



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

<b>In the Matter of:</b>	)	<b>EPA Docket Nos.:</b> CERCLA-03-2012-0257
	)	EPCRA-03-2012-0257
<b>USA Pork Packers, Inc.</b>	)	CAA-03-2012-0257
<b>328 South Wyoming Street</b>	)	
<b>Hazelton, Pennsylvania</b>	)	
<b>18201,</b>	)	<b>Proceedings Pursuant to Sections 103 and</b>
	)	<b>109 of the Comprehensive Environmental</b>
<b>Respondent,</b>	)	<b>Response, Compensation, and Liability Act,</b>
	)	<b>42 U.S.C. §§ 9603, 9609, Sections 304</b>
<b>USA Pork Packers, Inc.</b>	)	<b>and 325 of the Emergency Planning and</b>
<b>328 South Wyoming Street</b>	)	<b>Community Right-to-Know Act, 42 U.S.C.</b>
<b>Hazelton, Pennsylvania</b>	)	<b>§§ 11004, 11045, and Sections 112(r)(1) and 113</b>
<b>18201,</b>	)	<b>of the Clean Air Act, as amended, 42 U.S.C.</b>
	)	<b>§§ 7412(r)(1), 7413(d)</b>
<b>Facility.</b>	)	
	)	

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9609. The President has delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA"), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has redelegated this authority to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant"). This Consent Agreement is also proposed and entered into pursuant to the authority vested in the Administrator of EPA by Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, delegated to the Regional Administrator by EPA Delegation No. 22-3-A, and redelegated to Complainant by EPA Region III Delegation No. 22-3-A, and the authority vested in the Administrator of EPA by Sections 113(a)(3)(A) and 113(d) of the of the Clean Air Act ("CAA"), 42 U.S.C. §§ 7413(a)(3)(A), 7413(d), delegated to the Regional Administrator by EPA Delegation No. 7-6-A, and redelegated to Complainant by EPA Region III Delegation No. 7-6-A. Further, this Consent Agreement is proposed and entered into under the authority provided

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by 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 (“Part 22”). 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 the entry of this CA/FO, agree to comply with the terms of this CA/FO.

### **PRELIMINARY STATEMENT**

1. The implementing regulations for the emergency notification requirements in Section 304 of EPCRA, 42 U.S.C. § 11004, are codified at 40 C.F.R. Part 355. On November 3, 2008, EPA issued a final rule, 73 *Fed. Reg.* 65451 (Nov. 3, 2008), *inter alia*, to make these regulations easier to read by presenting them in a plain language format. The amendments resulted in a re-numbering of 40 C.F.R. Part 355, which became effective on December 3, 2008. This CA/FO references the newly effective numbering, but includes the pre-2008 numbering in parentheses since those regulations were in effect at the time of some of the violations alleged herein.

### **FINDINGS OF FACT**

2. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (“Reportable Quantity” or “RQ”). The list of hazardous substances and their respective RQs is codified at 40 C.F.R. § 302.4.

3. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances (“EHSs”) and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a) through (c) of EPCRA, 42 U.S.C. § 11004(a) through (c), (“Reportable Quantity” or “RQ”). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.

4. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), requires the Administrator of EPA to promulgate a list of substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The list of these substances is codified at 40 C.F.R. § 68.130, Tables 1-4.

5. Respondent USA Pork Packers, Inc. (“USA Pork” or “Respondent”) is a corporation established under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 328 South Wyoming Street in Hazleton, Pennsylvania.

6. As a corporation, Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), their respective regulations, 40 C.F.R. §§ 302.3 and 355.61 (355.20), and Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

7. Beginning on or about December 17, 1998, and at all times relevant to this CA/FO, Respondent has been in charge of, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and has been the operator of, within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004, of pork slaughterhouse located at 328 South Wyoming Street in Hazleton, Pennsylvania (“Facility”).

8. The Facility is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 304 of EPCRA, 42 U.S.C. § 11004, and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61 (355.20).

