



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 28 2020

REPLY TO THE ATTENTION OF

ELECTRONIC SERVICE
VIA EMAIL

Chris Cook
Warehouse Manager
American Logistics Services, LLC
7900 97th Street South
Cottage Grove, Minnesota 55016

Re: American Logistics Service, LLC, Cottage Grove, Minnesota, Consent Agreement and Final Order, Docket No. EPCRA-05-2020-0007

Dear Mr. Cook:

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 February 28, 2020.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$41,272 in the manner prescribed in paragraph 58 and reference your check with the docket number EPCRA-05-2020-0007.

Your payment is due on March 30, 2020.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed document. Please direct any legal questions to Steven Kaiser, Associate Regional Counsel, at (312) 353-3804. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

cc: Steve Tomlyanovich (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:)
)
American Logistics Services, LLC)
Cottage Grove, Minnesota,)
Respondent.)

Docket No. EPCRA-05-2020-0007

Proceeding to Assess a Civil Penalty Under
Section 325(c)(1) 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 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), 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 American Logistics Services, LLC, a Minnesota limited liability company 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 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) or safety data sheet (SDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community coordinator for the local emergency planning committee (LEPC), if an LEPC exists in the state, and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state commissions, local committees, and fire departments in planning for emergencies and makes information on

chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, an MSDS or SDS.

12. 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).

13. 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.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$32,500 per day of violation for each violation that occurred after March 15, 2004 through January 12, 2009, to \$37,500 per day of violation for each violation that occurred after January 12, 2009 through November 2, 2015, 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 \$53,907 per day of violation for each violation that occurred after November 2, 2015 and for which penalties are assessed on or after August 1, 2016 but before January 15, 2017, to \$54,789 per day of violation that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2017 but before January 15, 2018, to \$55,907 per day of violation for

each violation that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018 but before February 6, 2019, and to \$57,317 per day of violation for each violation that occurred after November 2, 2015 and for which penalties are assessed on or after February 6, 2019.

Factual Allegations and Alleged Violations

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

16. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 7900 97th Street South, Cottage Grove, Minnesota (facility).

17. At all times relevant to this Complaint, Respondent was an employer at the facility.

18. 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.

19. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Sulfuric acid is classified on the Safety Data Sheets maintained at the facility as a physical or health hazard, or hazard not otherwise classified and is found in batteries used to power equipment at the facility.

21. Sulfuric acid (CAS #7664-93-9) 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).

22. Sulfuric acid (CAS #7664-93-9) is an "extremely hazardous substance" within the meaning of Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

23. Sulfuric acid (CAS #7664-93-9) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

24. Diesel fuel is classified on the Safety Data Sheets maintained at the facility as a physical or health hazard, or hazard not otherwise classified.

25. Diesel fuel (CAS #68476-34-6) 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).

26. Diesel fuel (CAS #67476-34-6) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

27. Gasoline is classified on the Safety Data Sheets maintained at the facility as a physical or health hazard, or hazard not otherwise classified.

28. Gasoline 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. Gasoline has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

30. During at least one period of time in calendar year 2015, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

31. During at least one period of time in calendar year 2016, sulfuric acid, diesel fuel and gasoline were present at the facility in amounts equal to or greater than the minimum threshold level.

32. During at least one period of time in calendar year 2017, sulfuric acid, diesel fuel, and gasoline were present at the facility in amounts equal to or greater than the minimum threshold level.

33. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid.

34. OSHA requires Respondent to prepare, or have available, an MSDS for diesel fuel.

35. OSHA requires Respondent to prepare, or have available, an MSDS for gasoline.

36. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility for calendar year 2015 a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2016.

37. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility for calendar year 2016 a completed emergency and hazardous chemical inventory form including sulfuric acid, diesel fuel, and gasoline on or before March 1, 2017.

38. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility for calendar year 2017 a completed emergency and hazardous chemical inventory form including sulfuric acid, diesel fuel, and gasoline on or before March 1, 2018.

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

40. At all times relevant to this Complaint, the Cottage Grove Fire Department was the fire department with jurisdiction over the facility.

Count 1

(EPCRA 312/Past Year/2015)

41. Complainant incorporates paragraphs 1 through 40 of this CAFO as if set forth in this paragraph.

42. Respondent was required by EPCRA Section 312 to submit to the SERC and the Cottage Grove Fire Department for calendar year 2015 a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid no later than March 1, 2016.

43. Respondent submitted to the SERC and Cottage Grove Fire Department for calendar year 2015 a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid on May 4, 2018.

44. Each day Respondent failed to submit to the SERC and Cottage Grove Fire Department for calendar year 2015 a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid by March 1, 2016, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 2

(EPCRA 312/Past Year/2016)

45. Complainant incorporates paragraphs 1 through 40 of this CAFO as if set forth in this paragraph.

46. Respondent was required to submit to the SERC and Cottage Grove Fire Department for calendar year 2016 a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, diesel fuel, and gasoline no later than March 1, 2017.

47. Respondent submitted to the SERC and Cottage Grove Fire Department for calendar year 2016 a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, diesel fuel, and gasoline on May 4, 2018.

48. Each day Respondent failed to submit to the SERC and Cottage Grove Fire Department for calendar year 2016 a completed Emergency and Hazardous Chemical Inventory

Form including sulfuric acid, diesel fuel, and gasoline by March 1, 2017, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 3

(EPCRA 312/SERC/2017)

49. Complainant incorporates paragraphs 1 through 40 of this CAFO as if set forth in this paragraph.

50. Respondent was required to submit to the SERC for calendar year 2017 a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, diesel fuel, and gasoline no later than March 1, 2018.

51. Respondent submitted to the SERC for calendar year 2017 a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, diesel fuel, and gasoline on May 4, 2018.

52. Each day Respondent failed to submit to the SERC for calendar year 2017 a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, diesel fuel, and gasoline by March 1, 2018, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 4

(EPCRA 312/Cottage Grove Fire Department)

53. Complainant incorporates paragraphs 1 through 40 of this CAFO as if set forth in this paragraph.

54. Respondent was required to submit to the Cottage Grove Fire Department for calendar year 2017 a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, diesel fuel, and gasoline no later than March 1, 2018.

55. Respondent submitted to the Cottage Grove Fire Department for calendar year 2017 a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, diesel fuel, and gasoline on May 4, 2018.

56. Each day Respondent failed to submit to the Cottage Grove Fire Department for calendar year 2017 a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, diesel fuel, and gasoline by March 1, 2018, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

57. Complainant has determined that an appropriate civil penalty to settle these alleged EPCRA violations is \$41,272. 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 its ability to continue to do business, prior history of violations, economic benefit or savings resulting from the violations and other matters as justice required. 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).

58. Within 30 days after the effective date of this CAFO, Respondent must pay the \$41,272 civil penalty to resolve the alleged 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: American Logistics Services, LLC, and the docket number
of this CAFO EPCRA-05-2020-0007

59. A transmittal letter, stating Respondent's name, the case name, Respondent's
complete address, and the case docket number, must accompany the payment. Respondent must
send a copy of the check and transmittal letter to:

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

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

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

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

61. 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.

62. 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

63. The parties consent to service of this CAFO by email at the following valid email addresses: kaiser.steven@epa.gov (for Complainant) and CCook@als3pl.com (for Respondent).

64. 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.

65. 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.

66. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

68. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

70. 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.

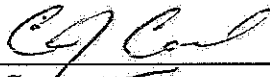
71. Each party agrees to bear its own costs and attorney's fees in this action.

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

In the Matter of: American Logistics Services, LLC., Cottage Grove, Minnesota
Docket No. EPCRA-05-2020-0007

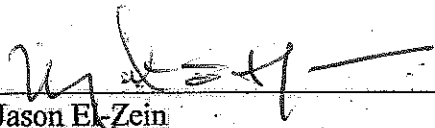
American Logistics Services, LLC, Respondent

2/19/20
Date


Chris Cook
Warehouse Manager
American Logistics Services, LLC

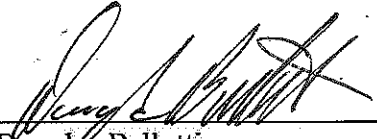
U.S. Environmental Protection Agency, Complainant

2-24-20
Date


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

*Michael S. Hans
for JSZ*

2/25/2020
Date


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

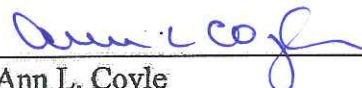
In the Matter of: American Logistics Services, LLC, Cottage Grove, Minnesota
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Final Order

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.

2/28/2020

Date



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

In the Matter of: American Logistics Services, LLC, Cottage Grove, Minnesota
Docket No. EPCRA-05-2020-0007

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 February 28, 2020 in the following manner to the addressees:

Copy by E-mail
Respondent:

Chris Cook
Warehouse Manager
American Logistics Services, LLC
7900 97th Street South
Cottage Grove, Minnesota 55016
CCook@als3pl.com


Copy by E-mail to
Attorney for Complainant:

Steven Kaiser
kaiser.steven@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: February 28, 2020



LaDawn Whitehead

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