

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Yen P. Hoang
Name of Case Attorney

8/30/12
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number EPCRA-01-2012-0047

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Coresite, L.L.C.
70 Innerbelt Road
Somerville, MA 02143

Total Dollar Amount of Receivable \$ 30,875 Due Date: 9/29/12

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1st \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND OFFICE
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

BY HAND

Date: August 30, 2012

RECEIVED
AUG 30 2012
EPA ORC WS
Office of Regional Hearing Clerk

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

RE: *In the Matter of Coresite, L.L.C.*
Docket No. EPCRA-01-2012-0047

Dear Ms. Santiago:

Please find enclosed for filing an original and one copy of the Consent Agreement and Final Order and Certificate of Service pertaining to the above-matter. The mailing addresses for the respondents are as follows:

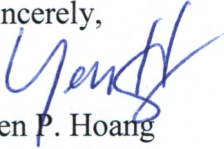
CT Corporation System
Registered agent for Coresite, L.L.C
101 Federal Street
Boston, MA 02110

Brenna Finn, Esq.
Davis Graham & Stubbs LLP
1550 Seventeenth Street, Suite 500
Denver, CO 80202

Derek S. McCandless
Senior Vice President, Coresite L.L.C.
1050 17th Street
Suite 800
Denver, CO 80265

Please do not hesitate to contact me at (617) 918-1171 should you have any questions regarding the enclosed.

Sincerely,



Yen P. Hoang

cc: CT Corporation System, Registered agent for Coresite, L.L.C
Derek S. McCandless, Senior Vice President, Coresite L.L.C.
Brenna Finn, Esq.
Karen McGuire, EPA
Sharon Hayes, EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND

RECEIVED
AUG 30 2012
EPA ORC WS
Office of Regional Hearing Clerk

_____))
IN THE MATTER OF))
))
Coresite, L.L.C.))
70 Innerbelt Road))
Somerville, MA 02143))
Respondent.))
))
Proceeding under Section 325(c) of Title III))
of the Superfund Amendments and))
Reauthorization Act, 42 U.S.C. § 11045(c)))
_____))

Docket No: EPCRA-01-2012-0047

**CONSENT AGREEMENT
AND FINAL ORDER**

Complainant, the United States Environmental Protection Agency (“EPA”), Region 1 (“Region 1”) and Coresite, L.L.C. (“Respondent”) enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. By this CAFO, Respondent agrees to pay a civil penalty for alleged violations of Section 311 and Section 312(a) of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11022(a), and the federal regulations that set out in greater detail these statutory requirements, 40 C.F.R. Part 370.¹

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). Complainant and Respondent (the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

¹ Part 370 of 40 C.F.R. was revised on November 30, 2008 (73 Fed. Reg. 65478). The current regulations are cited herein, with a cross-reference to the regulations in effect at the time of the alleged violations.

NOW THEREFORE, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law, the Parties agree to comply with the terms of this CAFO.

II. Statutory and Regulatory Background

1. In accordance with Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), and 40 C.F.R. §§ 370.20, 370.30, and 370.32 (formerly §§ 370.20 and 370.21) the owner or operator of a facility that is required by the Occupational Safety and Health Act (“OSHA”) to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical must submit an MSDS, or a list of such chemicals as provided at 40 C.F.R. § 370.20(a)(2), to the state emergency response commission (“SERC”), the local emergency planning committee (“LEPC”) and the local fire department for each hazardous chemical present at the facility at a quantity exceeding the applicable minimum threshold level (“MTL”) set forth at 40 C.F.R. § 370.10(a) (formerly § 370.20(b)). The MSDS or chemical list must be submitted within three (3) months after the owner or operator is first required to prepare or have available an MSDS for a hazardous chemical or after such chemical becomes present at a quantity exceeding the applicable MTL.

2. In accordance with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.44 and 370.45, the owner and operator of a facility that is required to prepare or have available MSDSs for hazardous chemicals under OSHA (“hazardous chemicals” or “hazardous chemicals under OSHA”) must prepare and submit an emergency and hazardous chemical inventory form (“Tier I” or “Tier II” form) to the LEPC, SERC, and local fire department for each hazardous chemical present at the facility at a quantity exceeding the applicable MTL set forth at 40 C.F.R. § 370.10(a). The Tier I or Tier II form must be submitted annually on or before March 1 and must contain chemical inventory information with respect to

the preceding calendar year. Facilities in Massachusetts must submit Tier II forms instead of Tier I forms.

3. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended by the 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, which was promulgated in accordance with the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, authorizes EPA to assess civil penalties for violations of Section 311 of EPCRA, 42 U.S.C. § 11021, and regulations promulgated thereunder in amounts of up to \$11,000 per day for each violation that occurred between January 31, 1997 and January 12, 2009.

4. For violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and regulations promulgated thereunder, Section 325(c) of EPCRA authorizes EPA to assess civil penalties in amounts of up to \$25,000 per day for each violation. The 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, as mandated by the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, authorizes EPA to assess civil penalties of up to \$32,500 per day for each violation that occurred after March 15, 2004 through January 12, 2009 and \$37,500 per day for each violation that occurs after January 12, 2009.

