

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

In the Matter of:	:	U.S. EPA-REGION 3-RHC
	:	FILED-11APR2019PM3:19
Schreiber Foods, Inc.	:	U.S. EPA Docket No.
400 N. Washington Street	:	EPCRA-CERCLA-03-2019-0067
Green Bay, Wisconsin 54301-5111,	:	
	:	Proceeding under Sections 103 and 109
Respondent.	:	of the Comprehensive Environmental
	:	Response, Compensation and Liability Act,
Schreiber Foods, Inc.	:	42 U.S.C. §§ 9603 and 9609, and Sections
208 East Dykeman Road	:	304 and 325 of the Emergency Planning and
Shippensburg, Pennsylvania 17257,	:	Community Right-to-Know Act,
	:	42 U.S.C. §§ 11004 and 11045
Facility.	:	
	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III ("Complainant") and Schreiber Foods, Inc. ("Respondent") (collectively the "Parties"), pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609, and 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 109 of CERCLA and Section 325 of EPCRA authorize the Administrator of the U.S. Environmental Protection Agency 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 it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "CAFO") resolve Complainant's civil penalty claims against Respondent under CERCLA 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. The U.S. Environmental Protection Agency 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)(7) and (8).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
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 CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. 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.
12. Respondent is a Wisconsin corporation, with its headquarters located at 400 North Washington Street, Green Bay, Wisconsin.
13. As a corporation, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21); Section 329(7) of EPCRA, 42 U.S.C. § 11049(7); and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61, and is subject to the assessment of civil penalties for the violations alleged herein.
14. At all times relevant to this CAFO, Respondent has been in charge of the cream

cheese and yogurt manufacturing facility located at 208 East Dykeman Road, Shippensburg, Pennsylvania 17257 ("Facility"), within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

15. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9); Section 329(4) of EPCRA, 42 U.S.C. § 11049(4); and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.
16. Respondent is an "owner or operator" of the Facility as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and referenced in Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. §§ 355.2 and 355.30.
17. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.
18. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances ("EHSs") and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a) through (c) of EPCRA, 42 U.S.C. § 11004(a) through (c), ("Reportable Quantity" or "RQ"). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.
19. The State Emergency Response Commission ("SERC") for the Facility is, and at all times relevant to this CAFO has been, the Pennsylvania Emergency Management Agency ("PEMA"), located at 2605 Interstate Drive, Harrisburg, Pennsylvania 17110-9364.
20. The Local Emergency Planning Committee ("LEPC") for the Facility is, and at all times relevant to this CAFO has been, the Cumberland County Department of Public Safety, located at 1 Public Safety Drive, Carlisle, Pennsylvania 17013.
21. At all times relevant to this CAFO, the Facility was a facility at which a hazardous chemical was produced, used or stored.
22. On April 17, 2017, EPA representatives conducted an inspection of the Facility following a reported release of anhydrous ammonia on September 6, 2016 to determine Respondent's compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-312 of EPCRA, 42 U.S.C. §§ 11002-11022 ("the EPA Inspection").
23. During the EPA Inspection, Respondent's personnel provided documentation to EPA regarding the September 6, 2016 event that had occurred at the Facility, when a conservatively estimated 172 pounds of anhydrous ammonia, Chemical Abstracts Service

(“CAS”) Registry No. 7664-41-7, was released from a silo in the cream cheese plant at the Facility (“the Release”).

