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HEARINGS CLERK  
REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	
Star Ice & Fuel, Inc.	)	Docket No. EPCRA-10-2013-0115
	)	
Fife, Washington	)	Consent Agreement and Final Order
	)	
Respondent.	)	
	)	
_____	)	

1. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045, and Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9609 (collectively “the Acts”).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part 5 of this CAFO to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Regional Judicial Officer.

1.3. Pursuant to EPCRA § 325, 42 U.S.C. § 11045, and CERCLA § 109, 42 U.S.C. § 9609, and in accordance with Section 22.13(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby

issues and Star Ice & Fuel, Inc. (“Respondent”) hereby agrees to issuance of the Final Order contained in Part 5 of this CAFO.

## 2. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part 5 of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 has been delegated the authority to sign consent agreements between EPA and the party against whom an administrative penalty for violations of Section 304 of EPCRA, 42 U.S.C. § 11004, and Section 103 of CERCLA, 42 U.S.C. § 9603, is proposed to be assessed pursuant to EPCRA § 325, 42 U.S.C. § 11045, and CERCLA § 109, 42 U.S.C. § 9609.

2.3. Part 3 of this CAFO contains a concise statement of the factual bases for alleging violations of the Acts, together with specific references to the provisions of the Acts and implementing regulations Respondent is alleged to have violated.

## 3. ALLEGATIONS

3.1. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires the person in charge of a facility 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 in an amount equal to or greater than the reportable quantity (“RQ”).

3.2. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), require that, if a facility at which hazardous chemicals are produced, used, or stored releases an RQ of an

extremely hazardous substance and the release requires, or occurred in a manner that would require notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility must immediately notify the State Emergency Response Commission (“SERC”) of any state likely to be affected by the release and the Local Emergency Planning Committee (“LEPC”) for any area likely to be affected by the release.

3.3. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires the person in charge of a facility from which an extremely hazardous substance has been released in an amount that meets or exceeds the RQ to file follow-up written reports with the SERC and LEPC within 30 days of the release.

3.4. Under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), “person” means, among other things, any corporation.

3.5. Under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), “facility” means, among other things, any building, structure, installation, storage container, equipment or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

3.6. Under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), “facility” means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person who controls, is controlled by, or under common control with, such person).

3.7. Under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

3.8. Ammonia is a CERCLA “hazardous substance,” 40 C.F.R. § 302.4, and an “extremely hazardous substance” under Section 302 of EPCRA, 42 U.S.C. § 11002. The RQ is 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A, and 40 C.F.R. § 304.2.

3.9. Under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), EPA may assess a civil penalty of up to \$25,000 for each day of violation of Section 304 of EPCRA, 42 U.S.C. § 11004. Under Section 109 of CERCLA, 42 U.S.C. § 9609, EPA may assess a civil penalty of up to \$25,000 per day of violation of Section 103 of CERCLA, 42 U.S.C. § 9603. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 42 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day of violation occurring after January 12, 2009.

3.10. Respondent is a corporation incorporated in the state of Washington.

3.11. Respondent owns and operates a facility located at 8220 Pacific Highway East in Fife, Washington (“the Facility”).

3.12. Respondent manufactures ice at the Facility.

3.13. On September 7, 2011, the Facility released approximately 450 pounds of ammonia to the atmosphere.

3.14. Respondent knew of the release at approximately 6:00 a.m. on September 7, 2011.

3.15. The release was likely to affect Pierce County in the State of Washington.

3.16. Respondent did not notify the NRC of the release until approximately 8:30 a.m. on September 7, 2011, approximately two hours after the release occurred.

3.17. Respondent did not notify the Washington SERC of the release until approximately 8:30 a.m. on September 7, 2011, approximately two hours after the release occurred.

3.18. Respondent did not notify the Pierce County LEPC of the release until approximately 8:30 a.m. on September 7, 2011, approximately two hours after the release occurred.

3.19. Respondent failed to file a follow-up report with the SERC within 30 days of the September 7, 2011 release.

3.20. Respondent failed to file a follow-up report with the LEPC within 30 days of the September 7, 2011 release.

3.21. Respondent's failure to make reports in a timely manner as required by EPCRA § 304, 42 U.S.C. § 11004, and CERCLA § 103, 42 U.S.C. § 9603, subjects Respondent to penalties pursuant to EPCRA § 325(b), 42 U.S.C. § 11045(b), and CERCLA § 109, 42 U.S.C. § 9609.

#### 4. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part 3 of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part 3 of this CAFO.

4.3. As required by Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$50,805, to be made in two installments, as required by Paragraph 4.5.

4.4. EPA's willingness to settle this case for \$50,805 paid in two installments is based on the financial information Respondent has provided to EPA. The signatory for Respondent declares that the financial information provided to EPA accurately reflects Respondent's current financial condition.

4.5. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.3 as follows: 1) Respondent shall pay \$5,000 of the \$50,805 penalty within 30 days of the effective date of the Final Order; and 2) Respondent shall pay the remaining balance of \$45,805 by August 30, 2013.

4.6. Each payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "U.S. Treasury" and shall be delivered to the following address:

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

Respondent shall note on each check the title and docket number of this case.

4.7. Respondent shall submit a photocopy of the check described above to the following individuals:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Suite 900  
Mail Stop ORC-158  
Seattle, Washington 98101

Suzanne Powers  
U.S. Environmental Protection Agency  
Region 10  
Washington Operations Office  
300 Desmond Drive SE, Suite 102  
Lacey, Washington 98503

4.8. Should Respondent fail to pay each penalty installment assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action under Section § 325(f) of EPCRA, 42 U.S.C. § 11045(f), and Section 109 of CERCLA, 42 U.S.C. § 9609, to collect any unpaid penalties, together with interest, handling charges and nonpayment penalties, as set forth below.

4.9. Should Respondent fail to pay each penalty installment assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.9.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1), from the effective date of the Final Order contained herein, provided, however, that

no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.9.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.9.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.10. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors and assigns.

4.13. Except as provided in Paragraph 4.8, each party shall bear its own costs in bringing or defending this action.

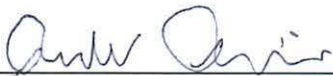
4.14. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.



4.15. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section 3.

STIPULATED AND AGREED:

STAR ICE & FUEL, INC.

Signature: 

Print Name: Richard Reisinger

Title: Manager

Dated: 27 June 2013

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10



Edward J. Kowalski  
Director, Office of Compliance and Enforcement

Dated: 7/17/2013

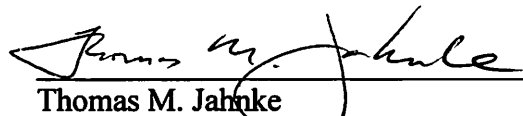
**5. FINAL ORDER**

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to EPCRA and CERCLA for the particular violations alleged in Part 3. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the Acts and regulations issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 23 day of July, 2013.



Thomas M. Jahnke  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER in In the Matter of Star Ice & Fuel, Inc., DOCKET NO.: EPCRA-10-2013-0115**, was filed with the Regional Hearing Clerk and served to the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Stephanie L. Mairs  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Richard Reisinger  
President  
Star Ice & Fuel, Inc.  
8220 Pacific Highway East  
Fife, WA 98101

DATED this 24<sup>th</sup> day of July 2013.

  
\_\_\_\_\_  
Candace Smith  
Regional Hearing Clerk  
EPA Region 10