



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

August 9, 2022

VIA ELECTRONIC MAIL

Mr. Edward Simes
Plant Manager
Jennie-O Turkey Store, Inc.
34 N. 7th Street
Barron, WI 54821

Re: Jennie – O Turkey Store, Inc., Consent Agreement and Final Order, Docket Nos. **MM-05-2022-0009**
CERCLA-05-2022-0010 EPCRA-05-2022-0012

Dear Mr. Simes:

Enclosed please find a copy of the 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 August 9, 2022.

Please pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$6,360 in the manner prescribed in paragraphs 49 and 50 and reference your check with the billing document number 2752230B011 and the docket number(s) CERCLA-05-2022-0010.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$6,360 in the manner prescribed in paragraphs 51 and 52 and reference your check with the docket number(s) EPCRA-05-2022-0012.

Your payments are due on September 8, 2022.

Please feel free to contact Bob Mayhugh at (312) 886-5929, or mayhugh.robert@epa.gov if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert H. Smith, Associate Regional Counsel, at (312) 886-0765, or smith.roberth@epa.gov. Thank you for your assistance in resolving this matter.

Sincerely,

Silvia Palomo Digitally signed by Silvia Palomo
Date: 2022.07.27 09:23:25 -05'00'

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

Enclosure

cc: David Radisewitz, WEMA (w/ enclosure)
Robert H. Smith, ORC

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket Nos. MM-05-2022-0009 CERCLA-05-2022-0010 EPCRA-05-2022-0012
)	
Jennie-O Turkey Store, Inc.)	Proceeding to Assess a Civil Penalty Under
Barron, Wisconsin,)	Section 109(b) of the Comprehensive
)	Environmental Response, Compensation and
Respondent.)	Liability Act, and Section 325(b)(2) of the
)	Emergency Planning and Community Right-
)	to-Know Act of 1986

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), and Sections 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. The Complainant is, by lawful delegation, the Manager of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Jennie-O Turkey Store, Inc., a corporation doing business in the State of Wisconsin.

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 consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO. For the purpose of this proceeding, Respondent neither admits nor denies the factual allegations and conclusions of law in this CAFO.

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

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities

equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

14. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

15. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), and 40 C.F.R. Part 19 authorizes U.S. EPA to assess a civil penalty of up to \$62,689 per day of violation, for violations of CERCLA Section 103 and EPCRA Section 304 that occurred after November 2, 2015, and for which penalties are assessed on or after January 12, 2022, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at Jennie-O Turkey Store, Inc., 34 N. 7th Street, Barron, Wisconsin (facility).

19. At all times relevant to this CAFO, Respondent was in charge of the facility.

20. Respondent's facility consists of a building, structure, installation, equipment, pipe, or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

21. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

23. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

24. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. Anhydrous ammonia is classified as a physical or health hazard, a simple asphyxiant, or hazard not otherwise classified.

27. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

28. At all times relevant to this Complaint, Respondent produced, used, or stored anhydrous ammonia at the facility.

29. Anhydrous ammonia (CAS #7664-41-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

30. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

31. On July 6, 2021, at or about 6:30 p.m., a release occurred from Respondent’s facility of approximately 280 pounds of anhydrous ammonia (the release).

32. In a 24 hour time period, the release of anhydrous ammonia exceeded 100 pounds.

33. During the release, approximately 280 pounds escaped into the ambient air/air.

34. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

35. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

36. Respondent had knowledge of the release on July 6, 2021, at approximately 6:30 p.m.

37. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

38. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

39. The release was likely to affect Wisconsin.

40. At all times relevant to this CAFO, Wisconsin Emergency Management was the SERC for Wisconsin under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

Count 1 (failure to immediately notify NRC)

41. Complainant incorporates paragraphs 1 through 40 of this CAFO as if set forth in this paragraph.

42. Respondent notified the NRC of the release on July 6, 2021, at 7:51 p.m.

43. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

44. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Count 2 (failure to immediately notify SERC)

45. Complainant incorporates paragraphs 1 through 40 of this CAFO as if set forth in this paragraph.

46. Respondent notified the Wisconsin SERC of the release on July 6, 2021, at 7:58 p.m.

47. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

48. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Civil Penalty

49. Complainant has determined that an appropriate civil penalty to settle this action is \$6,360 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation, and any other matters as justice may require. Complainant also considered U.S. 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, dated September 30, 1999 (EPCRA/CERCLA Enforcement

Response Policy).

50. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,360 civil penalty for the CERCLA violation. Respondent must pay the penalty online at www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

51. Complainant has determined that an appropriate civil penalty to settle this action is \$6,360 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, effect on ability to continue to do business, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered U.S. EPCRA/CERCLA Enforcement Response Policy.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,360 civil penalty for the EPCRA violations. Respondent must pay the penalty online at www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

53. Respondent must send a copy of each payment via email to:

Acting Regional Hearing Clerk (E-19J)
r5hearingclerk@epa.gov

Robert Mayhugh (SE-5J)
Mayhugh.robert@epa.gov

Robert H. Smith (C-14J)
smith.roberth@epa.gov

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

55. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action

to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

56. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

57. The parties consent to service of this CAFO by email at the following valid email addresses: smith.roberth@epa.gov (for Complainant) and ann.prouty@faegredrinker.com (for Respondent).

58. Full payment of the penalty and compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

59. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

60. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

61. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA, and other applicable federal, state, and local laws and regulations.

62. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

63. The terms of this CAFO bind Respondent and its successors and assigns.

64. 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.

65. Each party agrees to bear its own costs and attorney's fees in this action.

66. This CAFO constitutes the entire agreement between the parties.

In the Matter of: Jennie-O Turkey Store, Inc., Barron, Wisconsin

Docket Nos. MM-05-2022-0009 CERCLA-05-2022-0010 EPCRA-05-2022-0012

Jennie-O Turkey Store, Inc., Respondent

7/26/22
Date


Edward Simes
Barron Plant Manager
Jennie-O Turkey Store, Inc.

U.S. Environmental Protection Agency, Complainant

July 27, 2022
Date

Jason El-Zein Digitally signed by Jason El-Zein
Date: 2022.07.27 10:54:34 -04'00'
Jason El-Zein
Manager, Emergency Response Branch 1
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

July 27, 2022
Date

DOUGLAS BALLOTTI Digitally signed by DOUGLAS BALLOTTI
Date: 2022.07.27 11:26:09 -05'00'
Douglas Ballotti
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

HFC LEGAL DEPARTMENT
Approved on 7/26/22 by MUC
Unauthorized use of this
approval stamp is fraudulent and
makes this contract voidable.

In the Matter of: Jennie-O Turkey Store, Inc., Barron, Wisconsin
Docket Nos. MM-05-2022-0009 CERCLA-05-2022-0010 EPCRA-05-2022-0012

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.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2022.08.04
16:33:52 -05'00'

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

In the Matter of: Jennie-O Turkey Store, Inc., Barron, Wisconsin
Docket Nos. MM-05-2022-0009 CERCLA-05-2022-0010 EPCRA-05-2022-0012

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on August 9, 2022 in the following manner to the addressees:

Copy by E-mail to
Attorney for Respondent: Ann E. Prouty
ann.prouty@faegredrinker.com

Copy by E-mail to
Attorney for Complainant: Robert H. Smith
Smith.roberth@epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: _____

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