



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

JUL 21 2010

Kimberly Thorstad, Esquire  
Cargill, Incorporated  
15407 McGinty Road West MS 24  
Wayzata, MN 55391

Re: **In the Matter of Cargill Meat Solutions Incorporated**  
**U.S. EPA Docket No. EPCRA-03-2010-0320**

Dear Kim:

Enclosed please find a copy of Consent Agreement, which has been filed with the Regional Judicial Officer today.

Sincerely yours,

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

Cynthia T. Weiss  
Senior Assistant Regional Counsel

Enclosure



July 21, 2010



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

RECEIVED  
EPCRA  
JUL 21 2010

<b>In the Matter of</b>	)	<b>U.S. EPA Docket No.: EPCRA-03-2010-0320</b>
	)	
<b>Cargill Meat Solutions Corporation</b>	)	
<b>151 North Main Street</b>	)	
<b>Wichita, Kansas 67202,</b>	)	
	)	
<b>Respondent</b>	)	<b>Proceedings Pursuant to Sections 304 and 325 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11004 and 11045.</b>
	)	
<b>Cargill Meat Solutions Corporation</b>	)	
<b>Route 706 and Brewer Creek Rd</b>	)	
<b>Wyalusing, Pennsylvania 18853,</b>	)	
	)	
<b>Facility.</b>	)	

**CONSENT AGREEMENT**

**STATUTORY AUTHORITY**

This Consent Agreement ("CA") is proposed and entered into under the authority vested in the Administrator of U.S. Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and under the authority provided 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 Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

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.

### **FINDINGS OF FACT**

1. Cargill Meat Solutions Corporation ("Cargill") is a Delaware corporation with its principal place of business located at 151 North Main Street in Wichita, Kansas.

2. As a corporation, Cargill is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and its regulations, 40 C.F.R. § 355.61.

3. Beginning in approximately 2002, and at all times relevant to this CA/FO, Cargill was the owner or operator of a meat packing facility located at Route 706 and Brewer Creek Road in Wyalusing, Pennsylvania (hereinafter the "Facility" or "Facility"), within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004.

4. The Facility is a "facility" as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and its regulations, 40 C.F.R. § 355.61.

5. On February 10, 2009, EPA conducted an inspection of the Facility in order to determine the Facility's compliance with Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, ("CERCLA") and Sections 302-312 of EPCRA.

6. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the 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 is codified at 40 C.F.R. § 302.4.

7. 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)-(c) of EPCRA, 42 U.S.C. § 11004(a)-(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.

8. The State Emergency Response Commission ("SERC") for the Facility is, and has been at all times relevant to this CA/FO, the Pennsylvania Emergency Management Agency, located at 2605 Interstate Drive in Harrisburg, Pennsylvania.

9. The Local Emergency Planning Committee ("LEPC") for the Facility is, and has been at all times relevant to this CA/FO, the Bradford County Emergency Management Agency, located at Rural Route 1 in Towanda, Pennsylvania.

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

11. Beginning on or about June 8, 2007, at or about 4:50 a.m. an estimated 2,135 pounds of ammonia, Chemical Abstracts Service (“CAS”) No. 7664-41-7 was released from the Facility (the “Release”).

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

12. The findings of fact contained in paragraphs 1 through 11 of this CA/FO are incorporated by reference herein as though fully set forth at length.

13. Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored, to notify the SERC and 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.

14. 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, and an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61, with an RQ of 100 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B, and 40 C.F.R. § 302.4.

15. The Release of ammonia from the Facility constitutes a release of an EHS and hazardous substance in a quantity equal to or exceeding its RQ, requiring immediate notification to the National Response Center (“NRC”) pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

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

17. Respondent knew of the Release of ammonia from the Facility in an amount equal to or exceeding its RQ, on June 8, 2007

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

19. Respondent failed to immediately notify the SERC of the Release of ammonia as soon as Respondent knew that a release of the EHS had occurred at the Facility in an amount equal to or exceeding its RQ, as required by Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C.

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

20. Respondent's failure to notify the SERC immediately of the Release is a violation of Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(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**

21. The findings of fact and conclusions of law contained in paragraphs 1 through 20 of this CA/FO are incorporated by reference herein as though fully set forth at length.

22. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. § Part 355, Subpart C, 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.

23. The Release constitutes a release of an EHS equal to or exceeding its RQ, requiring immediate notification to the SERC and LEPC pursuant to Section 304(a)-(b) of EPCRA, 42 U.S.C. § 11004(a)-(b), and 40 C.F.R. Part 355, Subpart C, 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.

24. Respondent never filed a written follow-up report to the SERC.

25. Respondent did not provide a written follow-up report regarding the Release to the SERC as soon as practicable after Respondent knew 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.

