



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

AUG 21 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mary Ann Nolan
Director, Environmental Health and Safety
The Boston Beer Company
One Design Center Place, #850
Boston, Massachusetts 02210

Re: American Craft Brewery, LLC, Cincinnati, Ohio, Consent Agreement and Final Order
Docket Nos. MM-05-2014-0004 CERCLA-05-2014-0010 EPCRA-05-2014-0019

Dear Ms. Nolan:

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 August 21, 2014.

Please pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$20,230 in the manner prescribed in paragraph 77, and reference your check with the billing document number CERCLA-05-2014-0010 and the docket number 2751430B010.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$23,748 in the manner prescribed in paragraph 79, and reference your check with the docket number EPCRA-05-2014-0019.

Your payments are due on September 22, 2014.

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 Sheila McAnaney, Assistant Regional Counsel, at (312) 353-3114. Thank you for your assistance in resolving this matter.

Sincerely,

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



EPCRA-05-2014-0019

In the Matter of:) Docket Nos. MM-05-2014-0004 CERCLA-05-2014-0010
)
American Craft Brewery LLC) Proceeding to Assess a Civil Penalty Under
Cincinnati, Ohio,) Section 109(b) of the Comprehensive
) Environmental Response, Compensation and
Respondent.) Liability Act, and Section 325(b)(2) 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 109(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(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 of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. The Respondent is American Craft Brewery LLC, a limited liability company doing business in the State of Ohio.

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 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6 require any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance in any 24-hour period.

10. Pursuant to Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), the Administrator is required to promulgate regulations designating as hazardous substances such elements, compounds, mixtures, solutions, and substances which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Section 102(a) provides that the Administrator shall establish by regulation the quantity of any hazardous substance the release of which shall be reported pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603.

11. The elements and substances designated as hazardous substances by the Administrator pursuant to Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), are listed with their reportable quantities at 40 C.F.R. § 302.4, Table 302.4.

12. The term “release,” as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), includes any spilling, leaking, pumping, emitting, discharging, escaping, or disposing into the environment.

13. The term “person,” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), means “an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity”

14. The term “facility,” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), means “any building, structure, installation, equipment, pipe or pipeline”

15. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires the owner or operator of a facility to immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § U.S.C. § 9603(a).

16. The term “extremely hazardous substances,” as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), means a substance on the list described in Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

17. Pursuant to Section 302(a)(2) of EPCRA, the Administrator must promulgate and publish a list of extremely hazardous substances and their reportable quantities (as established in 40 C.F.R. § 302.4, Table 302.4) in 40 C.F.R. Part 355, Appendices A and B. 40 C.F.R. § 355.61

18. The term ‘hazardous chemical,’ as defined in Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), and, by reference Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), means any chemical as defined as hazardous by 29 U.S.C. § 1910.1200(c).

19. As defined by 29 U.S.C. § 1910.1200(c), a hazardous chemical is defined as any chemical which is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

20. The term “release,” as defined by Section 329(8) of EPCRA, 42 U.S.C. 11049(8), includes any spilling, leaking, pumping, emitting, emptying, discharging, escaping or disposing into the environment of any hazardous chemical, extremely hazardous substance, or toxic chemical.

21. The term “facility,” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), means “all 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”

22. The term “person,” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) includes “any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association”

23. Under Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1), the owner or operator of a facility must give the notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), immediately after the release, to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

24. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires the owner or operator of the facility to provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b), as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

25. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

26. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. 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 these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

27. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

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

29. Respondent is the owner or operator of the facility located at 1625 Central Parkway, Cincinnati, Ohio (facility).

30. At all times relevant to this CAFO until January 1, 2014, Samuel Adams Brewery Company, Ltd (Samuel Adams Brewery Company) was the owner or operator of the facility.

31. At all times relevant to this CAFO until January 1, 2014, Samuel Adams Brewery Company was a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

32. At all times relevant to this CAFO until January 1, 2014, Samuel Adams Brewery Company was a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

33. Samuel Adams Brewing Company merged with Respondent on January 1, 2014.

34. Respondent is the surviving entity of the merger dated January 1, 2014.

35. Respondent is the successor in liability to Samuel Adams Brewery Company.

36. At all times relevant to this CAFO, Samuel Adams Brewery Company was an employer at the facility.

37. At all times relevant to this CAFO, Samuel Adams Brewery Company was in charge of the facility.

38. At all times relevant to this CAFO, Samuel Adams Brewery Company produced, used or stored anhydrous ammonia at the facility.

39. The facility consists of a building, structure, installation, equipment, pipe or pipeline, or area where a hazardous substance has been deposited, disposed of, or placed, or otherwise come to be located.

40. The facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

41. The 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.

42. The facility is a “facility,” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

43. Anhydrous ammonia (CAS #7664-41-7) was listed by the Administrator as a hazardous substance under 40 C.F.R. Part 302, Table 302.4, and is therefore a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

44. Anhydrous ammonia is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

45. Anhydrous ammonia (CAS #7664-41-7) is a “hazardous chemical” within the meaning of Sections 311(e) and 329(5) of EPCRA, 42 U.S.C. §§ 11021(e) and 11049(5), and 29 C.F.R. § 1910.1200(c).