9. At all times relevant to this CA/FO, the Facility was a facility at which a hazardous chemical was used or stored.

10. The Facility is a “stationary source” as that term is defined in Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

11. Since at least December 17, 1998, and at all times relevant to this CA/FO, Respondent has handled, stored, and used, and continues to handle, store, and use ammonia, Chemical Abstracts Service (“CAS”) No. 7664-41-7, in an ammonia refrigeration system at the Facility. Quantities of ammonia were estimated at approximately 300 pounds from 1998-2006, 1,000 pounds from 2006-2008, and approximately 3,000 pounds from 2008 through the present. A total of 1,500 pounds of ammonia are utilized in the refrigeration system, while additional 150-pound cylinders of ammonia are periodically stored at the facility for use in recharging the system, as needed.

12. On or about May 12, 2010, EPA conducted an inspection of the Facility to determine its compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

13. On or about June 16, 2010, EPA conducted an inspection of the Facility to determine its compliance with Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 302-312 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11002-11022.

**FINDINGS OF FACT RELATED TO THE  
VIOLATION OF SECTION 103 OF CERCLA**

14. The findings of fact contained in paragraphs 1 through 13 of this CA/FO are incorporated by reference herein as though fully set forth at length.

15. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

16. Beginning on or about April 7, 2010, at or about 3:25 p.m., an estimated 1,200 pounds of ammonia, Chemical Abstracts Service (“CAS”) No. 7664-41-7, were released from the Facility (the “Release”).

17. 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, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.

18. The Release constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

19. The Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

20. Respondent knew or should have known of the Release of ammonia from the Facility in a quantity equal to or exceeding its RQ at or about 4:20 p.m. on April 7, 2010.

21. Respondent did not notify the NRC of the Release.

22. Respondent failed to immediately notify the NRC of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred from the Facility in an amount equal to or exceeding its applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 103 OF CERCLA**

23. Respondent's failure to notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

**FINDINGS OF FACT RELATED TO THE  
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC**

24. The findings of fact and conclusions of law contained in paragraphs 1 through 23 of this CA/FO are incorporated by reference herein as though fully set forth at length.

25. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored to notify the State Emergency Response Commission ("SERC") and the Local Emergency Planning Committee ("LEPC") immediately following a release of a hazardous substance or an EHS in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.

26. Ammonia is an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61 (40 C.F.R. § 355.20), with an RQ of 100 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B.

27. The SERC for the Facility for the purpose of emergency release notification is, and has been at all times relevant to this CA/FO, the Pennsylvania Emergency Management Agency, 2605 Interstate Drive in Harrisburg, Pennsylvania.

28. The Release of ammonia from the Facility constitutes a release of an EHS in a quantity equal to or exceeding its RQ.

29. The Release required immediate notification of the SERC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

30. Respondent did not notify the SERC of the Release.

31. Respondent failed to immediately notify the SERC of the Release of ammonia 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 its RQ, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC**

32. Respondent's failure to notify the SERC of the Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE  
VIOLATION OF SECTION 304(c) OF EPCRA – SERC**

33. The findings of fact and conclusions of law contained in paragraphs 1 through 32 of this CA/FO are incorporated by reference herein as though fully set forth at length.

34. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), requires, in relevant part, that when there has been a release of a hazardous substance or an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility must provide a written follow-up report regarding the release to the SERC and the LEPC, as soon as practicable.

35. The Release constitutes a release of an EHS in a quantity equal to or exceeding its RQ, requiring immediate notification of the SERC and LEPC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), and, consequently, requiring submission of written follow-up reports to the SERC and LEPC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

36. Respondent never provided a written follow-up report to the SERC.

37. Respondent did not provide a written follow-up report regarding the Release to the SERC as soon as practicable after Respondent knew or should have known of the Release, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 304(c) OF EPCRA – SERC**

38. Respondent's failure to provide a written follow-up report regarding the Release to the SERC, as soon as practicable, is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE  
VIOLATION OF SECTION 304(c) OF EPCRA – LEPC**

39. The findings of fact and conclusions of law contained in paragraphs 1 through 38 of this CA/FO are incorporated by reference herein as though fully set forth at length.

40. The LEPC for the Facility is, and has been at all times relevant to this CA/FO, the Luzerne County Emergency Management Agency, located at 185 Water Street in Wilkes-Barre, Pennsylvania.

