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1 UNITED STATES  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 REGION 9

2008 SEP 26 PM 1:30

U.S. EPA. REGION IX  
REGIONAL HEARING CLERK

4 In the Matter of: )

5 Beef Packers, Inc., a wholly )  
6 owned subsidiary of )  
7 Cargill Meat Solutions Corp., )

8 Respondent )

Docket No. EPCRA-09-2008- 00 2 2

CONSENT AGREEMENT AND FINAL  
ORDER PURSUANT TO 40 C.F.R.  
§§ 22.13 AND 22.18

9 I. CONSENT AGREEMENT

- 10 1. The Director of the Communities and Ecosystems Division  
11 ("Complainant"), United States Environmental Protection  
12 Agency ("EPA") Region 9, and Beef Packers, Inc., a wholly  
13 owned subsidiary of Cargill Meat Solutions Corp.  
14 ("Respondent" or "Beef Packers") agree to settle this matter  
15 and consent to the filing of this Consent Agreement and Final  
16 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CAFO"),  
17 which simultaneously commences and concludes this matter in  
18 accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
- 19 2. This is a civil administrative proceeding initiated pursuant  
20 to Section 325(c) of Title III of the Superfund Amendments  
21 and Reauthorization Act, 42 U.S.C. § 11001 et seq., also  
22 known as the Emergency Planning and Community Right-to-Know  
23 Act of 1986 ("EPCRA"), for violation of Section 313 of EPCRA,  
24 42 U.S.C. § 11023, and the regulations promulgated to  
25 implement Section 313 at 40 C.F.R. Part 372.
- 26 3. Complainant has been duly delegated the authority to file  
27 this action and sign a consent agreement settling this  
28 action. Respondent is a corporation incorporated in

1 California.

2 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023  
3 and 11048, EPA promulgated the Toxic Chemical Release  
4 Reporting: Community Right-to-Know Rule at 40 C.F.R. Part  
5 372.

6 5. Section 313(a) of EPCRA, as implemented by 40 C.F.R.  
7 § 372.30, provides that an owner or operator of a facility  
8 that meets the criteria set forth in EPCRA Section 313(b) and  
9 40 C.F.R. § 372.22, is required to submit annually to the  
10 Administrator of EPA and to the State in which the facility  
11 is located, no later than July 1st of each year, a toxic  
12 chemical release inventory reporting form (hereinafter "Form  
13 R") for each toxic chemical listed under 40 C.F.R. § 372.65  
14 that was manufactured, processed or otherwise used at the  
15 facility during the preceding calendar year in quantities  
16 exceeding the thresholds established under EPCRA Section  
17 313(f) and 40 C.F.R. §§ 372.25, 375.27, and 372.28.

18 6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that  
19 the requirements of Section 313(a) and 40 C.F.R. § 372.30  
20 apply to an owner and operator of a facility that has 10 or  
21 more full-time employees; that is in a Standard Industrial  
22 Classification major group codes 10 (except 1011, 1081, and  
23 1094), 12 (except 1241), 20 through 39; industry codes 4911,  
24 4931, or 4939 (limited to facilities that combust coal and/or  
25 oil for the purpose of generating power for distribution in  
26 commerce), or 4953 (limited to facilities regulated under the  
27 Resource Conservation and Recovery Act, subtitle C, 42 U.S.C.

1 §6921 *et seq.*), or 5169, 5171, or 7389 (limited to facilities  
2 primarily engaged in solvent recovery services on a contract  
3 or fee basis); and that manufactures, processes, or otherwise  
4 uses one or more toxic chemicals listed under Section 313(c)  
5 of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of  
6 the applicable thresholds established under EPCRA Section  
7 313(f) and 40 C.F.R. §§ 372.25, 372.27, and 372.28.

8 7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.  
9 Part 19 authorize EPA to assess a penalty of up to \$27,500  
10 for each violation of Section 313 of EPCRA that occurred on  
11 or after January 31, 1997 but before March 15, 2004 and up to  
12 \$32,500 for each violation of Section 313 of EPCRA that  
13 occurred on or after March 15, 2004.

14 8. Respondent is a "person," as that term is defined by Section  
15 329(7) of EPCRA.

16 9. At all times relevant to this CAFO, Respondent was the owner  
17 and operator of a "facility," as that term is defined by  
18 Section 329(4) of EPCRA and 40 C.F.R. § 372.3, located at  
19 3115 S. Fig Avenue, Fresno, California 93706 ("Facility"); the  
20 Facility had 10 or more "full-time employees," as that term  
21 is defined at 40 C.F.R. § 372.3; and the Facility was  
22 classified in Standard Industrial Classification Code 2011-04  
23 - Meat Products (Manufacturers).

24 10. During calendar year 2005, Respondent processed the following  
25 amounts (in pounds) of aqueous ammonia, chemicals listed  
26 under 40 C.F.R. § 372.65:  
27



1 in this CAFO; (iii) consents to the terms of this CAFO; (iv)  
2 waives any right to contest the allegations in this CAFO; and  
3 (v) waives the right to appeal the proposed final order  
4 contained in this CAFO.

5 17. The terms of this CAFO constitute a full settlement of the  
6 civil administrative matter filed under the docket number  
7 above.

