



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

In the Matter of:	)	EPA Docket No.: CERCLA-EPCRA-03-2018-0156
	)	
	)	
Tyson Poultry, Inc.	)	Proceedings Pursuant to Sections 103 and 109 of
2200 W. Don Tyson Parkway	)	the Comprehensive Environmental Response,
Springdale, Arkansas 72762,	)	Compensation, and Liability Act, 42 U.S.C.
	)	§§ 9603 and 9609, and Sections 304, 312, and
Respondent.	)	325 of the Emergency Planning and
	)	Community Right-to-Know Act,
	)	42 U.S.C. §§ 11004, 11022, and 11045
	)	
Tyson Poultry, Inc.	)	
403 South Custer Avenue	)	
New Holland, Pennsylvania 17557,	)	
	)	
Facility.	)	
	)	

U.S. EPA-REGION 3-RHC  
FILED-20SEP2018am11:26

CONSENT AGREEMENT

STATUTORY AUTHORITY

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

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CAFO") as prescribed by the Consolidated Rules of Practice, pursuant to 40 C.F.R. § 22.1(a)(7) and (8), 22.13(b), and 22.18(b)(2) and (3), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.



**JURISDICTION**

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(7) and (8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. § 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement or the Final Order, or enforcement of this CAFO.
4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

**FACTUAL ALLEGATIONS**

5. Tyson Poultry, Inc. ("Respondent") is a Delaware corporation with its headquarters located at 2200 W. Don Tyson Parkway in Springdale, Arkansas 72762.
6. 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, 355.61, and 370.66.
7. Respondent is the owner and operator of the poultry processing facility located at 403 South Custer Avenue in New Holland, Pennsylvania ("the Facility").
8. 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, 355.61, and 370.66.
9. 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 Sections 304 and 312 of EPCRA, 42 U.S.C. §§ 11004, 11022, and their respective regulations, 40 C.F.R. §§ 355.2, 355.30, 370.2.
10. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the 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.

11. 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.

12. The State Emergency Response Commission (“SERC”) for emergency release notifications regarding 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.

13. The State Emergency Response Commission for emergency planning and hazardous chemical inventory reporting requirements (“Chemical Inventory SERC”) regarding the Facility is, and at all times relevant to this CAFO has been, the Pennsylvania Department of Labor and Industry, Bureau of Occupational & Industrial Safety, Pennsafe Program, located at 651 Boas Street, in Harrisburg, Pennsylvania 17121.

14. The Local Emergency Planning Committee (“LEPC”) for the Facility is, and at all times relevant to this CAFO has been, the Lancaster County Emergency Management Agency, located at P.O. Box 219, Manheim, Pennsylvania 17545.

15. Respondent is engaged in a business at the Facility at which a hazardous chemical is produced, used, or stored.

16. Respondent is an “employer” at the Facility as that term is defined at 29 C.F.R. § 1910.1200(c).

17. On March 13, 2017, EPA conducted an inspection of the Facility to ascertain Respondent’s compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-304 and 311-312 of EPCRA, 42 U.S.C. §§ 11002-11004, 11021-11022 (“the Inspection”). During and following the Inspection, Respondent submitted information to EPA regarding the Facility and its compliance with the emergency notification and emergency planning requirements of CERCLA and EPCRA.

**COUNT I**  
**FACTUAL ALLEGATIONS RELATED TO THE**  
**ALLEGED VIOLATION OF SECTION 103(a) OF CERCLA**

18. The factual allegations contained in Paragraphs 5 through 17 of this CAFO are incorporated by reference herein as though fully set forth at length.

19. 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 he/she has 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.

20. The chemical ammonia, Chemical Abstracts Service (“CAS”) Registry No. 7664-41-7, 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.

21. On May 30, 2017, an estimated 8,619 pounds of anhydrous ammonia was released from the Facility into the environment as a result of a mechanical failure of a safety relief valve (“the Release”).

22. The Release from the Facility constitutes 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).

23. The 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).

24. Respondent first knew or should have known that the Release was occurring at approximately 12:30 a.m. on May 30, 2017.

