

1 SYLVIA A. QUAST
Regional Counsel

2 DANIEL REICH
3 Assistant Regional Counsel
4 U.S. Environmental Protection Agency
Region IX
5 75 Hawthorne Street
San Francisco, CA 94105
6 (415) 972-3911

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:

Docket No. EPCRA-09-2015-0003

11 National Beef California, LP,

12 CONSENT AGREEMENT
AND FINAL ORDER

13 Respondent.

14 pursuant to 40 C.F.R. §§ 22.13(b) and
22.18(b)

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency, Region IX (“EPA”), and National
17 Beef California, LP (“National Beef”) (“Respondent”), agree to settle this matter and consent to
18 the entry of this Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously
19 initiates and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought under Section 325(c) of the Emergency
23 Planning and Community Right-To-Know Act (“EPCRA”), 42 U.S.C. § 11045(c), for
24 assessment of a civil administrative penalty against Respondent for its failure to submit timely,
25 complete and correct Toxic Chemical Release Inventory Forms for calendar years 2010, 2011
26 and 2012 in violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the implementing
27 regulations set forth at 40 C.F.R. Part 372.

28 2. Complainant is the Assistant Director of the Air, Waste & Toxics Branch of the
Enforcement Division in EPA Region IX. The Administrator of EPA delegated to the Regional

1 Administrator of Region IX the authority to bring and resolve this action under EPCRA by EPA
2 Delegation Order Number 22-3-A, dated May 11, 1994. The Regional Administrator of Region
3 IX further delegated the authority to bring this action under EPCRA to the Director, Deputy
4 Director, and Assistant Directors of the Enforcement Division by EPA Regional Order Number
5 R9-22-3-A, dated February 11, 2013.

6 3. Respondent is a Delaware limited partnership that owns a facility located at 57 East
7 Shank Road in Brawley, California.

8 B. STATUTORY AND REGULATORY BASIS

9 4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA
10 promulgated regulations on February 16, 1988 (53 Fed. Reg. 4525), setting forth requirements for
11 the submission of information relating to the release of toxic chemicals under EPCRA Section
12 313. These regulations, as amended, are presently codified at 40 C.F.R. Part 372.

13 5. Sections 313(a) and (b) of EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R.
14 §§ 372.22 and 372.30, provide that the owner or operator of a facility must submit to EPA and
15 the State in which the facility is located a toxic chemical release inventory reporting form
16 published under Section 313(g) of EPCRA for each toxic chemical or toxic chemical category
17 listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65 that it manufactured, processed, or
18 otherwise used if: (i) the facility has ten or more full-time employees; (ii) the facility is in North
19 American Industry Classification System (“NAICS”) Code 311611; and (iii) the facility
20 manufactured, processed, or otherwise used during the calendar year the listed toxic chemical or
21 toxic chemical category in excess of the threshold quantity established under Section 313(f) of
22 EPCRA and 40 C.F.R. § 372.25 (or 40 C.F.R. § 372.28 for a chemical of special concern).

23 6. Pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), EPA published a
24 uniform Toxic Chemical Release Inventory Form (hereinafter referred to as a “Form R”) for
25 facilities that are subject to the reporting requirements of Section 313. Sections 313(a) and (b) of
26 EPCRA, 42 U.S.C. §§ 11023(a) and (b), and 40 C.F.R. § 372.30(d), provide that each Form R for
27 activities involving a toxic chemical or toxic chemical category that occurred during a calendar
28 year must be submitted on or before July 1 of the next year.

C. ALLEGED VIOLATIONS

7. Respondent is a limited partnership and therefore fits within the definition of a “person,” as provided in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

8. At all times relevant to this matter, Respondent owned and operated a facility (the “Facility”) in the business of a slaughter house, rendering plant and meat packing process located at 57 East Shank Road, Brawley, California, that fits within the definition of a “facility,” as provided in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

9. At all times relevant to this matter, the Facility had 10 or more “full-time employees,” as that term is defined at 40 C.F.R. § 372.3.

