

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

The Home City Ice Company
Cincinnati, Ohio

Respondent.

Docket Nos.

CERCLA-05-2025-0003

EPCRA-05-2025-0003

Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation and
Liability Act, and Section 325(b)(2) of the
Emergency Planning and Community Right-
to-Know Act of 1986Consent 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), 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 Manager of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5.

3. Respondent is The Home City Ice Company, an Ohio corporation, doing business in the State of Illinois.

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 or alleged violations 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. Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires 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.

10. 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 the 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.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must 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. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility 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.

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

14. 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. § 1910.1200(c).

15. 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.

16. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA,

42 U.S.C. § 11045(b)(2), and 40 C.F.R. Part 19 authorize U.S. EPA to assess a civil penalty of up to \$69,733 per day of violation, for violations of CERCLA Section 103 and EPCRA Section 304, that occurred after November 2, 2015, and for which penalties are assessed on or after December 27, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

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

19. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 3600 W. 59th Street, Chicago, Illinois, 60629 (the “Facility”).

20. At all times relevant to this CAFO, Respondent was in charge of the Facility.

21. Respondent’s Facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

22. Respondent’s Facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

23. 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.

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

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

26. Anhydrous ammonia CAS #7664-41-7 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).

27. At all times relevant to this CAFO, anhydrous ammonia was produced, used or stored at Respondent’s Facility.

28. Anhydrous ammonia CAS #7664-41-7 is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

29. Anhydrous ammonia CAS #7664-41-7 is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

30. Anhydrous ammonia CAS #7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

31. On July 27, 2023, at or about 4:34 a.m. CDT, a release occurred from Respondent’s Facility of anhydrous ammonia (the “Release”).

32. It was later determined that approximately 6,000 pounds of anhydrous ammonia was emitted into the air during the Release.

33. In a 24-hour time period, the Release of anhydrous ammonia exceeded 100 pounds.

34. The Release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

36. Respondent first had knowledge of the Release on July 27, 2023 at approximately 4:34 a.m. CDT when ammonia odors were detected and the Chicago Fire Department arrived to

the Facility and began responding to the Release at this time.

37. The Release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

38. The Release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

39. The Release was likely to affect Illinois.

40. At all times relevant to this CAFO, the Illinois Emergency Management Agency was the SERC for Illinois under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

41. The Release was likely to affect the city of Chicago.

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

43. Respondent notified the NRC of the Release on July 27, 2023, at 9:00 a.m. CDT.

44. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the Release.

45. Respondent'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).

46. Respondent had not provided notice of the Release to the Illinois SERC, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), prior to submittal of the written follow-up emergency notice on September 13, 2023.

47. Respondent did not immediately notify the SERC after Respondent had knowledge of the Release.

48. Respondent'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).

49. Respondent had not provided notice of the Release to the LEPC, as described in

Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), prior to submittal of the written follow-up emergency notice on September 13, 2023.

50. Respondent did not immediately notify the LEPC after Respondent had knowledge of the Release.

51. Respondent'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).

52. Respondent provided written follow-up emergency notice of the Release to the SERC on September 13, 2023.

53. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the Release occurred.

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

55. Respondent provided written follow-up emergency notice to the LEPC on September 13, 2023.

56. Respondent did not provide the LEPC with written follow-up emergency notice of the Release as soon as practicable after the release occurred.

57. Respondent's failure to provide written follow-up emergency notice 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).

Civil Penalty

58. Complainant has determined that the combined appropriate civil penalty to settle this action is \$163,475. Complainant has determined that \$32,695 of the \$163,475 is an appropriate

civil penalty to settle this action for the alleged CERCLA violations. Complainant has determined that \$130,780 of the \$163,475 is an appropriate civil penalty to settle this action for the alleged EPCRA violations. In determining the penalty amounts, 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 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").

59. Respondent agrees to pay separate civil penalties in the amount of \$32,695 for the alleged CERCLA (Superfund) violation and \$130,780 for the alleged EPCRA violations (Assessed Penalties) within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk.

60. Respondent shall pay the Assessed Penalties and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the U.S. EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

61. When making a payment, Respondent shall:

- a. Identify CERCLA payment with Respondent's name and the docket number of this Agreement, CERCLA-05-2025-0003, as well as the billing document number, 2752530B003, for the CERCLA payment.
- b. Identify EPCRA payment with Respondent's name and the docket number of this Agreement, EPCRA-05-2025-0003.
- c. Concurrently with any payment or within 24 hours of any payment, Respondent

shall serve proof of such payment to the following person(s):

Regional Hearing Clerk
R5hearingclerk@epa.gov

Ginger Jager
jager.ginger@epa.gov

Elyse Voyer
voyer.elyse@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to U.S. EPA requirements, in the amount due, and identified with the appropriate docket number, Respondent’s name, and billing document number for the CERCLA payment.

62. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalties per this Agreement, U.S. EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalties, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalties are paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalties are not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalties as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the IRS large corporate underpayment rate, any lower rate would fail to provide Respondents adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover U.S. EPA’s costs of processing and handling overdue debts. If Respondent fails to pay

the Assessed Penalties in accordance with this Agreement, U.S. EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalties as well as any accrued interest, penalties, and other charges are paid in full.

- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalties, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

63. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalties, interest, or other charges and penalties per this Agreement, U.S. EPA may take additional actions. Such actions U.S. EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

64. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

65. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to

this Agreement shall not be deductible for purposes of federal taxes.

66. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, U.S. EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that U.S. EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” U.S. EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide U.S. EPA with sufficient information to enable it to fulfill these obligations, U.S. EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email their completed Form W-9 to EPA’s Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and U.S. EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

General Provisions

67. The parties consent to service of this CAFO by email at the following valid email addresses: voyen.elyse@epa.gov (for Complainant) and ckahn@fbtlaw.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

68. In accordance with 40 C.F.R. § 22.18(c), 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. For the avoidance of doubt, this CAFO does not resolve any liability for any violations of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

69. 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.

70. Respondent certifies that it is currently complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004 with respect to the Facility.

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

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

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

74. 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.

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

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

In the Matter of: The Home City Ice Company, Cincinnati, Ohio
Docket Nos. CERCLA-05-2025-0003
EPCRA-05-2025-0003

The Home City Ice Company, Cincinnati, Ohio, Respondent

1/6/2025

Date



Jason Niewoehner
Chief Operations Officer
The Home City Ice Company

U.S. Environmental Protection Agency, Complainant

Mark Durno
Manager, Emergency Response Branch 1
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

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

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