

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for William Chin 8/9/12
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number EPCRA-01-2012-0064

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Christmas Tree Shops, Inc.
650 Liberty Avenue
Union, New Jersey 07083

Total Dollar Amount of Receivable \$ 26,325 Due Date: 9/8/12

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1ST \$ _____ on _____

2nd \$ _____ on _____

3rd \$ _____ on _____

4th \$ _____ on _____

5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912



August 9, 2012

Via Hand Delivery

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square - Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

RE: *In the Matter of: Christmas Tree Shops, Inc.*
Docket No. EPCRA-01-2012-0064

Dear Ms. Santiago:

I enclose for filing in the above-referenced matter the original and one copy of the Consent Agreement and Final Order and a Certificate of Service.

Thank you for your assistance.

Sincerely,

William D. Chin
Enforcement Counsel

Enclosures

cc: Katherine Sloss, Esq.
Allan Rauch, Esq.

In the Matter of: Christmas Tree Shops, Inc.
Docket No. EPCRA-01-2012-0064

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Consent Agreement and Final Order to be sent to the following person(s), in the manner stated, on the date below:

Original and one copy,
By Hand Delivery:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square - Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

One copy, By Certified Mail,
Return Receipt Requested:

Katherine Sloss, Esq.
Counsel
Bed, Bath & Beyond, Inc.
650 Liberty Avenue
Union, NJ 07083

Allan N. Rauch, Esq.
Vice President – Legal and General Counsel
Bed, Bath & Beyond, Inc.
650 Liberty Avenue
Union, NJ 07083

Dated: _____

8/9/12



William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: OES04-4
Boston, MA 02109-3912

RECEIVED
AUG 09 2012
EPA ORC WS
Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:)
)
Christmas Tree Shops, Inc.)
650 Liberty Avenue)
Union, New Jersey 07083)
)
Respondent.)
)
Proceeding under Section 325(c) of the Emergency)
Planning and Community Right-to-Know Act, 42)
U.S.C. § 11045(c))
)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No.
EPCRA-01-2012-0064

CONSENT AGREEMENT

Introduction

1. Complainant, United States Environmental Protection Agency (“EPA”), Region 1 and Respondent, Christmas Tree Shops, Inc. (“CTS”), enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. By this CAFO, Respondent agrees to pay a civil penalty for alleged violations of Section 312(a) of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11022(a), and the federal regulations that set out in greater detail these statutory requirements, 40 C.F.R. Part 370.¹

2. This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

3. Complainant and Respondent (the Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

¹ Part 370 of 40 C.F.R. was revised on November 30, 2008 (73 Fed. Reg. 65478). The current regulations are cited herein, with a cross-reference to the regulations in effect at the time of some of the alleged violations.

NOW THEREFORE, before any hearing or the taking of any testimony, and without adjudication of any issue of law or fact herein, the Parties agree to comply with the terms of this CAFO.

Preliminary Statement

4. Complainant alleges that Respondent violated Section 312(a) of EPCRA and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.44 and 370.45 (formerly §§ 370.20 and 370.25) by failing to submit to the LEPC, SERC, and local fire department, chemical inventory forms for certain hazardous chemicals that were stored at Respondent's warehouse located at 64 Leona Drive, Middleborough, Massachusetts (the "Facility") in quantities equal to or greater than the chemical-specific minimum threshold for these chemicals set forth at 40 C.F.R. § 370.10 (formerly § 370.20(b)).

Statutory and Regulatory Authority

5. Under Section 312(a) and (b) of EPCRA and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.44 and 370.45 (formerly §§ 370.20 and 370.25), the owner or operator of a facility must prepare and submit an emergency and hazardous chemical inventory form ("Tier I" or "Tier II" form) to the local emergency planning committee ("LEPC"), the state emergency response commission ("SERC"), and the local fire department if the facility (a) is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1970 ("OSHA") and regulations promulgated thereunder and (b) exceeds minimum threshold levels established for such chemical. Pursuant to 40 C.F.R. §§ 370.40 and 370.45 (formerly § 370.20(d)), the Tier I or Tier II form must be submitted annually on or before March 1 and is required to contain information with respect to the

preceding calendar year. Owners or operators of facilities in Massachusetts must submit Tier II forms instead of Tier I forms.

6. Section 325(c) of EPCRA, 42 U.S.C. §11045(c), authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of Section 312 of EPCRA, 42 U.S.C. § 11022, and regulations promulgated thereunder. The Civil Monetary Penalty Inflation Rule, 40 C.F.R. Part 19, as mandated by the Debt Collection Improvement Act, 31 U.S.C. § 3701, authorizes the assessment of civil administrative penalties of up to \$32,500 per day for each violation of Section 312 of EPCRA that occurred after March 15, 2004 through January 12, 2009 and \$37,500 per day for each violation that occurs after January 12, 2009.

