

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

U.S. EPA-REGION 3-RHC
FILED-10JUL2013am10:50

In the Matter of: :
 :
JBS Souderton, Inc. : **U.S. EPA Docket Nos.**
249 Allentown Road : **CAA-03-2019-0099**
Souderton PA 18964, : **CERCLA-EPCRA-03-2019-0099**
 :
Respondent. : **Proceeding under Sections 112(r) and 113 of**
 : **the Clean Air Act, 42 U.S.C. §§ 7412(r) and**
 : **7413, Sections 103 and 109**
 : **of the Comprehensive Environmental**
 : **Response, Compensation and Liability Act,**
 : **42 U.S.C. §§ 9603 and 9609, and Sections**
 : **304, 312, and 325 of the Emergency Planning**
 : **and Community Right-to-Know Act,**
 : **42 U.S.C. §§ 11004, 11022 and 11045**

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and JBS Souderton, Inc. (“Respondent”) (collectively the “Parties”), pursuant to Section 113(d) of the Clean Air Act, as amended (the “CAA”), 42 U.S.C. § 7413(d), 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 113 of the CAA and Section 109 of CERCLA vest the President of the United States with the authority to assess penalties and undertake other actions required by this Consent Agreement, which authority has been delegated to the Administrator of the U.S. Environmental Protection Agency (“EPA”). Section 325 of EPCRA authorizes the Administrator of the EPA to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated these authorities 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 the CAA, 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)(2), (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.

CAA 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. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).
13. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), known as the "General Duty Clause," the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C.

§ 7412(r)(3), or any other extremely hazardous substance have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

14. Respondent is the owner and operator of a meat processing facility located at 249 Allentown Road, Souderton, Pennsylvania (the "Facility").
15. Respondent, a wholly-owned subsidiary of JBS USA Food Company, is a Pennsylvania corporation with its headquarters located at 1770 Promontory Circle, Greeley, Colorado, 80634.
16. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and is subject to the assessment of civil penalties for the violations alleged herein.
17. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines "stationary source," as "any buildings, structures, equipment, installations, or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur."
18. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The list of substances is codified at 40 C.F.R. § 68.130.
19. On February 12, 2018, EPA conducted an inspection of the Facility to determine whether Respondent was in compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and regulations promulgated thereunder (the "CAA Inspection").
20. Based on the observations of EPA inspectors during the CAA Inspection, EPA has determined that Respondent stored approximately 9,303 pounds of anhydrous ammonia in its refrigeration process at the Facility's Distribution Center.
21. As owner and operator of the Facility, Respondent is, and at times referred to herein was, the owner and operator of a "stationary source," as the term is defined in Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

Count I
Failure to Comply with General Duty Clause Requirement
to Design and Maintain a Safe Facility

22. The allegations of Paragraphs 1 through 21 of this Consent Agreement are incorporated herein by reference.

23. Anhydrous ammonia, CAS No. 7664-41-7, is an extremely hazardous substance pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), because it is listed in accordance with CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, Table 1.
24. As the owner and operator of a stationary source, with respect to the handling and storage of anhydrous ammonia, Respondent has a duty under the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to design and maintain a safe facility taking such steps as are necessary to prevent the accidental release of this extremely hazardous substance to the air.
25. The following industry safety standards are relevant to refrigeration processes:
 - a. American National Standard Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ANSI/ASHRAE) Standard 15, Section 8, which states that each refrigerating machinery room shall contain a detector, located in an area where refrigerant from a leak will concentrate, that actuates an alarm and mechanical ventilation. The alarm shall annunciate visual and audible alarms inside the refrigerating machinery room and outside each entrance to the refrigerating machinery room. ANSI/ASHRAE Standard 15 §§ 8.11.2.1 and 8.11.4.
 - b. ANSI/International Institute of Ammonia Refrigeration (IIAR) 2, Chapter 5, which states that piping and equipment surfaces not intended for heat exchange shall be insulated, treated, or otherwise protected to mitigate condensation and excessive frost buildup. ANSI/ASHRAE Chapter 5 subsection 5.10.1.
26. During the CAA Inspection, EPA inspectors observed the following conditions, which did not provide protection from accidental releases consistent with the standards referenced in Paragraph 25, above. (1) There were no audible and visual alarms inside the Facility's Distribution Center and outside each entrance to the distribution machinery room; (2) there was excessive frost buildup on equipment hand valves and bullseye sight glasses in the distribution center machinery room.
27. Respondent violated the requirement of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to design and maintain a safe facility taking steps as are necessary to prevent accidental releases of an extremely hazardous substance by failing to provide audible and visual alarms inside and outside the Facility's Distribution Center machinery room and failed to prevent excessive ice buildup on valves and gages.
28. In failing to comply with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

