



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
December 9, 2021

ELECTRONIC SERVICE VIA EMAIL
RETURN RECEIPT REQUESTED

Timothy M. Serie
Senior Environmental Lawyer
Cargill Kitchen Solutions, Inc.
15407 McGinty Road West MS24
Wayzata, Minnesota 55391

Re: Cargill Kitchen Solutions, Inc., Monticello, Minnesota, Consent Agreement and Final Order, Docket Nos. [MM-05-2022-0002](#) [CERCLA-05-2022-0002](#) [EPCRA-05-2022-0002](#)

Dear Mr. Serie:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on December 9, 2021.

Please pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$20,512 in the manner prescribed in paragraph 49 and reference your check with the billing document number 2752230B002 and the docket number CERCLA-05-2022-0002.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$20,511 in the manner prescribed in paragraph 51 and reference your check with the docket number EPCRA-05-2022-0002.

Your payments are due on JANUARY 10, 2022.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Lisa Frasco, at (312) 886-5994. Thank you for your assistance in resolving this matter.

Sincerely,

MICHAEL
HANS

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Digitally signed by
MICHAEL HANS
Date: 2021.12.01
06:49:44 -06'00'

Enclosure

cc: Christopher Marnell (w/ enclosure)
Division of Homeland Security
and Emergency Management
445 Minnesota Street, Suite 223
St. Paul, Minnesota 55101
Christopher.Marnell@state.mn.us

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket Nos.
)	MM-05-2022-0002 CERCLA-05-2022-0002 EPCRA-05-2022-0002
Cargill Kitchen Solutions, Inc.)	Proceeding to Assess a Civil Penalty Under
Monticello, Minnesota,)	Section 109(b) of the Comprehensive
)	Environmental Response, Compensation and
Respondent.)	Liability Act, and Section 325(b)(2) of the
)	Emergency Planning and Community Right-
)	to-Know Act of 1986

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Cargill Kitchen Solutions, Inc., a Delaware corporation doing business in the State of Minnesota.

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

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

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

Jurisdiction and Waiver of Right to Hearing

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

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

Statutory and Regulatory Background

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

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

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

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

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b) and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015), amending 28 U.S.C. § 2461 note, and the implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$59,017 per day of violation for each day that occurred after November 2, 2015, and for which penalties are assessed on or after December 23, 2020.

Factual Allegations and Alleged Violations

15. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

16. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

17. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 206 West 4th Street, Monticello, Minnesota (facility).

18. At all times relevant to this CAFO, Respondent was in charge of the facility.

19. Respondent's facility consists of a building, structure, equipment, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

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

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

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

23. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

25. Anhydrous ammonia (CAS #7664-41-7) is classified as a physical or health hazard, a simple asphyxiant, or hazard not otherwise classified.

26. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

27. At all times relevant to this CAFO, Respondent produced, used, or stored anhydrous ammonia at the facility.

28. Anhydrous ammonia (CAS #7664-41-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

29. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

30. Beginning on December 23, 2020, at or about 11:50 p.m. Central Time and continuing until December 24, 2020, 12:30 a.m. Central Time, a release occurred from Respondent’s facility of approximately 2,536 pounds of anhydrous ammonia (the release).

31. In a 24-hour time period, the release of anhydrous ammonia exceeded 100 pounds.

32. During the release, approximately 2,526 pounds of anhydrous ammonia spilled, leaked, emitted, discharged, or escaped into the ambient air.

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

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

35. Respondent had knowledge of the release on December 24, 2020, at approximately 10:45 a.m. Central Time.

36. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

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

38. The release was likely to affect Minnesota.

39. At all times relevant to this CAFO, the Minnesota SERC was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

Count 1 (failure to notify NRC)

40. Complainant incorporates paragraphs 1 through 39 of this CAFO as if set forth in this paragraph.

41. Respondent notified the NRC of the release on December 24, 2020, at 12:32 p.m. Central Time.

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

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

Count 2 (failure to notify SERC)

44. Complainant incorporates paragraphs 1 through 39 of this CAFO as if set forth in this paragraph.

45. Respondent notified the Minnesota SERC of the release on December 24, 2020, at 12:38 p.m. Central Time.

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

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

Civil Penalty

48. Complainant has determined that an appropriate civil penalty to settle this action is \$20,512 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the

violation, and any other matters as justice may require. Complainant also considered U.S. 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, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

49. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,512 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

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

For checks sent by express mail, by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Bank
Government Lockbox 979076
U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Cargill Kitchen Solutions, Inc., Monticello, Minnesota, the docket number CERCLA-05-2022-0002 of this CAFO, and the billing document number 2752230B002.

50. Complainant has determined that an appropriate civil penalty to settle this action is \$20,511 for the EPCRA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violation, and with respect to Respondent, its

ability to pay, effect on ability to continue to do business, prior history of violations, economic benefit or savings resulting from the violation, and any other matters as justice may require.

Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the EPCRA/CERCLA Enforcement Response Policy.

51. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,511 civil penalty for the EPCRA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

For checks sent by express mail, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Cargill Kitchen Solutions, Inc., Monticello, Minnesota, and the docket number of this CAFO [EPCRA-05-2022-0002](#) .

52. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket numbers and the billing document number, if any, must accompany each payment. Respondent must send a copy of the checks and transmittal letters to:

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

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

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

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

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

55. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

56. The parties' consent to service of this CAFO by email at the following valid email addresses: frasco.lisa@epa.gov (for Complainant) and Timothy_Serie@cargill.com (for Respondent).

57. Full payment of the penalty and compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

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

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

61. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

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


64. Each party agrees to bear its own costs and attorney's fees in this action.

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

In the Matter of: Cargill Kitchen Solutions, Inc., Monticello, Minnesota
Docket Nos. MM-05-2022-0002 CERCLA-05-2022-0002 EPCRA-05-2022-0002

Cargill Kitchen Solutions, Inc., Monticello, Minnesota, Respondent

11-29-2021
Date


Kurt Zweifel
Operations Director
Cargill Kitchen Solutions, Inc.


U.S. Environmental Protection Agency, Complainant

Date

Jason El-Zein Digitally signed by Jason El-Zein
Date: 2021.12.01 09:53:30 -05'00'

Jason El-Zein
Chief, Emergency Response Branch 1
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

Date

 Digitally signed by DOUGLAS BALLOTTI
Date: 2021.12.01 11:14:08 -06'00'

Douglas Ballotti
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Cargill Kitchen Solutions, Inc., Monticello, Minnesota
Docket Nos. MM-05-2022-0002 CERCLA-05-2022-0002 EPCRA-05-2022-0002

Final Order

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

**ANN
COYLE**

Digitally signed by
ANN COYLE
Date: 2021.12.06
13:32:37 -06'00'

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the Matter of: Cargill Kitchen Solutions, Inc., Monticello, Minnesota

Docket Nos. MM-05-2022-0002 CERCLA-05-2022-0002 EPCRA-05-2022-0002

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on December 9, 2021 in the following manner to the addressees:

Electronic Service Via E-Mail

Return Receipt Requested: Timothy M. Serie
Senior Environmental Lawyer
Cargill Kitchen Solutions, Inc.
15407 McGinty Road West MS24
Wayzata, MN 55391
Timothy_Serie@cargill.com

Copy by E-mail to
Attorney for Complainant: Lisa Frasco
frasco.lisa@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: _____

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