46. The Administrator has identified anhydrous ammonia (CAS #7664-41-7) as an “extremely hazardous substance” in 40 C.F.R. Part 355, Appendices A and B. Anhydrous ammonia is therefore an “extremely hazardous substance” as defined in Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

47. The Administrator has established a reportable quantity of 100 pounds for anhydrous ammonia, as indicated at 40 C.F.R. Part 302, Table 302.4 and at 40 C.F.R. Part 355, Appendix A.

48. On October 12, 2011 at or about 2:19 a.m., approximately 664 pounds of anhydrous ammonia spilled, leaked, pumped, emitted, discharged, or escaped into the ambient air and/or air from the facility (the release).

49. The release is a “release” as that term is defined under Section 101(22) of

CERCLA, 42 U.S.C. § 9601(22).

50. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

51. In a 24 hour time period, more than 100 pounds of anhydrous ammonia was released from the facility.

52. Samuel Adams Brewery Company had knowledge of the release on October 12, 2011 at approximately 2:19 a.m.

53. Samuel Adams Brewery Company knew or should have known immediately that the release was above the reportable quantity.

54. The release required notice to the NRC under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

55. The release was likely to affect the state of Ohio.

56. The release was likely to affect Hamilton County, Ohio.

57. The release required notice to the LEPC and the SERC under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

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

59. At all times relevant to this CAFO, the Ohio Environmental Protection Agency was the SERC for Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

60. Respondent notified the NRC of the release on June 5, 2014.

61. Samuel Adams Brewery Company failed to notify the NRC as soon as it had knowledge of the release.

62. Samuel Adams Brewery Company’s failure to immediately notify the NRC of the

release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

63. Samuel Adams Brewery Company notified the Ohio SERC of the release on March 16, 2012 at 9:14 a.m.

64. Samuel Adams Brewery Company did not notify the SERC immediately after it had knowledge of the release.

65. Samuel Adams Brewery Company's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

66. Samuel Adams Brewery Company notified the LEPC of the release on March 27, 2012 through the written follow-up report.

67. Samuel Adams Brewery Company did not immediately notify the LEPC after it had knowledge of the release.

68. Samuel Adams Brewery Company's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

69. Samuel Adams Brewery Company provided written follow-up emergency notice of the release to the Ohio SERC on March 27, 2012.

70. Samuel Adams Brewery Company did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

71. Samuel Adams Brewery Company's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

72. Samuel Adams Brewery Company provided written follow-up emergency notice of the release to the Hamilton County LEPC on March 27, 2012.

73. Samuel Adams Brewery Company did not provide the LEPC written follow-up

emergency notice of the release as soon as practicable after the release occurred.

74. Samuel Adams Brewery Company's failure to provide written follow-up emergency notice of the release to the LEPC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

75. Respondent is liable for the violations of Section 304 of EPCRA and Section 103 of CERCLA described in paragraphs 48 through 74.

Civil Penalty

76. Complainant has determined that an appropriate civil penalty to settle this action is \$20,230 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, Respondent's agreement to perform supplemental environmental projects and the actions described in paragraph 110, 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 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).

77. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,230 civil penalty for the CERCLA violation by an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

78. Complainant has determined that an appropriate civil penalty to settle this action is \$23,748 for the EPCRA violations. In determining the penalty amount, Complainant considered

the nature, circumstances, extent and gravity of the violations, Respondent's agreement to perform supplemental environmental projects, 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, including the project described in paragraph 110.

Complainant also considered U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

79. Within 30 days after the effective date of this CAFO, Respondent must pay a \$23,748 civil penalty for the EPCRA violations by an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

80. Respondent must send a notice of each payment that states Respondent's name, complete address and the case docket numbers to EPA at the following addresses when it pays the penalty:

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

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

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

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

82. If Respondent does not timely pay the civil penalty or any stipulated penalties due

under paragraph 100, 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.

83. 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.

Supplemental Environmental Projects

84. Within 60 days of the issuance of this CAFO, Respondent must complete the following supplemental environmental project (SEP) designed to protect the environment and public health by purchasing equipment for the City of Cincinnati Fire Department’s Heavy Rescue #14 to improve the department’s ability to plan for and respond to emergencies.

85. Respondent must complete the SEP as follows:

Purchase the technological and safety equipment for the City of Cincinnati Fire Department’s Heavy Rescue #14 unit, as requested by the City of Cincinnati Fire Department, and listed in the table below. The purchased equipment must serve the function of replacing outdated equipment or providing new equipment to enhance the Heavy Rescue #14 Unit’s communication capabilities and improve emergency planning and response abilities.