Findings of Fact/Determinations of Law

Complainant alleges the following findings of fact and determinations of law which Respondent neither admits nor denies:

7. Respondent is a corporation incorporated under the laws of the Commonwealth of Massachusetts with its principal office located at 650 Liberty Avenue, Union, New Jersey.

8. Respondent's primary business activity is the operation of a chain of retail stores that are located in approximately 21 states throughout the United States. Respondent also owns and/or operates two warehouses that service its retail stores, including the Facility and another warehouse located in New Jersey.

9. Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and 40 C.F.R. § 370.66 (formerly § 370.2).

10. The Facility is a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. §11049(4), and 40 C.F.R. § 370.66 (formerly § 370.2).

11. Lead, sulfuric acid, and diesel fuel are considered “hazardous chemicals” under OSHA, 29 U.S.C. §§ 651 *et seq.*, and in its regulations at 29 C.F.R. § 1910.1200(c). Sulfuric acid is also an “extremely hazardous substance” (“EHS”), as defined by 40 C.F.R. § 370.66 (formerly § 370.2).

12. The Facility has fuel storage tanks on the premises that contain diesel fuel. The Facility also has on its premises lead-acid batteries to run certain warehouse equipment. The components of lead-acid batteries are lead and sulfuric acid. Accordingly, at all times relevant to this CAFO, Respondent was required pursuant to OSHA and the regulations promulgated thereunder, to prepare or have available a MSDS for any lead, sulfuric acid, and diesel fuel that was stored at the Facility.

13. In accordance with 40 C.F.R. § 370.10(a) (formerly § 370.20(b)), EHS chemicals are subject to a minimum threshold level (“MTL”) of 500 pounds, while other “hazardous chemicals” are subject to an MTL of 10,000 pounds. Therefore, the MTL for Tier II reporting for sulfuric acid is 500 pounds, while the MTL for Tier II reporting for lead and diesel fuel is 10,000 pounds.

14. On April 7, 2011, Complainant conducted an inspection of the Facility (“Inspection”) to determine its compliance with Sections 302-312 of EPCRA and Section 112 of the Clean Air Act.

15. Based on the Inspection, and other information provided by Respondent and/or other sources after the Inspection, Complainant identified the following violations:

Failure to Submit Tier II Form for Calendar Year 2009

16. During calendar year 2009, Respondent stored lead (260,215 pounds) and diesel fuel

(117,100 pounds) at the Facility in quantities that exceeded the MTL of 10,000 pounds set forth in 40 C.F.R. § 370.10(a)(2) (formerly §370.20(b)(4)). In addition, during calendar year 2009, Respondent stored sulfuric acid (94,624 pounds) at the Facility in a quantity that exceeded the MTL of 500 pounds, as set forth in 40 C.F.R. § 370.10(a)(1) (formerly §370.20(b)(1)).

17. Accordingly, Respondent was subject to the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44 and 370.45 (formerly §§ 370.20 and 370.25) for calendar year 2009.

18. Accordingly, Respondent was required to prepare and submit a Tier II form for the lead, sulfuric acid and diesel fuel stored at the Facility during calendar year 2009, to the SERC, LEPC and the local fire department on or before March 1, 2010.

19. Respondent failed to submit a Tier II form for the calendar year 2009 to the SERC, LEPC and local fire department on or before March 1, 2010.

20. Accordingly, Respondent's failure to prepare and submit a Tier II form for the lead, sulfuric acid and diesel fuel stored at the Facility during calendar year 2009, to the SERC, LEPC and the local fire department on or before March 1, 2010 constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44 and 370.45 (formerly §§ 370.20 and 370.25).

Failure to Submit Tier II Form for Calendar Year 2008

21. During calendar year 2008, Respondent stored lead (260,215 pounds) and diesel fuel (117,100 pounds) at the Facility in quantities that exceeded the MTL of 10,000 pounds set forth in 40 C.F.R. § 370.10(a)(2) (formerly §370.20(b)(4)). In addition, during calendar year 2008, Respondent stored sulfuric acid (94,624 pounds) at the Facility in a quantity that exceeded the

MTL of 500 pounds, as set forth in 40 C.F.R. § 370.10(a)(1) (formerly §370.20(b)(1)).

22. Accordingly, Respondent was subject to the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44 and 370.45 (formerly §§ 370.20 and 370.25) for calendar year 2008.

23. Accordingly, Respondent was required to prepare and submit a Tier II form for the lead, sulfuric acid and diesel fuel stored at the Facility during calendar year 2008, to the SERC, LEPC and the local fire department on or before March 1, 2009.

24. Respondent failed to submit a Tier II form for the calendar year 2008 to the SERC, LEPC and local fire department on or before March 1, 2009.

