



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 26 2019

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Peter Charboneau  
General Manager  
JBS USA Food Company  
1200 Story Avenue  
Louisville, Kentucky 40206

Re: JBS Louisville Pork – Louisville, Kentucky  
Consent Agreement and Final Order  
Docket No. EPCRA-04-2019-2004(b)

Dear Mr. Charboneau:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you have any questions concerning this matter or JBS Louisville Pork's compliance status in the future, please contact Eddie Chow of the U.S. Environmental Protection Agency Region 4's staff at (404) 562-8989.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony G. Toney", with a date "6/07" written below it.

Anthony G. Toney  
Chief

Chemical Safety and Enforcement Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF: )  
 )  
JBS USA Food Company ) Docket Number: EPCRA-04-2019-2004(b)  
 )  
Respondent. )  
\_\_\_\_\_ )

2019 MAR 25 AM 8:21  
EPA REGION 4  
OFFICE OF REGIONAL  
ADMINISTRATION

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency. Respondent is JBS USA Food Company.

2. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under EPCRA to the Regional Administrators by the EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

**II. Preliminary Statements**

4. Respondent is JBS USA Food Company, a corporation that owns and operates a facility in the Commonwealth of Kentucky.

5. Respondent is a “person” and owned and operated, at all times relevant to the allegations in Section III, a “facility” as those terms are defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), respectively.

6. Respondent’s facility, JBS Louisville Pork, is located at 1200 Story Avenue, in Louisville, Kentucky.

### **III. EPA’s Allegations of Violations**

#### **Violations of Section 312 of EPCRA**

7. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) or Safety Data Sheet (SDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, on or before March 1 annually, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 C.F.R. Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less. In 2012, the applicable OSHA regulation at 29 C.F.R. § 1910.1200(g) was revised to change the name of Material Data Safety Sheet (MSDS) to Safety Data Sheet (SDS). The pertinent EPCRA regulation found at 40 C.F.R. § 370.30(a)(1) requires that either an MSDS or SDS be submitted, or that a list of chemicals be submitted to the LEPC, SERC and fire department.

8. At some time during calendar years 2015 and 2016 ammonia and other hazardous chemicals were present at the facility in an amount equal to or greater than 500 pounds and 10,000 pounds, respectively.

9. Ammonia is a “hazardous chemical” as defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5) and 40 C.F.R. § 355.61, and is an “extremely hazardous substance” as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 355.61, for which Respondent is required to prepare or have available an MSDS or SDS under OSHA at its facility. Ammonia is also listed as an extremely hazardous substance in 40 C.F.R. Part 355, Appendices A and B.

10. Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for ammonia and other hazardous chemicals to the SERC, the LEPC, and fire department with jurisdiction over the facility for calendar years 2015 and 2016 by March 1 of the following years.

11. The EPA alleges that Respondent violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at its facility for calendar years 2015 and 2016, and is therefore subject to the assessment of civil penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

12. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, the EPA may assess a civil penalty for each violation of Section 312 of EPCRA, 42 U.S.C. § 11022. Each day a violation of Section 312 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by administrative order.

### **Violations of Section 313 of EPCRA**

13. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30, require the owner or operator of a facility that (a) has 10 or more full-time employees; (b) is in a Standard Industrial Classification (SIC) major group or industry listed in 40 C.F.R. § 372.23(a) for which the corresponding North American Industry Classification System (NAICS) subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and 372.23(c); and (c) manufactured, processed, or otherwise used a toxic chemical listed in Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f) and set forth in 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory reporting Form R (EPA Form 9350-1) to the Administrator of the EPA and to the State in which the facility is located, by July 1 for the preceding calendar year for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in quantities exceeding the established threshold quantity during the preceding calendar year.

14. As set forth at EPCRA Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds per calendar year. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds. Notwithstanding 40 C.F.R. § 372.25 or 40 C.F.R. § 372.27, lower reporting thresholds for chemicals of special concern are set forth in 40 C.F.R. § 372.28.

15. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3 at its facility.

16. Respondent's facility is classified under SIC code 2011 and the NAICS code 311611.

17. Respondent's facility is classified in a covered SIC code as described at 40 C.F.R. § 372.22 and in a covered NAICS code as described at 40 C.F.R. § 372.23.

18. Ammonia is a toxic chemical listed under EPCRA Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed under 40 C.F.R. § 372.65.

19. Respondent's facility otherwise used ammonia in excess of the 10,000 pound threshold quantity established under EPCRA Section 313(f) and 40 C.F.R. § 372.25, during calendar years 2014 and 2016.

20. Respondent violated the reporting requirements of Section 313 of EPCRA at its facility by failing to submit the required Form R for ammonia for calendar years 2014 and 2016, by July 1 of the following year and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

21. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, the EPA may assess a civil penalty for each violation of Section 313. Each day a violation of Section 313 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by an Administrative Order.

#### **IV. Consent Agreement**

22. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

23. Respondent waives any right to contest the allegations and its right to appeal the final order accompanying the Consent Agreement.

24. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

25. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

26. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

27. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA or other applicable laws and regulations.

**V. Final Order**

28. Respondent shall pay a civil penalty of **EIGHT THOUSAND FOUR DOLLARS (\$8,004)**, for the violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

29. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," or by electronic transfer to one of the following addresses:

**BY MAIL**

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

**BY OVERNIGHT**

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
(314) 425-1819

**BY ELECTRONIC TRANSFER\***

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: "U.S. Environmental Protection Agency"

\*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the U. S. EPA.