8 18. EPA's final policy statement on Incentives for Self-Policing:  
9 Discovery, Disclosure, Correction and Prevention of  
10 Violations, 65 Fed. Reg. 19617 (April 11, 2000) ("Audit  
11 Policy") has several important goals, including encouraging  
12 greater compliance with the laws and regulations which  
13 protect human health and the environment and reducing  
14 transaction costs associated with violations of the laws EPA  
15 is charged with administering. If certain specified criteria  
16 are met, reductions in gravity-based penalties of up to 100%  
17 are available under the Audit Policy. These criteria are (1)  
18 discovery of the violation(s) through an environmental audit  
19 or due diligence; (2) voluntary disclosure; (3) prompt  
20 disclosure; (4) discovery and disclosure independent of  
21 government or third party plaintiff; (5) correction and  
22 remediation; (6) prevent recurrence; (7) no repeat  
23 violations; (8) other violations excluded; and (9)  
24 cooperation.

25 19. Complainant has determined that Respondent has satisfied all  
26 of the criteria under the Audit Policy and thus qualifies for  
27 the elimination of civil penalties in this matter.

1 Accordingly, the civil penalty assessed in this matter is  
2 zero (\$0) dollars.

3 20. Complainant's finding that Beef Packers has satisfied the  
4 criteria of the Audit Policy is based upon documentation that  
5 Beef Packers has provided to establish that it satisfies  
6 these criteria. Complainant and Respondent agree that,  
7 should any material fact upon which Complainant relied in  
8 making its finding subsequently prove to be other than as  
9 represented by Beef Packers, this CAFO may be voided in whole  
10 or in part.

11 21. Nothing in this CAFO modifies, affects, exempts or relieves  
12 Respondent's duty to comply with all applicable provisions of  
13 EPCRA and other federal, state or local laws and permits. In  
14 accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves  
15 Respondent's liability for federal civil penalties for the  
16 violations and facts specifically alleged in this CAFO.  
17 Nothing in this CAFO is intended to or shall be construed to  
18 resolve (i) any civil liability for violations of any  
19 provision of any federal, state, or local law, statute,  
20 regulation, rule, ordinance, or permit not specifically  
21 alleged in this CAFO; or (ii) any criminal liability. EPA  
22 specifically reserves any and all authorities, rights, and  
23 remedies available to it (including, but not limited to,  
24 injunctive or other equitable relief or criminal sanctions)  
25 to address any violation of this CAFO or any violation not  
26 specifically alleged in this CAFO.

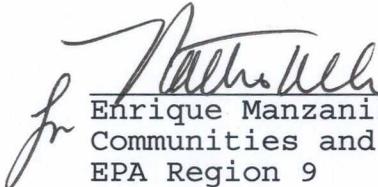
27 22. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),  
28

1 this CAFO shall be effective on the date that the final order  
2 contained in this CAFO, having been approved and issued by  
3 either the Regional Judicial Officer or Regional  
4 Administrator, is filed.

5 23. The provisions of this CAFO shall be binding upon Respondent,  
6 its agents, successors or assigns. Respondent's obligations  
7 under this Consent Agreement, if any, shall end when  
8 Respondent has performed all of the terms of the Consent  
9 Agreement in accordance with the Final Order. Complainant  
10 and Respondent consent to the entry of the CAFO without  
11 further notice.

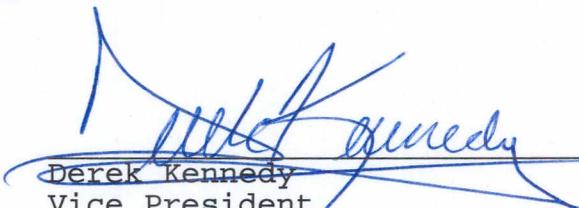
12 FOR COMPLAINANT:

13  
14 9/15/2008  
15 Date

16   
Enrique Manzanilla, Director  
Communities and Ecosystems Division  
EPA Region 9

17 FOR RESPONDENT:

18  
19 09/15/2008  
20 Date

21   
Derek Kennedy  
Vice President  
Beef Packers, Inc.

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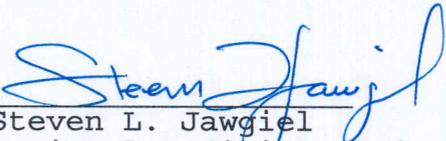
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**II. FINAL ORDER**

Complainant EPA Region 9 and Respondent Beef Packers, Inc.,  
a wholly owned subsidiary of Cargill Meat Solutions Corp.,  
having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this Consent Agreement and Final  
Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. EPCRA-  
09-2008- 00 22 ) be entered.

09/26/08  
Date

  
Steven L. Jawgiel  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency, Region 9

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1 CERTIFICATE OF SERVICE

2 I certify that the original of the foregoing Consent Agreement  
3 and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket  
4 No. EPCRA-09-2008- **0022** , was placed in the United States  
5 Mail, certified mail, return receipt requested, addressed to the  
6 following address:

7  
8 Derek Kennedy  
9 Vice President - General Manager  
10 Beef Packers, Inc.  
3115 South Fig Avenue  
Fresno, California 93706

11 Certified Return Receipt No.: 7000 1670 0011 9907 4635

12  
13  
14 Date: SEP 26 / 2008

By: *Danielle E. Carr*

15 Danielle Carr  
16 Regional Hearing Clerk  
17 United States Environmental  
18 Protection Agency, Region 9  
19 75 Hawthorne Avenue  
20 San Francisco, California 94105-3143  
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