24. Respondent first became aware of the Release at approximately 7:40 a.m. on September 6, 2016, when processing employees smelled ammonia and evacuated the area, and the ammonia detection system alarm sounded. Respondent’s personnel discovered the source of the Release, reset the relief valves that were open due to a faulty dual pressure regulator in the cooling system, and terminated the Release at 7:55 a.m. Respondent replaced the faulty dual pressure regulator and the silo was returned into service by the end of the day.
25. Following the Release, Respondent performed several sets of calculations to estimate the amount of ammonia released, which ranged from 114 pounds to 172 pounds. Respondent reported the Release as 172 pounds, based on the most conservative calculation performed, as referenced in Paragraphs 34, 44, and 51, below.
26. On April 12, 2018, EPA sent to Respondent an EPCRA/CERCLA Post-Inspection Letter itemizing potential violations of, among other requirements, CERCLA and EPCRA release reporting requirements following the September 6, 2016 Release, and requesting that Respondent comply with its obligations under EPCRA and take steps to prevent recurrence of the compliance issues.
27. On May 7, 2018, Respondent replied to EPA’s Post-Inspection Letter, outlining steps it had taken to come into compliance and to prevent future violations of the requirements of CERCLA and EPCRA, including conducting multiple personnel training programs and updating its standard operating procedures related to the introduction of new chemicals on site and the release reporting requirements.
28. On September 27, 2018, EPA issued to Respondent a Request to Show Cause and Opportunity to Confer with EPA Regarding Alleged Violations of CERCLA Section 103 and EPCRA Section 304 at the Schreiber Foods, Inc. Facility in Shippensburg, Pennsylvania (the “Show Cause Letter”).

Count I

Failure to Immediately Notify the NRC of a Release

29. The allegations of Paragraphs 1 through 28 of this Consent Agreement are incorporated herein by reference.
30. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as they have knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

31. The chemical ammonia is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.
32. The September 6, 2016 Release from the Facility constituted a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
33. The September 6, 2016 Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).
34. Respondent notified the NRC of the Release at 10:27 a.m. on September 6, 2016.
35. Respondent failed to immediately notify the NRC as soon as it had knowledge of the release of a hazardous substance from the Facility in a quantity greater than the RQ.
36. Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the relevant regulations at 40 C.F.R. § 302.6 by failing to immediately notify the NRC as soon as it had knowledge of the release of a hazardous substance from the Facility in a quantity greater than the RQ.
37. In failing to comply with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. Part 302, Respondent is subject to the assessment of penalties under Section 109(a) of CERCLA, 42 U.S.C. § 9609(a).

Count II
Failure to Immediately Notify the SERC of a Release

38. The allegations of Paragraphs 1 through 37 of this Consent Agreement are incorporated herein by reference.
39. 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 SERC immediately following the release of an EHS in an amount exceeding the RQ for such substance.
40. Ammonia is an EHS as listed in 40 CFR Part 355, Appendix A, with an RQ of 100 pounds.
41. Section 304(a)(4) of EPCRA, 42 U.S.C. § 11004(a)(4), and 40 C.F.R. § 355.31(a) exempt from the reporting requirement any release that results in exposure to persons solely within the boundaries of the facility.

42. Air modeling conducted by EPA shows that the Release plume traveled offsite from the facility property in the south-southeast direction at concentrations between 1 part per million (“ppm”) and 2 ppm.
43. The September 6, 2016 Release from the Facility constituted a release of an EHS in a quantity equal to or exceeding the RQ for that EHS, requiring immediate notification of the SERC pursuant to Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b).
44. Respondent notified the SERC of the Release at 11:00 a.m. on September 6, 2016.
45. Respondent failed to immediately notify the SERC as soon as it had knowledge of the release of an EHS from the Facility in a quantity greater than the RQ.
46. Respondent violated Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and the relevant regulations at 40 C.F.R. §§ 355.40 through 355.43, by failing to immediately notify the SERC as soon as it had knowledge of the release of an EHS from the Facility in a quantity greater than the RQ.
47. In failing to comply with Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), 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).

Count III
Failure to Immediately Notify the LEPC of a Release

48. The allegations of Paragraphs 1 through 47 of this Consent Agreement are incorporated herein by reference.
49. 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 LEPC immediately following the release of an EHS in an amount exceeding the RQ for such substance.
50. The September 6, 2016 Release from the Facility constituted a release of an EHS in a quantity equal to or exceeding the RQ for that EHS, requiring immediate notification of the LEPC pursuant to Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b).
51. Respondent notified the LEPC of the Release at 11:10 a.m. on September 6, 2016.
52. Respondent failed to immediately notify the LEPC as soon as it had knowledge of the release of an EHS from the Facility in a quantity greater than the RQ.

53. Respondent violated Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and the relevant regulations at 40 C.F.R. §§ 355.40 through 355.43, by failing to immediately notify the LEPC as soon as it had knowledge of the release of an EHS from the Facility in a quantity greater than the RQ.
54. In failing to comply with Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), 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).