The check shall reference on its face the name and the Docket Number of the CAFO.

30. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Eddie Chow  
U.S. EPA Region 4  
Air, Pesticides & Toxics Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

31. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO

**VI. Supplemental Environmental Project**

32. Respondent shall complete a SEP in the category of an Emergency Planning and Preparedness project designed to protect the environment and the people that could be harmed by chemical accidents by providing assistance (such as, response equipment or training) to responsible state or local emergency response or planning entities as follows (hereinafter referred to as the SEP):

- a. Respondent must purchase and donate the following to the recipient selected by the Respondent as identified below:

Recipient: Louisville Fire Department

<u>Quantity</u>	<u>Description</u>
10	QRae3 Gas Meter for O2/LEL/CO/H2S with Pump, Non-Wireless and Meter Only Accessories. Item# M020-11111-111
10	Demand Flow Regulator (2004) for use w/ Reactive Gases. Item# AS-DFR-2004
5	AutoRAE 2 Kit with inCase Calibration. Item# AS3-RC0Q
5	Calibration Gas. Item# AS1-R7-82046
5	Calibration Gas. Item# AS1-R7-91096
5	CMC Rescue Confined Space Harness. Item# CMC-202164-Reg
5	CMC Rescue Confined Space Harness. Item# CMC-202165-XL
4	Stearns Life Jacket-VR. Item# 1650RED-00-000
2	Notch Big Launcher. Item# 36484

- b. Respondent's total expenditure for purchase of the above equipment shall not be less than **THIRTY THOUSAND, THREE HUNDRED SIXTY-FOUR DOLLARS (\$30,364)**.
- c. Respondent must complete the purchase and donation of the above equipment within 45 days of the effective date of this CAFO.

33. This CAFO shall not be construed to constitute the EPA's endorsement of any product, equipment, technology or service purchased and donated by Respondent in connection with the SEP.

34. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is \$30,364;
- b. That, as of the effective date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation, permit, order or agreement and is not required to perform or develop the SEP by agreement, grant or as injunctive relief awarded in any other action in any forum;
- c. That the SEP is not a project the Respondent was planning or intending to construct, perform or implement other than in settlement of the claim resolved in this CAFO;
- d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action of any kind;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That for federal income tax purposes, Respondent agrees it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;
- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP; and
- h. That Respondent has inquired of Louisville Fire Department whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by Louisville Fire Department that it is not a party to such a transaction.

35. Respondent agrees that any public statement, oral or written, in print film or other media made by Respondent making any reference to the SEP under this CAFO from the effective date of this CAFO shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 312 and 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA)”.

36. Respondent shall complete and submit a SEP Completion Report for the SEP under this CAFO as follows:



- a. The SEP Completion Report shall include the following:
  - i. An affidavit from an authorized company official, certifying that the SEP has been completed or explaining in detail any failure to complete, and
  - ii. Copies of appropriate documentation, including invoices and receipts, showing that Respondent's total expenditure for the SEP was no less than the minimum total expenditure required above.
- b. The SEP Completion Report shall be submitted to the EPA within sixty (60) days of the effective date of this CAFO to the following:

Eddie Chow  
U.S. EPA Region 4  
Chemical Management and Emergency Planning Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

37. Upon request, Respondent shall send the EPA any additional documentation requested by the EPA.

38. Respondent agrees that in order to receive credit for the SEP, Respondent must fully and timely complete the SEP in accordance with and as indicated in this CAFO. In the event that Respondent fails to comply with any of the terms or provisions of the CAFO relating to the performance of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. If Respondent fails to spend the minimum amount of **THIRTY THOUSAND, THREE HUNDRED SIXTY-FOUR DOLLARS (\$30,364)**, Respondent shall pay to the United States, a stipulated penalty of the difference between the minimum amount noted above and the actual SEP expenditure.
- b. If Respondent fails to timely submit the SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of **\$100** for each calendar day that the report is late.
- c. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this CAFO.

39. The determination as to whether Respondent has fully and timely completed the SEP shall be in the sole discretion of the EPA.

40. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from the EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth in the written demand from the EPA.

## **VII. Other Provisions**

41. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

42. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

43. This CAFO shall be binding upon the Respondent, its successors and assigns.

44. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.


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**VIII. Effective Date**


45. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:


JBS USA Food Company

By:  Date: February 15<sup>th</sup>  
Name: Peter Charbonneau (Typed or Printed)  
Title: General Manager (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 3/12/19  
Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 25<sup>th</sup> day of March, 2019

  
Tanya Floyd  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of JBS USA Food Company, Docket Number: EPCRA-04-2019-2004(b), on the parties listed below in the manner indicated:

Robert W. Bookman  
U.S. EPA Region 4  
Chemical Management and  
Emergency Planning Section

(Via EPA's internal mail)

Robert Caplan  
Senior Attorney  
U.S. EPA Region 4  
Office of Regional Counsel

(Via EPA's internal mail)

Mr. Peter Charboneau  
General Manager  
JBS USA Food Company  
1200 Story Avenue  
Louisville, Kentucky 40206

(Certified Mail—Return Receipt Requested)

Date: 3-26-19



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9511