CERCLA & EPCRA FINDINGS OF FACT AND CONCLUSIONS OF LAW

29. The allegations of Paragraphs 1 through 28 of this Consent Agreement are incorporated

herein by reference.

30. 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 is subject to the assessment of civil penalties for the violations alleged herein.
31. At all times relevant to this CAFO, Respondent has been in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
32. The Facility is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. § 302.3, Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 355.61.
33. 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.
34. 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.
35. 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.
36. 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.
37. 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 State Emergency Response Commission (“SERC”) and the Local Emergency Planning Committee (“LEPC”) immediately following the release of an EHS in an amount exceeding the RQ for such substance.
38. The 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.

39. The LEPC for the Facility is, and at all times relevant to this CAFO has been, the Montgomery County Local Emergency Planning Committee, located at 50 Eagleville Road, Eagleville, PA 19403.
40. At all times relevant to this CAFO, the Facility was a facility at which an EHS was produced, used or stored.
41. On December 6, 2017, EPA conducted an inspection of the Facility to determine Respondent's compliance with Section 103 of CERCLA and Sections 302-312 of EPCRA in response to four separate releases of anhydrous ammonia and a release of sulfuric acid that were reported to have occurred between July 31, 2016 through October 15, 2017. During the inspection, EPA gathered information relevant to Respondent's compliance with Section 103 of CERCLA and Sections 302-312 of EPCRA. During the inspection and in the aftermath of the inspection, Respondent submitted information to EPA regarding its compliance with CERCLA and EPCRA.
42. 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.
43. Ammonia is 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, and 40 C.F.R Part 355, Subpart C.
44. Based upon Respondent's statements during the Inspection and supporting documentation provided to EPA regarding the releases, Respondent failed to comply with certain CERCLA and/or EPCRA reporting requirements.

July 12-13, 2017 Release of Ammonia

45. At or around 6:00 p.m. on July 12, 2017 and continuing until 7:30 a.m. on July 13, 2017, approximately 981 pounds of anhydrous ammonia was released from the beef processing area at the Facility (the "July Release"). The July Release occurred because a pipe thread fractured in the compressor room.
46. Respondent first became aware that the July Release was occurring at approximately 6:00 p.m. on July 12, 2017. At approximately 8:54 a.m. on July 13, 2017, Respondent calculated that 485 pounds of ammonia had been released, which Respondent later revised to 981 pounds.
47. 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).

48. Respondent reported the July Release to the NRC at approximately 8:53 a.m. on July 13, 2017.
49. Respondent did not notify the SERC.
50. Respondent reported the July Release to the LEPC at approximately 9:18 a.m. on July 13, 2017.

Count II
Failure to Immediately Notify the NRC of a Release

51. The allegations of Paragraphs 1 through 50 of this Consent Agreement are incorporated herein by reference.
52. The July 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).
53. Respondent failed to immediately notify the NRC of the July Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred 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.
54. 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 III
Failure to Immediately Notify the SERC of a Release

55. The allegations of Paragraphs 1 through 54 of this Consent Agreement are incorporated herein by reference.
56. The July Release from the Facility constitutes 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).
57. Respondent failed to immediately notify the SERC of the July Release as soon as Respondent knew or should have known that a release of an EHS had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by 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. Part 355, Subpart C.
58. 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 Immediately Notify the LEPC of a Release

59. The allegations of Paragraphs 1 through 58 of this Consent Agreement are incorporated herein by reference.
60. The July Release from the Facility constitutes 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).
61. Respondent failed to immediately notify the LEPC of the July Release as soon as Respondent knew or should have known that a release of a EHS had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by 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. Part 355, Subpart C.
62. 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 V
Failure to Timely Submit Written Follow-up Report to SERC

63. The allegations of Paragraphs 1 through 62 of this Consent Agreement are incorporated herein by reference.
64. 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.
65. The July 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).
66. Respondent did not provide a written follow up report to the SERC.
67. 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.
68. 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).

