

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

IN THE MATTER OF

Cold Storage Solutions I, Inc.
310 Kenneth Welch Drive
Lakeville, MA 02347

Respondent

Proceeding under Section 113(d) of the Clean
Air Act, 42 U.S.C. § 7413(d)

Docket No. CAA-01-2013-0063

**ANSWER AND HEARING REQUEST OF
RESPONDENT COLD STORAGE SOLUTIONS I, INC.**

NOW COMES Respondent, Cold Storage Solutions I, Inc. (“CSS-I”), and hereby answers the United States Environmental Protection Agency’s (“EPA”) Administrative Complaint (“Complaint”) as follows:

I. STATEMENT OF AUTHORITY

1. Paragraph 1 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required. To the extent an answer is required, CSS-I denies the allegations contained in Paragraph 1 of the Complaint.

2. Paragraph 2 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required. To the extent an answer is required, CSS-I denies the allegations contained in Paragraph 2 of the Complaint.

3. Paragraph 3 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required.

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REGIONAL HEARING CLERK

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II. STATUTORY AND REGULATORY AUTHORITY

4. Paragraph 4 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the cited statutory provisions speak for themselves.

5. Paragraph 5 states a conclusion of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the cited statutory provision speaks for itself.

6. Paragraph 6 states a conclusion of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the cited statutory provision speaks for itself.

7. Paragraph 7 states a conclusion of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the cited statutory provision speaks for itself.

8. Paragraph 8 states a conclusion of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the cited statutory provisions speak for themselves.

III. FACTUAL ALLEGATIONS

9. CSS-I admits that it is a Massachusetts corporation with its principal office in Lakeville, Massachusetts. Except so answered, Paragraph 9 states a conclusion of law for which no answer under 40 C.F.R. § 22.15(b) is required.

10. CSS-I admits the allegations contained in Paragraph 10 of the Complaint.

11. CSS-I is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint.

12. Paragraph 12 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required.

13. Paragraph 13 states a conclusion of law for which no answer under 40 C.F.R. § 22.15(b) is required.

14. CSS-I admits that its refrigeration system used approximately 9,000 pounds of anhydrous ammonia. CSS-I denies that it violated Section 112(r) of the Clean Air Act. Except so answered, Paragraph 14 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required.

15. CSS-I is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first four (4) sentences of Paragraph 15 of the Complaint. CSS-I admits that industry trade groups have published documents relating to the refrigeration industry. Except so answered, CSS-I denies the allegations contained in Paragraph 15 of the Complaint.

16. CSS-I admits the allegations contained in Paragraph 16 of the Complaint.

17. CSS-I admits that on February 13, 2012 EPA visited CSS-I's facility. Except so answered, CSS-I denies the allegations contained in Paragraph 17 of the Complaint.

18. CSS-I admits the allegations contained in Paragraph 18 of the Complaint.

19. CSS-I admits that it submitted EPCRA Inventory Forms in February 2012.

20. CSS-I denies the allegations contained in Paragraph 20 of the Complaint.

21. CSS-I admits that the EPA issued a Notice of Violation, Administrative Order and Reporting Requirement. Except so answered, CSS-I denies the allegations contained in Paragraph 21 of the Complaint.

22. CSS-I admits that the EPA re-inspected CSS-I's facility on August 5, 2013. Except so answered, CSS-I denies the allegations contained in Paragraph 22 of the Complaint.

23. CSS-I denies the allegations contained in Paragraph 23 of the Complaint.

24. CSS-I denies the allegations contained in Paragraph 24 of the Complaint.

IV. VIOLATIONS

Count 1: Failure to Identify Hazards in Violation of the CAA's General Duty Clause

25. CSS-I repeats, realleges and incorporates its responses contained in Paragraphs 1 through 24 of this Answer as if each were fully set forth herein.

26. Paragraph 26 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the cited statutory provision speaks for itself.

27. CSS-I denies the allegations contained in Paragraph 27 of the Complaint.

28. CSS-I denies the allegations contained in Paragraph 28 of the Complaint.

29. CSS-I denies the allegations contained in Paragraph 29 of the Complaint.

30. CSS-I denies the allegations contained in Paragraph 30 of the Complaint.

WHEREFORE, Respondent, CSS-I, prays that the EPA's Administrative Complaint be dismissed with prejudice and that it be awarded all costs and fees incurred in defending this action.

Count 2: Failure to Design and Maintain a Safe Facility in Violation of the CAA's General Duty Clause

31. CSS-I repeats, realleges and incorporates its responses contained in Paragraphs 1 through 30 of this Answer as if each were fully set forth herein.

32. Paragraph 32 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the cited statutory provision speaks for itself.

Lack of Refrigeration System Documentation

33. CSS-I denies the allegations contained in Paragraph 33 of the Complaint.

34. CSS-I denies the allegations contained in Paragraph 34 of the Complaint.

Inadequate Ventilation System Design and Operation

35. CSS-I denies the allegations contained in Paragraph 35 of the Complaint.

36. CSS-I denies the allegations contained in Paragraph 36 of the Complaint.
37. CSS-I denies the allegations contained in Paragraph 37 of the Complaint.
38. CSS-I denies the allegations contained in Paragraph 38 of the Complaint.

