

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of:	:
	:
	U.S. EPA Docket No. EPCRA-03-2022-0125
US Foods, Inc.	:
9399 W. Higgins Road, Suite 100	:
Rosemont, IL 60018,	:
Respondent.	:
	Proceeding under Sections 304, 312, and 325 of
	the Emergency Planning and Community
	Right-to-Know Act, 42 U.S.C. §§ 11004, 11022,
US Foods, Inc.	and 11045
1200 Hoover Avenue,	:
Allentown, PA 18109,	:
	:
Facility.	:

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and the US Foods, Inc. (“Respondent”) (collectively the “Parties”), pursuant to 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 325 of EPCRA authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA”) to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under 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)(8).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
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 Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order 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.

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. Respondent is a Delaware corporation with its headquarters located at 9399 W. Higgins Road, Rosemont, Illinois 60018.
13. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. §§ 355.61 and 370.66, and is subject to the assessment of civil penalties for the violations alleged herein.
14. Respondent is, and at all times relevant to this Consent Agreement and Final Order was, the owner and operator of the food distribution facility located at 1200 Hoover Avenue in Allentown, Pennsylvania 18109 ("Facility").

15. The Facility is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and its implementing regulations, 40 C.F.R. §§ 355.61 and 370.66.
16. Respondent is, and at all times relevant to this Consent Agreement and Final Order was, the “owner and operator” of the Facility, as within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004; Section 312 of EPCRA, 42 U.S.C. § 11022; and their respective regulations, 40 C.F.R. §§ 355.2 and 370.2.
17. At all times relevant to this Consent Agreement and Final Order, Respondent produced, used, or stored hazardous chemicals at the Facility, namely, anhydrous ammonia, lead, and sulfuric acid.
18. According to information submitted to EPA by Respondent, on July 29, 2019, Respondent released approximately 171 pounds of anhydrous ammonia from the Facility into the atmosphere after a relief valve on the high-pressure receiver, a component of the Facility’s refrigeration process located outdoors, failed (“the Release”).
19. In November 2020, EPA initiated an investigation into Respondent’s compliance with the emergency release notification requirements of Section 103 of Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9603, and Section 304 of EPCRA, as well as the emergency planning and chemical inventory and reporting requirements of Sections 302, 303, 311, and 312 (“the Investigation”). The Investigation included, but was not limited to, an Information Request Letter, issued to Respondent pursuant to Section 104 of the CERCLA.

Count I

Failure to Immediately Notify the Local Emergency Planning Committee of a Release

20. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
21. 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 immediately notify the local emergency planning committee (“LEPC”) as soon as he/she has knowledge of a release of an extremely hazardous substance for which notification is also required under CERCLA Section 103, 42 U.S.C. § 9603.
22. 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 an extremely hazardous substance (“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. § 302.4.

23. The LEPC for the Facility is, and at all times relevant to this Consent Agreement and Final Order has been, Lehigh County Emergency Services, which can be contacted at (610) 782-4600 and nicoleburton@lehighcounty.org.
24. The Release from the Facility constituted a release of an EHS in a quantity equal to or exceeding the reportable quantity (“RQ”) for that EHS, requiring immediate notification under CERCLA Section 103, 42 U.S.C. § 9603, and therefore, required immediate notification of the LEPC pursuant to Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b).
25. The Release was not a “federally permitted release” as that term is defined in Section 304(a)(2)(A) of EPCRA, 42 U.S.C. § 11004(a)(2)(A), and 40 C.F.R. § 355.31(b).
26. Respondent did not notify Lehigh County Emergency Services of the Release.
27. Respondent failed to immediately notify the LEPC 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.
28. Respondent violated Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), by failing to immediately notify the LEPC as soon as Respondent had knowledge of a release of an EHS had occurred at the Facility in an amount equal to or exceeding the applicable RQ.
29. 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).

