

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA REGION 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

2012 MAR -7 PM 2:15

IN THE MATTER OF) DOCKET NO. EPCRA-05-2012-0005
)
MC COOK COLD STORAGE CORPORATION) Proceeding to Assess a Civil Penalty Under
MC COOK, ILLINOIS) Sections 325(c)(1) and (c)(2) of the
) Emergency Planning and Community
) Right-to-Know Act of 1986
Respondent)

ANSWER TO THE COMPLAINT AND REQUEST FOR HEARING

Now comes the Respondent, MC COOK COLD STORAGE CORPORATION, an Illinois Corporation, by and through its attorneys, LLOYD M. SONENTHAL, LTD., and in response to the allegations of the Complaint, says as follows:

REQUEST FOR HEARING

The Respondent, MC COOK COLD STORAGE CORPORATION, contests material facts alleged in this Complaint, as will hereinafter be set forth with particularity, and contests the appropriateness of any penalty amount, as well as the computation thereof, and hereby requests and evidentiary hearing before an Administrative Law Judge as provided for in the Consolidated Rules, 40 CFR Ch. 1, Part 22, Subparts A through and including I.

ANSWER

1. The Respondent admits the allegations of paragraph 1.
2. The Respondent lacks sufficient knowledge to admit or deny the allegations of paragraph 2, and will therefore deny, and demand strict proof thereof at time of hearing.
3. The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) is a written

document, an Act of Congress found in the United States Code, Title 42, and as such, it “speaks for itself.” Respondent should not be required to validate Complainant’s interpretation of this written Act of Congress, or any section thereof, and therefore Respondent will deny the allegations of Paragraph 3 as they relate to the content of this Act of Congress.

4. Respondent adopts the answer to Allegation number 3 as and for its answer to Allegation number 4, as if the same were hereinafter set for verbatim (amending “Paragraph 3” in the last line to read “Paragraph 4”).

5. Respondent adopts the answer to Allegation number 3 as and for its answer to Allegation number 5, as if the same were hereinafter set for verbatim (amending “Paragraph 3” in the last line to read “Paragraph 5”).

6. The allegations of Paragraph 6 are not fact allegations, they are (1) presumptions as the mind of Congress in enacting the cited section, speculating on the purpose or presumed benefit thereof, and, (2), conclusionary supposition conjecture and guess (presumably advanced good faith) as to events which “could” occur, and the Respondent will deny.

7. The cited Regulations from the Code of Federal Regulations are found in written documents, and the written documents speak for themselves so Respondent will neither admit nor deny the allegation of Paragraph 7, and let the Regulations speak for themselves, but to the extent the written documents impose regulatory duties on Respondent, Respondent avers it believe it complies..

8. The cited Regulations from the Code of Federal Regulations are found in written documents, and the written documents speak for themselves so Respondent will neither admit nor deny the allegation of Paragraph 7, and let the Regulations speak for themselves.

ANSWER TO THE GENERAL ALLEGATIONS

9. Respondent admits the allegations of paragraph 9.
10. Respondent admits it is a tenant in the facility located at 8801 West 50th Street, Mc Cook, Illinois, but denies the balance of the allegations of paragraph 10..
11. Respondent admits it is an employer.
12. Respondent denies the allegations of paragraph 12 as it relates to “Respondent’s facility,” and Complainant’s assertion the enumerated components are owned and operated by the same person, and adopts and restates its answer to paragraph 10.
13. Respondent admits the definition of facility found at section 329(4) of EPCRA includes the cold storage facility at 8801 W. 50th Street, Mc Cook, Illinois.
14. - 24. Respondent admits the allegations of paragraph 14 through paragraph 24.
25. - 29. Respondent admits the allegations of paragraph 25 through paragraph 29.
30. The OSHA regulations found in Title 29 of the Code of Federal Regulations is a written document, and as such speaks for itself, but to the extent the regulation imposed a regulatory duty on Respondent, Respondent believes it complied therewith.
31. Respondent denies the allegations of paragraph 31, and the specific date therein, and avers the section requires the MSDS documents are to be submitted or be available (see 311(d)(1)(B)), and Respondent believes they were available.
32. - 35. Respondent admits the allegations of paragraph 32 through paragraph 35.
36. - 38. Respondent admits the allegations of paragraph 36 through paragraph 38.