41. Respondent never filed a written follow-up report to the LEPC.

42. Respondent did not provide a written follow-up report regarding the Release to the LEPC as soon as practicable after Respondent knew or should have known of the Release, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40).

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 304(c) OF EPCRA – LEPC**

43. Respondent's failure to provide a written follow-up report regarding the Release to the LEPC, as soon as practicable, is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE  
VIOLATION OF SECTION 311 OF EPCRA**

44. The findings of fact and conclusions of law contained in paragraphs 1 through 43 of this CA/FO are incorporated by reference herein as though fully set forth at length.

45. Section 311 of EPCRA, 42 U.S.C. § 11021, as implemented by 40 C.F.R. Part 370, requires an owner or operator of a facility required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical in accordance with the Occupational Safety and Health Administration ("OSHA") Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility is present at any one time a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous chemical ("EHS")) in a quantity equal to or greater than its applicable minimum threshold for reporting ("MTL") or threshold planning quantity ("TPQ") established by 40 C.F.R. § 370.10 (40 C.F.R. § 370.20), to submit, either MSDSs for, or a list identifying, those hazardous chemicals to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility, on or before October 17, 1990, or within three months after meeting the MTL or TPQ.

46. The Pennsylvania Emergency Management Agency, the SERC, has designated the Bureau of PENNSAFE, Pennsylvania Department of Labor and Industry, as the recipient of submissions pursuant to Sections 311 and 312 of EPCRA in the Commonwealth of Pennsylvania. The Bureau is located at 155-E Labor and Industry Building, Seventh and Forster Streets in Harrisburg, Pennsylvania.

47. The local fire department for the Facility is, and has been at all times relevant to this CA/FO, the Hazleton Fire Department, located at 525 E. Broad Street in Hazleton, Pennsylvania.

48. Ammonia, is a "hazardous chemical" as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), 40 C.F.R. § 370.66 (40 C.F.R. § 370.2), and 29 C.F.R. § 1910.1200(c).

49. Pursuant to 40 C.F.R. § 370.10(a)(1) (40 C.F.R. § 370.20(b)(1)), the TPQ for ammonia is 500 pounds.

50. At all times relevant to this CA/FO, Respondent was a person engaged in a business where chemicals were used, distributed, or produced for use or distribution.

51. At all times relevant to this CA/FO, Respondent was an "employer" as that term is defined at 29 U.S.C. § 1910.1200(c).

52. At all times relevant to this CA/FO, Respondent was required to have an MSDS at its Facility for ammonia, pursuant to 29 C.F.R. § 1910.1200(g).

53. At all times relevant to this CA/FO, Respondent was the owner or operator of a facility that is required to prepare or have available MSDSs for hazardous chemicals under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

54. During calendar year 2007, Respondent had present at its Facility ammonia at an approximate maximum quantity of 1,000 pounds, which exceeds the 500 pound TPQ for ammonia.

55. During calendar years 2008 and 2009, Respondent had present at its Facility ammonia at an approximate maximum quantity of 3,000 pounds, which exceeds the 500 pound TPQ for ammonia.

56. Respondent was required to submit to the SERC, LEPC, and the local fire department either an MSDS for, or a list of hazardous chemicals identifying, ammonia as being present at the Facility in a quantity exceeding its TPQ, no later than three months after Respondent had ammonia present at the Facility in an amount equal to or greater than its TPQ.



57. Respondent did not submit to the SERC, LEPC, or the local fire department an MSDS for, or a list of hazardous chemicals identifying, ammonia as present at the Facility in a quantity exceeding its TPQ.

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 311 OF EPCRA**

58. Respondent's failure to submit to the SERC, LEPC, and local fire department either an MSDS for, or a list of hazardous chemicals identifying, ammonia as present at the Facility in a quantity exceeding its TPQ, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE  
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2009**

59. The findings of fact and conclusions of law contained in paragraphs 1 through 58 of this CA/FO are incorporated by reference herein as though fully set forth at length.

