



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

AUG 07 2012

Parthenia B. Evans, Esquire
Stinson, Morrison Hecker LLP
1201 Walnut Street, Suite 2900
Kansas City, Missouri 64106-2150

Re: **In the Matter of National Beef Packing Company, LLC**
U.S. EPA Docket No. CAA-03-2012-0198

Dear Parthy:

Enclosed please find a copy of Consent Agreement and Final Order, which has been filed with the Regional Hearing Clerk today.

Sincerely yours,

A handwritten signature in cursive script that reads "Cynthia T. Weiss".

Cynthia T. Weiss
Senior Assistant Regional Counsel

Enclosure

cc: Mary Hunt (3HS61)



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

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:)
National Beef Packing Company, LLC)
12200 North Ambassador Drive)
Kansas City, Missouri 64163,)
)
Respondent.)
)
National Beef Packing Company, LLC)
1811 North Old Trail)
Selinsgrove, Pennsylvania 17870,)
)
Facility.)

EPA Docket No. CAA-03-2012-0198

Proceedings Pursuant to Sections 112(r)
and 113 of the Clean Air Act,
42 U.S.C. §§ 7412(r) and 7413

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or the "Agency") by Section 113 of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413, and under the authority of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The Administrator has delegated these authorities to the Regional Administrator, who has, in turn, delegated them to the Director, Hazardous Site Cleanup Division.

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

**FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

1. Respondent, National Beef Packing Company, LLC (“National Beef”), is a limited liability company formed in the state of Delaware with its principal place of business located at 12200 North Ambassador Drive, in Kansas City, Missouri 64163.
2. National Beef is the operator of a meat cutting and tray packing plant located at 1811 North Old Trail in Selinsgrove, Pennsylvania 17870 (the “Facility”).
3. 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).
4. Section 112(r) to the CAA, 42 U.S.C. § 7412(r), requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7), 42 U.S.C. § 7412(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7). The list of regulated substances and threshold levels can be found in 40 C.F.R. § 68.130.
5. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program (“RMP”), 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the CAA. The regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The risk management program is described in a risk management plan that must be submitted to EPA. The risk management plan must include a hazard assessment to assess the potential effects of an accidental release of any regulated substance, a program for preventing accidental releases of hazardous substances, and a response program providing for specific actions to be taken in response to an accidental release of a regulated substance, so as to protect human health and the environment.
6. Pursuant to Section 112(r)(7)(B)(iii) of the CAA, 42 U.S.C. § 7412(r)(7)(B)(iii), and its regulations at 40 C.F.R. §§ 68.10(a) and 68.150(a), the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity must submit a risk management plan to EPA no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.
7. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996, authorizes EPA to

commence an administrative action to assess civil penalties of not more than \$32,500 per day for each violation of Section 112(r) of the CAA that occurs after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation of Section 112(r) of the CAA that occurs after January 12, 2009.

8. The regulations at 40 C.F.R. § 68.3 define “stationary source,” in part, as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

9. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

10. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the CAA in 40 C.F.R. § 68.130.

11. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

12. EPA conducted an inspection of the Facility on November 17, 2010, to determine Respondent’s compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the Risk Management Program regulations at 40 C.F.R. Part 68.

13. The Facility’s inventory records on the date of the inspection indicated that a maximum of 25,000 pounds of anhydrous ammonia (Chemical Abstracts Service (“CAS”) No. 7664-47-1) was handled, stored or used at the Facility on that date.

14. Respondent submitted to EPA its initial Risk Management Plan for the Facility on May 16, 2001, and a voluntary update on June 19, 2004. Respondent submitted the latest updated Risk Management Plan on June 19, 2009.

15. The Risk Management Program regulations require the owner or operator of a regulated stationary source to comply with the following provisions at 40 C.F.R. Part 68:

- a. Update process hazard analysis, in accordance with 40 C.F.R. § 68.67(f);
- b. Comply with process safety information requirements for equipment, in accordance with 40 C.F.R. § 68.65(d);

- c. Comply with process safety information requirement for hazards of the regulated chemicals in the process, in accordance with 40 C.F.R. § 68.65(b);
- d. Perform inspections or tests of process equipment, in accordance with 40 C.F.R. § 68.73(d);
- e. Certify compliance with RMP regulations every three years, in accordance with 40 C.F.R. § 68.79(a); and
- f. Prepare adequate evacuation plan, in accordance with 40 C.F.R. § 68.95(a)(1)(iii).

