

10/15/2009 10:22 AM

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029**

In the Matter of:)	
)	
The Pond, Inc.	)	U.S. EPA Docket Nos: CERC-03-2009-
101 John F. Campbell Drive	)	0084, EPCRA-03-2009-0084
Newark, Delaware 19711,)	
)	
Respondent)	
)	
The Pond Ice Arena)	
101 John F. Campbell Drive)	
Newark, Delaware 19711,	)	CONSENT AGREEMENT AND
	)	FINAL ORDER
Facility.)	
)	
)	

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-to-Know Act, as amended, ("EPCRA"), 42 U.S.C. § 11045, and under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, ("Part 22"). The President has delegated his authority under Section 109 of CERCLA, 42 U.S.C. § 9609, to the Administrator. The Administrator has delegated that authority and the authority delegated to him under Section 325 of EPCRA, 42 U.S.C. § 11045, to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement ("CA") and Final Order (referred to collectively herein as "CAFO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.

FINDINGS OF FACT

1. The Pond, Inc. ("Respondent") is a Delaware corporation, with its principal place of business located at 101 John F. Campbell Drive in Newark, Delaware.

2. As a corporation, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. § 302.3, and Section 320(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. §§ 355.20 and 370.2.

3. At all times relevant to this CAFO, Respondent has been in charge of, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), The Pond Ice Arena, an ice skating facility located at 101 John F. Campbell Drive in Newark, Delaware, ("Facility"), with an SIC Code of 7999 (amusement and recreation services, NEC), and a NAICS Code of 713940 (fitness and recreational sports center).

4. At all times relevant to this CAFO, Respondent has owned and operated, within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022, the Facility.

5. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. §§ 355.20, 370.2.

6. During calendar years 2004, 2005, and 2006, the Facility stored approximately one thousand (1,000) pounds of anhydrous ammonia, Chemical Abstract Services Number 7664-41-7, in its two compressors, which were used to cool two rinks' ice surfaces.

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present a substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility, as soon as he or she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in quantities equal to, or greater than, the RQ, to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), of such release.

9. Sections 304(a) and (b) of EPCRA, 42 U.S.C. §§ 11004(a) and 11004(b), as

implemented by 40 C.F.R. § 355.40(a) and (b), require, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored, to notify the State Emergency Response Commission (“SERC”) and the Local Emergency Planning Committee (“LEPC”) immediately following a release of a hazardous substance or an extremely hazardous substance (“EHS”) in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.

10. Anhydrous ammonia is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, and an extremely hazardous substance (“EHS”) as defined by Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), 40 C.F.R. § 355.20, and 29 C.F.R. § 1910.1200(c), with an RQ of one hundred (100) pounds, as listed in 40 C.F.R. § 302.4 and 40 C.F.R. Part 355, Appendices A and B.

11. Beginning on or about August 6, 2006, at or about 2:00 p.m., an amount equal to or greater than the RQ of anhydrous ammonia was released from the Respondent’s Facility (the “Release”) during maintenance activities on Compressor #2.

12. The release lasted approximately two hours and thirty minutes.

13. At 10:30 a.m. on August 7, 2006, Respondent notified the National Response Center that three hundred (300) pounds of anhydrous ammonia had been released from the Facility.

14. At 10:43 a.m. on August 7, 2006, the Facility notified the LEPC that three hundred (300) pounds of anhydrous ammonia had been released from the Facility.

15. On August 14, 2007, EPA conducted a CERCLA Section 103/EPCRA Sections 302-312 Inspection of the Facility.

16. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility required to prepare or have available a Material Safety Data Sheet (“MSDS”) for a hazardous chemical in accordance with the Occupational Safety and Health Administration (“OSHA”) Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time during a calendar year in a quantity equal to or greater than its applicable minimum threshold for reporting (“MTL”) or threshold planning quantity (“TPQ”), established by 40 C.F.R. § 370.10(a), to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form (“Chemical Inventory Form”) identifying the hazardous chemical and providing the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

17. Pursuant to 40 C.F.R. § 370.20(b)(1), the MTL for anhydrous ammonia is 500 pounds.

18. The SERC for the Facility is, and has been at all times relevant to this CAFO, the Delaware Department of Natural Resources and Environmental Control, located at 156 South State Street in Dover, Delaware.

19. The LEPC for the Facility is, and has been at all times relevant to this CAFO, the New Castle County LEPC, Office of Emergency Preparedness, 87 Reads Way, in New Castle, Delaware.