60. 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 required to prepare or have available an MSDS for a hazardous chemical in accordance with the OSHA 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 MTL or 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") identifying the hazardous chemical and providing the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

61. During calendar year 2009, Respondent had present at its Facility ammonia, in a quantity exceeding its TPQ.

62. By March 1, 2010, Respondent was required to submit to the SERC, LEPC and local fire department Chemical Inventory Forms identifying ammonia as present at the Facility during calendar year 2009 in a quantity exceeding its TPQ, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about ammonia.

63. On or about April 23, 2010, Respondent submitted to the SERC, LEPC, and local fire department Chemical Inventory Forms, which identified ammonia as present at the Facility during calendar year 2009 in a quantity exceeding its TPQ.

64. Respondent failed to submit to the SERC, LEPC, or local fire department by March 1, 2010, Chemical Inventory Forms for the Facility for calendar year 2009.

**EPA'S CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2009**

65. Respondent's failure to submit Chemical Inventory Forms for the Facility to the SERC, LEPC, and local fire department by March 1, 2010, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2008**

66. The findings of fact and conclusions of law contained in paragraphs 1 through 65 of this CA/FO are incorporated by reference herein as though fully set forth at length.

67. During calendar year 2008, Respondent had present at its Facility ammonia, in a quantity exceeding its TPQ.

68. On or about April 23, 2010, Respondent submitted to the SERC, LEPC, and local fire department Chemical Inventory Forms, which identified ammonia as present at the Facility during calendar year 2008 in a quantity exceeding its TPQ.

69. Respondent failed to submit to the SERC, LEPC, or local fire department by March 1, 2009, Chemical Inventory Forms for the Facility for calendar year 2008.

**EPA'S CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2008**

70. Respondent's failure to submit Chemical Inventory Forms for the Facility to the SERC, LEPC, and local fire department by March 1, 2009, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007**

71. The findings of fact and conclusions of law contained in paragraphs 1 through 70 of this CA/FO are incorporated by reference herein as though fully set forth at length.

72. During calendar year 2007, Respondent had present at its Facility ammonia, in a quantity exceeding its TPQ.

73. On or about April 23, 2010, Respondent submitted to the SERC, LEPC, and local fire department Chemical Inventory Forms, which identified ammonia as present at the Facility during calendar year 2007 in a quantity exceeding its TPQ.

74. Respondent failed to submit to the SERC, LEPC, or local fire department by March 1, 2008, Chemical Inventory Forms for the Facility for calendar year 2007.

**EPA'S CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2007**

75. Respondent's failure to submit Chemical Inventory Forms for the Facility to the SERC, LEPC, and local fire department by March 1, 2008, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE  
VIOLATION OF SECTION 112(r)(1) OF THE CAA–  
FAILURE TO IDENTIFY HAZARDS**

76. The findings of fact contained in paragraphs 1 through 75 of this CA/FO are incorporated by reference herein as though fully set forth at length.

77. Pursuant to section 112(r)(1) to the CAA, 42 U.S.C. § 7412(r)(1) (referred to as the "General Duty Clause"), owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3) (hereinafter "regulated substance"), or any other extremely hazardous substance, have a general duty to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases that do occur.

78. Ammonia, is a "regulated substance," as defined by Section 112(r)(2)(B) and (3) of the CAA, 42 U.S.C. § 7412(r)(2)(B) and (3), and listed in Table 1 of 40 C.F.R. § 68.130. Ammonia was listed as a regulated substance in the text of Section 112(r)(3), 42 U.S.C. § 7412(r)(3), when that Section was added to the CAA in 1990.

79. On or about August 17, 2010, EPA issued an Administrative Order, Docket No. CAA-03-2010-0345DA ("Order"), to USA Pork finding that USA Pork had failed to comply with the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) (also known as

the “General Duty Clause”), and ordering USA Pork to undertake certain activities to bring the Facility into compliance with the General Duty Clause.

80. On December 7, 2011, EPA notified USA Pork that it had complied with the terms of the Order.

81. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), as the owner or operator of a stationary source handling and storing a regulated substance, Respondent was required to identify hazards at its Facility that could result from the accidental release of ammonia, using appropriate hazard assessment techniques.

82. Respondent did not identify hazards at the Facility that could result from the accidental release of ammonia until Respondent was ordered to do so by EPA on or about August 17, 2010.