Count IV
Failure to Timely Submit Written Follow-up Report to the SERC

55. The allegations of Paragraphs 1 through 54 of this Consent Agreement are incorporated herein by reference.
56. 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, that, when there has been a release of an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility must provide a written follow-up report regarding the release to the SERC as soon as practicable.
57. The September 6, 2016 Release from the Facility constituted a release of an EHS in a quantity equal to or exceeding the RQ for that EHS, requiring provision of a written follow-up report to the SERC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).
58. Respondent provided a written follow-up report to the SERC regarding the September 6, 2016 Release on April 19, 2017, two days after the EPA Inspection.
59. Respondent violated Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and the relevant regulations at 40 C.F.R. §§ 355.40 through 355.43, by failing to provide a written follow-up report as soon as practicable to the SERC regarding the release of an EHS from the Facility in a quantity greater than the RQ.
60. In failing to comply with Section 304(c) of EPCRA, 42 U.S.C. § 11004(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).

Count V
Failure to Timely Submit Written Follow-up Report to the LEPC

61. The allegations of Paragraphs 1 through 60 of this Consent Agreement are incorporated herein by reference.
62. 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, that, when there has been a release of an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous

chemicals are produced, used, or stored, the owner or operator of that facility must provide a written follow-up report regarding the release to the LEPC as soon as practicable.

63. The September 6, 2016 Release from the Facility constituted a release of an EHS in a quantity equal to or exceeding the RQ for that EHS, requiring provision of a written follow-up report to the LEPC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).
64. Respondent provided a written follow-up report to the LEPC regarding the September 6, 2016 Release on April 19, 2017, two days after the EPA Inspection.
65. Respondent violated Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and the relevant regulations at 40 C.F.R. §§ 355.40 through 355.43, by failing to provide a written follow-up report as soon as practicable to the LEPC regarding the release of an EHS from the Facility in a quantity greater than the RQ.
66. In failing to comply with Section 304(c) of EPCRA, 42 U.S.C. § 11004(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).

SETTLEMENT

67. 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 following Paragraph 68, and to performance of the Supplemental Environmental Project, as set forth beginning at Paragraph 78, below.

Civil Penalty

68. 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 **TWENTY-THREE THOUSAND THREE HUNDRED AND THIRTY-NINE DOLLARS (\$23,339)**, which total includes **FIVE THOUSAND THREE HUNDRED AND SIXTY-EIGHT DOLLARS (\$5,368)** for alleged violations of Section 103 of CERCLA, 42 U.S.C. § 9603 ("CERCLA civil penalty"), and **SEVENTEEN THOUSAND NINE HUNDRED AND SEVENTY-ONE DOLLARS (\$17,971)** for alleged violations of Section 304(b) and (c) of EPCRA, 42 U.S.C. § 11004(b) and (c) ("EPCRA civil penalty"), which Respondent shall be liable to pay in accordance with the terms set forth below.
69. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C) and Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), including, the following: 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 *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)*, which reflects the statutory penalty criteria and factors set forth at Section 325(b)(1)(C) of EPCRA and Section 109(a)(3) of CERCLA, 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.

70. 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.*, EPCRA-CERCLA-03-2019-0067;
- b. All checks in payment of the CERCLA civil penalty shall be made payable to the "EPA-Hazardous Substances Superfund";
- c. All payments made by check in payment of the CERCLA civil penalty and sent by regular mail shall be addressed and mailed to:

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

- d. All checks in payment of the EPCRA civil penalty shall be made payable to the "United States Treasury";
- e. All payments made by check in payment of the EPCRA civil penalty 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

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

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

- g. A copy of Respondent's checks or other documentation of payment of the penalties using the method selected by Respondent for payment shall be sent simultaneously to:

Elizabeth B. Lukens
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC42)
1650 Arch Street
Philadelphia, PA 19103-2029
lukens.elizabeth@epa.gov

71. 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.
72. 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 CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO 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).
73. INTEREST: In accordance with 40 C.F.R. § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed 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).
74. ADMINISTRATIVE COSTS: The costs of 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). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case 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 payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
75. 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).