20. The local fire department for the Facility is, and has been at all times relevant to this CAFO, the Aetna Hose, Hook and Ladder Company, located at 31 Academy Street, in Newark, Delaware.

21. At all times relevant to this CAFO, Respondent was a person engaged in a business where chemicals were used, distributed, or produced for use or distribution.

22. At all times relevant to this CAFO, Respondent was an “employer” as that term is defined at 29 U.S.C. § 1910.1200(c).

23. At all times relevant to this CAFO, Respondent was required to have MSDSs at its Facility for each hazardous chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).

24. At all times relevant to this CAFO, Respondent was the owner or operator of a facility that is required to prepare or have available MSDSs for hazardous chemicals under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

**EPA’S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA**

25. The findings of fact contained in Paragraphs 1 through 24 of this CAFO are incorporated by reference herein as though fully set forth at length.

26. The Release from Respondent’s Facility constitutes a release of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

27. The Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10), and 40 C.F.R. § 302.3.

28. Respondent knew or should have known of the Release of anhydrous ammonia

from the Facility, in amounts equal to or exceeding its RQ, on August 6, 2006.

29. Respondent did not immediately notify the NRC of the Release, as soon as the Respondent knew or should have known of the Release of anhydrous ammonia from the Facility in an amount equal to or in excess of its applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

EPA'S CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 103 OF CERCLA

30. Respondent's failure to notify the NRC immediately of the Release, as soon as the Respondent knew or should have known of the Release of anhydrous ammonia from the Facility in an amount equal to or in excess of its applicable RQ, is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

EPA'S FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 304 OF EPCRA

31. The findings of fact contained in Paragraphs 1 through 30 of this CAFO are incorporated by reference herein as though fully set forth at length.

32. The Release of anhydrous ammonia from the Facility constitutes a release of an EHS in a quantity equal to or exceeding its RQ.

33. The Release of anhydrous ammonia required immediate notification of the LEPC pursuant to Sections 304(a) and (b) of EPCRA, 42 U.S.C. §§ 11004(a) and 11004(b), and 40 C.F.R. § 355.40(a) and (b).

34. Respondent knew or should have known of the Release of anhydrous ammonia from the Facility in amounts equal to or exceeding its RQ on August 6, 2006.

35. Respondent did not immediately notify the LEPC of the Release of anhydrous ammonia, as soon as Respondent knew or should have known that a release of an EHS had occurred at the Facility in an amount equal to or exceeding its RQ, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a), (b), and 40 C.F.R. § 355.40(a) and (b).

EPA'S CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 304 OF EPCRA

36. Respondent's failure to notify the LEPC immediately of the Release, as soon as the Respondent knew or should have known of the Release of anhydrous ammonia from the

Facility in an amount equal to or in excess of its applicable RQ, is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 125 of EPCRA, 42 U.S.C. § 11045.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2006**

37. The findings of fact contained in Paragraphs 1 through 36 of this CAFO are incorporated by reference herein as though fully set forth at length.

38. During calendar year 2006, Respondent had present at its Facility one thousand (1,000) pounds of anhydrous ammonia, a quantity greater than its MTL.

39. By March 1, 2007, Respondent was required to submit to the SERC, LEPC, and the local fire department Chemical Inventory Forms identifying anhydrous ammonia as present at the Facility during calendar year 2006 in quantities greater than its MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the chemical.

40. Respondent failed to submit Chemical Inventory Forms to the SERC, the LEPC and the local fire department by March 1, 2007, for calendar year 2006.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2006**

41. Respondent's failure to submit complete and accurate Chemical Inventory Forms for calendar year 2006 for the Facility to the SERC, the LEPC and the local fire department by March 1, 2007, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2005**

42. The findings of fact contained in Paragraphs 1 through 41 of this CAFO are incorporated by reference herein as though fully set forth at length.

43. By March 1, 2006, Respondent was required to submit to the SERC, LEPC, and the local fire department Chemical Inventory Forms identifying anhydrous ammonia as present at the Facility during calendar year 2005 in quantities greater than its MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the chemical.

44. Respondent failed to submit Chemical Inventory Forms to the SERC, the LEPC

and the local fire department for the Facility by March 1, 2006, for calendar year 2005.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2005**

45. Respondent's failure to submit complete and accurate Chemical Inventory Forms for calendar year 2005 for the Facility to the SERC, the LEPC and the local fire department by March 1, 2006, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**EPA'S FINDINGS OF FACT RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2004**

46. The findings of fact contained in Paragraphs 1 through 45 of this CAFO are incorporated by reference herein as though fully set forth at length.

