



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

October 19, 2020

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeryl Olson
Partner
Seyfarth Shaw LLP
233 South Wacker Drive, Suite 8000
Chicago, Illinois 60606-6448

Re: Arctic Cold Storage, Inc., St. Cloud, Minnesota, Consent Agreement and Final Order
Docket Nos. MM-05-2021-0001 CERCLA-05-2021-0001 EPCRA-05-2021-0001

Dear Ms. Olson:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on October 19, 2020.

Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$19,500 in the manner prescribed in paragraph 55, and reference your check with the billing document number 2752130B001 and the docket number CERCLA-05-2021-0001.

Please have your client pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$45,500 in the manner prescribed in paragraph 57, and reference your check with the docket number EPCRA-05-2021-0001.

Your payments are due on November 18, 2020.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Cathleen Martwick, Associate Regional Counsel, at (312) 886-7166. Thank you for your assistance in resolving this matter.

Sincerely,

MICHAEL HANS Digitally signed by MICHAEL HANS
Date: 2020.10.01 15:03:20 -05'00'

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Joe Neuberger (w/ enclosure)
Division of Homeland Security
and Emergency Management
445 Minnesota Street, Suite 223
St. Paul, Minnesota 55101

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket Nos.
)	MM-05-2021-0001 CERCLA-05-2021-0001 EPCRA-05-2021-0001
Arctic Cold Storage, Inc.)	Proceeding to Assess a Civil Penalty Under
St. Cloud, Minnesota,)	Section 109(b) of the Comprehensive
Respondent.)	Environmental Response, Compensation and
)	Liability Act, and Section 325(b)(2) of the
)	Emergency Planning and Community Right-
)	to-Know Act of 1986

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Chief of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Arctic Cold Storage, Inc., a corporation doing business in the State of Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals

are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

14. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

15. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

16. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b) and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015), amending 28 U.S.C. § 2461 note, and the implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$58,328 per day of violation for each day that

occurred after November 2, 2015, and for which penalties are assessed on or after January 13, 2020.

Factual Allegations and Alleged Violations

17. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

18. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

19. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 4139 Roosevelt Road, St. Cloud, Minnesota (facility).

20. At all times relevant to this CAFO, Respondent was in charge of the facility.

21. Respondent’s facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

22. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

23. Respondent’s facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

24. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

25. Anhydrous ammonia (CAS #7664-41-7) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

26. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

27. Anhydrous ammonia is classified as a physical or health hazard, a simple asphyxiant, or hazard not otherwise classified.

28. Anhydrous ammonia (CAS #7664-41-7) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

29. At all times relevant to this CAFO, Respondent produced, used or stored anhydrous ammonia at the facility.

30. Anhydrous ammonia (CAS #7664-41-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

31. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

32. On May 28, 2018, beginning at or about 4:15 a.m., Central Time, a release occurred from Respondent’s facility of approximately 1,420 pounds of anhydrous ammonia (the release).

33. In a 24-hour time period, the release of anhydrous ammonia exceeded 100 pounds.

34. During the release, approximately 1,420 pounds spilled, leaked, emitted, discharged, or escaped into the ambient air.

35. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

36. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

37. Respondent had knowledge of the release on May 28, 2018, at approximately 4:17 a.m. Central Time.

38. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

39. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

40. The release was likely to affect Minnesota.

41. At all times relevant to this CAFO, the Minnesota SERC was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

Count 1 (failure to notify NRC)

42. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

43. Respondent notified the NRC of the release on May 28, 2018, at 7:55 a.m., Central Time.

44. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

45. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Count 2 (failure to notify SERC)

46. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

47. Respondent notified the Minnesota SERC of the release on May 30, 2018, at 1:09 p.m. Central Time.

48. Respondent did not immediately notify the SERC as soon as Respondent had knowledge of the release.

49. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 3 (written notice to SERC)

50. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

51. On February 11, 2019, Respondent provided the written follow-up emergency notice of the release to the SERC.

52. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

53. Respondent's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Civil Penalty

54. Complainant has determined that an appropriate civil penalty to settle this action is \$19,500 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. 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 (EPCRA/CERCLA Enforcement Response Policy).

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$19,500 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

For checks sent by express mail, by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Bank
Government Lockbox 979076 U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Arctic Cold Storage, Inc., the docket number of this CAFO and the billing document number 2752130B001.

56. Complainant has determined that an appropriate civil penalty to settle this action is \$45,500 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, effect on ability to continue to do business, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

57. Within 30 days after the effective date of this CAFO, Respondent must pay a \$45,500 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

For checks sent by express mail, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Arctic Cold Storage, Inc. and the docket number of this CAFO EPCRA-05-2021-0001.

58. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket number and the billing document number, if any, must accompany each payment. Respondent must send a copy of the checks and transmittal letters to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

James Entzminger (SE-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Cathleen Martwick (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

59. This civil penalty is not deductible for federal tax purposes.

60. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

61. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

62. The parties' consent to service of this CAFO by email at the following valid email addresses: martwick.cathleen@epa.gov (for Complainant) and Jolson@seyfarth.com (for Respondent).

63. Full payment of the penalty and compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

64. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

65. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

66. This CAFO does not affect Respondent's responsibility to comply with CERCLA, EPCRA and other applicable federal, state and local laws and regulations.

67. This CAFO is a “final order” for purposes of U.S. EPA’s EPCRA/CERCLA Enforcement Response Policy.

68. The terms of this CAFO bind Respondent and its successors and assigns.

69. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

70. Each party agrees to bear its own costs and attorney’s fees in this action.

71. This CAFO constitutes the entire agreement between the parties.

In the Matter of: Arctic Cold Storage, Inc, St. Cloud, Minnesota

Docket No. MM-05-2021-0001 CERCLA-05-2021-0001 EPCRA-05-2021-0001

Arctic Cold Storage, Inc., Respondent


9/30/2020
Date



Jeff Condon
Chief Executive Officer
Arctic Cold Storage, Inc.


U.S. Environmental Protection Agency, Complainant

October 15, 2020
Date

**JASON EL-
ZEIN**  Digitally signed by JASON
EL-ZEIN
Date: 2020.10.15 15:54:45
-04'00'

Jason El-Zein
Chief, Emergency Response Branch 1
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

October 16, 2020
Date



Digitally signed by DOUGLAS
BALLOTTI
Date: 2020.10.16 08:34:14 -05'00'

Douglas Ballotti
Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Arctic Cold Storage, Inc., St. Cloud, Minnesota
Docket No. MM-05-2021-0001 CERCLA-05-2021-0001 EPCRA-05-2021-0001

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

**ANN
COYLE**

Digitally signed by
ANN COYLE
Date: 2020.10.19
16:10:52 -05'00'

Date

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the Matter of: Arctic Cold Storage, Inc., St. Cloud, Minnesota
Docket No. MM-05-2021-0001 CERCLA-05-2021-0001 EPCRA-05-2021-0001

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on October 19, 2020 in the following manner to the addressees:

Copy by E-mail

Attorney for Respondent: Jeryl Olson
Partner
Seyfarth Shaw LLP
233 South Wacker Drive, Suite 8000
Chicago, Illinois 60606-6448
JOlson@seyfarth.com

Copy by E-mail to

Attorney for Complainant: Cathleen Martwick
martwick.cathleen@epa.gov

Copy by E-mail to

Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: October 19, 2020

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5