



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 02 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Spinrad
Attorney at Law
Arnall Golden Gregory L.L.P.
171 17th Street N.W.
Suite 2100
Atlanta, Georgia 30363-1031

Re: W.T. Charlotte RE, L.L.C.
Consent Agreement and Final Order
Docket Number EPCRA-04-2013-2058(b)

Dear Mr. Spinrad:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves this Comprehensive Environmental Response, Compensation, and Liability Act and Emergency Planning and Community Right-to-Know Act matter, Docket No. EPCRA-04-2013-2058(b), involving W.T. Charlotte RE, L.L.C. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the U.S. Environmental Protection Agency. If you or your client have any questions concerning the SEC environmental disclosure requirements, please refer to the contact phone number at the bottom of the SEC Notice.

For all other questions, please call Ms. Lynda Crum at (404) 562-9524.

Sincerely,

Caron B. Falconer
Chief
EPCRA Enforcement Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
W. T. Charlotte RE, L.L.C.)
)
Respondent.)
)
_____)

Docket Number: EPCRA-04-2013-2058(b)

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HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/ Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is W. T. Charlotte RE, L.L.C.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA and under EPCRA to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31, dated March 8, 1999, and updated August 6, 2004, and the authority under EPCRA by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent, W. T. Charlotte RE, L. L.C., is a limited liability company doing business in the State of North Carolina. Provide Commerce, Inc. ("Provide Commerce") is a corporation doing business in the State of Delaware.
5. Respondent and Provide Commerce are "persons" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
6. Respondent owns a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
7. Respondent's facility is located at 11922 General Drive, Charlotte, North Carolina.
8. Respondent is an "owner" of the facility as that term is defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).
9. EPA alleges Provide Commerce is an "operator" of the facility as that term is defined by Section 101 (20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).
10. EPA alleges that the owner and operator of the facility are jointly and severally liable for the violations alleged herein.

III. EPA's Allegations of Violations

Violation of Section 103(a) of CERCLA

11. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list, which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.
12. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ.
13. Respondent and Provide Commerce were in charge of the facility on August 22, 2011, and therefore they are co-liaible.
14. Ammonia is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 100 pounds, as specified in 40 C.F.R. § 302.4.

15. EPA alleges that, on August 22, 2011, a release of ammonia above the RQ occurred at the facility.

16. EPA alleges that Respondent and Provide Commerce violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the applicable CERCLA regulations, 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as they had knowledge of the release of ammonia in an amount equal to or greater than its RQ at the facility. EPA alleges that Respondent and Provide Commerce are therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

17. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after January 12, 2009. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

18. Respondent has agreed to pay the penalty assessed for the alleged violation.

Violations of Section 304(a) of EPCRA

19. Section 304(a) of EPCRA, 42 U.S.C. §11004(a) and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) when there has been a release of a CERCLA hazardous substance or an EPCRA extremely hazardous substance in an amount equal to or greater than the RQ. Section 304(a) does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

20. Ammonia is an “extremely hazardous substance” as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 C.F.R. Part 355, Appendices A & B.

21. EPA alleges that, on August 22, 2011, a release of ammonia above the RQ occurred at the facility that resulted in the potential for exposure to persons beyond the site or sites on which the facility is located.

22. EPA alleges that Respondent and Provide Commerce violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. §11004(a), and that they failed to immediately notify the SERC and LEPC as soon as they had knowledge of a release of ammonia in an amount equal to or greater than the RQ at the facility, and are therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. §11045.

23. Respondent has agreed to pay the penalty assessed for the alleged violation.

Violations of Section 304(c) of EPCRA

24. Section 304(c) of EPCRA, 42 U.S.C. §11004(c) and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to provide a written follow-up emergency notice to the SERC and LEPC when there has been a release of a CERCLA hazardous substance or an EPCRA extremely hazardous substance in an amount equal to or greater than the RQ.

25. At all times relevant to this matter, the facility produced, used, or stored an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 C.F.R. Part 355, Appendices A & B.

26. Ammonia is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 C.F.R. Part 355, Appendices A & B.

27. EPA alleges that, on August 22, 2011, a release of ammonia above the RQ occurred at the facility.

28. EPA alleges that Respondent and Provide Commerce violated the notification requirements of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), by failing to provide a written follow-up emergency notice to the LEPC when there had been a release of ammonia in an amount equal to or greater than the RQ and are therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. §11045.

29. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$37,500 for each violation of Section 304(a) and (c) of EPCRA, 42 U.S.C. § 11004(a) that occurred after January 12, 2009. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

30. Respondent has agreed to pay the penalty assessed for the alleged violation.

Violations of Section 312 of EPCRA

31. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations found at 40 C.F.R. Part 370, provide that the owner or operator of a facility that is required to prepare or have available a Material Safety Data Sheet (MSDS) for hazardous chemicals under the Occupational Safety and Health Act of 1970 (OSHA) and regulations promulgated under that Act, shall submit to the Local Emergency Planning Committee (LEPC), the State Emergency Response Commission (SERC), and the fire department with jurisdiction over the facility, by March 1, 1988, and on or before March 1 annually thereafter, a completed emergency and hazardous chemical inventory form (Tier I or Tier II) as described in 40 C.F.R. Part 370, containing the information required by that part for hazardous chemicals present at the facility at any one time in the calendar year in amounts equal to or greater than 10,000 pounds and containing the information required by

that part for extremely hazardous substances (EHS) present at the facility at any one time in amounts equal to or greater than the threshold planning quantity (TPQ) or 500 pounds, whichever is less.

32. At some time during the calendar years of 2011 and 2010, ammonia was present at the facility in an amount equal to or greater than 500 pounds.

33. Ammonia is a "hazardous chemical" as defined under Section 329(5) of EPCRA, 42 U.S.C. § 11049(5) and 40 C.F.R. § 355.61, and is an "extremely hazardous substance" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), and 40 C.F.R. § 355.61, for which Respondent is required to prepare or have available an MSDS under OSHA at its facility. Ammonia is also listed as an extremely hazardous substance in 40 C.F.R. Part 355, Appendix A.

34. EPA alleges that Respondent or Provide Commerce failed to submit a completed Emergency and Hazardous Chemical Inventory Form for 2012 and 2011, to the SERC, the LEPC, and fire department with jurisdiction over the facility for calendar years 2011 and 2010, by March 1 of the year following the calendar years for which the report was required.

35. EPA alleges that Respondent and Provide Commerce violated the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, at the facility for calendar years 2011 and 2010, and are therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

36. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$37,500 for each violation of Section 312 that occurred on or after January 12, 2009. Each day a violation of Section 312 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by Administrative Order.

37. Respondent has agreed to pay the penalty assessed for the alleged violation.

IV. Consent Agreement

38. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations and the allegations of violations set out above.

39. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

40. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO. Notwithstanding anything to the contrary, this CAFO shall not affect Respondent's right to recover against Provide Commerce, including for any penalties paid hereunder.

41. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA and EPCRA.

42. Compliance with the CAFO shall resolve the allegations of violations against Respondent that are contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Complainant does not waive any right to bring an enforcement action against Respondent or Provide Commerce for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

43. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

44. In the event Respondent does not pay the agreed upon penalty amount for any reason, Complainant does not waive any right to bring an enforcement action against Respondent or Provide Commerce for the violations alleged herein.

V. Final Order

45. Respondent shall pay a CERCLA civil penalty of ELEVEN THOUSAND FIVE HUNDRED FIVE DOLLARS (\$11,505) for the CERCLA violation alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

46. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

U.S. Environmental
Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

BY OVERNIGHT

U.S. Bank
Government Lockbox 979076
U.S. EPA Superfund Payments
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1818

The check shall reference on its face the name and the Docket Number of the CAFO.

47. Respondent shall pay an EPCRA civil penalty of FORTY EIGHT THOUSAND THREE HUNDRED SIXTY DOLLARS (\$48,360) for the EPCRA violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

48. Respondent shall pay the EPCRA penalty by forwarding a cashier's or certified check payable to "Treasurer, United States of America," to one of the following addresses:

BY MAIL

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

BY OVERNIGHT

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

The check shall reference on its face the name and the Docket Number of the CAFO.

49. At the time of payment, Respondent shall send a separate copy of each check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Patricia Rubin
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

50. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

51. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

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APPROVED AND SO ORDERED this 1st day of May, 2014.


Susan B. Schub
Regional Judicial Officer

8

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of W. T. Charlotte RE, L.L.C.,
Docket Number: EPCRA-04-2013-2058(b), on the parties listed below in the manner indicated:

Caron B. Falconer (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Lynda Crum (Via EPA's internal mail)
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Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

John Spinrad (Via Certified Mail - Return Receipt Requested)
Attorney at Law
Arnall Golden Gregory LLP
171 17th Street NW
Suite 2100
Atlanta, Georgia 30363-1031

Date: 5-2-14



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