

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Maximilian Boal 9/20/12
Name of Case Attorney Date

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

Case Docket Number EPCRA-01-2012-0090

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:

Thunderline-Z, Inc.
11 Hazel Drive
Hampstead, NT 03841

Total Dollar Amount of Receivable \$ 11,500 Due Date: 10/20/12

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
REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912



September 20, 2012

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

BY HAND

Re: *In the Matter of Thunderline-Z, Inc.*
Docket No. EPCRA-01-2012-0090

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Consent Agreement and Final Order (CAFO) settling the matter referenced above pursuant to 40 C.F.R. § 22.18(b) and the certificate of service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that appears to read "Maximilian Boal".

Maximilian Boal
Enforcement Counsel

Enclosure

cc: Rick Hirsh, President and CEO, Thunderline-Z, Inc.
Reza Zarghamee, Esq.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

RECEIVED
SEP 20 2012
EPA ORC
Office of Regional Hearing Clerk

IN THE MATTER OF)

Thunderline – Z, Inc.)
11 Hazel Drive)
Hampstead, NH 03841)

Respondent.)

Proceeding under Section 325(c) of the Emergency)
Planning and Community Right-to-Know Act,)
42 U.S.C. § 11045(c))

_____)

Docket No: EPCRA-01-2012-0090

**CONSENT AGREEMENT
AND FINAL ORDER**

Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”) and Respondent Thunderline - Z, Inc., enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. By this CAFO, Respondent agrees to pay a civil penalty for an alleged violation of Section 312(a) of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11022(a).

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.

NOW THEREFORE, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of the Parties, it is hereby ordered and adjudged as follows:

I. EPCRA Statutory and Regulatory Authority

1. Under Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.12, 370.20, 370.40, 370.44, and 370.45, the owner or operator of any facility that is required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970 (“OSHA”), and the hazard communication standards promulgated thereunder at 29 C.F.R. § 1910.1200(b)(1), must prepare and submit an emergency and hazardous chemical inventory form (“Tier I” or “Tier II” form) to the Local Emergency Planning Committee (“LEPC”), the State Emergency Response Commission (“SERC”), and the local fire department with jurisdiction over the facility. Pursuant to 40 C.F.R. §§ 370.40 and 370.45, the Tier I or Tier II form must be submitted annually on or before March 1st of each year and is required to contain information with respect to the preceding calendar year. Facilities in New Hampshire must submit Tier II forms instead of Tier I forms.

2. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA is authorized to assess a civil penalty of up to \$32,500 per day for each violation of EPCRA Section 312 42 U.S.C. § 11022, occurring after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation occurring after January 12, 2009.

II. General Allegations

3. Respondent is a corporation formed under the laws of the State of Delaware and is “person” as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.

4. Respondent is the owner or operator of a “facility,” located at 11 Hazel Drive, Hampstead, NH 03841 (“the 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 40 C.F.R. § 370.2).

5. On or about July 18, 2011, authorized representatives of EPA inspected the Facility. The purpose of the inspection was to determine Respondent’s compliance with EPCRA reporting requirements.

6. During calendar year 2010, Respondent stored “hazardous chemicals,” as defined under 40 C.F.R. § 370.66, including liquid nitrogen, in quantities which exceed the minimum threshold level (“MTL”) of 10,000 pounds, set forth in 40 C.F.R. § 370.10 (formerly 40 C.F.R. § 370.20(b)(4)) at the Facility.

7. During calendar year 2010, Respondent stored anhydrous ammonia, which is an “extremely hazardous substance” as defined under 40 C.F.R. § 370.66 and as listed in Appendices A and B of 40 C.F.R. Part 355, in a quantity that exceeds the MTL of 500 pounds set forth in 40 C.F.R. § 370.10(a)(1) (formerly 40 C.F.R. § 370.20(b)(1)) at the Facility.

8. During calendar year 2010, Respondent stored hydrofluoric acid, which is an “extremely hazardous substance” as defined under 40 C.F.R. § 370.66 and as listed in Appendices A and B of 40 C.F.R. Part 355, in a quantity that exceeds the MTL of 100 pounds set forth in 40 C.F.R. § 370.10(a)(1) (formerly 40 C.F.R. § 370.20(b)(1)) at the Facility.

9. During calendar year 2010, Respondent was required, pursuant to the OSHA and regulations promulgated thereunder, to prepare or have available onsite a MSDS for the anhydrous ammonia, hydrofluoric acid and liquid nitrogen stored at the Facility.

III. EPCRA Violations

10. Respondent was therefore subject to the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40 and 370.42 (formerly §§ 370.20 and 370.25), for calendar year 2010.

11. Accordingly, on or before March 1 of 2011, Respondent was required to prepare and submit Tier II forms containing chemical information for calendar year 2010, to the SERC, LEPC and the local fire department with jurisdiction over the Facility.

12. Based on an EPA inspection of the Facility on July 18, 2011, and follow-up investigation, Complainant determined that:

- a. Respondent failed to submit a Tier II form for the calendar year of 2010 to the SERC, LEPC and local fire department with jurisdiction over the Facility by March 1, 2011; and
- b. Respondent's failure to submit Tier II forms to all of the necessary authorities on or before the reporting deadline of March 1st of the subsequent year for calendar year 2010 constituted a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40 and 370.42 (formerly §§ 370.20 and 370.25).

IV. Terms of Settlement

13. Respondent certifies that it has corrected the alleged violation cited in this CAFO and that it is now operating the Facility in compliance with Section 312(a) of EPCRA and the regulations promulgated thereunder.

14. Respondent stipulates that EPA has jurisdiction over the subject matter alleged 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.

15. 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.

16. 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.

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

18. 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 an appropriate civil penalty to settle this action is \$11,500.

19. Within thirty (30) days of the effective date of the Final Order, Respondent shall make payment in the amount of \$11,500 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 Thunderline-Z, Inc., Docket No. EPCRA-01-2012-0090*") noted on the check.

20. 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

21. 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

Maximilian Boal
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-2)
Boston, MA 02109-3912

22. 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.

23. 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.

24. 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.

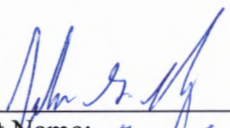
25. The terms of this CAFO constitute a full settlement by EPA of all claims for civil penalties for the violation alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters 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.

26. 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.

27. 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.

28. 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 Thunderline – Z, Inc.



Print Name: JOHN G. SHIVELY
Title: ASSISTANT SECRETARY

Date: 9/13/12

For Complainant U.S. EPA, Region 1



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


Date: 9/19/12

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, which will become effective on the date it is filed with the Regional Hearing Clerk.

Date:

September 20, 2012


~~Jill Metcalf~~ **CARL F. DIERKER**
Acting Regional Judicial Officer
U.S. EPA, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the Matter of:)	
)	
Thunderline-Z, Inc.)	Docket No. EPCRA-01-2012-0090
)	
11 Hazel Drive)	
Hampstead, NH 03841)	
)	
Respondent)	
)	

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 (Mail Code ORA 18-1) U.S. Environmental Protection Agency, Region 1 5 Post Office Square, Suite 100 Boston, MA 02109-3912
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Copy, Certified Mail, Return Return Receipt Requested	Rick Hirsh, President and CEO Thunderline – Z, Inc. 11 Hazel Drive Hampstead, NH 03841
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Reza Zarghamee, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street NW
Washington, D.C. 20037-1122

Dated: 11/20/2012



Maximilian Boal, Enforcement Counsel (OES)
U.S. Environment Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: OES04-2
Boston, MA 02109-3912