III. General Allegations

5. Respondent Coresite, L.L.C. is a limited liability company organized under the laws of the State of Delaware, with a principal place of business at 1050 17th Street, Suite 899, Denver, Colorado 80265.

6. As a limited liability company, Coresite, L.L.C. is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66 (formerly § 370.2) against whom a civil penalty may be assessed under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

7. Respondent Coresite, L.L.C. is the operator and/or owner of a “facility,” as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. §370.66 (formerly § 370.2), located at 70 Innerbelt Road, Somerville, Massachusetts (“Facility”).

IV. EPCRA Violations

8. Sulfuric acid, lead, diesel fuel, and Freon R-22 (chlorodifluoromethane) are considered “hazardous chemicals” under the OSHA, 29 U.S.C. §§ 651 et seq., and in regulations promulgated thereunder at 29 C.F.R. § 1910.1200(c). Furthermore, sulfuric acid is considered to be an “extremely hazardous substance,” (“EHS”) as defined by 40 C.F.R. § 370.66 (formerly § 370.2).

9. In accordance with 40 C.F.R. § 370.10(a) (formerly § 370.20(b)), the MTL for the purposes of EPCRA Sections 311 and 312 is 500 pounds for EHS chemicals, while the MTL for other hazardous chemicals is 10,000 pounds. Therefore, the MTL for sulfuric acid is 500 pounds and the MTL for lead, diesel, and Freon R-22 is 10,000 pounds.

10. At all times relevant to the allegations cited herein, Respondent was required, pursuant to the OSHA and regulations promulgated thereunder, to prepare or have available on site a MSDS for the sulfuric acid, lead, diesel fuel and Freon R-22 that Respondent stored at the Facility.

11. In August and September 2007, Respondent stored hazardous chemicals at the Facility in quantities exceeding the corresponding MTL set forth in 40 C.F.R. § 370.10 (formerly § 370.20(b)). Specifically, Respondent stored approximately 8520 pounds of sulfuric acid; 23,430 pounds of lead; 26,400 pounds of diesel fuel and 17,000 pounds of Freon R-22 at the Facility during August and September 2007.

12. At all times relevant during the calendar years 2008, 2009 and 2010, Respondent stored hazardous chemicals in quantities exceeding the corresponding MTL set forth in 40 C.F.R. § 370.10 at the Facility. Specifically, Respondent stored approximately 39,000 pounds of sulfuric acid; 107,000 pounds of lead; 52,800 pounds of diesel fuel and 17,000 pounds of Freon R-22 at the Facility during the calendar years 2008, 2009, and 2010.

13. At all times during the calendar year 2011, Respondent stored hazardous chemicals in quantities exceeding the corresponding MTL set forth in 40 C.F.R. § 370.10 at the Facility. Specifically, Respondent stored 67,970 pounds of sulfuric acid; 126,230 pounds of lead; 64,000 pounds of diesel fuel and 17,300 pounds of Freon R-22 at the Facility during the calendar year 2011.

14. Respondent was therefore required by Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), and 40 C.F.R. §§ 370.20, 370.30, and 370.32 (formerly §§ 370.20 and 370.21) to make a one-time submission of a MSDS for each hazardous chemical described in Paragraph 11 (or a chemical list) to the LEPC, SERC and local fire department by December 31, 2007.

15. Respondent was therefore also required by Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44 and 370.45 to prepare and submit Tier II forms containing information for the chemicals described in Paragraphs 11, 12 and 13 to the SERC, LEPC and the local fire department for calendar years 2007, 2008, 2009, 2010 and 2011 by March 1 of the following year.

16. Based on an EPA inspection of the Facility on October 6, 2011 and other information provided by Respondent, Complainant determined that:

- a. Respondent did not make a one-time submission of a MSDS, or chemical list as provided in 40 C.F.R § 370.30(a), for the chemicals described above in Paragraph 11 to the SERC, LEPC and local fire department by December 31, 2007.
 - b. Respondent's failure to make a one-time submission of a MSDS for each hazardous chemical or a chemical list to the SERC, LEPC and local fire department by December 31, 2007 violated Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), and 40 C.F.R. §§ 370.20, 370.30, and 370.32 (formerly §§ 370.20 and 370.21) for four (4) chemicals, including sulfuric acid.
 - c. Each day a violation of EPCRA Section 311(a) continues constitutes a separate violation.²
 - d. Therefore, Respondent is subject to the assessment of civil penalties under Section 325(c) of EPRCA and the 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, in the amount of up to \$11,000 per day for each violation of Section 311(a) of EPCRA.
17. Additionally, Complainant determined that:
- a. For the calendar years 2007, 2008, 2009 and 2010, Respondent did not submit Tier II forms for the chemicals described in Paragraphs 11 and 12 to the SERC, LEPC and local fire department.
 - b. For the calendar year 2011, Respondent did not submit the Tier II form for the chemicals described in Paragraph 13 to the SERC, LEPC and local fire department until May 7, 2012, which is 67 days past the March 1, 2012 deadline.
 - c. Respondent's failure to prepare and submit Tier II forms on or before the reporting deadline of March 1st of the subsequent year for calendar years 2007,

² See former 40 C.F.R. § 370.5(c), which was in effect at the time of the violations alleged herein.