October 15-16, 2017 Release of Ammonia

69. At or around 8:27 a.m. on October 15, 2017 and continuing until 6:27 a.m. on October 16, 2017, an amount of anhydrous ammonia exceeding the reportable quantity of 100 pounds was released from the beef processing area at the Facility (the “October Release”). The Release occurred because of a rupture in the weld of the central pressure receiver.
70. The October 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).
71. Respondent first became aware that the October Release was occurring at approximately 8:27 a.m. on October 15, 2017. Soon thereafter, Respondent calculated that 7472 pounds of ammonia had been released, which Respondent later revised to 331 pounds.
72. Respondent did not immediately notify the SERC of the October Release.

Count VI

Failure to Immediately Notify the SERC of a Release

73. The allegations of Paragraphs 1 through 72 of this Consent Agreement are incorporated herein by reference.
74. The October Release from the Facility constitutes 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).
75. Respondent failed to immediately notify the SERC of the October Release as soon as Respondent knew or should have known that a release of an EHS had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by 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. Part 355, Subpart C.
76. 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 VII

Failure to Timely Submit Written Follow-up Report to SERC

77. The allegations of Paragraphs 1 through 76 of this Consent Agreement are incorporated herein by reference.
78. Respondent did not provide a written follow up report to the SERC for the October Release.

79. 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.
80. 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).

2016 Tier II Report for Sulfuric Acid

81. 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 required to prepare or have available a material safety data sheet or safety data sheet (“MSDS” or “SDS”) for a hazardous chemical in accordance with the 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”) to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form (“Chemical Inventory Form”) identifying the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.
82. 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 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).
83. The TPQ for sulfuric acid is 1000 pounds. 40 C.F.R. Part 355, Appendix A.

**Count VIII
Failure to Timely Submit Tier II Report**

84. The allegations of Paragraphs 1 through 83 of this Consent Agreement are incorporated herein by reference.
85. Based on information obtained during the inspection, Respondent had present at the Facility 8,046 pounds of sulfuric acid during calendar year 2016.
86. Respondent did not submit to the SERC, LEPC, and local fire department a Chemical Inventory Form for calendar year 2016 by March 1, 2017, identifying sulfuric acid as present at the Facility in a quantity equal to or greater than the TPQ, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).
87. Respondent’s failure to submit to the SERC, LEPC, and local fire department with

jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for calendar year 2016 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.

88. In failing to comply with Section 312 of EPCRA, 42 U.S.C. § 11022, Respondent is subject to the assessment of penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

SETTLEMENT

89. 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.

Civil Penalty

90. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a total civil penalty in the amount of **ONE HUNDRED AND TWENTY TWO THOUSAND AND SIX HUNDRED AND TWENTY FOUR DOLLARS (\$122,624)**, which total includes **TEN THOUSAND FIVE HUNDRED AND ONE DOLLARS (\$10,501)** for alleged violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r) ("CAA civil penalty"), **SIXTEEN THOUSAND AND SEVENTEEN DOLLARS (\$16,017)** for alleged violations of Section 103 of CERCLA, 42 U.S.C. § 9603 ("CERCLA civil penalty"), and **NINETY SIX THOUSAND ONE HUNDRED AND SIX DOLLARS (\$96,106)** for alleged violations of Section 304(b) and (c) of EPCRA, 42 U.S.C. § 11004(b) and (c), and Section 312 of EPCRA, 42 U.S.C. § 11022 ("EPCRA civil penalty"), which Respondent shall be liable to pay in accordance with the terms set forth below.
91. The CAA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012).
92. The CERCLA civil penalty and the EPCRA civil penalty are 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.