Counts II and III

Failure to Send a Follow-Up Written Notice to the LEPC and the SERC

30. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
31. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C, in relevant part, requires the owner or operator of a facility at which hazardous chemicals are produced, used, or stored and where there has been a release of a hazardous substance or EHS in a quantity equal to or greater than the RQ and the release requires immediate notification pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), to provide a written follow-up emergency notice regarding the release to the LEPC and the State emergency response commission (“SERC”) as soon as practicable after a release.
32. The Release constituted a release of an EHS in a quantity equal to or exceeding its RQ from a facility at which hazardous chemicals are produced, used, or stored, which required immediate notification pursuant to Section 103(a) of CERCLA, 42 U.S.C.

§ 9603(a), and consequently, obligated Respondent to provide a written follow-up emergency notice to the LEPC and the SERC as soon as practicable after the release, pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

33. The SERC, for purposes of providing written follow-up emergency notice pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), at the Facility is, and at all times relevant to this Consent Agreement has been, the Pennsylvania Emergency Management Agency (“PEMA”), located at 1310 Elmerton Avenue, Harrisburg, PA 17110 and (717) 651-2001. The SERC directs follow-up spill reports to be submitted in PDF file format to hazmat@pa.gov.
34. The LEPC, for the purposes of providing written follow-up emergency notice of a release of an EHS in an amount equal to or exceeding the RQ, is, and at all times relevant to this Consent Agreement, has been, Lehigh County Emergency Services.
35. Respondent failed to provide a written follow-up emergency notice to PEMA, the SERC for written follow-up emergency notice, and the LEPC as soon as practicable after the Release, as required pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.
36. Respondent’s failure to submit a follow-up emergency notice to PEMA, the SERC for written follow-up emergency notice, and the LEPC as soon as practicable after the Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).
37. 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).

Counts IV through VI
Failure to Timely Submit Complete and Accurate Chemical Inventory Forms
to the Local Fire Department

38. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
39. 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 (or Safety Data Sheet) for a hazardous chemical in accordance with OSHA’s 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 (“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”) 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 appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

- 40. The SERC for complying with the emergency planning and community right-to-know requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at the Facility is the Department of Labor & Industry, Bureau of Occupational & Industrial Safety, Pennsafe Program (“Pennsafe”), located at 651 Boas Street, Harrisburg, PA 17121, with its website located at [https://www.dli.pa.gov/Individuals/Labor-Management-Relations/bois/tier-ii/Pages/Tier-II-\(PATTS\)-System.aspx](https://www.dli.pa.gov/Individuals/Labor-Management-Relations/bois/tier-ii/Pages/Tier-II-(PATTS)-System.aspx).
- 41. The LEPC for complying with the emergency planning and community right-to-know requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at the Facility is Lehigh County Emergency Services.
- 42. The local fire department with jurisdiction over the Facility is Allentown Fire Department, located at 641 S. 10th Street, Allentown, Pennsylvania 18103. Efrain Agosto, Fire Chief, can be reached at Efrain.Agosto@Allentownpa.gov and (610) 437-7765.
- 43. Anhydrous ammonia, lead, and sulfuric acid are “hazardous chemicals” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66, and are subject to Section 312 of EPCRA, 42 U.S.C. § 11022, pursuant to Section 312(c) of EPCRA, 42 U.S.C. § 11022(c). Additionally, pursuant to 40 C.F.R. § 370.66, anhydrous ammonia and sulfuric acid are EHSs because they are substances listed in appendices A and B of 40 C.F.R. Part 355.
- 44. Pursuant to 40 C.F.R. § 370.10(a), the TPQ or threshold level for ammonia and sulfuric acid is 500 pounds, and the MTL for lead is 10,000 pounds.
- 45. According to the information submitted to EPA by Respondent, the maximum amount in pounds of anhydrous ammonia, sulfuric acid, and lead present at the Facility during the 2017, 2018, and 2019 calendar years exceeded their respective thresholds, as set forth below:

Chemical	2017	2018	2019
Ammonia	14,699	14701	14701
Sulfuric Acid	24006	24006	24006
Lead	206886	206886	206886

- 46. Respondent submitted Chemical Inventory Forms for calendar years 2017, 2018, and 2019 for the Facility to the SERC for emergency planning submissions, Pennsafe, and the LEPC.
- 47. Respondent failed to submit to the local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for each of the

calendar years 2017, 2018, and 2019 identifying the total quantity of ammonia, sulfuric acid, and lead present at the Facility during the 2017, 2018, and 2019 calendar years.

