

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

Received by
EPA Region 1
Hearing Clerk

_____)	
In the Matter of)	
)	
W. R. Cobb Company,)	Docket Nos. CAA-01-2023-0041,
800 Waterman Avenue)	EPCRA-01-2023-0042
East Providence, RI 02914)	
)	
Respondent.)	CONSENT AGREEMENT
)	AND FINAL ORDER
Proceeding under Section 113 of the Clean)	
Air Act and Section 325(c) of the)	
Emergency Planning and Community)	
Right-to-Know Act)	
_____)	

CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”), alleges that W.R. Cobb (“Respondent”) violated the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11001 - 11050, and the federal regulations promulgated thereunder, and also violated Section 112(r)(1) of the Clean Air Act (“CAA”), 42 U.S.C. § 7412(r)(1).

Complainant and Respondent (together, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), set out at 40 C.F.R. Part 22, Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO.

Therefore, before any hearing, and without adjudication of any issue of fact or law, the Parties agree to comply with the terms of this CAFO as follows:

I. STATUTORY AND REGULATORY AUTHORITY

A. EPCRA Section 313 and EPCRA Regulations

1. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated Toxic Chemical Release Reporting: Community Right-to-Know regulations at 40 C.F.R. Part 372.

2. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), requires owners or operators of a facility subject to the requirements of Section 313(b) of EPCRA to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, “TRI Form R”), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding the toxic chemical thresholds established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. §§ 372.25 and 372.28. If an owner or operator determines that the alternative reporting threshold specified in 40 C.F.R. § 372.27 applies, the owner or operator may instead submit an alternative threshold certification statement that contains the information required under 40 C.F.R. § 372.95 (“TRI Form A”). Each TRI Form R or Form A (hereinafter, referred to together as “TRI Forms”) must be submitted to EPA and a designated state authority.

3. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. §§ 372.22 and 372.30 provide that owners or operators of facilities that have 10 or more full-time employees; that are in a Standard Industrial Classification (“SIC”) code or North American Industry Classification System (“NAICS”) code set forth in 40 C.F.R. § 372.23; and that manufactured, processed, or otherwise used a toxic chemical listed under 40 C.F.R. § 372.65 in a quantity

exceeding the established threshold during a calendar year, must submit TRI Forms to EPA and the state authority for each of these substances for that year.

4. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended through 2016 (“FCPIAA”), and the FCPIAA’s implementing regulations as promulgated and updated by EPA at 40 C.F.R. § 19 (most recently at 88 Fed. Reg. 986, 989 (Jan. 6, 2023)), together authorize the assessment of civil administrative penalties of up to \$67,544 for each violation of Section 313 of EPCRA that occurs after November 2, 2015. Pursuant to Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day that an EPCRA Section 313 violation continues constitutes a separate violation.

B. CAA Section 112(r)(1)

5. The purpose of Section 112(r) of the CAA and its implementing regulations is “to prevent the accidental release and to minimize the consequences of any such release” of an “extremely hazardous substance.” *See* 42 U.S.C. § 7412(r)(1), 42 U.S.C. § 7412(r)(1).

6. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to (a) identify hazards that may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the CAA is referred to as the “General Duty Clause” or the “GDC.”

7. Section 112(r)(8) of the CAA, 42 U.S.C. § 7412(r)(8), requires EPA to develop and disseminate information on how to conduct hazard assessments. According to EPA’s

Guidance for Implementation of the GDC CAA Section 112(r)(1) (“EPA GDC Guidance,” May 2000), available at <https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf>, facilities subject to the General Duty Clause should identify hazards that may result from hazardous releases by determining: (a) the intrinsic hazards of the chemicals used in the processes; (b) the risks of accidental releases from the processes through possible release scenarios; and (c) the potential effect of these releases on the public and the environment. The document that contains this analysis is often referred to as a process hazard review.

8. The term “extremely hazardous substance” means an extremely hazardous substance as defined by Section 112(r)(1) of the CAA, including any chemical which may, as a result of short-term exposures associated with releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability or corrosivity.¹ The term includes, but is not limited to, regulated substances listed in Section 112(r)(3) of the CAA and in 40 C.F.R. § 68.130.

9. Anhydrous ammonia is included as one of the extremely hazardous substances listed in Section 112(r)(3) of the CAA and in 40 C.F.R. § 68.130.