10. At all times relevant to this matter, the Facility was in NAICS Code of 31161.

11. During the calendar years 2010, 2011 and 2012 Respondent “manufactured” (“M”), “processed” (“P”), or “otherwise used” (“OU”) at the Facility, as those terms are defined in 40 C.F.R. § 372.3, the following toxic chemicals listed under 40 C.F.R. § 372.65, in excess of the regulatory thresholds at 40 C.F.R. §§ 372.25 and 372.28 identified below:

<u>Year</u>	<u>Toxic Chemical</u>	<u>Nature of Use</u>	<u>Regulatory Threshold (lbs)</u>
2010	Ammonia	M	25,000
2010	Nitrate compounds	M	25,000
2010	Lead compounds	P	100
2010	Mercury compounds	P	10
2010	Peracetic acid	OU	10,000
2011	Ammonia	M	25,000
2011	Nitrate compounds	M	25,000
2011	Lead compounds	P	100
2011	Mercury compounds	P	10
2011	Peracetic acid	OU	10,000
2012	Ammonia	M	25,000
2012	Nitrate compounds	M	25,000
2012	Lead compounds	P	100

<u>Year</u>	<u>Toxic Chemical</u>	<u>Nature of Use</u>	<u>Regulatory Threshold (lbs)</u>
2012	Mercury compounds	P	10
2012	Peracetic acid	OU	10,000
2012	Hydrogen sulfide	M	25,000

12. Respondent was required to submit Form Rs for ammonia, nitrate compounds, lead compounds, mercury compounds, peracetic acid to EPA and the State of California for calendar year 2010 on or before July 1, 2011. See 40 C.F.R. § 372.30(d).

13. Respondent failed to submit the Form Rs required of it to EPA and the State of California for calendar year 2010 on or before July 1, 2011, and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

14. Respondent was required to submit Form Rs for ammonia, nitrate compounds, lead compounds, mercury compounds and peracetic acid to EPA and the State of California for calendar year 2011 on or before July 2, 2012. See 40 C.F.R. § 372.30(d)(July 1, 2012 is on Sunday).

15. Respondent failed to submit the Form Rs required of it to EPA and the State of California for calendar year 2011, on or before July 2, 2012, and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

16. Respondent was required to submit Form Rs for ammonia, nitrate compounds, lead compounds, mercury compounds, peracetic acid and hydrogen sulfide to EPA and the State of California for calendar year 2012 on or before July 1, 2013. See 40 C.F.R. § 372.30(d).

17. Respondent failed to submit the Form Rs required of it to EPA and the State of California for calendar year 2012, on or before July 1, 2013, and thus violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

18. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19 and the Enforcement Response Policy for Section 313 of EPCRA, dated August 10, 1992, provide for a penalty up to \$37,500 for each of the sixteen violations cited above.

1 ATTN Box 979077
2 St. Louis, MO 63101

3 ACH (also known as REX or remittance express):
4 Automated Clearinghouse (ACH) for receiving U.S. currency
5 PNC Bank
6 808 17th Street, NW
7 Washington, DC 20074
8 ABA = 051036706
9 Transaction Code 22 – checking
10 Environmental Protection Agency
11 Account 31006
12 CTX Format

13 On Line Payment:
14 This payment option can be accessed from the information below:
15 www.pay.gov
16 Enter “sfol.1” in the search field
17 Open form and complete required fields

18 If clarification regarding a particular method of payment remittance is
19 needed, contact the EPA’s Cincinnati Finance Center at (513) 487-2091.

20 Concurrently, a copy of each check, or notification that the payment has been made by one of the
21 other methods listed above, including proof of the date payment was made, shall be sent with a
22 transmittal letter, indicating Respondent’s name, the case title, and docket number, to the
23 following addresses:

24 Regional Hearing Clerk
25 Office of Regional Counsel (ORC-1)
26 U.S. Environmental Protection Agency, Region IX
27 75 Hawthorne Street
28 San Francisco, CA 94105

29 Dave Basinger
30 Enforcement Division (ENF-2-1)
31 U.S. Environmental Protection Agency, Region IX
32 75 Hawthorne Street
33 San Francisco, CA 94105

34 Daniel Reich
35 Office of Regional Counsel (ORC-2)
36 U.S. Environmental Protection Agency, Region IX
37 75 Hawthorne Street
38 San Francisco, CA 94105

39 21. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
40 from Respondent’s federal, state, or local taxes, nor shall Respondent allow any other person to
41 use such payment as a tax deduction.