2008, 2009, 2010 and 2011 constitutes five (5) violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44, and 370.45 (formerly §§ 370.20 and 370.25). Only four (4) of these violations are subject to penalties.

- d. Therefore, Respondent is subject to the assessment of civil penalties under Section 325(c) of EPRCA and the 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, in the amount of up to \$37,500 per day for each violation of Section 312(a) of EPRCA.

IV. Terms of Settlement

18. Respondent certifies that it is now operating the Facility in compliance with Section 311 and Section 312(a) of EPCRA and the regulations promulgated thereunder.

19. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in herein and that the allegations in this CAFO state a claim upon which relief can be granted. Respondent hereby waives any defenses it might have as to jurisdiction and venue.

20. Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein and waives its right to appeal the Final Order accompanying this Consent Agreement.

21. Without admitting or denying the allegations herein, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of a civil penalty for the purpose of settlement of this action.

22. This CAFO shall apply to and be binding upon Respondent and its officers, directors, agents, successors and assigns.

23. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and in light of the nature of the violations and other relevant factors, Complainant has determined that an appropriate civil penalty to settle this action is \$30,875.

24. Within thirty (30) days of the effective date of the Final Order, Respondent shall make payment in the amount of \$30,875 by cashier's or certified check, payable to "Treasurer, United States of America," with the title and docket number of the action ("In the Matter of Coresite, L.L.C., EPCRA-01-2012-0047) noted on the check.

25. The check shall be mailed via regular U.S. Postal Service mail to:

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

26. Respondent shall simultaneously submit notice of payment of the civil penalty and copies of the check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)
Boston, MA 02109-3912

and

Yen P. Hoang, Esq.
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: ORA17-1)
Boston, MA 02109-3912

27. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of

Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based.

28. Pursuant to 31 U.S.C. § 3717, 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. In the event that any partial payment of the civil penalty, plus interest thereon, is not paid when due without demand, the penalty plus accrued interest shall be payable with additional interest from the original due date to the date of payment, at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. §901.9(b)(2). In addition, a penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. See 31 C.F.R. § 901.9(d). In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

29. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Respondent further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

30. The terms of this CAFO constitute a full settlement by EPA of all claims for civil penalties for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, and local law. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal

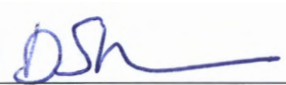
liability of Respondent. Nothing in the CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. This CAFO does not operate as a waiver of any defenses in governmental or third party actions against the Respondent for matters not addressed in this CAFO.

31. Respondent shall bear its costs in connection with the action resolved by this CAFO, including attorney's fees. Respondent specifically waives any right to recover such costs from the Complainant pursuant to the Equal Access for Justice Act, 5 U.S.C. § 504, or other applicable laws.

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

33. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO shall be the date on which it is filed with the Regional Hearing Clerk.

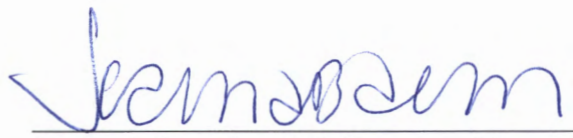
For Respondent Coresite, L.L.C.



Print Name: *Derek S. McCandless*
Title: *Senior Vice President, Legal*

Date: *8/21/12*

For Complainant U.S. EPA, Region 1



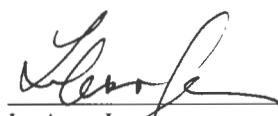
Joanna Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: *8/28/12*

V. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date: August 29, 2012



LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	
)	
Coresite, L.L.C.)	CONSENT AGREEMENT
70 Innerbelt Road)	AND FINAL ORDER
Somerville, MA 02143)	
)	
Respondent.)	Docket No.
)	EPCRA-01-2012-0047
Proceeding under Section 325(c) of the Emergency)	
Planning and Community Right-to-Know Act, 42)	
U.S.C. § 11045(c))	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and one copy
hand delivered:

Wanda Santiago
Regional Hearing Clerk (RAA)
U.S. EPA, Region I
One Congress Street, Suite 1100
Boston, MA 02114-2023

Copy by Certified Mail-
Return Receipt Requested

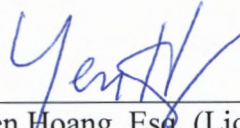
CT Corporation System
Registered agent for Coresite, L.L.C
101 Federal Street
Boston, MA 02110

Brenna Finn, Esq.
Davis Graham & Stubbs LLP
1550 Seventeenth Street, Suite 500
Denver, CO 80202

Derek S. McCandless
Senior Vice President, Coresite L.L.C.
1050 17th Street
Suite 800

Denver, CO 80265

Date: 8/30/2012



Yen Hoang, Esq. (Lic. 5012398)
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA17-1
Boston, MA 02109-3912
Email: Hoang.Yen@epamail.epa.gov
Tel: 617-918-1171