16. Complainant determined, based on its inspection of the Facility and documents obtained from the Facility, that Respondent failed to comply with the following components of the Risk Management Program:

- a. Respondent did not timely or completely update its process hazard analysis (“PHA”) within five years of July 2004, as required by 40 C.F.R. § 68.67(f). Respondent provided a PHA to EPA shortly after the inspection, dated November 2010, but the PHA was deficient because it did not address recent revisions to the ventilation system.
- b. Respondent failed to comply with process safety information requirements with respect to the ventilation system in the machinery room in 40 C.F.R. § 68.65(b) and (d), and thus failed to take the following actions consistent with industry standards and guidance:
 - i. Ensure that the configuration of the exhaust fans and the supply air for the machinery room provided adequate cross-ventilation and proper air changes;
 - ii. Provide ammonia detectors that annunciate visual and audible alarms inside the machinery room and provide separate alarms for emergency ventilation and emergency shutdown;
 - iii. Provide emergency eyewash stations or a deluge body shower located outside the machinery room door; and
 - iv. Provide a self-contained breathing apparatus (“SCBA”) and a back-up SCBA outside of, but close to, the exit door of the machinery room.
- c. At the time of the inspection, Respondent did not provide any documentation that inspections or tests of the ammonia detectors had been performed at the Facility, in accordance with 40 C.F.R. § 68.73(d).

- d. Respondent did not demonstrate that compliance audits had been conducted at the Facility at least every three years, in accordance with 40 C.F.R. § 68.79(a). As of the time of the inspection, the last audit had been conducted in June 2007; therefore, a compliance audit was due by June 2010.
- e. At the time of the inspection, Respondent's evacuation plan located at the machinery room door was deficient in that it designated evacuation routes for the production room, not the machinery room, and it did not identify persons responsible for the evacuation.

17. On February 18, 2011, EPA issued an Administrative Order, Docket No. CAA-03-2011-0077 ("Order"), to Respondent to correct the compliance issues identified during EPA's inspection. By letter dated November 29, 2011, National Beef demonstrated that it had complied with all task items in the Order as of November 17, 2011. As part of its compliance with the Order, Respondent took the following actions:

- a. Respondent submitted a revised PHA on June 2, 2011, that addressed both the ammonia refrigeration system and new ventilation system;
- b. Respondent conducted a ventilation system assessment in April 2011, and installed new supply and exhaust fans and intakes for both continuous ventilation and emergency ventilation in November 2011;
- c. Respondent installed new ammonia detectors in the refrigeration room and emergency stop and emergency ventilation switches outside each engine room entrance in November 2011, and installed alarms inside the machinery room in February 2012;
- d. Respondent installed emergency eyewash stations and a deluge body shower in May 2011;
- e. Respondent provided a storage area with SCBAs outside the machinery room exit door in May 2011;
- f. Respondent submitted to EPA new preventative maintenance records and test results for the ammonia detectors in March 2011;
- g. Respondent submitted a compliance audit on April 22, 2011, that EPA deemed complete; and
- h. Respondent corrected the evacuation plan in March 2011.

18. On April 23, 2012, EPA sent Respondent a request to show why penalties against Respondent were not warranted under Section 113 of the CAA for the violations identified during the inspection and corrected by Respondent pursuant to the Order.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATION OF SECTION 112(r)(7) OF THE CLEAN AIR ACT**

19. The findings of fact contained in Paragraphs 1 through 18 of this CA/FO are incorporated by reference herein as though fully set forth at length.

20. Anhydrous ammonia is a "regulated substance" pursuant to Section 112(r)(3) of the CAA, and listed in 40 C.F.R. § 68.130, with a threshold quantity of 10,000 pounds.

21. At all times relevant to this Consent Agreement, anhydrous ammonia has been present in a process at the Facility.

22. Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

23. Respondent has been the operator of a "stationary source," as the term is defined at 40 C.F.R. § 68.3, since approximately 2001.

24. Respondent is subject to the requirements of Section 112(r) of the CAA, 40 U.S.C. § 7412(r), and 40 C.F.R. Part 68, because it is the owner and/or operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

25. Respondent has violated Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and its regulations at 40 C.F.R. Part 68, by failing to comply with the Risk Management Program regulations identified in Paragraph 15 above. Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

SETTLEMENT

26. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), as set forth above, in the amount of **\$45,830**.

27. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

PAYMENT TERMS

28. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay

the civil penalty of \$45,830 no later than thirty (30) days after the effective date of the Final Order (the "final due date") by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, CAA-03-2012-0198;
- b. All checks shall be made payable to **United States Treasury**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Heather Russell, 513-487-2044

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

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

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

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

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

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

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

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

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

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

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

- i. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

29. Respondent shall submit copies of the check, or verification of wire transfer or ACH, to the following persons:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Cynthia T. Weiss
Senior Assistant Regional Counsel (3RC42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

30. 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 Response Policy for Section 112(r) of the Clean Air Act* (August 15, 2001).

31. 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 by the final due date or to comply with the conditions of this CA/FO shall result in the assessment of late payment charges,

including interest beyond that required by this CA/FO, penalties and/or administrative costs of handling delinquent debts.

32. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. 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).

33. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix B of EPA's *Resource Management Directives – Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

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

35. Failure of Respondent to pay the penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

36. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

37. Respondent agrees not to contest EPA's jurisdiction with respect to execution or enforcement of the CA/FO.

38. Except as provided in Paragraph 36 above, for purposes of this proceeding, Respondent neither admits nor denies factual allegations set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

39. By entering into this CA/FO, Respondent does not admit any liability for the civil claims alleged herein.

40. For purposes of this proceeding, Respondent expressly waives its right to hearing and to appeal the Final Order pursuant to Section 113 of the CAA, 42 U.S.C. § 7413.

41. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, the Facility is presently in compliance with all requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

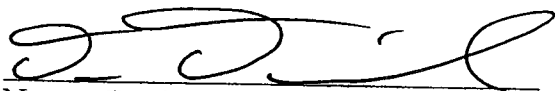
42. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized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

43. This CA/FO does not constitute a waiver, suspension or modification of the requirements of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), or any regulations promulgated thereunder.

44. This CA/FO is a complete and final settlement of all civil and administrative claims and causes of action set forth in this CA/FO for alleged violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Nothing herein shall be construed to limit the authority of EPA to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

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

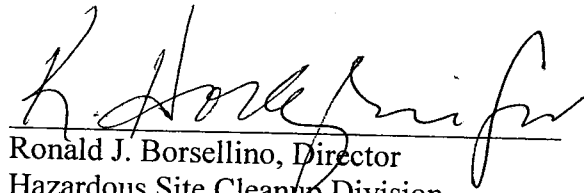
FOR NATIONAL BEEF PACKING COMPANY, LLC



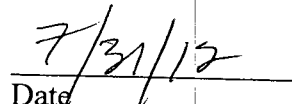
Name: David Davidson
Title: General Manager Hummels Wharf

7/24/2012
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Ronald J. Borsellino, Director
Hazardous Site Cleanup Division



Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

| | | |
|---|---|--|
| In the Matter of: |) | EPA Docket No. CAA-03-2012-0198 |
| National Beef Packing Company, LLC |) | |
| 12200 North Ambassador Drive |) | |
| Kansas City, Missouri 64163, |) | |
| |) | |
| Respondent. |) | Proceedings Pursuant to Sections 112(r) |
| |) | and 113 of the Clean Air Act, |
| National Beef Packing Company, LLC |) | 42 U.S.C. §§ 7412(r) and 7413 |
| 1811 North Old Trail |) | |
| Selinsgrove, Pennsylvania 17870, |) | |
| |) | |
| Facility. |) | |

FINAL ORDER

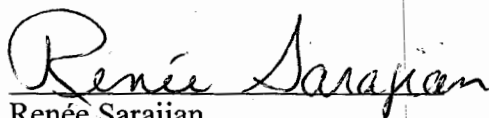
Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

Date:

8/7/12



Renée Sarajian
Regional Judicial Officer/Presiding Officer

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

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LLC)
1811 North Old Trail)
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CERTIFICATE OF SERVICE

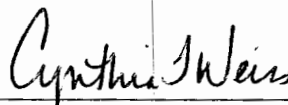
I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via certified mail, return receipt requested

Parthenia B. Evans, Esquire
Stinson, Morrison Hecker LLP
1201 Walnut Street, Suite 2900
Kansas City, Missouri 64106-2150

AUG 07 2012

Date



Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel