



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN - 2 2017

REPLY TO THE ATTENTION OF:

ELECTRONIC SERVICE
VIA EMAIL

Mr. Mark Quayle
Vice President, Law
Cargill Meat Solutions Corporation
151 N. Main Street, 7th Floor
Wichita, KS 67202

Re: Cargill Meat Solutions Corporation,
Swift Pork Company
Consent Agreement and Final Order
Docket No. **CAA-05-2017-0025**

Dear Mr. Quayle:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on June 2, 2017. Please pay the civil penalty in the amount of **\$79,165** in the manner prescribed in paragraph(s) 49 thru 51 and reference your check with the number BD N/A and the docket number.

Please feel free to contact Silvia Palomo at (312) 353-2172 if you have any questions regarding the enclosed documents. Please direct any legal questions to Sherry Estes, Associate Regional Counsel at (312) 886-7164. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. E. Hans", with a long horizontal line extending to the right.

Michael E. Hans, Chief
Chemical Emergency
Preparedness and Prevention Section



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77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN - 2 2017

REPLY TO THE ATTENTION OF:

ELECTRONIC SERVICE
VIA EMAIL

Jonathan T. Hopkins
Beardstown General Manager
Swift Pork Company
8295 Arenzville Rd.
Beardstown, IL 62618

Re: Cargill Meat Solutions Corporation
Swift Pork Company
Consent Agreement and Final Order
Docket No. **CAA-05-2017-0025**

Dear Mr. Hopkins:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U. S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on June 2, 2017. It is my understanding from your attorney, Steven P. Case, that Cargill Meat Solutions Corporation is obligated to pay the civil penalty called for in the CAFO. Under paragraph 59 of the CAFO, Swift Pork Company certifies that it is in full compliance with 40 C.F.R. Part 68, the Risk Management Program regulations, at the Beardstown, Illinois facility.

Please feel free to contact Silvia Palomo at (312) 353-2172 if you have any questions regarding the enclosed documents. Please direct any legal questions to Sherry Estes, Associate Regional Counsel at (312) 886-7164. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. E. Hans".

Michael E. Hans, Chief
Chemical Emergency
Preparedness and Prevention Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2017-0025
)	
Cargill Meat Solutions Corporation and)	Proceeding to Assess a Civil Penalty
)	
Swift Pork Company)	Under Section 113(d) of the Clean Air Act,
Beardstown, Illinois)	
)	42 U.S.C. § 7413(d)
)	
Respondents)	
)	
)	
)	



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondents are Cargill Meat Solutions Corporation (Cargill), and Swift Pork Company, both Delaware corporations doing business in Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent Cargill Meat Solutions Corporation consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO. Respondent Swift Pork Company consents to the paragraphs where that company is specifically named.

Jurisdiction and Waiver of Right to Hearing

7. Both Respondents admit the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Both Respondents waives their rights to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and their right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 112(r) of the CAA, EPA promulgated the Risk Management Program (RMP) regulations at 40 C.F.R. §§ 68.1 through 68.220.

10. The owner or operator of the Beardstown, Illinois facility was required to comply with the requirements of 40 C.F.R. Part 68 by June 21, 1999.

11. The RMP regulations for anhydrous ammonia apply to the Cargill Meat Solutions facility in Beardstown, Illinois.

12. The RMP regulations at 40 C.F.R. § 68.12 require that the owner or operator of a facility subject to the regulations develop and implement a program for preventing accidental releases to the air and minimizing the consequences of releases that do occur.

13. Section 40 C.F.R. §68.150(a) requires the owner or operator to submit a single Risk Management plan (plan) that includes the information required by 40 C.F.R. §§ 68.155 through 68.185.

14. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations that occurred after January 12, 2009 through December 6, 2013 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

15. For CAA violations that occurred after December 6, 2013 through November 2, 2015, the Administrator may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

16. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

17. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

18a. Respondent Cargill Meat Solutions Corporation (Cargill) is a Delaware corporation which used to own and operate a plant located at 8295 Arenzville Road, Beardstown,

Illinois 62618 (the Facility). At the Facility, the Respondent Cargill was engaged in the pork processing business.

18b. The Respondent Swift Pork Company is a Delaware corporation which currently owns and operates the Facility located at 8295 Arenzville Road, Beardstown, Illinois. The Respondent Swift Pork Company is engaged in the pork processing business.

19. Each Respondent is a "person," as that term is defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

20. Respondent Cargill operated a closed-loop refrigeration system at the Facility which utilized anhydrous ammonia as a refrigerant.

21. Respondent Cargill also owned and operated an anhydrous ammonia storage tank at the Facility.

22. The Facility is a "stationary source" as that term is defined at 40 C.F.R. § 68.3.

23. For purposes of the requirements at 40 C.F.R. Part 68, the Respondent Cargill was the past "owner or operator" of the Facility. For purposes of the requirements at 40 C.F.R. Part 68, the Respondent Swift Pork Company is the current "owner or operator" of the Facility. 42 U.S.C. § 7412(a)(9).

24. Respondent Cargill used and stored up to 153,000 lbs. of anhydrous ammonia in the Facility's refrigeration system.

25. Respondent Cargill used and stored up to 21,456 lbs. of anhydrous ammonia in a storage tank at the Facility.

26. The Facility's refrigeration system is a "process," as defined at 40 C.F.R. § 68.3.

27. The Facility's anhydrous ammonia tank is a "process," as defined in 40 C.F.R. § 68.3.

28. On July 12, 2012, EPA inspected the Facility. The purpose of the inspection was to determine whether the Respondent Cargill was complying with Section 112(r) of the Act and the regulations implementing Section 112(r) at 40 C.F.R. Part 68 at the Facility.

29. Respondent Cargill submitted additional follow-up information to EPA with regard to the July 12, 2012 inspection on August 9, 2012; January 31, 2013; January 29, 2014 and January 11, 2015.

30. Under 40 C.F.R. §68.67(a), Respondent Cargill was required to conduct a process hazard analysis on the anhydrous ammonia storage process. The regulations require that the process hazard analysis be appropriate to the complexity of the process and identify, evaluate, and control the hazards involved in the process.

31. Respondent Cargill conducted a process hazard analysis from June 29, 2010 to July 2, 2010, and identified deficiencies, among them a failure to have catwalks above the condenser, and the failure to install recirculator vessels. Contrary to the requirements of 40 C.F.R. §§ 68.67(a) and (c)(4), Respondent Cargill did not remedy all of the deficiencies identified by the process hazard analysis. Catwalks above the condenser and recirculator vessels were not added until 2015.

32. Respondent Cargill failed to address in its process hazard analysis the Facility's engineering and administrative controls, in violation of 40 C.F.R. § 68.67(c)(3) from June 29, 2010 to June 18, 2015.

33. Pursuant to 40 C.F.R. § 68.71(b), Respondent Cargill was required to provide refresher training at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process.

34. Respondent Cargill failed to provide refresher training at least every three years to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process, violating 40 C.F.R. § 68.71(b).

35. Under 40 C.F.R. § 68.73(d)(1) and (2), Respondent Cargill was required to conduct inspection and testing following recognized and generally accepted good engineering practices. The frequency of inspections and tests of process equipment was mandated to be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

36. 40 C.F.R. § 68.73(d)(4) directed Respondent Cargill to document each inspection and test that had been performed on process equipment (identifying the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test).

37. Respondent Cargill was required to correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation. 40 C.F.R. § 68.73(e).

38. In March 2011, Respondent Cargill calculated the ventilation rate in the Facility's engine room and, based on the calculation, the ventilation system did not meet the minimum ventilation rate needed in accordance with the International Institute of Ammonia Refrigeration (IIAR) Standard 2.

39. In June 2011, a mechanical integrity inspection of the Facility's entire system was conducted by an independent inspector. Based on the inspection report, the size of the relief vent headers for three of the chillers were below the recommended size under the industry standards described in the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)-15 and IIAR-2.

40. On July 12, 2012, EPA requested copies of the annual inspection reports conducted on the Facility's ammonia refrigeration equipment. Respondent failed to provide the inspection reports at the time of the inspection, but did provide these reports shortly thereafter.

41. Respondent Cargill failed to conduct inspections and tests at the facility following recognized and generally accepted good engineering practices, violating 40 C.F.R. § 68.73(d)(1) and (2) from July 12, 2012 to July 2015.