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 112(r)(1) OF THE CAA–  
FAILURE TO IDENTIFY HAZARDS**

83. Respondent’s failure to identify hazards at its Facility that could result from the accidental release of ammonia, using appropriate hazard assessment techniques, is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and is therefore subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

**FINDINGS OF FACT RELATED TO THE  
VIOLATION OF SECTION 112(r)(1) OF THE CAA) –  
FAILURE TO DESIGN AND MAINTAIN A SAFE FACILITY**

84. The findings of fact contained in paragraphs 1 through 83 of this CA/FO are incorporated by reference herein as though fully set forth at length.

85. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), as the owner or operator of a stationary source handling and storing a regulated substance, Respondent was required to design and maintain a safe facility taking such steps as are necessary to prevent releases.

86. Respondent failed to design and maintain a safe facility because it failed to do the following in connection with its Facility:

- a. Obtain, maintain in a safe place, and make readily available all essential records and documentation relevant to the Facility’s ammonia refrigeration system so that the standards and details to which the systems were designed are available to those concerned with inspection, maintenance, and operation;

- b. Prepare and maintain in the records a schematic refrigeration circuit or flow diagram for the ammonia refrigeration system, on which the controls and valves that are most likely to be of importance in an emergency are clearly identified, and which shall be updated when changes are made to the system;
- c. Install an excess flow or back pressure check valve directly in the container opening or a point outside where the line enters the container;
- d. Place a legible, permanent sign easily accessible on the ammonia refrigeration system displaying the name and address of the installer, the refrigerant number and the amount of refrigerant in the system, the lubricant identity and amount, and the field test pressure(s) applied;
- e. Place name plates on compressors, shell and tube heat exchangers, and pressure vessels with appropriate data;
- f. Maintain appropriate protective equipment in accordance with industry standards;
- g. Maintain mechanical ventilation in refrigerating machinery rooms in accordance with industry standards;
- h. Store cylinders securely to prevent falling in a building with a dry, well-ventilated area where temperatures do not exceed 130° F (54.5° C);
- i. Display in the machinery room and its accesses warning and first aid notices appropriate to ammonia and to equipment;
- j. Prepare and display prominently in the machinery room concisely worded operational instructions for normal starting and stopping and for the emergency stopping of equipment;
- k. Instruct operating and maintenance personnel both in the operation of the ammonia refrigeration system and on possible hazards, including the properties of ammonia, safe operating practices, and appropriate actions in the event of a leak or emergency, and maintaining documentation of training programs for employees;
- l. Prepare and maintain management of change procedures;
- m. Establish an incident investigation program;

- n. Perform audits of the Facility's hazard prevention program; and
- o. Prepare and implement a preventative maintenance program.

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 112(r)(1) OF THE CAA) –  
FAILURE TO DESIGN AND MAINTAIN A SAFE FACILITY**

87. Respondent's failure to design and maintain a safe facility taking such steps as are necessary to prevent releases, is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and is therefore subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

**FINDINGS OF FACT RELATED TO THE  
VIOLATION OF SECTION 112(r)(1) OF THE CAA–  
FAILURE TO MINIMIZE THE CONSEQUENCES OF RELEASES**

88. The findings of fact contained in paragraphs 1 through 87 of this CA/FO are incorporated by reference herein as though fully set forth at length.

89. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), as the owner or operator of a stationary source handling and storing a regulated substance, Respondent was required to minimize the consequences of accidental releases which do occur.

90. Respondent failed to minimize the consequences of accidental releases because it failed to do the following in connection with its Facility:

- a. Prepare an emergency response plan;
- b. Coordinate with local officials;
- c. Train for releases or incidents ; and
- d. Perform exercises, in accordance with industry standards.

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 112(r)(1) OF THE CAA–  
FAILURE TO MINIMIZE THE CONSEQUENCES OF RELEASES**

91. Respondent's failure to minimize the consequences of accidental releases, is a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and is therefore subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

**CIVIL PENALTY**

92. 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, the Respondent consents to the assessment of a civil penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, set forth above, in the amount of **\$1,600.00** plus **\$3.04** in interest for a total amount of **\$1,603.04** (“CERCLA civil penalty”), for the violations of Sections 304(a) and (b) and 304(c) of EPCRA, 42 U.S.C. §§ 11004(a) and (b) and 11004(c), and Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), set forth above, in the amount of **\$18,400.00** plus **\$46.00** in interest for a total amount of **\$18,446.00** (“EPCRA/CAA civil penalty”).

