



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

FEB 24 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Susan V. Harris
Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603

Re: Ozburn-Hessey Logistics, Plainfield, Indiana
Consent Agreement and Final Order
Docket No. **EPCRA-05-2015-0009**

Dear Ms. Harris:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on February 24, 2015.

Please have your client pay the EPCRA civil penalty in the amount of \$171,483 in the manner prescribed in paragraph 84 and reference your payment with the docket number **EPCRA-05-2015-0009**.

The payment is due on March 26, 2015.

Please feel free to contact Ruth McNamara at mcnamara.ruth@epa.gov or by telephone at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert H. Smith, Associate Regional Counsel, at smith.robert@epa.gov or by telephone at (312) 886-0765. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket Nos. EPCRA-05-2015-0009
)	
Ozburn-Hessey Logistics)	Proceeding to Assess a Civil Penalty Under
Plainfield, Indiana)	Section 325(c)(1) and (c)(2) of the Emergency
)	Planning and Community Right-to-Know
Respondent.)	Act of 1986
)	
)	
)	
)	
)	
)	



Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1) and (c)(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 Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Ozburn-Hessey Logistics, a corporation doing business in the State of Indiana.
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 to the terms of this 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 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.

Statutory and Regulatory Background

9. Section 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC) and the fire department with jurisdiction over the facility an MSDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, and for each extremely hazardous chemical present at the facility in an amount equal to or greater than 500 pounds, or the threshold planning quantity (TPQ), whichever is lower, or to submit a list of such chemicals. The owner or operator must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the SERC, community coordinator for the LEPC and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

11. Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a), assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

12. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

13. 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 U.S.C. § 1910.1200(c).

14. 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.

15. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

16. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1) authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$32,500 per day of violation that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

17. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes U.S. EPA to assess a civil penalty of up to \$10,000 for each EPCRA Section 311 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$11,000 per day of violation for EPCRA 311 violations that occurred after March 15, 2004 through January 12, 2009 and to \$16,000 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

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 1100 Whitaker Road, Plainfield, Indiana (facility).

20. At all times relevant to this CAFO, Respondent was an employer at the facility.

21. 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.

22. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

23. Sulfuric acid CAS# 7664-93-9 is classified as a health hazard.

24. Sulfuric acid CAS# 7664-93-9 is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

25. Sulfuric acid CAS# 7664-93-9 has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

26. As of at least December 31, 2009, sulfuric acid was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

27. Lead CAS# 7664-93-9 is classified as a health hazard.

28. Lead CAS# 7664-93-9 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).

29. Lead CAS# 7664-93-9 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

30. As of at least December 31, 2009, lead was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

31. During at least one period of time in calendar year 2009, sulfuric acid and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

32. During at least one period of time in calendar year 2010, sulfuric acid and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

33. During at least one period of time in calendar year 2011, sulfuric acid and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

34. During at least one period of time in calendar year 2012, sulfuric acid and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

35. During at least one period of time in calendar year 2013, sulfuric acid and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

36. OSHA requires Respondent to prepare, or have available, a MSDS for sulfuric acid.

37. OSHA requires Respondent to prepare, or have available, a MSDS for lead.

38. Respondent was required to submit to the SERC, LEPC and fire department on or before March 31, 2010, a MSDS for sulfuric acid and lead, or a list including sulfuric acid and lead.

39. Respondent was required to submit to the SERC, LEPC and fire department on or before March 1, 2010, a completed emergency and hazardous chemical inventory form including sulfuric acid and lead for calendar year 2009.

40. Respondent was required to submit to the SERC, LEPC and fire department on or before March 1, 2011, a completed emergency and hazardous chemical inventory form including sulfuric acid and lead for calendar year 2010.

41. Respondent was required to submit to the SERC, LEPC and fire department on or before March 1, 2012, a completed emergency and hazardous chemical inventory form including sulfuric acid and lead for calendar year 2011.

42. Respondent was required to submit to the SERC, LEPC and fire department on or before March 1, 2013, a completed emergency and hazardous chemical inventory form including sulfuric acid and lead for calendar year 2012.

43. Respondent was required to submit to the SERC, LEPC and fire department on or before March 1, 2014, a completed emergency and hazardous chemical inventory form including

sulfuric acid and lead for calendar year 2013.

Count 1 (EPCRA 311/SERC Sulfuric Acid)

44. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

45. Respondent submitted to the SERC a MSDS or a list showing sulfuric acid no earlier than April 4, 2011.

46. Each day Respondent failed to submit to the SERC a MSDS or a list for sulfuric acid by March 31, 2008, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 2 (EPCRA 311/LEPC Sulfuric Acid)

47. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

48. Respondent submitted to the LEPC a MSDS for sulfuric acid or a list showing sulfuric acid no earlier than April 4, 2011.