10. The term “accidental release” is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A), as an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

11. The term “stationary source” is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), in pertinent part, as any buildings, structures, equipment, installations, or substance-emitting stationary activities, located on one or more contiguous properties under the control of the same person, from which an accidental release may occur.

¹ See Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Sen. Report No. 228, 101st Congress, 1st Session at 211 (1989).

12. Sections 113(a)(3) and (d) of the CAA, 42 U.S.C. § 7413(a)(3) and (d), the FCPIAA as amended through 2016, and the FCPIAA's implementing regulations as promulgated and updated by EPA at 40 C.F.R. § 19 (most recently at 88 Fed. Reg. 986, 989 (Jan. 6, 2023)), together authorize the assessment of civil administrative penalties of up to \$55,808 per day for violations of CAA Section 112(r) that occurred after November 2, 2015.

II. GENERAL ALLEGATIONS

13. Respondent owns and operates a jewelry and silverware manufacturing facility at 800 Waterman Avenue, East Providence, Rhode Island 02914 (the "Facility"). The Facility is located within a quarter mile of the Providence Country Day School and the East Providence Police Department.

14. Anhydrous ammonia is used in the Facility's manufacturing process.

15. Respondent is a Rhode Island corporation.

16. Respondent is a "person," as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66, and as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

17. Respondent operates a "facility," as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

18. The Facility has more than 10 "full-time employees," as defined by 40 C.F.R. § 372.3.

19. The Facility is classified in a NAICS code set forth in 40 C.F.R. § 372.23.

20. During calendar years 2018, 2019, and 2020, the Facility "otherwise used" anhydrous ammonia in quantities greater than the reporting threshold of 10,000 pounds.

21. The EPCRA TRI reporting threshold set out at 40 C.F.R. § 372.25 for a facility that otherwise uses anhydrous ammonia is 10,000 pounds per year.

22. Accordingly, the requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, apply to Respondent at the Facility.

23. The Facility is a building or structure from which an accidental release may occur and is therefore a “stationary source,” as defined at Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

24. Respondent is the “owner or operator” of the Facility within the meaning of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

25. Beginning from no later than 2018, the Facility has stored and utilized anhydrous ammonia in its manufacturing process.

26. Anhydrous ammonia is an “extremely hazardous substance” within the meaning of the General Duty Clause of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Anhydrous ammonia is flammable and is corrosive to the skin, eyes, and lungs.

27. The unanticipated emission of anhydrous ammonia into the ambient air from the Facility would constitute an “accidental release,” as that term is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

28. Accordingly, Respondent has operated a stationary source that stored and utilized anhydrous ammonia, an extremely hazardous substance, and has been subject to the CAA’s General Duty Clause at Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

29. An EPA representative initially contacted Respondent on August 3, 2021, to request information about Respondent’s compliance with EPCRA Section 313. Respondent provided initial responses to EPA in October 2021 and provided updated information thereafter. EPA conducted an EPCRA and CAA Section 112(r) compliance inspection of the Facility on December 9, 2021.

III. ALLEGED EPCRA AND CAA VIOLATIONS

Count 1: Failure to Timely Submit TRI Form For Anhydrous Ammonia for Calendar Year 2018

30. During calendar year 2018, Respondent otherwise used anhydrous ammonia, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than the 10,000-pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25.

31. Respondent was therefore required to submit to EPA a TRI Form for anhydrous ammonia for calendar year 2018 on or before July 1, 2019. *See* Section 313(a) of EPCRA and 40 C.F.R. §§ 372.30(a) and (d).

32. Respondent submitted a TRI Form for anhydrous ammonia for calendar year 2018 on October 25, 2021.

33. Accordingly, Respondent failed to submit a TRI Form for anhydrous ammonia for calendar year 2018 to EPA on or before July 1, 2019.

34. Respondent's failure to timely submit a TRI Form for anhydrous ammonia for calendar year 2018 violated Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 2: Failure to Timely Submit TRI Form For Anhydrous Ammonia for Calendar Year 2019

35. During calendar year 2019, Respondent otherwise used anhydrous ammonia, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than the 10,000-pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25.

36. Respondent was therefore required to submit to EPA a TRI Form for anhydrous ammonia for calendar year 2019 on or before July 1, 2020. *See* Section 313(a) of EPCRA and 40 C.F.R. §§ 372.30(a) and (d).