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

26. 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**

27. The findings of fact and conclusions of law contained in paragraphs 1 through 26 of this CA/FO are incorporated by reference herein as though fully set forth at length.

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

29. Respondent did not provide a written follow-up report regarding the Release to the LEPC as soon as practicable after Respondent knew 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.

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

30. 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.

**CIVIL PENALTY**

31. In full and final settlement and resolution of all allegations referenced in the foregoing EPA's Findings of Fact and EPA's 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 violations of Sections 304(a)-(b) and 304(c) of EPCRA, 42 U.S.C. §§ 11004(a)-(b), 11004(c), set forth above, in the amount of \$55,809.00 ("EPCRA civil penalty").

**PAYMENT TERMS**

32. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CAFO, Respondent shall pay the EPCRA civil penalty of \$55,809.00, no later than thirty (30) days after the effective date of the Final Order (the "final due date") by either cashier's check, certified check, or electronic wire transfer. Payment of the EPCRA civil penalty shall be made in the following manner:

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

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Eric Volck 513-487-2105

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

U.S. EPA  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Eric Volck 513-487-2105

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

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

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

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

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

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

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 - Checking

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

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

i. Additional payment guidance is available at:

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

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

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

and

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

34. The EPCRA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the following: the nature, circumstances, extent and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit (if any) resulting from the violation, and such matters as justice may require. The penalty is consistent with 40 C.F.R. Part 19 and the *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, (September 30, 1999)*.

35. 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.

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



not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

37. 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 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.

38. 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).

39. Failure by the Respondent to pay the EPCRA civil penalty assessed by the Final Order ("FO") in full by the final due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

### GENERAL PROVISIONS

40. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

41. Respondent agrees not to contest the Environmental Protection Agency's jurisdiction with respect to the execution or enforcement of the CA/FO.

42. For the purpose of this proceeding, Respondent neither admits nor denies factual allegations set forth in this CA, but expressly waives its rights to contest said allegations.

43. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the FO under Section 325 of EPCRA, 42 U.S.C. § 11045.

44. The provisions of the 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 CA on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this CA and to legally bind Respondent to the terms and conditions of the CA and accompanying FO.

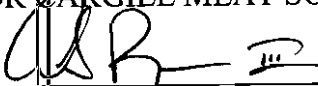
45. This CA/FO resolves only those civil claims that are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition that Complainant determines may present an imminent and substantial 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.

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

Cargill Meat Solutions

EPCRA-03-2010-0320

FOR CARGILL MEAT SOLUTIONS CORPORATION

  
SIGNATURE

JUNE 30, 2010  
DATE

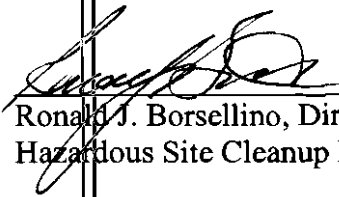
Name: Andrew S Ripic III

Title: General Manager AVP

Cargill Meat Solutions

EPCRA-03-2010-0320

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division

  
\_\_\_\_\_  
DATE



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

In the Matter of	)	U.S. EPA Docket No.: EPCRA-03-2010-0320
	)	
Cargill Meat Solutions Corporation	)	
151 North Main Street	)	
Wichita, Kansas 67202,	)	
	)	
Respondent	)	Proceedings Pursuant to Sections 304 and 325 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §§ 11004 and 11045.
	)	
Cargill Meat Solutions Corporation	)	
Route 706 and Brewer Creek Rd	)	
Wyalusing, Pennsylvania 18853,	)	
	)	
Facility.	)	

**FINAL ORDER**

Pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

**Effective Date**

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

U.S. ENVIRONMENTAL PROTECTION AGENCY

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

*7/21/10*  
\_\_\_\_\_  
DATE

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

RECEIVED  
EPA REGION III  
PHILADELPHIA, PA

In the Matter of	)	U.S. EPA Docket No.: EPCRA-03-2010-
	)	0320
Cargill Meat Solutions Corporation	)	
151 North Main Street	)	
Wichita, Kansas 67202,	)	
	)	
Respondent	)	Proceedings Pursuant to Sections 304
	)	and 325 of the Emergency Planning and
Cargill Meat Solutions Corporation	)	Community Right-to-Know Act, 42
Route 706 and Brewer Creek Rd	)	U.S.C. §§ 11004 and 11045.
Wyalusing, Pennsylvania 18853,	)	
	)	
Facility.	)	

**CERTIFICATE OF SERVICE**


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

Via certified mail, return receipt requested

Kimberly Thorstad, Esquire  
Cargill, Incorporated  
15407 McGinty Road West MS 24  
Wayzata, Minnesota 55391

**NOV 21 2010**

Date



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