76. Failure by the Respondent to pay the CERCLA civil penalty and the EPCRA civil penalty assessed by the Final Order in accordance with the terms of this CAFO may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 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.
77. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

Supplemental Environmental Project

78. The following Supplemental Environmental Project (“SEP”) is consistent with applicable EPA policy and guidelines, specifically EPA’s *Supplemental Environmental Projects Policy 2015 Update* (“the SEP Policy”), effective March 10, 2015.
79. Respondent agrees to upgrade the cooling system for the six milk silos at the Facility to minimize the potential for an ammonia release, and to minimize the amount of any such release that does occur. Respondent will interlock the cooling system with the plant Programmable Logic Controller, the automated computer system, to automatically disable the cooling system when the milk level in the tank is low and when the tank is in the clean-in-process (“CIP”) mode. This will prevent the addition of liquid ammonia to the cooling system during CIP mode, when 180-degree water is added to the silo. This will mean that there will be less ammonia present in the cooling system to build up pressure upon the sudden change in temperature, thus reducing the likelihood of a release. The SEP is described further in the Supplemental Environmental Project Proposal (“SEP Proposal”), attached hereto as Attachment A and incorporated herein by reference.
80. Respondent shall complete the SEP by July 1, 2019 (“SEP Completion Deadline”).
81. Respondent’s total expenditure for the SEP shall not be less than \$6,100 in accordance with the specifications set forth in the SEP Proposal. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Paragraph 85 below.
82. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:
 - a. All cost information provided to EPA in connection with EPA’s approval of the SEP is complete and accurate and Respondent in good faith estimates that the cost to implement the SEP is \$6,100;
 - b. As of the date of signing this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- c. The SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
 - d. Respondent has not received and will not receive credit for the SEP in any other enforcement action;
 - e. Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
 - f. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
 - g. Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 79; and
 - h. Respondent has inquired of the contractor Respondent has selected to assist with implementation of the SEP, Heim Company, whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by Heim Company that it is not a party to such a transaction.
83. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this Consent Agreement from the date of execution of this Consent Agreement shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, In re: Schreiber Foods, Inc., EPA Docket No. EPCRA-CERCLA-03-2019-0067, brought by the U.S. Environmental Protection Agency to enforce federal laws."
84. Respondent shall notify EPA EPCRA Enforcement Officer Anne Gilley, at the address noted in Paragraph 85, below, when such SEP is complete. EPA may grant Respondent an extension of time to fulfill its SEP obligations if EPA determines, in its sole and unreviewable discretion, that Respondent, due to causes beyond its reasonable control, is unable to complete the SEP obligations within the time frame required by Paragraph 80 and, if extensions are granted, by this Paragraph. Requests for any extension must be made in writing within 48 hours of any event, such as an unanticipated delay in obtaining governmental approvals, the occurrence of which renders the Respondent unable to complete the SEP within the required time frame ("force majeure event"), and prior to the expiration of the allowed SEP Completion Deadline. Any such requests should be directed to Anne Gilley, at the address noted in Paragraph 85 below.

85. SEP Completion Report

- a. Respondent shall submit to EPA a Completion Report for the SEP via first class mail to Anne Gilley, U.S. EPA Region III, 1650 Arch Street (Mailcode 3HS61), Philadelphia, PA 19103, and via email to gilley.anne@epa.gov within fourteen (14) days of completing the implementation of the SEP, as set forth in Paragraphs 79 and 80. The SEP Completion Report shall contain the following information:
 - (i) detailed description of the SEP as implemented, including photographs of completed work;
 - (ii) a description of any problems encountered and the solution thereto; and
 - (iii) itemized costs, including invoices.
- b. Respondent shall sign the report required by this Paragraph and certify under penalty of law that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- c. Respondent agrees that failure to submit reports required by this Paragraph 85 shall be deemed a violation of this CAFO and, in such an event, Respondent will be liable for stipulated penalties pursuant to Paragraph 88 below.
 - d. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
86. Respondent agrees that EPA may inspect the locations at which the SEP is implemented at any time to confirm that the SEP is being undertaken in conformity with the representations made herein and as required by this CAFO.