25. Accordingly, Respondent's failure to prepare and submit a Tier II form for the lead, sulfuric acid and diesel fuel stored at the Facility during calendar year 2008, to the SERC, LEPC and the local fire department on or before March 1, 2009 constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44 and 370.45 (formerly §§ 370.20 and 370.25).

Failure to Submit Tier II Form for Calendar Year 2007

26. During calendar year 2007, Respondent stored lead (260,215 pounds) and diesel fuel (117,100 pounds) at the Facility in quantities that exceeded the MTL of 10,000 pounds set forth in 40 C.F.R. § 370.10(a)(2) (formerly § 370.20(b)(4)). In addition, during calendar year 2007, Respondent stored sulfuric acid (94,624 pounds) at the Facility in a quantity that exceeded the MTL of 500 pounds, as set forth in 40 C.F.R. § 370.10(a)(1) (formerly § 370.20(b)(1)).

27. Accordingly, Respondent was subject to the reporting requirements of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44 and

370.45 (formerly §§ 370.20 and 370.25) for calendar year 2007.

28. Accordingly, Respondent was required to prepare and submit a Tier II form for the lead, sulfuric acid and diesel fuel stored at the Facility during calendar year 2007, to the SERC, LEPC and the local fire department on or before March 1, 2008.

29. Respondent failed to submit a Tier II form for the calendar year 2007 to the SERC, LEPC and local fire department on or before March 1, 2008.

30. Accordingly, Respondent's failure to prepare and submit a Tier II form for the lead, sulfuric acid and diesel fuel stored at the Facility during calendar year 2007, to the SERC, LEPC and the local fire department on or before March 1, 2008 constitutes a violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44 and 370.45 (formerly §§ 370.20 and 370.25).

Terms of Settlement

31. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that the allegations in this CAFO state a claim upon which relief can be granted. Respondent waives any defenses it might have as to jurisdiction and venue.

32. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein and waives its right to appeal the Final Order accompanying this Consent Agreement. Without admitting or denying the allegations herein, Respondent consents to this CAFO.

33. This CAFO shall apply to and be binding upon Respondent, its officers, directors, agents, successors and assigns.

34. Respondent consents to the terms and issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set out in this CAFO.

35. Respondent certifies that it is now operating its business in compliance with Section 312 of EPCRA, 42 U.S.C. § 11022(a) and 40 C.F.R. §§ 370.10, 370.20, 370.40, 370.42, 370.44 and 370.45 (formerly §§ 370.20 and 370.25).

36. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), in light of the nature of the violations and other relevant factors, Complainant has determined that an appropriate civil penalty to settle this action is \$26,325.

37. Within thirty (30) days of the effective date of the Final Order, Respondent shall submit a cashier's or certified check, with the title of the CAFO ("In the Matter of: Christmas Tree Shops, Inc.") and docket number ("EPCRA-01-2012-0064") noted on the check, to the order of the "Treasurer, United States of America," in the amount of \$26,325 to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check must be mailed to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
Mail Code ORA18-1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and to:

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
Mail Code OES04-4
5 Post Office Square, Suite 100
Boston, MA 02109-3912

38. Neither assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with all applicable requirements of federal law.

39. The terms of this CAFO constitute a full settlement by EPA of all claims for civil penalties for the violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, and local law. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability or any other civil liability of Respondent. Nothing in the CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. This CAFO does not operate as a waiver of any defenses in governmental or third party actions against the Respondent for matters not addressed in this CAFO.

39. This CAFO does not constitute a waiver, suspension or modification of the requirements of EPCRA, 42 U.S.C. § 11022 et seq., or any regulations promulgated thereunder.

40. 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 costs of processing and handling a

delinquent claim. In the event that the penalty is not paid when due, the penalty plus additional interest shall be payable without demand. Interest will begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. See 31 C.F.R. § 901.9(d). In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

41. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Respondent further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

42. Respondent shall bear its own costs in connection with the action resolved by this CAFO, including attorney's fees. Respondent specifically waives any right to recover such costs from the other party pursuant to the Equal Access for Justice Act, 5 U.S.C. § 504, or other applicable laws.

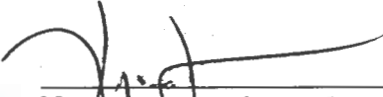
43. Each undersigned representative of the Parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.


In the Matter of: Christmas Tree Shops, Inc.
Docket No. EPCRA-01-2012-0064

44. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed with the Regional Hearing Clerk.

In the Matter of: Christmas Tree Shops, Inc.
Docket No. EPCRA-01-2012-0064

For Christmas Tree Shops, Inc.:



 Name: Todd Johnson
Title: President
Company: Christmas Tree Shops, Inc.

July 26, 2012
Date

For U.S. EPA, Region 1:




Joanna B. Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region I

8/2/12
Date

In the Matter of: Christmas Tree Shops, Inc.
Docket No. EPCRA-01-2012-0064

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.



LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

8/8/12
Date