37. Respondent submitted a TRI Form for anhydrous ammonia for calendar year 2019 on October 25, 2021.

38. Accordingly, Respondent failed to submit a TRI Form for anhydrous ammonia for calendar year 2019 to EPA on or before July 1, 2020.

39. Respondent's failure to timely submit a TRI Form for anhydrous ammonia for calendar year 2019 violated Section 313 of EPCRA and 40 C.F.R. Part 372.

**Count 3: Failure to Timely Submit TRI Form
For Anhydrous Ammonia for Calendar Year 2020**

40. During calendar year 2020, Respondent otherwise used anhydrous ammonia, a toxic chemical listed under 40 C.F.R. § 372.65(a), at the Facility in quantities greater than the 10,000-pound threshold amount established for EPCRA TRI reporting by 40 C.F.R. § 372.25.

41. Respondent was therefore required to submit to EPA a TRI Form for anhydrous ammonia for calendar year 2020 on or before July 1, 2021. *See* Section 313(a) of EPCRA and 40 C.F.R. §§ 372.30(a) and (d).

42. Respondent submitted a TRI Form for anhydrous ammonia for calendar year 2020 on October 25, 2021.

43. Accordingly, Respondent failed to submit a TRI Form for anhydrous ammonia for calendar year 2020 to EPA on or before July 1, 2021.

44. Respondent's failure to timely submit a TRI Form for anhydrous ammonia for calendar year 2020 violated Section 313 of EPCRA and 40 C.F.R. Part 372.

Count 4: Failure to Identify Hazards under the General Duty Clause

45. Pursuant to the General Duty Clause in Section 112(r)(1) of the CAA, owners and operators of stationary sources producing, processing, handling, or storing extremely hazardous substances have a general duty, in the same manner and to the same extent as Section 654 of Title 29, to identify hazards that may result from accidental releases of such substances, using appropriate hazard assessment techniques.

46. To identify hazards that may result from accidental releases of extremely hazardous substances under the General Duty Clause, owners and operators of stationary sources should determine: (a) the intrinsic hazards of the chemicals used in the processes; (b) the risks of accidental releases from the processes through possible release scenarios; and (c) the potential effect of these releases on the public and the environment, using appropriate hazard assessment techniques.

47. Beginning from no later than 2018, Respondent has stored, handled, and used anhydrous ammonia at the Facility.

48. Anhydrous ammonia is an “extremely hazardous substance” within the meaning of the General Duty Clause and is specifically included in a list of extremely hazardous substances in Section 112(r)(3) of the CAA.

49. Pursuant to the General Duty Clause, Respondent was required to identify hazards that may result from accidental releases of anhydrous ammonia by using appropriate, industry-recognized hazard assessment techniques.

50. Prior to EPA’s EPCRA and CAA Section 112(r) compliance inspection in December 2021, while Respondent had a number of facility-wide safety features and protocols in place, it had not fully identified hazards that could result from accidental releases of anhydrous ammonia at the Facility by using appropriate hazard assessment techniques. Respondent subsequently provided EPA with a written process hazard review for anhydrous ammonia in May 2022.

51. Accordingly, EPA alleges that Respondent violated the General Duty Clause at Section 112(r)(1) of the CAA.

IV. TERMS OF SETTLEMENT

52. Respondent certifies that it has corrected the alleged violations cited in this CAFO and will operate its Facility in compliance with Section 313 of EPCRA and the regulations promulgated thereunder at 40 C.F.R. Part 372, and with the General Duty Clause at Section 112(r)(1) of the CAA.

53. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. Admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. Neither admits nor denies the specific factual allegations contained in this CAFO;
- c. Consents to the assessment of a civil penalty as stated below;
- d. Consents to the issuance of any specified compliance or corrective action order;²
- e. Consents to the conditions specified in this CAFO;
- f. Consents to any stated permit action;³
- g. Waives any right to contest the alleged violations of law set forth in Section III of this CAFO; and
- h. Waives its right to appeal the Final Order accompanying this Consent Agreement.

54. For the purpose of this proceeding, Respondent also:

- a. Agrees that this CAFO states a claim upon which relief can be granted against Respondent;
- b. Acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

² There were no specified compliance or corrective action orders in this case.

³ There was no permit action in this case.

- c. Waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO;
- d. Consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the District of Rhode Island; and
- e. Waives any rights Respondent may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO and to seek an additional penalty for such noncompliance and agrees that federal law shall govern in any such civil action.

55. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and taking into account the particular facts and circumstances of this case with reference to relevant statutory penalty criteria and applicable penalty policies, Complainant has determined that it is fair and proper that Respondent pay a total of \$108,900 to resolve the violations alleged in Section III of this CAFO.

56. Respondent agrees to:

- a. Pay the civil penalty of \$108,900 (the “Settlement Amount”) within 30 calendar days of the effective date of this CAFO (*i.e.*, the day the CAFO is filed with the Regional Hearing Clerk);
- b. Pay the Settlement Amount using any appropriate method provided on the website <https://www.epa.gov/financial/makepayment>, identifying the payment with “*In the Matter of W. R. Cobb Company*, Docket Nos. CAA-01-2023-0041 and EPCRA-01-2023-0042”; and
- c. Within 24 hours of payment of the Settlement Amount, send proof of payment by email to the addresses below. “Proof of payment” means, as applicable, a copy of the

check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “*In the Matter of W. R. Cobb Company*, Docket Nos. CAA-01-2023-0041 and EPCRA-01-2023-0042.” The addresses are as follows:

Wanda Santiago
Regional Hearing Clerk
EPA Region 1
santiago.wanda@epa.gov
and
R1_Hearing_Clerk_Filings@epa.gov

and

Kassandra Kometani
Enforcement Counsel
EPA Region 1
kometani.kassandra@epa.gov

57. 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.

58. If any portion of the Settlement Amount relating to the alleged EPCRA violations (which shall be deemed to be 53% of the total Settlement Amount required by Paragraphs 55 and 56 of this CAFO) is not paid when due, then the unpaid portion of the Settlement Amount shall be payable with accrued interest from the original due date to the date of payment. The interest shall be calculated at the rate established in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due, with the charge assessed from the first day that payment is due in accordance with 31 C.F.R. § 901.9(d). In any such

collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

59. If any portion of the Settlement Amount relating to the alleged CAA violations (which shall be deemed to be 47% of the total Settlement Amount required by Paragraphs 55 and 56 of this CAFO) is not paid when due, then pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the Settlement Amount if it is not paid within thirty (30) calendar days of the effective date of this CAFO. In that event, interest will accrue from the effective date of this CAFO at the “underpayment rate” established pursuant to 26 U.S.C. § 6621(a)(2). In the event that the Settlement Amount is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorneys’ fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the Settlement Amount persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding Settlement Amount and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

60. The Settlement Amount under this CAFO and any interest, nonpayment penalties, and other charges paid pursuant to any penalty collection action arising from this CAFO shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and shall not be deductible for purposes of federal, state, or local taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

61. In accordance with 40 C.F.R. § 22.18(c), this CAFO constitutes a settlement by EPA of all claims for civil penalties for the violations and facts specifically alleged in Section III of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

62. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the allegations in this CAFO are based, or if Respondent violates any other applicable provision of federal, state, or local law.

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

64. Complainant and Respondent, by entering into this CAFO, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the full executed CAFO, by electronic mail, to the following address: bjedele@crfllp.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database.

Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing

and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with and be maintained in accordance with that Order.

65. Each Party shall bear its own costs and attorneys' fees in this proceeding and specifically waives any right to recover such costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

66. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approval of the Regional Judicial Officer.

67. 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, either in person or electronically via email, with the Regional Hearing Clerk.

FOR RESPONDENT:



Roderick Lichtenfels
Chief Executive Officer
W. R. Cobb Company

9/19/23

Date

In the Matter of W. R. Cobb Company, Docket Nos. CAA-01-2023-0041, EPCRA-01-2023-0042
Consent Agreement and Final Order

FOR COMPLAINANT:

James Chow, Acting Director
Enforcement and Compliance Assurance Division
EPA Region 1

Date

In the Matter of W. R. Cobb Company, Docket Nos. CAA-01-2023-0041, EPCRA-01-2023-0042, Consent Agreement and Final Order

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent W. R. Cobb Company is ordered to pay the \$108,900 amount specified in the Consent Agreement in the manner indicated therein. The terms of the CAFO shall become effective on the date that it is filed, either in person or electronically via email, with the Regional Hearing Clerk.

LeAnn Jensen
Regional Judicial Officer
EPA Region 1

Date