93. Payment of the CAA civil penalty, the CERCLA civil penalty and the EPCRA 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.*, CAA-EPCRA-CERCLA-03-2019-0099;
- 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 CAA civil penalty and the EPCRA civil penalty shall be made payable to the "United States Treasury";
- e. All payments made by check in payment of the CAA civil penalty and 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:

Jefferie Garcia
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029
garcia.jefferie@epa.gov

94. 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.
95. Payment of the CAA civil penalty, the CERCLA civil penalty and the EPCRA 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).
96. 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).
97. ADMINISTRATIVE COSTS: The costs of the 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.
98. 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).
99. 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.

100. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

101. 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.
102. 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 the 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

103. 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

104. 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 the CAA, CERCLA or EPCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

105. 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 the CAA, 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

106. This CAFO shall apply to and be binding upon the 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

107. 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

108. 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: JBS, Souderton, Inc.
EPA Docket Nos. CAA-EPCRA-CERCLA-03-2019-0099

For Respondent: JBS Souderton, Inc.


Date: 7/3/19

By: 
Alan Byers, President

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: JUL 8 2019

By: 
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

For the Complainant:

Date: 6/25/19

By: 
Jefferie E. Garcia
Sr. Assistant Regional Counsel

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

U.S. EPA-REGION 3-RHC
FILED-10JUL2019AM10:50

In the Matter of:

JBS Souderton, Inc.
249 Allentown Road
Souderton PA 18964,

Respondent.

:
:
: U.S. EPA Docket Nos.
: CAA-03-2019-0099
: CERCLA-EPCRA-03-2019-0099
:
: Proceeding under Sections 112(r) and 113 of the
: Clean Air Act, 42 U.S.C. §§ 7412(r) and 7413,
: Sections 103 and 109
: of the Comprehensive Environmental Response,
: Compensation and Liability Act,
: 42 U.S.C. §§ 9603 and 9609, and Sections
: 304, 312, and 325 of the Emergency Planning and
: Community Right-to-Know Act,
: 42 U.S.C. §§ 11004, 11022 and 11045

FINAL ORDER

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, JBS Souderton, 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.

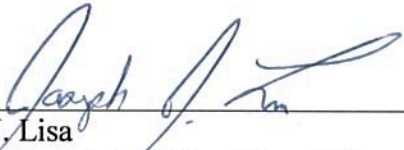
Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012) and the statutory factors set forth in Section 113(e) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(e). The penalty agreed to therein is also 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 113(d) of the CAA, 42 U.S.C. § 7413(d), 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 **ONE HUNDRED TWENTY-TWO THOUSAND SIX HUNDRED AND TWENTY FOUR DOLLARS (\$122,624)**, 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.

July 10, 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: :
 : **U.S. EPA Docket Nos.**
JBS Souderton, Inc. : **CAA-05-2019-0099**
249 Allentown Road : **CERCLA-EPCRA-03-2019-0099**
Souderton PA 18964, :
Respondent. : **Proceeding under Sections 112(r) and 113 of**
 : **the Clean Air Act, 42 U.S.C. §§ 7412(r) and**
 : **7413, Sections 103 and 109**
 : **of the Comprehensive Environmental**
 : **Response, Compensation and Liability Act,**
 : **42 U.S.C. §§ 9603 and 9609, and Sections**
 : **304, 312, and 325 of the Emergency Planning**
 : **and Community Right-to-Know Act,**
 : **42 U.S.C. §§ 11004, 11022 and 11045**

CERTIFICATE OF SERVICE

I certify that on JUL 10 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 caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via UPS Next Day Delivery, to:

Steven P. Case
McGrath North
First National Tower
Suite 3700, 1601 Dodge St.,
Omaha, NE 68102

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

Jefferie E. Garcia
Senior Assistant Regional Counsel
ORC – 3RC20
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Mary Hunt
Enforcement Officer
ECAD – 3ED12
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Perry Pandya
Enforcement Officer
ECAD – 3ED12
U.S. EPA, Region III
1650 Arch Street,
Philadelphia, PA 19103

Dated: JUL 10 2019

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

TRACKING NUMBERS: 1Z A43 F710196590642