48. Respondent's failure to submit to the local fire department with jurisdiction over the Facility a complete and accurate Chemical Inventory Form for the Facility for each of the calendar years 2017, 2018, and 2019 constitute violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and are, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

49. In settlement of EPA's claims for civil penalties for the EPCRA violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of THIRTY-FIVE THOUSAND dollars (\$35,000), which Respondent shall be liable to pay in accordance with the terms set forth below.
50. The civil penalty is 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). 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), and adjusted in accordance with 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.
51. Payment of the 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-03-2022-0125;
 - b. EPCRA Civil Penalty - \$35,000
 - i. All checks in payment of the EPCRA civil penalty shall be made payable to the "United States Treasury"
 - ii. All payments made by check 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

- c. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- d. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Lauren E. Ziegler
Assistant Regional Counsel
ziegler.lauren@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov

- 52. 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.
- 53. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order 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).
- 54. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. 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).
- 55. 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.

56. 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).
57. Failure by the Respondent to pay the EPCRA civil penalty assessed by the Final Order in accordance with the terms of this Consent Agreement and Final Order may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to 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.
58. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
59. The parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: ziegler.lauren@epa.gov (for Complainant), and jolson@seyfarth.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

60. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
61. 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 Consent Agreement and Final Order, 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

62. 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

63. Nothing in this Consent Agreement and Final Order 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 Consent Agreement and Final Order does not constitute a waiver, suspension, or modification of the requirements of EPCRA or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

64. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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 EPCRA, the regulations promulgated thereunder, and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION/PARTIES BOUND

65. This Consent Agreement and Final Order 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 he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

66. The effective date of this Consent Agreement and Final Order 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

67. This Consent Agreement and Final Order 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 Consent Agreement and Final Order.

In the Matter of US Foods, Inc.

EPA Docket No. EPCRA-03-2022-0125

For Respondent: US Foods, Inc.

Date: 09-26-2022

By: 

Donald Joseph Hart III
Vice President of Operations, US Foods, Inc.

For Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & 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.

By: _____
[Digital Signature and Date]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[Digital Signature and Date]
Lauren E. Ziegler
Assistant Regional Counsel
U.S. EPA – Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

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1200 Hoover Avenue,	:
Allentown, PA 18109,	:
	:
Facility.	:

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, US Foods, 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. Section 22.13(b), and Sections 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 *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, 42 U.S.C. §11045(b)(1)(C).

NOW, THEREFORE, PURSUANT TO Section 325(b)(1) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045(b)(1), 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 ***THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00)***, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), 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 the Emergency Planning and Community Right-to-Know Act 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.

By: _____
[Digital Signature and Date]
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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1200 Hoover Avenue,	:
Allentown, PA 18109,	:
	:
Facility.	:

CERTIFICATE OF SERVICE

I certify that on _____, 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:

Copy served via **Electronic Mail** to:

Jeryl Olson
Partner
Seyfarth Shaw LLP
233 S. Wacker Drive, Suite 8000
Chicago, IL 60606-6448
jolson@seyfarth.com
(Attorney for Respondent)

Copy served via **Electronic Mail** to:

Lauren E. Ziegler
Assistant Regional Counsel
U.S. EPA, Region III
4 Penn Center (3RC20)
1600 JFK Boulevard
Philadelphia, PA 19103
Ziegler.Lauren@epa.gov
(Attorney for Complainant)

Dated: _____
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): _____