



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

APR 10 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David J. Parsells
Stevens & Lee
620 Freedom Business Center
Suite 200
King of Prussia, PA 19406

Re: JSP International, LLC, Consent Agreement and Final Order, Docket No.

Dear Mr. Parsells

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 APR 10 2012.

Please pay the EPCRA civil penalty in the amount of \$45,000 in the manner prescribed in paragraphs 36 and 37, and reference your check with the billing document number 2751244E011 and the docket number EPCRA-05-2012-0013.

Your payment is due on May 10, 2012.

Please feel free to contact Ginger Jager at (312) 886-0767 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jerome P. Kujawa, Associate Regional Counsel, at (312) 886-6731. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

cc: Susan Parker, MDEQ

RECEIVED
APR 10 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	
)	Docket No. EPCRA-05-2012-0013
)	
JSP International, LLC)	Proceeding to Assess a Civil Penalty
13889 W. Chicago Street)	Under Section 325(c)(1) of the Emergency
Detroit, Michigan 48228)	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 Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is JSP International, LLC, a limited liability company 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 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, community emergency coordinator for the local emergency planning committee, 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 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 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 MSDSs.

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 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 violations that occurred after March 15, 2004 through January 12, 2009.

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 13889 W. Chicago Street, Detroit, Michigan (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. Carbon dioxide is listed as a toxic and hazardous substance 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. Carbon dioxide, CAS# 124-38-9, 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).

21. Carbon dioxide, CAS# 124-38-9, has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

22. OSHA requires Respondent to prepare, or have available, an MSDS for carbon dioxide.

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

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

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

26. During at least one period of time in calendar year 2006, carbon dioxide was present at the facility in an amount equal to or greater than the minimum threshold level.

27. Respondent was required to submit to the state emergency response commission (SERC), local emergency planning committee (LEPC), and fire department on or before March 1, 2007, a completed emergency and hazardous chemical inventory form including carbon dioxide for calendar year 2006.

28. During at least one period of time in calendar year 2007, carbon dioxide was present at the facility in an amount equal to or greater than the minimum threshold level.

29. Respondent was required to submit to the state emergency response commission (SERC), local emergency planning committee (LEPC), and fire department on or before March 1, 2008, a completed emergency and hazardous chemical inventory form including carbon dioxide for calendar year 2007.

30. As of June 18, 2008, Respondent had not submitted to the SERC, LEPC, and Detroit Fire Department a completed Emergency and Hazardous Chemical Inventory Form including carbon dioxide for calendar year 2006.

31. Each day that Respondent failed to submit to the SERC, LEPC, and Detroit Fire Department a completed Emergency and Hazardous Chemical Inventory Form including carbon dioxide by March 1, 2007, for calendar year 2006 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

32. As of June 18, 2008, Respondent had not submitted to the SERC, LEPC and Detroit Fire Department a completed Emergency and Hazardous Chemical Inventory Form including carbon dioxide for calendar year 2007.

33. Each day that Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including carbon dioxide by March 1, 2008, for calendar year 2007, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

34. Each day that Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including carbon dioxide by March 1, 2008, for calendar year 2007, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

35. Each day that Respondent failed to submit to the Detroit Fire Department a completed Emergency and Hazardous Chemical Inventory Form including carbon dioxide by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of

EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

36. Complainant has determined that an appropriate civil penalty to settle this action is forty-five thousand dollars (\$45,000). 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, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considers 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).

Within 30 days after the effective date of this CAFO, Respondent must pay a \$45,000 civil penalty for the EPCRA violations 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

The check must note the following: In the Matter of: JSP International, LLC, Detroit, Michigan, the docket number of this CAFO, and the billing document number 215/244E01/00.

37. A transmittal letter, stating Respondent's name, the case title-"In the Matter of JSP International, LLC, Detroit, Michigan", Respondent's complete address, the case docket number, and the billing document 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

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

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

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

39. 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.

40. 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

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

42. 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.

43. Respondent certifies that it is complying with the requirements of Section 312 of EPCRA, 42 U.S.C. § 11022 in regards to its facility at 13889 W. Chicago Street, Detroit, Michigan.

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

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

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

47. 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.

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

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

In the Matter of: JSP International, LLC, Detroit, Michigan

Docket No.

JSP International, LLC, Respondent

2/20/12

Date

Richard C. Allaway - President

U.S. Environmental Protection Agency, Complainant

4-2-12

Date

Richard C. Karl

Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: JSP International, LLC, Detroit, Michigan

Docket No. EPCRA-05-2012-0013

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APR 10 2012

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

Final Order

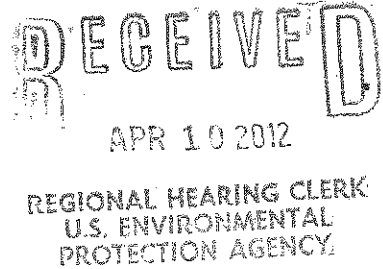
This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4-9-12
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: JSP International, LLC
Docket No. EPCRA-05-2012-0013

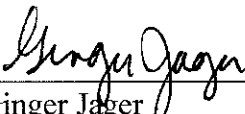


Certificate of Service

I, Ginger Jager, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

David J. Parsells
Stevens & Lee
620 Freedom Business Center
Suite 200
King of Prussia, PA 19406

on the 10th day of April, 2012



Ginger Jager
U.S. Environmental Protection Agency
Region 5