49. Each day Respondent failed to submit to the LEPC a MSDS or a list for sulfuric acid by March 31, 2008, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 3 (EPCRA 311/SERC Lead)

50. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

51. Respondent submitted to the SERC a MSDS or a list showing lead no earlier than April 4, 2011.

52. Each day Respondent failed to submit to the SERC a MSDS or a list for lead by

March 31, 2008, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 4 (EPCRA 311/LEPC Lead)

53. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

54. Respondent submitted to the LEPC a MSDS or a list showing lead no earlier than April 4, 2011.

55. Each day Respondent failed to submit to the LEPC a MSDS or a list for lead by March 31, 2008, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 5 (EPCRA 312/Past Year CY 2009)

56. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

57. Respondent never submitted to the SERC, LEPC, and Plainfield Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2009.

58. Each day Respondent failed to submit to the SERC, LEPC, and Plainfield Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 6 (EPCRA 312/SERC CY 2010)

59. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

60. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead no earlier than April 4, 2011, for

calendar year 2010.

61. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2011, for calendar year 2010 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 7 (EPCRA 312/LEPC CY 2010)

62. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

63. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead no earlier than April 4, 2011, for calendar year 2010.

64. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2011, for calendar year 2010 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 8 (EPCRA 312/Fire Dept. CY 2010)

65. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

66. Respondent submitted to the Plainfield Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead no earlier than April 4, 2011, for calendar year 2010.

67. Each day Respondent failed to submit to the Plainfield Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March

1, 2011, for calendar year 2010 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 9 (EPCRA 312/SERC CY 2011)

68. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

69. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead on August 1, 2014, for calendar year 2011.

70. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 10 (EPCRA 312/LEPC CY 2011)

71. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

72. As of September 30, 2013, Respondent had not submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2011.

73. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 11 (EPCRA 312/Fire Dept. CY 2011)

74. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

75. As of November 6, 2013, Respondent had not submitted to the Plainfield Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2011.

76. Each day Respondent failed to submit to the Plainfield Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 12 (EPCRA 312/LEPC CY 2012)

77. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

78. As of September 30, 2013, Respondent had not submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead for calendar year 2012.

79. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2013, for calendar year 2012 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 13 (EPCRA 312/SERC CY 2013)

80. Complainant incorporates paragraphs 1 through 43 of this CAFO as if set forth in this paragraph.

81. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead on August 1, 2014, for calendar year 2013.

82. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid and lead by March 1, 2014, for calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

83. Complainant has determined that an appropriate civil penalty to settle this action is \$171,483. In determining the penalty amount, 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).

84. Within 30 days after the effective date of this CAFO, Respondent must pay a \$171,483 civil penalty for the EPCRA violations. Respondent must pay the penalty by electronic funds transfer (EFT), payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the EFT, state the following: Ozburn-Hessey Logistics and the docket number of this CAFO.

85. At the time that Respondent makes the EFT payment, the Respondent shall send a letter, stating Respondent's name, the case name, Respondent's complete address, the case docket number and verification that the EFT payment has been made to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

Ruth McNamara, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert H. Smith, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

87. 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.

88. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. 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 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

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

90. 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.

91. Respondent certifies that it is complying with Sections 311 and 312 of EPCRA, 42 U.S.C. §§11021 and 11022.

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

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

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

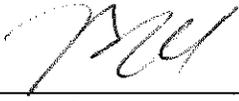
95. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

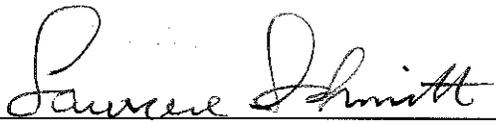
Ozburn-Hessey Logistics, Respondent

2/11/2015
Date


Frank Eichler
Chief Administrative Officer and General Counsel
Ozburn-Hessey Logistics

U.S. Environmental Protection Agency, Complainant

2/20/15
Date


Lawrence Schmitt, Acting Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

2-20-15
Date


Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Ozburn-Hessey Logistics, Plainfield, Indiana
Docket No. EPCRA-05-2015-0009

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.

2-23-2015

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of: Ozburn-Hessey Logistics, Plainfield, Indiana
Docket No. EPCRA-05-2015-0009

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on February 24, 2015 in the following manner to the addresses:

Copy by Certified Mail

Return Receipt Requested: Susan V. Harris
Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603

Copy by E-mail to

Attorney for Complainant: Robert H. Smith
smith.roberth@epa.gov

Copy by E-mail to

Regional Judicial: Ann Coyle
coyle.ann@epa.gov

Dated: February 24, 2015



LaDawn Whitehead, Regional Hearing Clerk
U.S./Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604