25. Based upon the Respondent’s statements during the Inspection and supporting documentation provided regarding the Release, the following events occurred on May 30, 2017 at the Facility:

a. At approximately 12:30 a.m., Respondent’s cleaning personnel heard an audible ammonia alarm, smelled ammonia, and evacuated the Facility.

b. At approximately 12:40 a.m., Respondent’s cleaning personnel and security together verified the ammonia odor and visually observed the ammonia alarm’s yellow, flashing indicator light near the plant door from which the odor was emanating.

c. At approximately 12:57 a.m., Respondent’s security personnel called 911 to notify them of the ongoing Release, the ammonia odor, and of a visible cloud of ammonia in the sky.

d. At 1:04 a.m., the local fire department arrived at the Facility. By 1:14 a.m., a shelter-in-place for local residents was put into effect in response to the Release and the visible ammonia plume.

e. At 2:18 a.m., Respondent notified the LEPC of the release from the Facility and the LEPC indicated that they were already aware of the Release.

f. At 2:23 a.m., Respondent notified the NRC of the Release.

g. At 2:55 a.m., Respondent spoke with Pennsylvania Department of Environmental Protection (“PADEP”) regarding the Release.

h. By approximately 2:56 a.m., Respondent asserts that the Release was under control, however, hazardous material crews (“Hazmat crews”) continued to investigate the Release until approximately 6:05 a.m. when the “all clear” determination was made.

26. Respondent completed formal calculations to determine the quantity of ammonia released from the Facility into the environment during the Release on June 1, 2017 and determined that an estimated 8.619 pounds of ammonia was released from the Facility during the Release on May 30, 2017.

**CONCLUSION OF LAW RELATED TO THE  
ALLEGED VIOLATION OF SECTION 103 OF CERCLA**

27. Respondent failed to immediately notify the NRC of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred on May 30, 2017 at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

28. Respondent’s failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603. Respondent is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

**COUNT II  
FACTUAL ALLEGATIONS RELATED TO THE ALLEGED VIOLATIONS  
OF SECTION 304(a) AND (b) OF EPCRA – SERC**

29. The factual allegations contained in Paragraphs 5 through 28 of this CAFO are incorporated by reference herein as though fully set forth at length.

30. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) 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 immediately notify the SERC following a release of a hazardous substance or an EHS in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.

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 and § 302.4, and an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61, with an RQ of 100 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B.

32. The Release required immediate notification to the SERC, pursuant to 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.

33. Respondent did not notify the SERC of the Release.

**CONCLUSION OF LAW RELATED TO THE  
ALLEGED VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC**

34. Respondent failed to immediately notify the SERC of the Release of ammonia as soon as Respondent knew or should have known that a release of an EHS had occurred on May 30, 2017 at the Facility in an amount equal to or exceeding its RQ, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C.

35. Respondent's failure to immediately notify the SERC of the Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

**COUNT III  
FACTUAL ALLEGATIONS RELATED TO THE ALLEGED VIOLATION  
OF SECTION 304(c) OF EPCRA – SERC**

36. The factual allegations contained in Paragraphs 5 through 35 of this CAFO are incorporated by reference herein as though fully set forth at length.

37. 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 a hazardous substance or 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.

38. The Release constitutes a release of an EHS in a quantity equal to or exceeding its RQ requiring immediate notification of the SERC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C, and, consequently, requiring submission of a written follow-up report to the SERC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

39. Respondent did not provide a written follow-up report regarding the Release to the SERC, as required by Section 304(c) of EPCRA, as implemented by 40 C.F.R. Part 355, Subpart C.

**CONCLUSION OF LAW RELATED TO THE  
ALLEGED VIOLATION OF SECTION 304(c) OF EPCRA – SERC**

40. Respondent's failure to submit a written follow-up report to the SERC for the Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

**COUNT IV  
FACTUAL ALLEGATIONS RELATING TO THE  
ALLEGED VIOLATION OF SECTION 312 OF EPCRA – 2014**

41. The factual allegations contained in Paragraphs 5 through 40 of this CAFO are incorporated by reference herein as though fully set forth at length.

42. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (“MSDS”) or Safety Data Sheet (“SDS”) for a hazardous chemical in accordance with Occupational Safety and Health Administration (“OSHA”) Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS is present at any one time during a calendar year in a quantity equal to or greater than its applicable minimum threshold level for reporting (“MTL”) or threshold planning quantity (“TPQ”) established by 40 C.F.R. § 370.10, to submit on or before March 1, 1988, and by March 1<sup>st</sup> of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form (“Chemical Inventory Form”) for the previous calendar year identifying the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the SERC, the LEPC, and local fire department with jurisdiction over the facility.

