



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 20 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Tristan R. Armer, Esq.
Heidelberg Steinberger Colmer & Burrow, P.A.
711 Delmas Avenue
Pascagoula, Mississippi 39568

Re: Gulf Coast Cold Storage, Inc. – Pascagoula, MS
Consent Agreement and Final Order
Docket Number: CERCLA-04-2015-2009(b)

Dear Mr. Armer:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 matter (Docket No. CERCLA-04-2015-2009(b)) involving Gulf Coast Cold Storage, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on the date of filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the U.S. Environmental Protection Agency. If your client has any questions with regard to the SEC's environmental disclosure requirements, your client may refer to the contact phone number at the bottom of the SEC notice.

If you have any questions, please contact Ms. Michi Kono at (404) 562-9558.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief

Chemical Safety and Enforcement Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
 Gulf Coast Cold Storage, Inc.)
)
 Respondent.)
 _____)

Docket Number: CERCLA-04-2015-2009(b)

RECEIVED
EPA REGION 4
AIR, PESTICIDES AND TOXICS
DIVISION
MAY 13 2015

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Gulf Coast Cold Storage, Inc.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA to the Regional Administrators by EPA Delegation 14-31 dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent is Gulf Coast Cold Storage, Inc., a corporation doing business in the State of Mississippi.

5. Respondent is a "person" and is the "owner or operator" of a "facility" as those terms are defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

6. Respondent's facility is located at 100 Port Road, Pascagoula, Mississippi.

III. EPA's Allegation of Violation

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of 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 the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ.

9. Ammonia is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 100 pounds, as specified in 40 C.F.R. § 302.4.

10. On December 10, 2013, a release of ammonia above the RQ occurred at the facility.

11. Respondent was in charge of the facility on December 10, 2013.

12. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of ammonia in an amount equal to or greater than its RQ at Respondent's facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

13. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after December 6, 2013. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by an Administrative Order.

IV. Consent Agreement

14. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

15. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

16. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

17. Respondent agrees to complete the Supplemental Environmental Project (SEP) as set forth in this CAFO.

18. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA.

19. Compliance with this CAFO shall resolve the allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA, CERCLA or other applicable laws and regulations.

20. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA.

V. Final Order

21. Respondent shall pay a civil penalty of **FOUR THOUSAND SEVEN HUNDRED SIXTY-SEVEN DOLLARS (\$4,767)** for the CERCLA violation in Section III. The penalty shall be paid within thirty (30) days of the effective date of this CAFO.

22. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

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

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979076
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1818

The check shall reference on its face the name and the Docket Number of the CAFO.

23. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Eddie Chow
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, GA 30303

24. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

25. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Respondent shall expend no less than **FIFTEEN THOUSAND, SIX HUNDRED FIFTY-FOUR DOLLARS (\$15,654)** for the purchase of the following equipment for donation to the Pascagoula Fire Department:

<u>Quantity</u>	<u>Description</u>
4	APX6000 XE ASTRO DIGITAL PORTABLE RADIO, 764-870 MHZ, MODEL 2.5, Model# H98UCF9PW6N
4	ENH: APX6000XE RUGGED RADIO, Model# QA020006
4	ADD: ASTRO DIGITAL CAI OPERATION, Model# Q806
4	ADD: SMARTZONE OPERATION, Model# H38
4	ADD: P25 9600 BAUD TRUNKING, Model# Q361
4	ADD: TDMA OPERATION, Model# QA00580
4	ADD: ADVANCED SYSTEMS KEY – HARDWARE KEY, Model# QA01648
4	ADD: PROGRAMMING OVER P25 (OTAP), Model# G996
4	ADD: RADIO TRACE/REMOTE MONITOR, Model# H43

- 4 ADD: RADIO PACKET DATA, Model# Q947
- 4 ALT: HIGH IMPACT GREEN, Model# QA01427
- 4 RADIO PROGRAMMING, Model# SVC03SVC0115D
- 4 APX6000 IMPRES SINGLE UNIT DESKTOP CHARGER,
Model# WPLN7080A
- 4 SPARE APX6000 XE BATTERY, IMPRES LI-ION 2300 MAH IS(FM),
Model# NNTN8092A
- 4 IMPRES XE REMOTE SPEAKER MICROPHONE, GREEN,
Model# NNTN8203A
- 4 APX6000 XE LEATHER CARRY CASE, BELTLOOP,
Model# PMLN5876A
- 4 SHOULDER STRAP, Model# NTN5243A

This CAFO shall not be construed to constitute EPA's endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

26. Respondent certifies that:

- a. It is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in paragraph 25.
- b. It has inquired of the Pascagoula Fire Department whether the Pascagoula Fire Department is a party to an open federal financial assistance transaction that is funding or could fund the same activity and has been informed by the Pascagoula Fire Department that it is not a party to such a transaction.

27. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 25. If Respondent does not fully and timely complete the SEP, it shall be required to pay stipulated penalties pursuant to Paragraph 28.

28. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of FIFTEEN THOUSAND, SIX HUNDRED FIFTY-FOUR DOLLARS (\$15,654), Respondent shall pay to the United States, a stipulated penalty of the difference between \$15,654 and the actual SEP expenditure.

29. For purposes of Paragraphs 27 and 28, the determination as to whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

30. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

31. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violation of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)”

32. No later than sixty (60) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the Chemical Management & Emergency Planning Section, to the attention of Eddie Chow at the address provided above in Paragraph 23. The Report shall include the following:

(a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(b) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than \$15,654, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 25.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

33. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

34. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth in the written demand from EPA.

35. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

36. 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. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

37. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

38. This CAFO shall be binding upon the Respondent, its successors, and assigns.

39. The following individual is authorized to receive service for EPA in this proceeding:

Verne H. George
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8988

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

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VI. Effective Date

41. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Gulf Coast Cold Storage, Inc.

By: Keith E. McCreedy (Signature) Date: 8-7-15

Name: KEITH E. MCCREEDY (Typed or Printed)

Title: GENERAL MANAGER (Typed or Printed)

U.S. Environmental Protection Agency

By: Beverly H. Banister Date: 8/18/2015
Beverly H. Banister
Director

Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 20th day of August, 2015.

Tanya Floyd

Tanya Floyd
Regional Judicial Officer

THIS SECTION INTENTIONALLY LEFT BLANK

Gulf Coast Cold Storage, Inc.
Docket Number: CERCLA-04-2015-2009(b)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of, Gulf Coast Cold Storage, Inc., Docket Number: CERCLA 04-2015-2009(b), on the parties listed below in the manner indicated:

Erika White (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides and Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

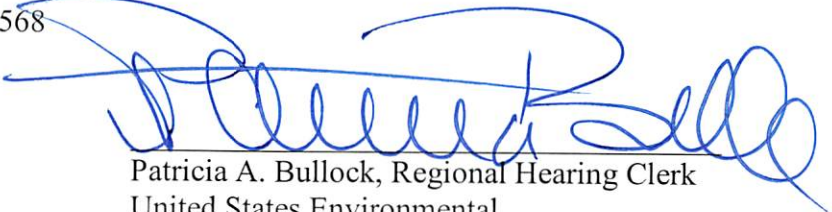
Michi Kono (Via EPA's internal mail)
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, GA 30303

Tristan Russell Armer (Certified Mail - Return Receipt Requested)
Heidelberg Steinberger Colmer & Burrow, P.A.
711 Delmas Avenue
Pascagoula, Mississippi 39568

Date:

8-20-15



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511