Inadequate Signs

39. CSS-I denies the allegations contained in Paragraph 39 of the Complaint.
40. CSS-I denies the allegations contained in Paragraph 40 of the Complaint.
41. CSS-I denies the allegations contained in Paragraph 41 of the Complaint.
42. CSS-I denies the allegations contained in Paragraph 42 of the Complaint.

Inadequate Basic Safety Practices

43. CSS-I denies the allegations contained in Paragraph 43 of the Complaint.
44. CSS-I denies the allegations contained in Paragraph 44 of the Complaint.
45. CSS-I denies the allegations contained in Paragraph 45 of the Complaint.
46. CSS-I denies the allegations contained in Paragraph 46 of the Complaint.
47. CSS-I denies the allegations contained in Paragraph 47 of the Complaint.
48. CSS-I denies the allegations contained in Paragraph 48 of the Complaint.
49. CSS-I denies the allegations contained in Paragraph 49 of the Complaint.
50. CSS-I denies the allegations contained in Paragraph 50 of the Complaint.

Inadequate Emergency Design and Mechanisms

51. CSS-I denies the allegations contained in Paragraph 51 of the Complaint.
52. CSS-I denies the allegations contained in Paragraph 52 of the Complaint.
53. CSS-I denies the allegations contained in Paragraph 53 of the Complaint.
54. CSS-I denies the allegations contained in Paragraph 54 of the Complaint.
55. CSS-I denies the allegations contained in Paragraph 55 of the Complaint.
56. CSS-I denies the allegations contained in Paragraph 56 of the Complaint.

57. CSS-I denies the allegations contained in Paragraph 57 of the Complaint.
58. CSS-I denies the allegations contained in Paragraph 58 of the Complaint.
59. CSS-I denies the allegations contained in Paragraph 59 of the Complaint.
60. CSS-I denies the allegations contained in Paragraph 60 of the Complaint.

Inadequate Training Program

61. CSS-I denies the allegations contained in Paragraph 61 of the Complaint.
62. CSS-I denies the allegations contained in Paragraph 62 of the Complaint.

Inadequate Mechanical Integrity Program

63. CSS-I denies the allegations contained in Paragraph 63 of the Complaint.
64. CSS-I denies the allegations contained in Paragraph 64 of the Complaint.
65. CSS-I denies the allegations contained in Paragraph 65 of the Complaint.

WHEREFORE, Respondent, CSS-I, prays that the EPA's Administrative Complaint be dismissed with prejudice and that it be awarded all costs and fees incurred in defending this action.

Count 3: Failure to Minimize the Consequences of Accidental Releases That Do Occur in Violation of the CAA's General Duty Clause

66. CSS-I repeats, realleges and incorporates its responses contained in Paragraphs 1 through 65 of this Answer as if each were fully set forth herein.

67. CSS-I denies the allegations contained in Paragraph 67 of the Complaint.
68. CSS-I denies the allegations contained in Paragraph 68 of the Complaint.
69. CSS-I denies the allegations contained in Paragraph 69 of the Complaint.
70. CSS-I denies the allegations contained in Paragraph 70 of the Complaint.
71. CSS-I denies the allegations contained in Paragraph 71 of the Complaint.

WHEREFORE, Respondent, CSS-I, prays that the EPA's Administrative Complaint be dismissed with prejudice and that it be awarded all costs and fees incurred in defending this action.

V. PROPOSED CIVIL PENALTY

72. Paragraph 72 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the cited statutory provisions speak for themselves.

73. CSS-I is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 73 that the EPA and Department of Justice jointly have determined that an administrative penalty action is appropriate. Except so answered, Paragraph 73 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the cited statutory provisions speak for themselves.

74. CSS-I denies the allegations contained in Paragraph 74 of the Complaint.

75. Paragraph 75 states a conclusion of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the cited statutory provision speaks for itself.

76. CSS-I is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 76 of the Complaint.

77. CSS-I denies the allegations contained in Paragraph 77 of the Complaint.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

78. Paragraph 78 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the Consolidated Rules of Practice speak for themselves.

79. Paragraph 79 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the Consolidated Rules of Practice speak for themselves.

80. Paragraph 80 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the Consolidated Rules of Practice speak for themselves.

81. Paragraph 81 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the Consolidated Rules of Practice speak for themselves.

82. Paragraph 82 states a conclusion of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the Consolidated Rules of Practice speak for themselves.

83. Paragraph 83 states a conclusion of law for which no answer under 40 C.F.R. § 22.15(b) is required. In addition, the Consolidated Rules of Practice speak for themselves.