87. EPA Acceptance of SEP Completion Report

- a. Upon receipt of the SEP Completion Report, EPA may exercise one of the following options:
 - (i) notify the Respondent in writing that the SEP Completion Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional thirty (30) days to correct those deficiencies;
 - (ii) notify the Respondent in writing that EPA has concluded that the project has been satisfactorily completed; or
 - (iii) notify the Respondent in writing that EPA has concluded that the project has not been satisfactorily completed, and seek stipulated penalties in accordance with Paragraph 88, below.
- b. If EPA elects to exercise option (i) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) business days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached within this thirty (30) day period, EPA shall provide to the Respondent a written statement of its decision on the adequacy of the completion of the SEP, which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event either the SEP is not completed as required herein or the SEP Completion Report is not submitted to EPA, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 88, below.

88. Stipulated Penalties

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in Paragraphs 79 and 80, above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs of the SEP required by Paragraph 81, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - (i) Except as provided in subparagraph (iii) below and Paragraph 87, if the SEP has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to EPA in the amount of \$6,405.
 - (ii) If the SEP is not completed in accordance with Paragraphs 79 and 80, but the Complainant determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of

the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

- (iii) If the SEP is completed in accordance with Paragraphs 79 and 80, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of \$610.
 - (iv) If the SEP is completed in accordance with Paragraphs 79 and 80, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
 - (v) For failure to submit the SEP Completion Report required by Paragraph 85, above, Respondent shall pay a stipulated penalty in the amount of \$300.00 for each day after the report was originally due until the report is submitted.
- b. The determination of whether the SEP has been satisfactorily implemented and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.
 - c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties, in accordance with the provisions of Paragraph 70, above. Interest and late charges shall be paid as set forth in Paragraphs 71 through 75, above.

GENERAL SETTLEMENT CONDITIONS

89. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
90. 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 EPA regarding matters relevant to this CAFO, 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

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

OTHER APPLICABLE LAWS

92. Nothing in this CAFO 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 CAFO does not constitute a waiver, suspension or modification of the requirements of CERCLA or EPCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

93. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this CAFO. 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 CERCLA and EPCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION /PARTIES BOUND

94. This CAFO shall apply to and be binding upon 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 they are fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

EFFECTIVE DATE

95. The effective date of this CAFO 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

96. This CAFO 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 CAFO.

In Re: Schreiber Foods, Inc.
EPA Docket No. EPCRA-CERCLA-03-2019-0067

For Respondent: Schreiber Foods, Inc.

Date: 03/27/2019

By: 
[SIGNATURE]

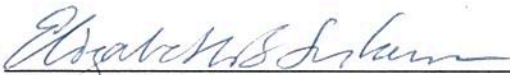
Chad Wiegand
[SIGNATORY NAME - PRINT]

Senior Vice President, General Counsel +
Corporate Secretary
[SIGNATORY TITLE]

In Re: Schreiber Foods, Inc.
EPA Docket No. EPCRA-CERCLA-03-2019-0067

For the Complainant: U.S. Environmental Protection Agency, Region III

Date: 4-10-19

By: 
Elizabeth B. Lukens
Sr. Assistant Regional Counsel

After reviewing the Consent Agreement and other pertinent matters, the Hazardous Site Cleanup Division of the U.S. Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 4-10-19

By: 
Paul Leonard, Acting Director
Hazardous Site Cleanup Division

ATTACHMENT A

SCHREIBER FOODS, INC.

Supplemental Environmental Project Proposal

Detailed Description of Proposed SEP

Objective of SEP:

To add an additional level of safety to the equipment in the system that is most vulnerable to having an overpressure condition that could result in an ammonia release.