<u>Equipment Name</u>	<u>Quantity</u>
Compressed Air Foam Backpack	1
Fan Spray Nozzle Tip for Compressed Air Foam Backpack	1
EasyDecon 200 - 5 gallon kit	2
ConSpace Rescue Kit 3, Communication kit	1
Toxi Rae Pro, with wireless capability	2

Toxi Rae Pro, without wireless capability	4
NH ₃ Sensors	4
HCN Sensors	2
Chlorine Sensors	4
Sensor RAE 4R+, sensor conditioner	2
Multi-unit Charging station	2
32GB iPad with Wifi capability	3
Ear Mic System	6
Arizona Vortex	1
Task Force Tips, Blitzfire Oscillating Nozzle, FTF-XXV-53-HE	1

86. Respondent must spend at least \$30,375 to carry out the SEP described in paragraph 85.

87. Within 60 days of the issuance of this CAFO, Respondent must complete the following supplemental environmental project (SEP) designed to protect the environment and public health by planning and funding emergency response training for the City of Cincinnati Fire Department's Heavy Rescue #14 to improve the department's ability to plan for and respond to emergencies.

88. Respondent must complete the SEP as follows:

Provide three one-day emergency response training sessions by a qualified instructor for the City of Cincinnati Fire Department Heavy Rescue #14 unit that is designed to meet the requirements of OSHA 29 CFR 1910.120(q) for a response relating to hazmat emergencies. The session will be conducted by an outside contractor. The training must address proper management, planning and response to ammonia incidents and must include site-specific training on Respondent's facility refrigeration system and Brewery Emergency Response Plan. The training must include a "real time" drill. The training must be conducted within 60 days from the effective date of this CAFO.

89. Respondent must spend at least \$10,000 on the SEP described in paragraph 88.

90. Within 60 days of the effective date of this CAFO, Respondent must complete the following supplemental environmental project (SEP) designed to protect the environment and

public health by improving the facility's internal emergency notification systems in order to automatically notify first responders in the event that life safety alarm systems at the facility are activated. This will benefit the surrounding community and allow for improved communication and immediate response from the City of Cincinnati Fire Department's Heavy Rescue #14.

91. Respondent must complete the SEP as follows:

Update the internal fire alarm system and add a fire panel and communication system that would connect the facility directly, either to the local first responders or to a service that would then engage first responders, when any life safety alarm (including the fire, CO₂, and NH₃ alarm systems) are activated. Respondent must conduct drills and training for staff and emergency responders once the system is deployed.

92. Respondent must spend at least \$149,813 on the SEP described in paragraph 91.

93. Respondent certifies as follows:

I certify that American Craft Brewery LLC is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that American Craft Brewery LLC has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that American Craft Brewery LLC is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to U.S. EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

94. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

95. Respondent must submit a SEP completion report to U.S. EPA within 90 days of the

effective date of this CAFO. This report must contain the following information for each SEP:

- a. Detailed description of the SEP as completed, including a letter signed by the Cincinnati Fire Chief indicating what equipment was received and the dates that the equipment was delivered and the dates of the ammonia training;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete each SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEPs in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from each SEP (quantify the benefits and pollution reductions, if feasible).

96. Respondent must submit all notices and reports required by this CAFO by first class mail to James Entzminger of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 80, above.

97. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

98. Following receipt of the SEP completion report described in paragraph 95, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or

- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 100.

99. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 100, below.

100. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule, Respondent must pay a penalty of \$131,935.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amounts set forth in paragraphs 86, 89 and 92, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraphs 84, 87, and 90, Respondent must pay a penalty of \$13,194.
- d. If Respondent did not submit timely the SEP completion report required by paragraph 95, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty Per Violation Per Day</u>	<u>Period of Violation</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

101. U.S. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

102. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the methods of payment specified in paragraphs 77 and 79, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

103. Any public statement that Respondent makes referring to the SEP must include the following language, "American Craft Brewery LLC undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against American Craft Brewery LLC for violations of the Comprehensive Environmental Response, Compensation, and Liability Act and the Emergency Planning and Community Right-to-Know Act."

104. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

105. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

107. 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.

108. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304 of EPCRA, 42 U.S.C. § 11004.

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

110. Respondent will install ammonia diffusion tanks and a collection header system within six months of the effective date of this CAFO. When the project is complete, Respondent will send a certified notice of completion to James Entzminger at the address in paragraph 80 above.

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

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

113. 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.

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

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

American Craft Brewery LLC, Respondent

August 12, 2014
Date

Kathleen H. Wade
Kathleen H. Wade
Vice President, Legal
American Craft Brewery LLC

U.S. Environmental Protection Agency, Complainant

8-15-14
Date

M. J. JEFFESS MICHAEL S. HAN
ACTING CHIEF
Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

8-18-14
Date

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

In the Matter of: American Craft Brewery LLC
Docket No. MM-05-2014-0004 CERCLA-05-2014-0010 EPCRA-05-2014-0019

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.

8-18-2014

Date



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

Certificate of Service

I, James Entzminger, 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:

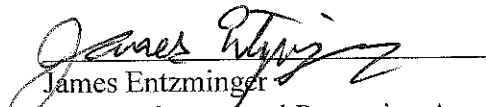
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Ms. Cindy DeWulf, Co-Chairperson
Ms. Nancy Dragani, Co-Chairperson
Jeff Beattie
Mel House
Ohio SERC

on the 21 day of august, 2014


James Entzminger
U.S. Environmental Protection Agency
Region 5