43. According to information supplied to EPA by Respondent, approximately 44,369 pounds of sodium bisulfite were present at the Facility during calendar year 2014.

44. According to information supplied to EPA by Respondent, approximately 76,728 pounds of a 95% solution of sulfuric acid, were present at the Facility during calendar year 2014.

45. Sodium bisulfite is a “hazardous chemical” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66, and is subject to Section 312 of EPCRA, 42 U.S.C. § 11022, pursuant to Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

46. Sulfuric acid is a “hazardous chemical” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66, and an EHS as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 370.66, and is subject to Section 312 of EPCRA, 42 U.S.C. § 11022, pursuant to Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

47. Pursuant to 40 C.F.R. § 370.10(a)(1), the TPQ for sodium bisulfite is 10,000 pounds and the TPQ for sulfuric acid is 500 pounds.

48. Respondent had present at the Facility during calendar year 2014 sodium bisulfite and sulfuric acid in amounts exceeding each chemical’s respective TPQ.

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

50. Respondent submitted to the Chemical Inventory SERC a Chemical Inventory Form for calendar year 2014 by March 1, 2015, that failed to identify sodium bisulfite as being present at the Facility and inaccurately identified the quantity of sulfuric acid that was present at the Facility in calendar year 2014.

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

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

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

**COUNT V**  
**FACTUAL ALLEGATIONS RELATING TO THE  
ALLEGED VIOLATION OF SECTION 312 OF EPCRA – 2015**

53. The factual allegations contained in Paragraphs 5 through 52 of this CAFO are incorporated by reference herein as though fully set forth at length.

54. According to information supplied to EPA by Respondent, approximately 78,799 pounds of sodium bisulfite was present at the Facility during calendar year 2015.

55. According to information supplied to EPA by Respondent, approximately 76,728 pounds of a 95% solution of sulfuric acid were present at the Facility during calendar year 2015.

56. Respondent had present at the Facility during calendar year 2015 sodium bisulfite and sulfuric acid in amounts exceeding each chemical's respective TPQ.

57. Respondent submitted to the Chemical Inventory SERC a Chemical Inventory Form for calendar year 2015 by March 1, 2016, that failed to identify sodium bisulfite as being present at the Facility and inaccurately identified the quantity of sulfuric acid that was present at the Facility in calendar year 2015.

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

58. Respondent failed to submit to the Chemical Inventory SERC a Chemical Inventory Form for calendar year 2015 by March 1, 2016, that completely and accurately identified sodium bisulfite and sulfuric acid as present at the Facility in a quantity equal to or greater than their respective MTL or TPQ, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

59. Respondent's failure to submit to the Chemical Inventory SERC a Chemical Inventory Form for the Facility for calendar year 2015 constitutes a violation of Section 312 of EPCRA, 42 U.S.C.



§ 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

### SETTLEMENT

60. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty of **\$15,750** for the violations of Section 103 of CERCLA, 42 U.S.C. § 9603 (“CERCLA civil penalty”), and a civil penalty of **\$47,250** for violations of Sections 304 and 312 of EPCRA, 42 U.S.C. §§ 11004, 11022 (“EPCRA civil penalty”), set forth above, thereby consenting to the assessment of a combined, total civil penalty in the amount of **\$63,000** (“Civil Penalty”).

61. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the Civil Penalty cited in the foregoing Paragraph.

### PAYMENT TERMS

62. The Civil Penalty shall become due and payable on the date on which a copy of the CAFO is mailed or hand-delivered to Respondent. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CAFO, Respondent shall pay the Civil Penalty of **\$63,000** no later than thirty (30) days after the date on which a copy of the CAFO is mailed or hand-delivered to Respondent, by either cashier’s check, certified check, or electronic wire transfer, as set forth in the following paragraphs.