ANSWER TO COUNT 1

39. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as

its answer to paragraph 39 of Count 1, as if the same were set forth herein verbatim.

40. Respondent denies the allegations of paragraph 40 on the basis it believes an MSDS for the specified chemical was and is available (see 311(d)(1)(B)).

41. Respondent denies the allegations of paragraph 41 and avers EPCRA Sec. 311(d)(1)(B) provides “shall be provided...3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.”

ANSWER TO COUNT 2

42. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 42 of Count 2, as if the same were set forth herein verbatim.

43. Respondent denies the allegations of paragraph 43 on the basis it believes an MSDS for the specified chemical was and is available (see 311(d)(1)(B)).

44. Respondent denies the allegations of paragraph 44 and avers EPCRA Sec. 311(d)(1)(B) provides “shall be provided.....3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.”

ANSWER TO COUNT 3

45. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 45 of Count 3, as if the same were set forth herein verbatim.

46. Respondent denies the allegations of paragraph 46 on the basis it believes an MSDS for the specified chemical was and is available (see 311(d)(1)(B)).

47. Respondent denies the allegations of paragraph 47 and avers EPCRA Sec. 311(d)(1)(B)

provides “shall be provided....3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.”

ANSWER TO COUNT 4

48. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 48 of Count 4, as if the same were set forth herein verbatim.

49. Respondent denies the allegations of paragraph 49 on the basis it believes an MSDS for the specified chemical was and is available (see 311(d)(1)(B)).

50. Respondent denies the allegations of paragraph 50 and avers EPCRA Sec. 311(d)(1)(B) provides “shall be provided....3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.”

ANSWER TO COUNT 5

51. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 51 of Count 5, as if the same were set forth herein verbatim.

52. Respondent denies the allegations of paragraph 52 on the basis it believes an MSDS for the specified chemical was and is available (see 311(d)(1)(B)).

53. Respondent denies the allegations of paragraph 53 and avers EPCRA Sec. 311(d)(1)(B) provides “shall be provided....3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.”

ANSWER TO COUNT 6

54. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 54 of Count 6, as if the same were set forth herein verbatim.

55. Respondent denies the allegations of paragraph 55 on the basis it believes an MSDS for the specified chemical was and is available (see 311(d)(1)(B)).

56. Respondent denies the allegations of paragraph 56 and avers EPCRA Sec. 311(d)(1)(B) provides "shall be provided....3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act."

ANSWER TO COUNT 7

57. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 57 of Count 7, as if the same were set forth herein verbatim.

58. Respondent denies the allegations of paragraph 58 on the basis it believes an MSDS for the specified chemical was and is available (see 311(d)(1)(B)).

59. Respondent denies the allegations of paragraph 59 and avers EPCRA Sec. 311(d)(1)(B) provides "shall be provided....3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act."

ANSWER TO COUNT 8

60. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 60 of Count 8, as if the same were set forth herein verbatim.

61. Respondent denies the allegations of paragraph 61 on the basis it believes an MSDS for the specified chemical was and is available (see 311(d)(1)(B)).

62. Respondent denies the allegations of paragraph 62 and avers EPCRA Sec. 311(d)(1)(B) provides “shall be provided....3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.”

ANSWER TO COUNT 9

63. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 63 of Count 9, as if the same were set forth herein verbatim.

64. Respondent denies the allegations of paragraph 64 on the basis it believes an MSDS for the specified chemical was and is available (see 311(d)(1)(B)).

65. Respondent denies the allegations of paragraph 65 and avers EPCRA Sec. 311(d)(1)(B) provides “shall be provided....3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.”