**PAYMENT TERMS**

93. Respondent shall pay the CERCLA civil penalty assessed herein, in the manner and over the time period specified below:

<u>Schedule</u>	<u>Principal</u>		<u>1% Interest</u>		<u>Payment</u>
1 <sup>st</sup> Payment Due Within 30 Days of the Interest Accrual Date	\$800.00	+	\$0	=	\$800.00
2 <sup>nd</sup> Payment Due Within 6 Months of Interest Accrual Date	\$800.00	+	\$3.04	=	\$803.04
				TOTAL	\$1,603.04

94. Respondent shall pay the EPCRA/CAA civil penalty assessed herein, in the manner and over the time period specified below:

<u>Schedule</u>	<u>Principal</u>		<u>1% Interest</u>		<u>Payment</u>
1 <sup>st</sup> Payment Due Within 30 Days of the Interest Accrual Date	\$9,200.00	+	\$0	=	\$9,200.00
2 <sup>nd</sup> Payment Due Within 6 Months of Interest Accrual Date	\$9,200.00	+	\$46.00	=	\$9,246.00
				TOTAL	\$18,446.00

95. Respondent shall pay the CERCLA and EPCRA/CAA civil penalties by cashier's check, certified check, electronic wire transfer, or on-line payment. Payment shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Numbers of this action;
- b. All checks for the CERCLA civil penalty shall be made payable to **EPA-Hazardous Substances Superfund**; all checks for the EPCRA/CAA civil penalty shall be made payable to **United States Treasury**;
- c. All payments for the CERCLA civil penalty made by check and sent by regular mail shall be addressed to:

U.S. EPA  
ATTN: Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

- d. All payments for the EPCRA/CAA civil penalty made by check and sent by regular mail shall be addressed to:

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

- e. All payments for the CERCLA civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA  
ATTENTION: Superfund Payments  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

- f. All payments for the EPCRA/CAA civil penalty made by check and sent by overnight delivery service shall be addressed for delivery to:



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U.S. EPA  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

- g. 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

- h. 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

- i. 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

j. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

k. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

96. The Respondent shall submit proof of the penalty payments, noting the title and docket numbers of this case, to the following persons:

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

and

Allison F. Gardner (3RC42)  
Senior Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

97. The CERCLA and EPCRA/CAA civil penalties stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, the penalty criteria set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), and are consistent with 40 C.F.R. Part 19, 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, and EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68*, dated June 20, 2012.

98. 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 in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

99. Interest on the civil penalty should begin to accrue on the date that this CAFO is mailed or hand-delivered to the Respondent ("Interest Accrual Date"). EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of a civil penalty not paid within such thirty (30) calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a).

100. 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 2 of EPA's Resources 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.

101. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit installment payments for the civil penalty and accrued interest in accordance with the payment schedule set forth above. In order to avoid the assessment of late payment penalty charges, as described above, Respondent must remit all installment payments no later than 30 days after the date each such payment is due.

102. A penalty charge of six (6) 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).

103. Failure by Respondent to pay the penalty assessed by the Final Order in full within six (6) months of the Interest Accrual Date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

### **GENERAL PROVISIONS**

104. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth in this CA/FO. Respondent's admission of the jurisdictional allegations in this CA/FO shall not constitute an admission as to any matter other than as necessary for meeting the requirements of 40 C.F.R. § 22.18(b).

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

106. For the purpose of this proceeding, and with the exception of Paragraph 104, above, Respondent neither admits nor denies factual allegations or conclusions of law set forth in this Consent Agreement, but expressly waives its rights to contest said allegations in this proceeding.

107. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 113 of the CAA, 42 U.S.C. § 7413.