1 22. If Respondent fails to pay the assessed civil administrative penalty of EIGHTY
2 THOUSAND, EIGHT HUNDRED AND FIFTY DOLLARS (\$80,850), as identified in
3 Paragraph 20, by the deadline specified in that Paragraph, then Respondent shall also pay a
4 stipulated penalty to EPA upon EPA's written request. The amount of the stipulated penalty will
5 be TWENTY-SIX THOUSAND, NINE HUNDRED, AND FIFTY DOLLARS (\$26,950), and
6 will be immediately due and payable on the day following the deadline specified in Paragraph 20,
7 together with the initially assessed civil administrative penalty of EIGHTY THOUSAND,
8 EIGHT HUNDRED AND FIFTY DOLLARS (\$80,850), resulting in a total penalty due of ONE
9 HUNDRED, SEVEN THOUSAND, EIGHT HUNDRED DOLLARS (\$107,800). Failure to pay
10 the civil administrative penalty specified in Paragraph 20 by the deadline specified in that
11 Paragraph may also lead to any or all of the following actions:

12 (1) EPA may refer the debt to a credit reporting agency, a collection
13 agency, or to the Department of Justice for filing of a collection action in the appropriate United
14 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
15 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
16 collection proceeding.

17 (2) The U.S. Government may collect the debt by administrative offset
18 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
19 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
20 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
21 C.F.R. §§ 13(C) and 13(H).

22 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
23 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
24 business with EPA or engaging in programs EPA sponsors or funds.

25 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
26 Government may assess interest, administrative handling charges, and nonpayment penalties
27 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
28 civil administrative penalty specified in Paragraph 22 by the deadline specified in that Paragraph.

1 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
2 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
3 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
4 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
5 (30) days of the effective date of this CAFO.

6 (b) Administrative Handling Charges. Pursuant to
7 31 U.S.C. Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling
8 charge, based on either actual or average cost incurred (including both direct and indirect costs),
9 for every month in which any portion of the assessed penalty is more than thirty (30) days past
10 due.

11 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
12 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
13 may be assessed on all debts more than ninety (90) days delinquent.

14 F. CERTIFICATION OF COMPLIANCE

15 23. In executing this CAFO, Respondent certifies that (1) it has now fully completed and
16 submitted to EPA all of the required Toxic Chemical Release Inventory Forms in compliance
17 with Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder for
18 the years 2010 to date; and (2) it is in compliance with all other EPCRA requirements at all
19 facilities under its control.

20 G. RETENTION OF RIGHTS

21 24. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
22 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
23 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
24 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
25 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
26 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
27 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
28 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

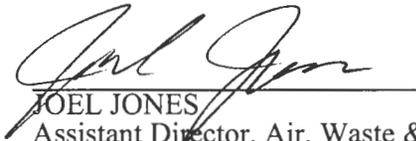
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2 FOR RESPONDENT NATIONAL BEEF CALIFORNIA, LP:
3

4 9/23/15
5 DATE


6 Bret G. Wilson
7 Vice President and General Counsel
8 National Beef California, LP
9 12200 N. Ambassador Drive, #500
10 Kansas City, MO 64163

11
12 FOR COMPLAINANT EPA:
13

14 9/30/15
15 DATE


16 JOEL JONES
17 Assistant Director, Air, Waste & Toxics Branch
18 Enforcement Division
19 U.S. Environmental Protection Agency, Region IX
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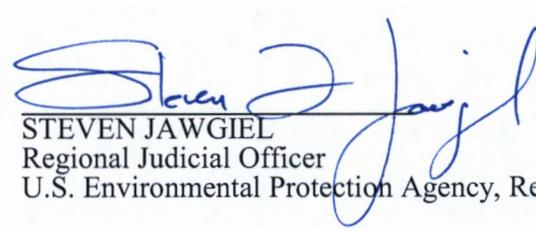
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II. FINAL ORDER

EPA and National Beef California, LP, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. EPCRA-09-2015-0003) be entered, and Respondent shall pay a civil administrative penalty in the amount of EIGHTY THOUSAND, EIGHT HUNDRED AND FIFTY DOLLARS (\$80,850), and comply with the terms and conditions set forth in the Consent Agreement.

09/30/15
DATE



STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order (“CAFO”), Docket Number EPCRA-09-2015-~~000~~³, was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the CAFO was sent, certified mail return receipt requested, to Respondent at the following addresses:

Bret G. Wilson, Vice President and General Counsel
National Beef California, LP
12200 N. Ambassador Drive #500
Kansas City, MO 64163

Parthenia B. Evans
Partner, Stinson Leonard Street LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106-2150

Certified Mail No: 7014 1820 0000 4720 9966



for: Steven Armsey
Regional Hearing Clerk
Region IX, EPA
Office of Regional Counsel

9/30/15

Date