ANSWER TO COUNT 10

66. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 66 of Count 10, as if the same were set forth herein verbatim.

67. Respondent admits the completed Emergency and Hazardous Chemical Inventory Form was not submitted timely.

68. Respondent denies the legal conclusion alleged by Complainant.

ANSWER TO COUNT 11

69. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 69 of Count 11, as if the same were set forth herein verbatim.

70. Respondent admits the completed Emergency and Hazardous Chemical Inventory Form was not submitted timely.

71. Respondent denies the legal conclusion alleged by Complainant.

ANSWER TO COUNT 12

72. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 72 of Count 12, as if the same were set forth herein verbatim.

73. Respondent admits the completed Emergency and Hazardous Chemical Inventory Form was not submitted timely.

74. Respondent denies the legal conclusion alleged by Complainant.

ANSWER TO COUNT 13

75. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 75 of Count 13, as if the same were set forth herein verbatim.

76. Respondent admits the completed Emergency and Hazardous Chemical Inventory Form was not submitted timely.

77. Respondent denies the legal conclusion alleged by Complainant.

ANSWER TO COUNT 14

78. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 78 of Count 14, as if the same were set forth herein verbatim.

79. Respondent admits the completed Emergency and Hazardous Chemical Inventory Form was not submitted timely.

80. Respondent denies the legal conclusion alleged by Complainant.

ANSWER TO COUNT 15

81. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 81 of Count 15, as if the same were set forth herein verbatim.

82. Respondent admits the completed Emergency and Hazardous Chemical Inventory Form was not submitted timely.

83. Respondent denies the legal conclusion alleged by Complainant.

ANSWER TO COUNT 16

84. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 84 of Count 16, as if the same were set forth herein verbatim.

85. Respondent admits the completed Emergency and Hazardous Chemical Inventory Form was not submitted timely.

86. Respondent denies the legal conclusion alleged by Complainant.

ANSWER TO COUNT 17

87. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 87 of Count 17, as if the same were set forth herein verbatim.

88. Respondent admits the completed Emergency and Hazardous Chemical Inventory Form was not submitted timely.

89. Respondent denies the legal conclusion alleged by Complainant.

ANSWER TO COUNT 18

90. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 90 of Count 18, as if the same were set forth herein verbatim.

91. Respondent admits the completed Emergency and Hazardous Chemical Inventory Form was not submitted timely.

92. Respondent denies the legal conclusion alleged by Complainant.

ANSWER TO COUNT 19

93. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 93 of Count 19, as if the same were set forth herein verbatim.

94. Respondent admits the completed Emergency and Hazardous Chemical Inventory Form was not submitted timely.

95. Respondent denies the legal conclusion alleged by Complainant.

ANSWER TO COUNT 20

96. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 96 of Count 20, as if the same were set forth herein verbatim.

97. Respondent admits the completed Emergency and Hazardous Chemical Inventory Form was not submitted timely.

98. Respondent denies the legal conclusion alleged by Complainant.

ANSWER TO COUNT 21

99. Respondent adopts and restates its answers to paragraphs 1 through 38 of this Complaint as its answer to paragraph 99 of Count 21, as if the same were set forth herein verbatim.

100. Respondent admits the completed Emergency and Hazardous Chemical Inventory Form was not submitted timely.

101. Respondent denies the legal conclusion alleged by Complainant.

ANSWER TO PROPOSED EPCRA PENALTY

102. The cited provisions of the Act and Code of Federal Regulations are written documents.

Written documents speak for themselves. No answer is necessary, and Respondent makes none,

but will deny any legal conclusions inferred or averred by Claimant derived or alleged to be derived from the cited Acts or Regulations.

103. The cited provisions of the Act and Code of Federal Regulations are written documents. Written documents speak for themselves. No answer is necessary, and Respondent makes none, but will deny any legal conclusions inferred or averred by Claimant derived or alleged to be derived from the cited Acts or Regulations.