108. To the extent relevant in any future proceeding between Respondent and Complainant or other party, other than a proceeding by Complainant against Respondent to enforce the terms of this CA/FO, Respondent does not waive any argument or defense relating to the factual or legal allegations set forth herein.

109. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to CERCLA, EPCRA, and the CAA for the violations alleged by EPA in this CA/FO. 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 Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

110. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant 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.

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

FOR USA PORK PACKERS, INC.:

Wayne Kreisl Sr.  
SIGNATURE

9/26/2012  
DATE

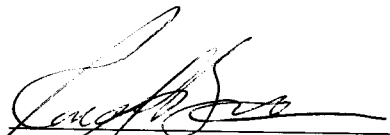
Name: Wayne Kreisl, Sr.

Title: President

In re: USA Pork Packers, Inc.

CERCLA-03-2012-0257  
EPCRA-03-2012-0257  
CAA-03-2012-0257

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division

9/27/12  
DATE



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

<b>In the Matter of:</b>	)	<b>EPA Docket Nos.:</b>	<b>CERCLA-03-2012-0257</b>
	)		<b>EPCRA-03-2012-0257</b>
<b>USA Pork Packers, Inc.</b>	)		<b>CAA-03-2012-0257</b>
<b>328 South Wyoming Street</b>	)		
<b>Hazleton, Pennsylvania</b>	)		
<b>18201,</b>	)		
<b>Respondent,</b>	)		<b>Proceedings Pursuant to Sections 103 and</b>
	)		<b>109 of the Comprehensive Environmental</b>
	)		<b>Response, Compensation, and Liability Act,</b>
	)		<b>42 U.S.C. §§ 9603, 9609, Sections 304</b>
<b>USA Pork Packers, Inc.</b>	)		<b>and 325 of the Emergency Planning and</b>
<b>328 South Wyoming Street</b>	)		<b>Community Right-to-Know Act, 42 U.S.C.</b>
<b>Hazleton, Pennsylvania</b>	)		<b>§§ 11004, 11045, and Sections 112(r)(1) and 113(d)</b>
<b>18201,</b>	)		<b>of the Clean Air Act, as amended, 42 U.S.C.</b>
<b>Facility.</b>	)		<b>§§ 7412(r)(1), 7413(d)</b>
	)		

**FINAL ORDER**

Pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, Section 113 of the Clean Air Act, as amended ("CAA"), 42 U.S.C. § 7413, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), 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.

*Renée Sarajian*  
 \_\_\_\_\_  
 Renée Sarajian  
 Regional Judicial Officer  
 EPA, Region III

*9/28/12*  
 \_\_\_\_\_  
 DATE



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

In the Matter of: )  
)  
USA Pork Packers, Inc. )  
328 South Wyoming Street )  
Hazelton, Pennsylvania )  
18201, )  
Respondent, )  
)  
USA Pork Packers, Inc. )  
328 South Wyoming Street )  
Hazelton, Pennsylvania )  
18201, )  
Facility. )  
)

EPA Docket Nos.: CERCLA-03-2012-0257  
EPCRA-03-2012-0257  
CAA-03-2012-0257

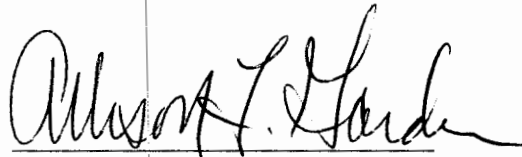
Proceedings Pursuant to Sections 103 and  
109 of the Comprehensive Environmental  
Response, Compensation, and Liability Act,  
42 U.S.C. §§ 9603, 9609, Sections 304  
and 325 of the Emergency Planning and  
Community Right-to-Know Act, 42 U.S.C.  
§§ 11004, 11045, and Sections 112(r)(1) and  
113(d) of the Clean Air Act, as amended, 42  
U.S.C. §§ 7412(r)(1), 7413(d)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent by first class mail to:

Carol F. McCabe, Esq.  
Manko Gold Katcher Fox, LLP  
401 City Avenue, Suite 500  
Bala Cynwyd, Pennsylvania 19004

9/28/12  
DATE

  
Allison F. Gardner (3RC42)  
Senior Assistant Regional Counsel  
Counsel for Complainant  
(215) 814-2631