63. Payment of the **CERCLA civil penalty** shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent’s name and address, and the Docket Number of this action, **CERCLA-EPCRA-03-2018-0156**;
- b. All checks shall be made payable to **EPA-Hazardous Substances Superfund**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000  
Contact: Elizabeth McGuffey (513-487-2885)

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

U.S. EPA  
Government Lockbox 979076  
1005 Convention Plaza

SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: 314-418-1028

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

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

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

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
D 68010727 Environmental Protection Agency

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

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

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

- h. On-Line Payment Option:

WWW.PAY.GOV

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

- i. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

64. Payment of the **EPCRA civil penalty** shall be made in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, **CERCLA-EPCRA-03-2018-0156**;
  - b. All checks shall be made payable to **United States Treasury**;
  - c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Jessica Henderson (513-487-2718)

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

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

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

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

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

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

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

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

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

- h. On-Line Payment Option:

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

- i. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

65. Respondent shall submit proof of the penalty payment, noting the title and docket number of this case, **CERCLA-EPCRA-03-2018-0156**, to the following persons:

Regional Hearing Clerk  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
[R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov)

and

Lauren E. Ziegler (3RC42)  
Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
[Ziegler.Lauren@epa.gov](mailto:Ziegler.Lauren@epa.gov)

66. The Civil Penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), and Section 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C): the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. The Civil Penalty is also consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

67. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's

failure to make timely payment in accordance with this CAFO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

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

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

70. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

71. Failure by Respondent to pay the Civil Penalty assessed by the Final Order in full in accordance with this CAFO may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 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.

### **GENERAL PROVISIONS**

72. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

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

74. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition, this settlement is subject to all

limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

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

FOR TYSON POULTRY, INC.

  
Authorizing Signature

9/17/2018  
DATE

Kevin J. Igli  
Print Name

SVP & Chief Environmental Officer  
Print Title

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



\_\_\_\_\_  
Karen Melvin, Director  
Hazardous Site Cleanup Division

SEP 19 2018

\_\_\_\_\_  
DATE



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

<b>In the Matter of:</b>	)	<b>EPA Docket No.: CERCLA-EPCRA-03-2018-0156</b>
	)	
	)	
<b>Tyson Poultry, Inc.</b>	)	<b>Proceedings Pursuant to Sections 103 and 109 of</b>
<b>2200 W. Don Tyson Parkway</b>	)	<b>the Comprehensive Environmental Response,</b>
<b>Springdale, Arkansas 72762,</b>	)	<b>Compensation, and Liability Act, 42 U.S.C.</b>
	)	<b>§§ 9603 and 9609, and Sections 304, 312, and</b>
<b>Respondent.</b>	)	<b>325 of the Emergency Planning and</b>
	)	<b>Community Right-to-Know Act,</b>
	)	<b>42 U.S.C. §§ 11004, 11022, and 11045</b>
<b>Tyson Poultry, Inc.</b>	)	
<b>403 South Custer Avenue</b>	)	
<b>New Holland, Pennsylvania 17557,</b>	)	
	)	
<b>Facility.</b>	)	
	)	

**U.S. EPA-REGION 3-RHC**  
FILED-20SEP2018am11:26

**FINAL ORDER**


Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Tyson Poultry, 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 22.1(a)(7), 22.1(a)(8), 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 on 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 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), and Section 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C).

**NOW, THEREFORE, PURSUANT TO** Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045, and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **SIXTY-THREE THOUSAND DOLLARS (\$63,000)**, plus any applicable interest, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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

Sept. 20, 2018  
Date

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

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

In the Matter of: ) EPA Docket No.: CERCLA-EPCRA-03-2018-0156  
)  
)  
Tyson Poultry, Inc. ) Proceedings Pursuant to Sections 103 and 109 of  
2200 W. Don Tyson Parkway ) the Comprehensive Environmental Response,  
Springdale, Arkansas 72762, ) Compensation, and Liability Act, 42 U.S.C.  
) §§ 9603 and 9609, and Sections 304, 312, and  
Respondent. ) 325 of the Emergency Planning and  
) Community Right-to-Know Act,  
) 42 U.S.C. §§ 11004, 11022, and 11045  
Tyson Poultry, Inc. )  
403 South Custer Avenue )  
New Holland, Pennsylvania 17557, )  
)  
Facility. )  
)

**CERTIFICATE OF SERVICE**

I certify that on SEP 20 2018, the original and one (1) copy of 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:

Copies served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Kendra Jones  
Senior Counsel  
Tyson Foods, Inc.  
2200 Don Tyson Parkway  
Springdale, AR 72762  
(Attorney for Respondent)

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

Lauren E. Ziegler  
Assistant Regional Counsel  
Office of Regional Counsel (3RC42)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(Attorney for Complainant)

In the Matter of: Tyson Poultry, Inc.

EPA Docket No. CERCLA-EPCRA-03-2018-0156

Dated: SEP 20 2018

Beverly Esposito  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 7001 2510000 1 1042 8958