Evaluation of Potential Improvements to Ammonia Refrigeration System

Schreiber Foods completed a process hazard analysis (PHA) of the ammonia refrigeration system involved in the September 6, 2016 ammonia release incident at its Shippensburg, Pennsylvania facility that is the subject of the EPA's Request to Show Cause dated September 27, 2018. The purpose of the PHA was to determine what potential improvements or upgrades could be made to the system, particularly within the milk silos as that is where the release originated, to either reduce or minimize the amount of ammonia released from the system or improve the facility's ability to respond to a release in a more timely fashion. In reviewing its current system and processes, Schreiber Foods determined that it could make improvements within the controls and processes for the milk silos to better maintain a steady pressure within the system and minimize the potential for a failure of the back pressure regulator valve, particularly when the facility puts the silos into the clean-in-process (CIP) mode. When milk is cooling in the silo, the ammonia typically sits in a stable state. As the silo is emptied, the silo is placed into the CIP mode, which involves filling it with 180 degree water, resulting in a sudden temperature change within the silo. Accordingly, the silo heats up, causing the ammonia to expand. Although Schreiber already has several safety mechanisms built into the system, as described below, Schreiber looked at ways it may be able to further eliminate the hazard of a flash off or buildup of pressure within the ammonia refrigeration system. In order to further minimize the release potential in the milk silos the facility is proposing to complete the upgrade outlined below.

Description of Upgrade:

The proposed upgrade is to interlock the cooling for the six silos with the plant Programmable Logic Controller (PLC) to automatically disable the cooling when the tank level is low, and when the tank is in the CIP mode. Currently, Schreiber's standard operating procedures for the CIP process requires staff to manually turn off the cooling and agitator switches on the silos prior to initiating the CIP process; in other words, the system relies on staff ensuring the proper switches are turned off, allowing for potential human error.

Disabling the cooling means the liquid feed valve on the silo will not be allowed to open in order to maintain liquid level in the surge drum. If one can prevent additional liquid ammonia from entering the surge drum, there will be less liquid to build pressure. Ultimately, Schreiber wants

to be in control of the systems/components that remove heat and this upgrade will give Schreiber that additional control. Schreiber believes interlocking the cooling process is the most critical action to prevent a release from the system. Furthermore, a key objective is to prevent additional buildup of pressure as that will minimize the amount of ammonia that may be released from the system.

Proposed Timeline for Implementation of the SEP

As a capital improvement, the facility needs to submit a formal request to corporate headquarters for funding the project before it can order the necessary equipment. Schreiber expects the formal approval process to take approximately two to three weeks. Schreiber has selected Heim Company as a contractor to assist with implementation of the SEP. Upon corporate approval, Schreiber will enter into a contract with Heim Company for purchase of the necessary equipment and supplies to complete the proposed interlocking and upgrade. Schreiber commits to having the project completed on or before July 1, 2019.

Project Costs

Capital Costs

The projected cost of the proposed SEP is \$6,100 in equipment and supplies, plus labor costs. Attached to this SEP Proposal is a bid from Heim Company that provides additional information on the equipment to be installed and the projected cost. The only portion of the Heim bid that applies to the proposed SEP is the part titled "Receiving Bay Relays," as highlighted in yellow. The proposed relays will allow for the interlocking of the cooling system during the CIP process.

Annual Operating Costs

Due to the nature of the upgrade, Schreiber does not anticipate any annual operating or maintenance costs for this particular project.

Detailed Description of the Nexus between the Violation and SEPs

The alleged violations in the September 27, 2018 Request to Show Cause center around the failure to timely report an ammonia release that had occurred at Schreiber Foods' Shippensburg, Pennsylvania facility on September 6, 2016, as well as the failure to provide a written follow-up report to the SERC and LEPC as soon as practicable. On September 6, 2016, the facility experienced an ammonia leak that occurred within the ammonia refrigeration system that supported the facility's cream cheese production, particularly within the milk silos. The leak was caused by a faulty dual backpressure regulator that allowed the relief valve on the refrigeration system to lift and release ammonia from the system.

As noted above, the objective of the proposed SEP is to better maintain a steady pressure within the cooling system to minimize the potential for a release of ammonia to the environment, as well as to minimize the quantity of ammonia that may be released. By accomplishing such

objectives, the proposed SEP will hopefully eliminate the need to report an ammonia release to the NRC, SERC and LEPC.

Statement Regarding the Category of the Project

The proposed SEP falls within the "pollution prevention" category. The upgrade is geared towards preventing a release from the ammonia refrigeration system when personnel put the milk silos into the CIP process.

Benefit to Public Health / Environment from the SEP

The proposed SEP will directly benefit human health and the environment by minimizing the potential for a release of ammonia to the environment, as well as minimizing the quantity of ammonia that may be released if an incident does occur.



