Pursuant to information provided to EPA by the NRC, between June 21, 2021, and June 23, 2021, Respondent’s Facility released approximately 320 pounds of anhydrous ammonia from an ammonia condenser located on the roof of the Facility’s south engine room (the “Release”).
47. The Release from the Facility constituted a release of an EHS in a quantity equal to or exceeding its RQ, which required immediate notification under CERCLA Section 103, 42 U.S.C. § 9603, and therefore, required immediate notification of the SERC and LEPC pursuant to Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b).
48. This Release was not a “federally permitted release” as that term is defined in Section 304(a)(2)(A) of EPCRA, 42 U.S.C. § 11004(a)(2)(A), and 40 C.F.R. § 355.31(b).
49. Pursuant to a certified statement from the LEPC, Respondent did not notify the LEPC of the Release.

50. Pursuant to a certified statement from the SERC, Respondent did not notify the SERC of the Release.
51. Pursuant to a certified statement from the SERC, Respondent did not send a follow-up notice of the Release to the SERC.
52. By failing to immediately notify the SERC and LEPC as soon as Respondent knew or should have known that a release of an EHS had occurred at the Facility in an amount equal to or exceeding the applicable RQ, Respondent failed to comply with Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b).
53. By failing to send a written follow-up notice of the Release to the SERC, Respondent failed to comply with Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).
54. In failing to comply with Section 304(a)(1), (b), and (c) of EPCRA, 42 U.S.C. § 11004(a)(1), (b), and (c), and 40 C.F.R. Part 355, Subpart C, Respondent is subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

CIVIL PENALTY

55. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **SEVENTY-TWO THOUSAND AND TWO HUNDRED TWENTY-FOUR dollars (\$72,224)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
56. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and Section 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C) including the following: the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation; as well as 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 matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012), and 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 adjusted in accordance with the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

57. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, **CAA-EPCRA-03-2023-0069**;
- b. All checks in payment of the civil penalty shall be made payable to the "**United States Treasury**";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Mark Bolender
Senior Assistant Regional Counsel
bolender.mark@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

58. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

59. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final

- Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
60. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. However, EPA will not seek to recover interest on any amount of the civil penalty 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).
 61. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
 62. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 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. 31 C.F.R. § 901.9(d).
 63. If Respondent fails to make a full and complete payment of the civil penalty in accordance with this Consent Agreement and Final Order, the entire unpaid balance of the penalty shall become immediately due and owing. Failure by Respondent to pay the CAA civil penalty assessed by the Final Order in full in accordance with this Consent Agreement and Final Order may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.
 64. Failure by the Respondent to pay the EPCRA civil penalty assessed by the Final Order in accordance with the terms of this Consent Agreement and Final Order 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.
 65. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

66. The parties' consent to service of the Final Order by email at the following valid email addresses: bolender.mark@epa.gov (for Complainant), and sjpoplawski@bclplaw.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

67. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
68. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

69. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with the CAA with regard to the CAA violation alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

70. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CAA, EPCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

71. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and

Final Order. 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. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CAA and EPCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

72. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

73. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

74. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent:

Kerry Stock & Broth Inc.

Date: May 9, 2023

By: *Matthew Kolesar*
Matt Kolesar VP HSE Kerry, North
America Region

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Mark Bolender
Sr. Assistant Regional Counsel
U.S. EPA – Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

| | | |
|--|---|--|
| In the Matter of: | : | |
| | : | |
| KERRY STOCK & BROTH COMPANY INC. 3400 MILLINGTON RD BELOIT, WISCONSIN 53511 | : | U.S. EPA Docket No. CAA-EPCRA-03-2023-0069 |
| | : | |
| Respondent. | : | Proceeding under Sections 112(r) and 113 of the Clean Air Act, 42 U.S.C. §§ 7412(r) and 7413; and Sections 304 and 325 of the Emergency Planning and Community Right-to- Know Act, 42 U.S.C. §§ 11004 and 11045 |
| | : | |
| KERRY HARRISONBURG 1711 NORTH LIBERTY STREET HARRISONBURG, VIRGINIA 22802 | : | |
| | : | |
| Facility. | : | |

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Kerry Stock & Broth Company, Inc., 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 *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (June 2012) and 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 statutory factors set forth in Section 113(e) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(e) and Section 325(b)(1)(C) of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045(b)(1)(C).

NOW, THEREFORE, PURSUANT TO Section 113(d) of the CAA, 42 U.S.C. § 7413(d); 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 **SEVENTY-TWO THOUSAND AND TWO HUNDRED TWENTY-FOUR dollars (\$72,224)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order 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 the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and EPCRA and the regulations promulgated thereunder.

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.

Date: _____

By: _____

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

