



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 21 2007

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Andrew R. Greenberg
Newport-St. Paul Cold Storage Company
2233 Maxwell Avenue, P.O. Box 129
Newport, Minnesota 55055

Re: Newport-St. Paul Cold Storage Company, Newport, Minnesota
Docket Number **CERCLA-05-2007-0017**

Dear Mr. Greenberg:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on August 21, 2007. Please pay the civil penalty in the amount of \$11,223 in the manner prescribed in paragraphs 25 and 26 and reference your check with the number BD 2750730B019 and docket number CERCLA-05-2007-0017. Your payment is due on September 21, 2007.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Michael McClary, Associate Regional Counsel at (312)886-7163. Thank you for your assistance in resolving this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Ruth McNamara for".

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Michael McClary (w/enclosure)
Office of Regional Counsel
U.S. EPA Region 5

Steve Tomylanovich
MN SERC (w/enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. CERCLA-05-2007-0017
)	
Newport – St. Paul Cold Storage Company)	Proceeding to Assess a Civil Penalty under
2233 Maxwell Avenue)	Section 109(b) of the Comprehensive
Newport, Minnesota 55055)	Environmental Response, Compensation,
)	and Liability Act.
)	
)	

Consent 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) 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 (2005).

2. The Complainant is, by lawful delegation, the Chief, Chemical Emergency Preparedness and Prevention Section, Emergency Response Branch 1, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. Respondent is Newport-St. Paul Cold Storage Company, a corporation doing business in Minnesota.

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) (2005)

5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of facts or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Newport-St. Paul Cold Storage Company admits the jurisdictional allegations in this CAFO and neither admits or denies the factual allegations in this CAFO.

8. Newport-St. Paul Cold Storage Company 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.

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 hazardous substance's reportable quantity.

10. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), the U.S. EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004 and to \$32,500 per day for violations that occurred after March 15, 2004.

Factual Allegations and Violations

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

12. Respondent's Facility consists of the buildings, structures, installations, equipment, pipes, storage containers, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

13. Respondent's Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. 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).

15. Ammonia, CAS# 7664-41-7, has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

16. On June 4, 2005 at or about 1830 Central Time, a release occurred from Respondent's Facility of approximately 950 pounds of ammonia (the release).

17. In a 24 hour time period, the Release of 950 pounds of ammonia exceeded the 10 pound reportable quantity for this chemical

18. During the release, approximately 950 pounds of ammonia spilled, leaked, emitted, emptied, discharged, or escaped, into ambient air.

19. The release is a "release" as that term is defined under Section 101(22) of CERCLA 42 U.S.C. § 9601(22).

20. Respondent had knowledge of the release on June 4, 2005, at approximately 1830 Central Time.

21. Respondent notified the NRC of the release on June 6, 2005, at 0847 Central Time.

22. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

23. Each day Respondent failed to notify immediately the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Civil Penalty

24. In consideration of Respondent's willingness to enter into this streamlined enforcement action resulting to savings to both parties, and their cooperation throughout the enforcement process, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$11,223.

25. Within 30 days after the effective date of this CAFO, Respondent must pay a \$11,223 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. EPA – Region 5
ATTN: Finance
P.O. Box 371531
Pittsburgh, PA 15251-7531

The check must note the case title of this matter: *In the Matter of Newport-St. Paul Cold Storage Company*, the docket number of the CAFO and the billing document number

2750730B019.

26. Alternatively, Respondent may pay by wire transfer to J.P. Morgan Chase Bank, NA, Routing Number 071000013 for Account Number 1113399, U.S. EPA, or online using ACH debit or credit card, please visit www.pay.gov. Using the "Search Public Forms" option on the tool bar (left side of page), enter SFO 1.1 in the search field. Open the form and complete the information requested. The wire payment or online payment must note the case title of this matter: *In the Matter of Newport-St. Paul Cold Storage Company*, the docket number of the CAFO and the billing document number CERCLA-05-2007-0017.

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

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Ruth McNamara (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
77 West Jackson Blvd.
Chicago, Illinois 50504-3511

Michael McClary (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

29. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

30. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a six percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO had been entered by the Regional Hearing Clerk.

General Provisions

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

32. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

34. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA.

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

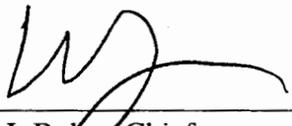
36. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

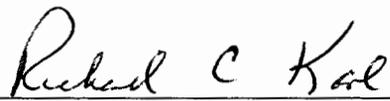
37. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

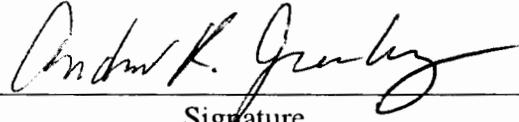
SIGNATORIES

**U.S. Environmental Protection Agency
Complainant**

Date: 8/14/07 By: 
William J. Bolen, Chief
Emergency Response Branch 1
Superfund Division
U.S. EPA Region 5

Date: 8-15-07 By: 
Richard K. Karl, Director
Superfund Division
U.S. EPA Region 5

**Newport-St. Paul Cold Storage Company
Respondent**

Date: 8/6/07 By: 
Signature
Andrew R. Greenberg
Printed Name and Title

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Newport-St. Paul Cold Storage Company, Newport, Minnesota
Docket No. CERCLA-05-2007-0017**

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Newport-St. Paul Cold Storage Company, Newport, Minnesota
Docket No. CERCLA-05-2007-0017**

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. IT IS SO ORDERED.

Date: 8/17/07

By:  _____

Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Certificate of Service

I, Ruth McNamara, certify that I hand delivered one original and one copy of the Consent Agreement and Final Order, docket number CERCLA-05-2007-0017 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed one original by first-class, postage prepaid, certified mail, return receipt requested, to Newport St. Paul Cold Storage Company by placing it in the custody of the United States Postal Service addressed as follows:

Andrew R. Greenberg
Newport-St. Paul Cold Storage Company
2233 Maxwell Avenue, P.O. Box 129
Newport, Minnesota 55055

on the 21st day of August, 2007.


Ruth McNamara
U.S. Environmental Protection Agency
Region 5

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Newport-St. Paul Cold Storage Company, Newport, Minnesota
Docket No. CERCLA-05-2007-0017**