



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 08 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jan Kucharski, President
McCook Cold Storage Corporation
8801 West 50th Street
McCook, Illinois 60525

Re: McCook Cold Storage Corporation, McCook, Illinois, Consent Agreement and Final Order, Docket No. EPCRA-05-2012-0005

Dear Mr. Kucharski:

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 3, 2012.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$12,000 in the manner prescribed in paragraph 9, and reference your check with the billing document number 2751244E022 and the docket number EPCRA-05-2012-0005.

Your payment is due on September 3, 2012.

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 Cathleen Martwick, Associate Regional Counsel, at (312) 886-7166. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

cc: Jon England, Legal Counsel (w/ enclosure)
Kathy Allen (w/ enclosure)
IL SERC

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Ariel Rios Building/Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket Nos. EPCRA-05-2012-0005
)	
McCook Cold Storage Corporation)	Proceeding to Assess a Civil Penalty Under
McCook, Illinois,)	Section 325(c)(1) and (c)(2) of the Emergency
)	Planning and Community Right-to-Know Act
)	
Respondent.)	
)	

Consent Agreement and Final Order

1. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, United States Environmental Protection Agency (U.S. EPA), Region 5.

2. On February 1, 2012, U.S. EPA filed the Complaint in this action against Respondent McCook Cold Storage Corporation. The Complaint alleges that Respondent violated Section 311 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11021, by failing to submit to the Illinois State Emergency Response Commission (SERC), the Cook County, Illinois Local Emergency Planning Committee (LEPC), and McCook Fire Department a Material Safety Data Sheet or a list for anhydrous ammonia, sulfuric acid, and lead; and violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), by failing to submit to the Illinois SERC, the Cook County, Illinois LEPC, and McCook Fire Department completed Emergency and Hazardous Chemical Inventory Forms for anhydrous ammonia, sulfuric acid, and lead.

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U.S. EPA-REGION 5
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3. Respondent filed an Answer and requested a hearing under Section 325(b)(1)(B) of EPCRA, 42 U.S.C. § 11045(b)(1)(B), and Section 109(a)(2)(B) of CERCLA, 42 U.S.C. § 9609(a)(2)(B).

Stipulations

4. Respondent admits the jurisdictional and factual allegations in the Complaint.
5. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).
6. The parties consent to the terms of this CAFO.
7. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

8. In consideration of Respondent's inability to pay the penalty and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$12,000 for the EPCRA violations.

9. Within 30 days after the effective date of this CAFO, Respondent must pay a \$12,000 civil penalty for the EPCRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

for checks sent by express mail 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: McCook Cold Storage, the docket number of this CAFO (EPCRA-05-2012-0005) and the billing document number 2751244E022

10. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the checks and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

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

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

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

12. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 25, below, 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.

13. 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 Project

14. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by completing the Process Safety Management (PSM) program. Respondent's PSM program will evaluate its anhydrous ammonia refrigeration system, establish safe operating procedures, and establish mitigation steps in the event of component or system failure.

15. At its McCook, Illinois facility, Respondent must complete the SEP as follows:

By December 31, 2012, Respondent will complete the Process Safety Management Program. The program information must include:

A. Process Safety Information

1. Information pertaining to the hazards of the refrigeration system
 - a. toxicity information
 - b. permissible exposure limits
 - c. physical data
 - d. reactivity data
 - e. corrosivity data
 - f. thermal and chemical stability data
 - g. hazardous effects of inadvertent mixing.
2. Information pertaining to the technology of the process
 - a. process chemistry
 - b. maximum intended inventory
 - c. safer upper and lower limits
 - d. consequences of deviations.
3. Information pertaining to the equipment in the process
 - a. materials of construction
 - b. electrical classification
 - c. relief system design and design basis;

- o maximum allowable distance from relief valve to header or atmosphere versus actual distances, as applicable
 - o header size calculations
 - o discharge points analysis
 - o header (and sub-header) maximum allowable distance to atmosphere (or sub-header) versus actual distances, as applicable
 - d. ventilation system design
 - e. listing of design codes and standards employed
 - f. refrigeration load analysis
 - g. listing of safety systems
 - h. documentation that equipment complies with recognized and generally accepted good engineering practices.
- B. Process Hazards Analysis (PHA) including:
1. performance of the analysis
 2. creation of the PHA report
 3. creation of the itemized list of recommendations.
- C. Standard Operating Procedures including:
1. pertinent instructions:
 - a. initial startup
 - b. normal operations
 - c. temporary operations
 - d. emergency shutdown
 - e. emergency operations
 - f. normal shutdown
 - g. start up following a turnaround or after an emergency shutdown
 2. listing of operating limits
 3. listing of consequence of deviation
 4. steps required to correct (or avoid) deviation
 5. safety and health considerations
 6. properties of and hazards presented by anhydrous ammonia
 7. safety systems and their functions.
- D. Mechanical Integrity Program.

16. Respondent must spend at least \$50,000 to complete the Process Safety

Management Program.

17. Respondent certifies as follows:

I certify that McCook Cold Storage Corporation 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 McCook Cold Storage Corporation has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that McCook Cold Storage Corporation 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.

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

19. Respondent must maintain copies of the data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any data to U.S. EPA within seven days of U.S. EPA's request for the information.

20. Respondent must submit a SEP completion report to U.S. EPA by January 31, 2013. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the 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 SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

21. 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 10, above.

22. 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.

23. Following receipt of the SEP completion report described in paragraph 20, 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 25.

24. 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 25, below.

25. 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 in paragraph 15, Respondent must pay a penalty of \$36,000.
- 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 amount set forth in paragraph 16, 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 paragraph 16, Respondent must pay a penalty of \$3,600.
- d. If Respondent did not submit timely the SEP completion report, 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

26. 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.

27. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 9, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

28. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a)."

29. 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.

30. 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

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

32. 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.

33. Respondent certifies that it is complying with Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a).

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

35. This CAFO is a "final order" for purposes of 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.

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

37. 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.


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

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

**In the Matter of: McCook Cold Storage Corporation, McCook, Illinois
Docket No. EPCRA-05-2012-0005**

McCook Cold Storage Corporation, Respondent

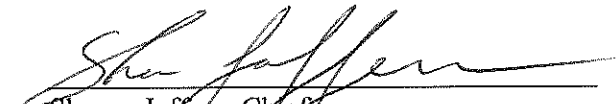
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Date



Jan Kucharski
President
McCook Cold Storage Corporation

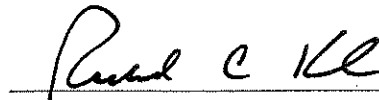
U.S. Environmental Protection Agency, Complainant

8/1/12
Date



Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

8-1-12
Date




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

In the Matter of: McCook Cold Storage Corporation, McCook, Illinois
Docket No. EPCRA-05-2012-0005

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.

8-2-12
Date



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

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In the Matter of: McCook Cold Storage Corporation, McCook, Illinois
Docket No. EPCRA-05-2012-0005

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, and mailed a 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:

Mr. Jan Kucharski, President
McCook Cold Storage Corporation
8801 West 50th Street
McCook, Illinois 60525

Mr. Lloyd M. Sonenthal
Registered Agent for
McCook Cold Storage Corporation
70 West Madison Street, Suite 400
Chicago, Illinois 60602

I also certify that I mailed a copy of the CAFO by first-class mail, addressed as follows:

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Ariel Rios Building/Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

on the 3 day of August, 2012


James Entzminger
U.S. Environmental Protection Agency
Region 5

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