



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
March 10, 2022

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Matthew B. Eugster
Attorney
Varnum LLP
333 North Bridge Street, NW, Suite 1700
Grand Rapids, Michigan 49504

Re: State Heat Treating Company, Grand Rapids, Michigan, Consent Agreement and Final Order, Docket No. EPCRA-05-2022-0007

Dear Mr. Eugster:

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 March 10, 2022.

Please have your client pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$50,000 in the manner prescribed in paragraph 64 and please direct your client to reference the check with the docket number EPCRA-05-2022-0007.

Your client's payment is due on April 11, 2022.

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 Justin Berchiolli, Attorney Advisor in the Office of Regional Counsel, at (312) 353-8640. Thank you for your assistance in resolving this matter.

Sincerely,

MICHAEL
HANS

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

Digitally signed by MICHAEL
HANS
Date: 2022.03.04 09:36:40
-06'00'

Enclosure

cc: Captain Kevin Sweeney, Chairperson (w/ enclosure)
State Emergency Response Commission
EMHSD/Michigan Department of State Police
Post Office Box 30634
Lansing, Michigan 48909
sweeneyk@michigan.gov

Michael Young (w/ enclosure)
State Emergency Response Commission
Michigan Department EGLE
Post Office Box 30457
Lansing, Michigan 48909
YOUNGM1@michigan.gov

Jay Eickholt (w/ enclosure)
State Emergency Response Commission
Michigan Department EGLE
Post Office Box 30457
Lansing, Michigan 48909
EickholtJ1@michigan.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. EPCRA-05-2022-0007
)	
State Heat Treating Company)	Proceeding to Assess a Civil Penalty Under
Grand Rapids, Michigan,)	Section 325(c)(1) of the Emergency Planning
)	and Community Right-to-Know Act of 1986
Respondent.)	
_____)	

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 State Heat Treating Company, a Michigan corporation doing business in the State of Michigan.

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 is 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 rights to request a hearing as provided at 40 C.F.R. § 22.15(c), to contest the allegations in this CAFO, and 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) 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, 42 U.S.C. § 110022(d), 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 substances 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, 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. § 19h10.1200(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 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 \$62,689 per day of violation for each day that occurred after November 2, 2015, and for which penalties are assessed on or after January 12, 2022.

Factual Allegations and Alleged Violations

15. Respondent is, and was at all times relevant to this CAFO, 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 CAFO, Respondent was an owner or operator of the facility located at 520 32nd Street, SE, Grand Rapids, Michigan 49548 (Facility).

17. At all times relevant to this CAFO, 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).

Quench Oil

20. Quench oil is classified as a physical or health hazard, or hazard not otherwise classified.

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

23. During at least one period of time in calendar year 2017, quench oil was present at the Facility in an amount equal to or greater than the minimum threshold level.

24. During at least one period of time in calendar year 2018, quench oil was 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 2019, quench oil was present at the Facility in an amount equal to or greater than the minimum threshold level.

26. During at least one period of time in calendar year 2020, quench oil was present at the Facility in an amount equal to or greater than the minimum threshold level.

27. OSHA requires Respondent to prepare, or have available, an MSDS or SDS for quench oil.

Anhydrous Ammonia

28. Anhydrous Ammonia is classified as a physical or health hazard, simple asphyxiant, or hazard not otherwise classified.

29. Anhydrous ammonia 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).

30. Anhydrous Ammonia is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

31. Anhydrous ammonia has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

32. During at least one period of time in calendar year 2017, anhydrous ammonia was present at the Facility in an amount equal to or greater than the minimum threshold level.

33. During at least one period of time in calendar year 2018, anhydrous ammonia was present at the Facility in an amount equal to or greater than the minimum threshold level.

34. During at least one period of time in calendar year 2019, anhydrous ammonia was present at the Facility in an amount equal to or greater than the minimum threshold level.

35. During at least one period of time in calendar year 2020, anhydrous ammonia was present at the Facility in an amount equal to or greater than the minimum threshold level.

36. OSHA requires Respondent to prepare, or have available, an MSDS or SDS for anhydrous ammonia.

Reporting Requirements

37. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Facility, a completed emergency and hazardous chemical inventory form including quench oil and anhydrous ammonia on or before March 1, 2018, for calendar year 2017.

38. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Facility, a completed emergency and hazardous chemical inventory form including quench oil and anhydrous ammonia on or before March 1, 2019, for calendar year 2018.

39. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Facility, a completed emergency and hazardous chemical inventory form including quench oil and anhydrous ammonia on or before March 1, 2020, for calendar year 2019.

40. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Facility, a completed emergency and hazardous chemical inventory form including quench oil and anhydrous ammonia on or before March 1, 2021, for calendar year 2020.

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

42. At all times relevant to this CAFO, the Kent County LEPC was the LEPC for Kent County Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

43. At all times relevant to this CAFO, the Wyoming Fire Department was the fire department with jurisdiction over the Facility.

Count 1 (EPCRA 312, Calendar Year 2017)

44. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

45. Respondent submitted to the SERC, LEPC, and the local fire department with jurisdiction over the Facility, a completed Emergency and Hazardous Chemical Inventory Form

including quench oil and anhydrous ammonia on October 29, 2021, for calendar year 2017, missing the March 1, 2018, deadline imposed by Section 312(a) of EPCRA, 42 U.S.C. § 11022(a) by three years and 244 days.