104. Respondent contends it is entitled to judgment as a matter of law as to Counts 1 through and including 9 for the reason Section 311 provides the option of having the MSDS available, and Respondent believe each MSDS sheet for each enumerated Chemical was or is available. Respondent contests the appropriateness of the penalty amounts, Count 1 through 21, and in support thereof states as follows: (A) Respondent lacks the ability to pay the alleged penalty amount, as will be demonstrated to the Hearing Officer at the requested Evidentiary Hearing, based upon the financial statements of the Respondent, the current business environment and business outlook for Cold Storage facilities in the defined Market Respondent does business in. Respondent believes, and avers the proofs will show that the proposed fine will cause the Respondent to lose its financing, its line of credit and it will be crippled thereby, causing it to either seek protection under the provisions of the United States Bankruptcy Code, or close its doors, causing numerous employees to become unemployed. (B) On information and belief, Complainant evaluated Respondent's ability to pay us ABEL, the Agency's computer model, or some other computer modeled financial analysis software. Such software does not "model" the concerns and trepidation of Respondent's bank, and the bank officers employed therein who, Respondent verily believes, will pull its credit line and call its Note due if Respondent is fined

the amounts proposed by Complainant, which will necessarily lead to Respondent filing for protection under the United States Bankruptcy Code, or close its doors, causing numerous employees to become unemployed. (C) Respondent believes it may be unfairly being penalized as a "repeat violator," based upon the nature of the allegations of this Complaint, and Respondent will offer evidence at the time of any Hearing on this matter, why Respondent shall be treated, if at all, as a first offender (D) Respondent believes it may be assessed at Level II, as to the Degree of Culpability, whereas Respondent lacked sufficient knowledge of the potential hazard allegedly created by its conduct, if any there may be, and without sufficient knowledge lacked "knowing control" over the situation to prevent an occurrence of an alleged violation. (E) No economic Benefit or Savings flowed to the Respondent from the alleged noncompliance. The alleged non-compliance or failure to report, all of which has been remedied, all reports having been made, are tasks performed by salaried individuals employed directly by Respondent. No additional salary costs were incurred to make said employees familiar with the Rules or to make them familiar with the manner and method of filing the completed Emergency and Hazardous Chemical Inventory Form, so no economic benefit or savings would be realized by non-compliance. (F) The proposed penalties are aggregated and without specificity as to which facts and circumstances were applied to the matrixes, so the Respondent cannot fully and appropriately assess the proposed penalty to determine whether (as alleged in paragraph 105 hereafter) said proposed penalty was properly computed consistent with the Enforcement Response Policy dated September 30, 1999, and therefore will deny same, each and every one Counts 1 through 21.

105. Respondent will deny the allegations of paragraph 105, and as and for additional answer to paragraph 105, adopt and re-state paragraph 104 as if the same were set forth verbatim.

Mc Cook Cold Storage Corporation
By One of its Attorneys



Lloyd M. Sonenthal

CERTIFICATE OF SERVICE

I, LLOYD SONENTHAL, an attorney, and attorney-in-fact for the Respondent, certify I received the Complaint on February 7, 2012, that I was served with the Complaint as Registered Agent of the Respondent (that the envelope was mis-addressed to Suite 3700, and I office in Suite 400, which has been the office of the Registered Agent since August, 2010), and I personally hand delivered and filed an Answer to the Complaint and Request for Hearing (an original and one copy thereof), with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, to wit: Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and served a copy thereof on designated Counsel Cathleen Martwick, by mailing a copy to her before 3:00 p.m, in an envelope addressed to Cathleen Martwick (C14J), Office of the Regional Counsel U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, with First Class Postage affixed and depositing same in the United States Postal Service depository at 70 W. Madison Street, Chicago, Illinois, on the 7th day of March, 2012.



Lloyd M. Sonenthal

LLOYD M. SONENTHAL (A.R.D.C. 2674882)
LLOYD M. SONENTHAL, LTD.
70 W. Madison Street, Suite 400
Chicago, Illinois 60602
Tel (312) 553-0523 -- FAX (312) 553-1373