42. Respondent Cargill failed to document each inspection and test that has been performed on the Facility's process equipment (identifying the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test), in violation of 40 C.F.R. § 68.73(d)(4) from July 12, 2012 to July 2015.

43. On October 14, 2014, Respondent Cargill informed EPA that the Facility's ventilation system was upgraded on August 9, 2012.

44. Respondent Cargill failed to correct deficiencies in the Facility's ventilation system, in violation of 40 C.F.R. § 68.73(e), from June 2011 to August 2012.

45. Respondent Cargill failed to correct deficiencies in the Facility's relief vent headers for the three chillers, in violation of 40 C.F.R. § 68.73(e), from June 2011 to July 2012.

46. Respondent Cargill failed to inspect all the piping in the Facility's refrigeration system per IIAR Bulletin Number 109, Section 4.7, from August 11, 2009 to December 2015.

47. On September 3, 2009, pursuant to 40 C.F.R. § 68.150(b)(3), Respondent Cargill submitted the Facility's RMP for the refrigeration system but failed to include the anhydrous ammonia storage tank.

48. Respondent Cargill failed to submit an RMP for the anhydrous ammonia storage tank, violating 40 C.F.R. § 68.150(b)(3), from August 2009 to September 2013.

Civil Penalty

49. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Respondent Cargill's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$79,165.

50. Within 30 days after the effective date of this CAFO, Respondent Cargill must pay a \$79,165 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

51. Respondent Cargill must send a notice of payment that states Respondent Cargill's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Sherry L. Estes, C-14J
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Silvia Palomo
Chemical Emergency Preparedness and
Prevention Section, SC-5J
Superfund Division
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

52. This civil penalty is not deductible for federal tax purposes.

53. If Respondent Cargill does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

54. Respondent Cargill must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent Cargill must pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent Cargill must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the

outstanding penalties and nonpayment penalties accrued from the beginning of the quarter, as provided by 42 U.S.C. § 7413(d)(5).

General Provisions

55. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: estes.sherry@epa.gov (for Complainant), and scase@mcgrathnorth.com (for Respondents). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

56. This CAFO resolves only Respondent's Cargill's liability for federal civil penalties for the violations alleged in this CAFO.

57. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

58. This CAFO does not affect Respondents' responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 56, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

59. Respondent Swift Pork Company certifies that it is complying fully with 40 C.F.R. Part 68 at the Beardstown Facility.

60. This CAFO constitutes an "enforcement response" as that term is used in EPA's Final Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68 to determine Respondent Cargill's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

- 61. The terms of this CAFO bind both Respondents, their successors and assigns.
- 62. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
- 63. Each party agrees to bear its own costs and attorneys' fees in this action.
- 64. This CAFO constitutes the entire agreement between the parties.
- 65. This CAFO may be signed in counterparts.

Cargill Meat Solutions Corporation, Respondent

4/21/17
Date

Mark Quayle
Mark Quayle
Vice President, Law
Cargill Meat Solutions Corporation

Swift Pork Company, Respondent

4-25-17
Date

Jonathan T. Hopkins
Jonathan T. Hopkins
Beardstown General Manager
Swift Pork Company

United States Environmental Protection Agency, Complainant

5/18/2017
Date

Margaret M. Guerriero
Margaret M. Guerriero,
Acting Director
Superfund Division
U.S. Environmental Protection Agency, Region 5


**Consent Agreement and Final Order
In the Matter of: Cargill Meat Solutions Corporation
Docket No. CAA-05-2017-0025**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

May 31, 2017

Date



Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

CONSENT AGREEMENT AND FINAL ORDER
In the matter of: Cargill Meat Solutions Corporation
and Swift Pork Company; Beardstown, Illinois

Docket Number: CAA-05-2017-0025

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final**

Order, docket number CAA-05-2017-0025, which was filed on June 2, 2017.

in the following manner to the addressees:

Copy by E-mail to Respondents
Cargill Meat Solutions Corporation
Swift Pork Company

Steven P. Case
scase@mcgrathnorth.com


Copy by E-mail to
Attorney for Complainant:

Sherry L. Estes
estes.sherry@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: June 2, 2017



LaDawn Whitehead

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5