46. Each day Respondent failed to submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility a completed Emergency and Hazardous Chemical Inventory Form including quench oil and anhydrous ammonia by March 1, 2018, for calendar year 2017, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 2 (EPCRA 312, Calendar Year 2018)

47. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

48. Respondent submitted to the SERC, LEPC, and local fire department with jurisdiction over the Facility, a completed Emergency and Hazardous Chemical Inventory Form including quench oil and anhydrous ammonia on October 29, 2021, for calendar year 2018, missing the March 1, 2019, deadline imposed by Section 312(a) of EPCRA, 42 U.S.C. § 11022(a) by two years and 244 days.

49. Each day Respondent failed to submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility a completed Emergency and Hazardous Chemical Inventory Form including quench oil and anhydrous ammonia by March 1, 2019, for calendar year 2018, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 3 (EPCRA 312, Calendar Year 2019)

50. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

51. Respondent submitted to the SERC, LEPC and local fire department with

jurisdiction over the Facility, a completed Emergency and Hazardous Chemical Inventory Form including quench oil and anhydrous ammonia, on October 29, 2021, for calendar year 2019, missing the March 1, 2020, deadline imposed by Section 312(a) of EPCRA, 42 U.S.C. § 11022(a) by one year and 244 days.

52. Each day Respondent failed to submit to the SERC, LEPC, and local fire department with jurisdiction over the Facility a completed Emergency and Hazardous Chemical Inventory Form including quench oil and anhydrous ammonia by March 1, 2020, for calendar year 2019, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 4 (EPCRA 312/SERC, Calendar Year 2020)

53. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

54. Respondent submitted to the SERC, a completed Emergency and Hazardous Chemical Inventory Form including quench oil and anhydrous ammonia, on October 29, 2021, for calendar year 2020, missing the March 1, 2021, deadline imposed by Section 312(a) of EPCRA, 42 U.S.C. § 11022(a) by 244 days.

55. Each day Respondent failed to submit to the SERC, a completed Emergency and Hazardous Chemical Inventory Form including quench oil and anhydrous ammonia by March 1, 2021, for calendar year 2020, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 5 (EPCRA 312/LEPC, Calendar Year 2020)

56. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

57. Respondent submitted to the LEPC, a completed Emergency and Hazardous

Chemical Inventory Form including quench oil and anhydrous ammonia on October 29, 2021, for calendar year 2020, missing the March 1, 2021, deadline imposed by Section 312(a) of EPCRA, 42 U.S.C. § 11022(a) by 244 days.

58. Each day Respondent failed to submit to the LEPC, a completed Emergency and Hazardous Chemical Inventory Form including quench oil and anhydrous ammonia by March 1, 2021, for calendar year 2020, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 6 (EPCRA 312/fire department, Calendar Year 2020)

59. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

60. Respondent submitted to the Wyoming Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including quench oil and anhydrous ammonia, on October 29, 2021, for calendar year 2020, missing the March 1, 2020, deadline imposed by Section 312(a) of EPCRA, 42 U.S.C. § 11022(a) by 244 days.

61. Each day Respondent failed to submit to the Wyoming Fire Department a completed Emergency and Hazardous Chemical Inventory Form including quench oil and anhydrous ammonia by March 1, 2021, for calendar year 2020, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

62. Section 325(b)(1)(C) of EPCRA, §11045(b)(1)(C) requires the Administrator to consider the nature, circumstances, extent and gravity of the violations, the violator's ability to pay, prior violation history, degree of culpability, economic benefits or savings resulting from the violations (if any), and such other matters as justice may require.

63. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 325(b)(1)(C) of EPCRA, and 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), Complainant has determined the appropriate penalty to settle this action is \$50,000.

64. Within 30 days after the effective date of this CAFO, Respondent must pay a \$50,000 civil penalty for 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 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: State Heat Treating Company and the docket number of this CAFO EPCRA-05-2022-0007.

65. 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
Martinez.isidra@epa.gov

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

Justin Berchiolli (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
Berchiolli.justin@epa.gov

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

67. 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.

68. 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

69. Pursuant to 40 C.F.R. 22.6, the parties consent to service of this CAFO by email at the following valid email addresses: berchiolli.justin@epa.gov (for Complainant) and mbeugster@varnumlaw.com (for Respondent).

70. 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.

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

72. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations promulgated thereunder.

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

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

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

76. Each person signing this CAFO 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.

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

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

In the Matter of: State Heat Treating Company, Grand Rapids, Michigan
Docket No. EPCRA-05-2022-0007

State Heat Treating Company, Respondent

03-03-2022
Date



Jesse Massengill
Owner
State Heat Treating Company

In the Matter of: State Heat Treating Company, Grand Rapids, Michigan
Docket No. EPCRA-05-2022-0007

U.S. Environmental Protection Agency, Complainant

March 7, 2022


Date

Jason El-Zein Digitally signed by
Jason El-Zein
Date: 2022.03.07
07:29:48 -05'00'

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

March 7, 2022

Date

 Digitally signed by
DOUGLAS BALLOTTI
Date: 2022.03.07
11:58:09 -06'00'

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

In the Matter of: State Heat Treating Company, Grand Rapids, Michigan
Docket No. EPCRA-05-2022-0007

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: 2022.03.08
15:35:11 -06'00'

Date

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

In the Matter of: State Heat Treating Company, Grand Rapids, Michigan
Docket No. EPCRA-05-2022-0007

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 March 10, 2022 in the following manner to the addressees:

Copy by E-mail to
Attorney for Respondent: Matthew B. Eugster
mbeugster@varnumlaw.com

Copy by E-mail to
Attorney for Complainant: Justin Berchiolli
berchiolli.justin.epa.gov

Copy by E-mail to
Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: _____

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

