



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

JUL 06 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sam C. Bradshaw
Chairman of the Board
American Cold Storage
3860 W. Northwest Hwy, Suite 406
Dallas, TX 75220

Re: American Cold Storage, Booneville, Indiana
Consent Agreement and Final Order
Docket No. **EPCRA-05-2009-0022**

Dear Mr. Bradshaw:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on July 6, 2009.

Please pay the EPCRA civil penalty in the amount of thirty-six thousand two-hundred sixty-nine dollars (\$36,269) in the manner prescribed in paragraphs 37 and 38, and reference your check with the number BD 2750944E024 and docket number EPCRA-05-2009-0022.

Your payment is due on August 6, 2009.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jerome Kujawa, Associate Regional Counsel, at (312) 886-6731 or "kujawa.jerome@epa.gov". Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. EPCRA-05-2009-0022
)	
American Cold Storage – North America, L.P.)	
)	
Boonville, Indiana)	Proceeding to Assess a Civil Penalty
)	Under Section 325(c)(1) and (c)(2) of the
Respondent.)	Emergency Planning and Community
)	Right-to-Know Act of 1986,
<hr/>)	42 U.S.C. § 11045(c)(1) and (c)(2)

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JUL 06 2009

Consent Agreement and Final Order
Preliminary Statement

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY.**

1. This is an administrative action commenced and concluded under Section 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) and (c)(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, Emergency Response Branch 2, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is American Cold Storage – North America, L.P., a Tennessee partnership doing business in the State of Indiana.
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 to the terms of this 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) for a hazardous chemical, to prepare and submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC), and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier 1 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 and local committees 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, MSDS.

12. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

13. 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 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations and Alleged Violations

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

15. At all times relevant to this CAFO, Respondent was an owner or operator of the

facility located at 888 American Way, Boonville, Indiana (facility).

16. At all times relevant to this CAFO, Respondent was an employer at the facility.

17. 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.

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

19. Ammonia, sulfuric acid, and lead are listed as toxic and hazardous substances under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

20. Lead CAS# 7439-92-1 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).

21. Lead CAS# 7439-92-1 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

22. Ammonia CAS# 7664-41-7 and sulfuric acid CAS# 7664-93-9 are "extremely hazardous substances" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

23. Ammonia CAS# 7664-41-7 and sulfuric acid CAS# 7664-93-9 each have a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

24. During at least one period of time in calendar year 2004, ammonia, sulfuric acid, and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

25. During at least one period of time in calendar year 2005, ammonia, sulfuric acid,

and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

26. OSHA requires Respondent to prepare, or have available, an MSDS for ammonia, sulfuric acid, and lead.

27. Respondent was required to submit to the state emergency response commission, local emergency planning committee, and fire department a completed emergency and hazardous chemical inventory form including ammonia, sulfuric acid and lead on or before March 1, 2005, for calendar year 2004.

28. Respondent was required to submit to the state emergency response commission, local emergency planning committee, and fire department a completed emergency and hazardous chemical inventory form including ammonia, sulfuric acid and lead on or before March 1, 2006, for calendar year 2005.

29. At all times relevant to this CAFO, the Indiana State Emergency Response Commission was the SERC for Indiana under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

30. At all times relevant to this CAFO, the Warrick County Local Emergency Planning Committee was the LEPC for Warrick County under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

31. At all times relevant to this CAFO, the Booneville Fire Department was the fire department with jurisdiction over the facility.

32. Respondent submitted to the SERC, LEPC, and fire Department a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid, and lead on August 15, 2006, for calendar year 2004.

33. Each day Respondent failed to submit to the SERC, LEPC, and fire department a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid, and lead after March 1, 2005, for calendar year 2004 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

34. Respondent submitted to the SERC, LEPC, and fire department a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid, and lead on August 15, 2006, for calendar year 2005.

35. Each day Respondent failed to submit to the SERC, LEPC and fire department a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid, and lead after March 1, 2006, for calendar year 2005 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

36. In consideration of American Cold Storage's willingness to settle this matter U.S. EPA has determined that an appropriate civil penalty to settle this action is thirty-six thousand two-hundred sixty-nine dollars (\$36,269).

37. Within 30 days after the effective date of this CAFO, Respondent must pay a thirty-six thousand two-hundred sixty-nine dollars (\$36,269) civil penalty for the EPCRA violations.

Payment by check

Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. postal service]

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

[for check sent by express mail]

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: In the Matter of American Cold Storage –North

America, L.P., the docket number of this CAFO and the billing document number _____

2750944E024

_____.

Electronic Funds Transfer

Respondent must pay by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read “D68010727
Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state the following: In the Matter of American Cold Storage – North America, L.P., the docket number of this CAFO and the billing document number 2750944E024.

Online Payments Using Debit or Credit Card

Respondent must pay online using ACH debit or credit card. For payments online using ACH

debit or credit card please visit www.pay.gov. Using the Search Public Forms option on the tool bar (left side of page), enter SFO 1.1 in the search field. Open the form and complete the information requested.

38. When paying by check Respondent must send with the payment, a transmittal letter stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)

U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Ruth McNamara, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

40. 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.

41. Pursuant to 31 C.F.R. § 901.9, Respondent must pay interest 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

42. This CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

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

44. Respondent certifies that it is complying with 312 of EPCRA, 42 U.S.C. § 11022.

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

46. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 311 and 312 of EPCRA.

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

48. 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.

49. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

American Cold Storage – North America, L.P., Respondent

JUNE 17, 2009
Date

Samuel C. Bradshaw
Samuel C. Bradshaw,
CEO & Chairman of the Board
American Cold Storage – North America, L.P.

U.S. Environmental Protection Agency, Complainant

July 1, 2009
Date

Beverly Kush for JEZ
Jason El-Zein, Chief
Emergency Response Branch 2
Superfund Division

7/1/09
Date

Richard C. Karl
for Richard C. Karl, Director
Superfund Division

In the Matter of:
American Cold Storage-North America, L.P., Boonville, Indiana
Docket No. EPCRA-05-2009-0022

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.

7/1/09
Date

Walter W. Karalich
for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

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U.S. ENVIRONMENTAL
PROTECTION AGENCY


**In the Matter of:
American Cold Storage, Booneville, Indiana
Docket No EPCRA-05-2009-0022**

Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number **EPCRA-05-2009-0022** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to John Simpson and Sam C. Bradshaw, American Cold Storage, by placing them in the custody of the United States Postal Service addressed as follows:

Sam C. Bradshaw,
Chairman of the Board
American Cold Storage
3860 W. Northwest Hwy, Suite 406
Dallas, TX 75220

on the 6th day of July, 2009


Ruth McNamara
U.S. Environmental Protection Agency
Region 5

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PROTECTION AGENCY**