47. By March 1, 2005, Respondent was required to submit to the SERC, LEPC, and the local fire department Chemical Inventory Forms identifying anhydrous ammonia as present at the Facility during calendar year 2004 in quantities greater than its MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about the chemical.

48. Respondent failed to submit Chemical Inventory Forms to the SERC, the LEPC and the local fire department for the Facility by March 1, 2005, for calendar year 2004.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 312 OF EPCRA – CALENDAR YEAR 2004**

49. Respondent's failure to submit to the SERC, LEPC, and the local fire department by March 1, 2005, complete and accurate Chemical Inventory Forms for the Facility for calendar year 2004, constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

50. In full and final settlement and resolution of all allegations referenced in the foregoing EPA's findings of Fact and EPA's Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the alleged violations of Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 304 and 312 of EPCRA, 42 U.S.C. §§ 11004, 11022, set forth above, in the amount of \$22,980.00. Respondent consents to the issuance of this Consent Agreement and consents for purposes of settlement to the payment of the civil penalty.

PAYMENT TERMS

51. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.

52. Interest on any civil penalty assessed in this CAFO begins to accrue on the Effective Date of this CAFO. EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of a civil penalty not paid within such thirty (30) calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a). Accordingly, interest payments on each outstanding installment of the civil penalty assessed herein are set forth in Paragraph 56 of this CAFO.

53. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

54. A penalty charge of six percent per year will be assessed monthly on any portion of an installment payment which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

55. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit installment payments for the civil penalty and accrued interest in accordance with the payment schedule set forth below. In order to avoid the assessment of late payment penalty charges, as described above, Respondent must remit all installment payments not later than ninety (90) days after the date each such payment is due.

56. Payment of the civil penalty assessed herein, plus any accrued interest, shall be made in the manner and over the time period specified below:

- a. The first payment is due within 60 days of the Effective Date of this CAFO, in the amount of \$1,689.93 for the CERCLA penalty (consisting of \$1,666.05 principal and \$23.88 interest), and \$4,159.41 for the EPCRA penalty (consisting of \$4,078.95 principal and \$80.46 interest).

- b. The second payment is due within 240 days of the Effective Date of this CAFO, in the amount of \$1,737.69 for the CERCLA penalty (consisting of \$1,666.05 principal and \$71.64 interest), and \$4,320.33 for the EPCRA penalty (consisting of \$4,078.95 principal and \$241.38 interest).
- c. The third payment is due within 420 days of the Effective Date of this CAFO, in the amount of \$1,749.63 for the CERCLA penalty (consisting of \$1,666.05 principal and \$83.58 interest), and \$4,360.57 for the EPCRA penalty (consisting of \$4,078.95 principal and \$281.62 interest).
- d. The fourth payment is due within 600 days of the Effective Date of this CAFO, in the amount of \$1,725.75 for the CERCLA penalty (consisting of \$1,666.05 principal and \$59.70 interest), and \$4,280.10 for the EPCRA penalty (consisting of \$4,078.95 principal and \$201.15 interest).

57. Pursuant to the above schedule, Respondent will remit total payments for the civil penalty in the amount of Twenty-Two Thousand Nine Hundred Eighty Dollars and No Cents (\$22,980.00) principal, and interest payments in the amount of One Thousand Forty-Three Dollars and Forty-One Cents (\$1,043.41); provided, however, that on payment due dates, Respondent may pre-pay the total of future principal payments (and accrued interest) and thereby avoid paying future interest payments.

58. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 56, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in Paragraphs 53-54, above, in the event of any such failure or default.

59. Payment shall be made as follows.

- a. If payment is to be made by check, separate CERCLA and EPCRA payment checks shall be made as follows.
 - i. The CERCLA portion of the penalty, payable to "EPA-Hazardous Substances Superfund" in care of:

U.S. EPA
ATTENTION: Superfund Payments
Cincinnati Finance Center

St. Louis, MO 63197-9000

If the check is sent via overnight mail, it should be sent to:

U.S. EPA
ATTENTION: Superfund Payments
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson 314-418-4087

The Respondent shall note on the CERCLA penalty-payment check the title and docket number of this case.

- ii. The EPCRA portion of the penalty, payable to "United States Treasury" in care of:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

If the check is sent via overnight mail, it should be sent to:

US Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson 314-418-4087

The Respondent shall note on the EPCRA penalty-payment check the title and docket number of this case.