EDWIN L. HEIM COMPANY
1918 GREENWOOD ST, HARRISBURG, PA 17104

November 7, 2018

Schreiber Foods Inc.
208 Dykeman Road
Shippensburg, PA 17257
ATTN: Mr. Randy Shadle

RE: Refrigeration wiring

Dear Randy,

The Edwin L. Heim Company is pleased to provide you with our pricing for the above referenced project.

Our scope of work will include the following:

Receiving Bay Relays

- Provide and install conduit and wiring from CP-50 to selector switch box in receiving bay.
- Provide and install six relays.
- Terminate all wiring.
- Programing by others.
- Does not include any overtime costs.

Our price will be \$6,100.00

Cooler Pressure Switches

- Remove existing cables to cooler sensors.
- Replace cables including four new cables for pressure switches.
- Connect four pressure switches furnished by Schreiber.
- Does not include any overtime costs.

Our price will be \$8,150.00

Randy, if you have any questions please call.

Sincerely,
Mike Myers
Edwin L. Heim Company

ELECTRICAL, MECHANICAL, TELECOMMUNICATIONS CONTRACTING, MOTOR AND INDUSTRIAL CONTROLS, PANEL DESIGN AND BUILD
24-HOUR SERVICE

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AN EQUAL OPPORTUNITY EMPLOYER

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

In the Matter of:

**Schreiber Foods, Inc.
400 N. Washington Street
Green Bay, Wisconsin 54301-5111**

Respondent.

**Schreiber Foods, Inc.
208 East Dykeman Road
Shippensburg, Pennsylvania 17257,
Facility.**

**EPA Docket No.
EPCRA-CERCLA-03-2019-0067**

U.S. EPA-REGION 3-RHC
FILED-11APR2019PM3:19

FINAL ORDER

**Proceeding under Sections 103 and 109
of the Comprehensive Environmental
Response, Compensation and Liability
Act,
42 U.S.C. §§ 9603 and 9609, and Sections
304 and 325 of the Emergency Planning
and Community Right-to-Know Act,
42 U.S.C. §§ 11004 and 11045**

FINAL ORDER

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Schreiber Foods, 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 *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 325(b)(1)(C) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §11045(b)(1)(C) and Section 109(a)(3) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609(a)(3).

NOW, THEREFORE, PURSUANT TO Section 109 of CERCLA, 42 U.S.C. § 9609, and 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 **TWENTY-THREE THOUSAND THREE HUNDRED AND THIRTY-NINE DOLLARS (\$23,339)**, in accordance with the payment provisions set forth in the Consent Agreement, 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 CERCLA 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.

April 11, 2019
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

In the Matter of: :
: :
Schreiber Foods, Inc. : U.S. EPA Docket No.
400 N. Washington Street : EPCRA-CERCLA-03-2019-0067
Green Bay, Wisconsin 54301-5111 : :
Respondent. : Proceeding under Sections 103 and 109
: of the Comprehensive Environmental
Schreiber Foods, Inc. : Response, Compensation and Liability Act,
208 East Dykeman Road : 42 U.S.C. §§ 9603 and 9609, and Sections
Shippensburg, Pennsylvania 17257, : 304 and 325 of the Emergency Planning and
: Community Right-to-Know Act,
Facility. : 42 U.S.C. §§ 11004 and 11045
:

CERTIFICATE OF SERVICE

I certify that on APR 11 2019, the original and one (1) copy of the foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **UPS Next Day Delivery** to:

Chad Wiegand, Senior Vice President,
General Counsel & Corporate Secretary
Schreiber Foods, Inc.
400 N. Washington Street
Green Bay, WI 54301-5111

Jodi Arndt Labs, Esquire
Conway, Olejniczak & Jerry, S.C.
231 S. Adams Street, P.O. Box 23200
Green Bay, WI 54305-3200

Copies served via **Hand Delivery or Inter-Office Mail** to:

Elizabeth B. Lukens
Senior Assistant Regional Counsel
ORC – 3RC42
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Anne Gilley
Enforcement Officer
HSCD – 3HS61
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: APR 11 2019

Beverly Esposito
Regional Hearing Clerk

U.S. Environmental Protection Agency, Region III

TRACKING NUMBERS: 12 A43 F71019712 1558
12 A43 F71019898 8540