VII. INFORMAL SETTLEMENT CONFERENCE

84. Paragraph 84 states conclusions of law for which no answer under 40 C.F.R. § 22.15(b) is required.

85. Paragraph 85 states a conclusion of law for which no answer under 40 C.F.R. § 22.15(b) is required.

VIII. CONTINUED COMPLIANCE OBLIGATION

86. Paragraph 86 states a conclusion of law for which no answer under 40 C.F.R. § 22.15(b) is required.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The complaint fails to state a claim upon which relief can be granted. The Clean Air Act imposes a general duty only “in the same manner and to the same extent as section 654 of Title 29,” Section 112(r), which requires that the alleged hazard has caused or is likely to cause death, serious injury, or substantial property damage.

Second Affirmative Defense

The private industry documents that EPA alleges have been violated by CSS-I are not requirements or prohibitions of the Clean Air Act for which penalties can be sought under section 113(d) of the Clean Air Act Section 113 of the Clean Air Act, 42 U.S.C. § 7413.

Third Affirmative Defense

The private industry documents that EPA alleges have been violated by CSS-I have not been promulgated in accordance with the notice and comment requirements of the federal Administrative Procedures Act, 5 U.S.C. § 551 et seq., and, therefore, are not enforceable by the EPA.

Fourth Affirmative Defense

The private industry documents that EPA alleges have been violated by CSS-I on their face indicate that the use of such documents is voluntary and not binding.

Fifth Affirmative Defense

The EPA guidance document that EPA alleges has been violated by CSS-I is not a requirement or prohibition for which penalties can be sought under Section 113 of the Clean Air Act, 42 U.S.C. §7413.

Sixth Affirmative Defense

The EPA guidance document that EPA alleges has been violated by CSS-I has not been promulgated in accordance with the notice and comment requirements of the federal Administrative Procedures Act, 5 U.S.C. § 551 et seq., and, therefore, is not enforceable by the EPA.

Seventh Affirmative Defense

The EPA guidance document that EPA alleges has been violated by CSS-I on its face states that it cannot be relied upon to create rights enforceable in litigation with United States.

Eighth Affirmative Defense

EPA's attempted use of private industry documents and guidance that have not been promulgated in accordance the notice and comment requirements of the Administrative Procedures Act, 5 U.S.C. § 551 et seq., violates the fair warning requirements of the due process clause.

Ninth Affirmative Defense

EPA's complaint is contrary to the requirements of Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r) that contemplates that EPA will duly promulgate regulations to enforce Section 112(r).

Tenth Affirmative Defense

CSS-I is exempt from the hazard assessment, operating procedures, and other such requirements applicable under Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), because EPA has determined that CSS-I does not store an amount of anhydrous ammonia which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health.

Eleventh Affirmative Defense

EPA's attempts to impose enormous civil penalties without conforming to the requirements of the Clean Air Act, the Administrative Procedures Act and the requirements for fair warning are arbitrary and capricious and violate due process.

Twelfth Affirmative Defense

EPA's proposed civil penalties are illegal and CSS-I is entitled to judgment as a matter of law.

Thirteenth Affirmative Defense

CSS-I hereby gives notice that it intends to rely upon such other and further defenses as may become available during discovery proceedings in this matter and hereby reserves its right to amend this Answer and assert such defenses.

CSS-I'S REQUEST FOR HEARING

Pursuant to 40 C.F.R. § 22.15(c), CSS-I hereby requests a hearing of the issues raised by the Complaint.

CSS-I'S REQUEST FOR ATTORNEYS' FEES

Pursuant to 28 U.S.C. § 2412, CSS-I hereby requests that it be awarded the costs, attorneys' fees and other expenses it incurred as a result of this action.

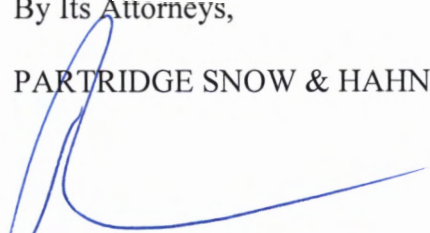
Respectfully Submitted,

Respondent,

COLD STORAGE SOLUTIONS I, INC.

By Its Attorneys,

PARTRIDGE SNOW & HAHN LLP



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DATED: April 18, 2014

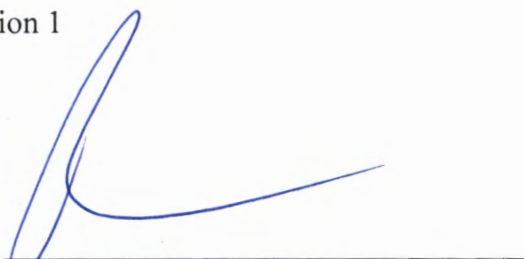
CERTIFICATES OF SERVICE

I hereby certify that the original and one copy of the foregoing Answer and Hearing Request was sent by Federal Express on this 18th day of April, 2014 to the following:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code ORA 18-1
Boston, MA 02109-3912

I hereby certify that a copy of the foregoing Answer and Hearing Request was mailed, postage prepaid, on this 18th day of April, 2014 to the following:

Christine M. Foot, Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912



Robert K. Taylor