- b. Payment made by made via EFT (wire transfer) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727

SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

- c. Payment may be made via Automated Clearinghouse (ACH) to:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

60. The Respondent shall submit a copy of the checks, or verification of wire transfer or ACH to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

61. CERCLA and EPCRA civil penalties stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the following: the nature, circumstances, extent and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit (if any) resulting from the violation, and such matters as justice may require. The penalty is consistent with 40 C.F.R. Part 19 and the *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, (September 30, 1999)*.

62. Failure by the Respondent to pay the penalty assessed by the Final Order in full by the due dates may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

63. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

64. Respondent agrees not to contest the Environmental Protection Agency's jurisdiction with respect to the execution or enforcement of this CAFO.

65. Except as set forth in Paragraph 63 above, without admitting or denying the factual allegations or EPA's conclusions of law set forth in this Consent Agreement, Respondent consents to the terms of this CAFO.

66. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Consent Agreement under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

67. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and accompanying Final Order.

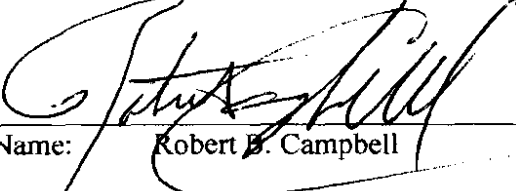
68. This CAFO does not constitute a waiver, suspension or modification of the requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, or Sections 304 or 312 of EPCRA, 42 U.S.C. §§ 11004, 11022, or any regulations promulgated thereunder.

69. This CAFO is a complete and final settlement of all civil and administrative claims and causes of action set forth in this CAFO for alleged violations of Section 103 of CERCLA, 42 U.S.C. § 9603, or Sections 304 or 312 of EPCRA, 42 U.S.C. §§ 11004, 11022. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CAFO shall be construed to limit the United States' authority to pursue criminal sanctions. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanction available by virtue of Respondent's violation of this agreement, other statutes and regulations, or any other applicable provision of law.

70. Each party to this action shall bear its own costs and attorney's fees.

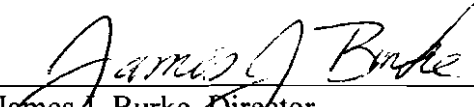
71. By entering into this CAFO, the Respondent does not admit any liability for the civil claims alleged herein.

FOR THE POND, INC.

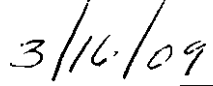

Name: Robert B. Campbell
Title: President

3/4/09
DATE

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



James J. Burke, Director
Hazardous Site Cleanup Division



DATE

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029**

In the Matter of:)	
)	
The Pond, Inc.	)	U.S. EPA Docket Nos: CERC-03-2009-
	)	0084, EPCRA-03-2009-0084
101 John F. Campbell Drive)	
Newark, Delaware 19711,)	
)	
Respondent)	
)	
The Pond Ice Arena)	
101 John F. Campbell Drive)	
Newark, Delaware 19711,	)	Proceedings Pursuant to Sections 103
	)	and 109 of the Comprehensive
Facility.	)	Emergency Response, Compensation
	)	and Liability Act, 42 U.S.C. §§ 9603,
	)	9609, as amended, and Sections 304, 312
	)	and 325 of the Emergency Planning
	)	and Community Right to Know Act, 42
	)	U.S.C. §§ 11004, 11022, 11045

FINAL ORDER

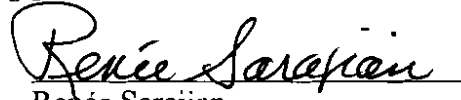
Pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act, as amended, ("EPCRA"), 42 U.S.C. § 11045, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 3/18/09

A handwritten signature in cursive script, reading "Renée Sarajian", written over a horizontal line.

Renée Sarajian
Regional Judicial Officer
EPA, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

RECEIVED
MARCH 13 11 3:02
U.S. ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	
The Pond, Inc.	)	U.S. EPA Docket Nos: CERC-03-2009-
101 John F. Campbell Drive	)	0084, EPCRA-03-2009-0084
Newark, Delaware 19711,)	
)	
Respondent)	
)	
The Pond Ice Arena)	
101 John F. Campbell Drive)	
Newark, Delaware 19711,	)	CONSENT AGREEMENT AND
	)	FINAL ORDER
Facility.)	
)	

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent via certified mail, return receipt requested, to

Sharon Oras Morgan
Fox Rothschild LLP
919 Market Street, Suite 1300
Wilmington, DE 19899

3/18/09
DATE

Cynthia T. Weiss
Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel
Counsel for Complainant
(215) 814-2659