UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

Received by
EPA Region 1
Hearing Clerk

In the Matter of:

New England Warehousing Group, LLC
82 West Clark Street
West Haven, Connecticut 06516,

Respondent.

Proceeding under Section 113(d) of the Clean Air Act and Section 325(c) of the Emergency Planning and Community Right-to-Know Act.

Docket Nos.: CAA-01-2022-0030
EPCRA-01-2022-0031

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7413(d), Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(c), and Sections 22.13(b) and 22.18(b) 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. Complainant is the United States Environmental Protection Agency, Region 1 ("EPA").

3. Respondent, New England Warehousing Group, LLC ("NEWG" or "Respondent"), is a Connecticut limited liability company that operates as a public warehousing facility with its principal place of business located at 82 West Clark Street in West Haven, CT (hereinafter, the "Facility").

4. Complainant and Respondent (collectively, the "Parties"), having agreed that settlement of this action is in the public interest, consent to the entry of this Consent Agreement ("Agreement" or "Consent Agreement") and accompanying Final Order ("Order" or "Final Order") without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of the Consent Agreement and Final Order (collectively, "CAFO").

B. JURISDICTION

5. This Consent Agreement is entered into under CAA Sections 113(a)(3)(A) and 113(d), 42 U.S.C. §§ 7413(a)(3)(A) and 7413(d), Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules, 40 C.F.R. Part 22.

6. EPA and the United States Department of Justice have jointly determined that this matter is appropriate for an administrative penalty assessment under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. § 19.4.

7. The issuance of this CAFO simultaneously commences and concludes this proceeding under the Consolidated Rules, as allowed by 40 C.F.R. § 22.13(b).

C. GOVERNING LAW

CLEAN AIR ACT STATUTORY AND REGULATORY AUTHORITY

8. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), states that the purpose of Section 112(r) and its implementing regulations is "to prevent the accidental release and to minimize the consequences of any such release" of an "extremely hazardous substance."

9. Section 112(r)(1) of the CAA is referred to as the "General Duty Clause" or the "GDC." Under the GDC, among other things, owners and operators of stationary sources producing, processing, handling, or storing substances listed under CAA Section 112(r)(3), 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 releases* that do occur.

10. The term "have a general duty in the same manner and to the same extent as section 654 of title 29 [of the U. S. Code]" means owners and operators must comply with the General Duty Clause in the same manner and to the same extent as employers must comply with the Occupational Safety and Health Act ("OSH Act") administered by the Occupational Safety and Health Administration ("OSHA").[1]

11. The term "extremely hazardous substance" ("EHS") means, without limitation, an extremely hazardous substance within the meaning of Section 112(r)(1) of the Act (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[2]) and any regulated substance listed in CAA Section 112(r)(3) (including any substance listed in 40 C.F.R. § 68.130 or in 40 C.F.R. Part 355, Appendices A and B, published under Section 302 of EPCRA, 42 U.S.C. § 11002).

[1] Section 654 of the OSH Act provides, in pertinent part, that "[e]ach employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees" and "shall comply with occupational safety and health standards promulgated under this act." 29 U.S.C. § 654.

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

12. 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.

13. The term "stationary source" is defined by Section 112(r)(2)(C) of the Act, 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.

14. The General Duty Clause is a performance standard with requirements that often can be achieved in a variety of ways. EPA routinely consults chemical Safety Data Sheets ("SDSs"), codes, standards, and guidance issued by chemical manufacturers, trade associations, and fire prevention associations (collectively, "industry standards") to understand the hazards posed by using various EHSs and the standard of care that industry, itself, has found to be appropriate for managing such hazards. Industry standards consistently are relied upon by industry and fire prevention experts and sometimes incorporated into state building, fire, and mechanical codes. For facilities storing EHSs in warehouses, EPA often consults SDSs, National Fire Prevention Association ("NFPA") standards (such as NFPA 400 *Hazardous Materials Code* and NFPA 30 *Flammable Liquids Code*), state fire codes, and the Center for Chemical Process Safety's *Guidelines for Safe Warehousing of Chemicals* and *Guidelines for Safe Storage and Handling of Reactive Materials*.

15. Sections 113(a) and (d) of the CAA, 42 U.S.C. §§ 7413(a) and (d), provide for the assessment of civil penalties for violations of Section 112(r) of the CAA. Statutory maximum penalties for the CAA, as adjusted for inflation, are set forth in 40 C.F.R. Part 19.

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT STATUTORY AND REGULATORY AUTHORITY

16. In accordance with Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), the owner or operator of a facility which is required to prepare or have available a material safety data sheet ("safety data sheet" or "SDS") for a hazardous chemical under the OSH Act shall submit to the state emergency response commission ("SERC"), local emergency planning committee ("LEPC"), and the fire department with jurisdiction over the facility, an SDS for each chemical present at the facility in quantities equal to or greater than the chemical-specific minimum threshold level established under EPCRA 311(b), 42 U.S.C. § 11021(b). Alternatively, Section 311(a) of EPCRA allows the owner or operator to submit a chemical list to the SERC, LEPC, and fire department. Pursuant to Section 311(d) of EPCRA, 42 U.S.C. § 11021(d), the SDS or list must be submitted within three months from when the owner or operator is first required to have an SDS for the chemical.

17. In accordance with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), the owner or operator of a facility which is required under the OSH Act to prepare or have available an SDS for a hazardous chemical must prepare and submit an emergency and hazardous chemical inventory form (commonly known as "Tier I" or "Tier II" forms) to the SERC, LEPC, and the local fire department. Tier I or Tier II forms must be submitted annually, on or before March 1, and are required to contain chemical inventory information with respect to the preceding calendar year. Under EPCRA Section 312(b), 42 U.S.C. § 11022(b), EPA is authorized to establish minimum threshold levels of hazardous chemicals for purposes of Section 312(a).

18. The regulations promulgated pursuant to Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, are found at 40 C.F.R. Part 370. Under 40 C.F.R. §§ 370.20, 370.30, and 370.32, the owner or operator of a facility that has present a quantity of a hazardous chemical meeting or exceeding the minimum threshold level must submit an SDS for each hazardous chemical to the LEPC, SERC, and local fire department. Alternatively, the owner or operator may submit a list of the hazardous chemicals for which the SDS is required ("chemical list"), grouped by hazard category, with the chemical or common name of each hazardous chemical as provided on the SDS and a description of the hazardous component of each hazardous chemical. The SDS or chemical list must be submitted within three months after the owner or operator is first required to prepare or have an SDS available for a hazardous chemical or after such chemical becomes present in an amount meeting or exceeding the threshold established in 40 C.F.R. § 370.10(a). Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, the owner or operator of a facility subject to the reporting requirements of Part 370 that has a quantity of a hazardous chemical present at the facility in an amount meeting or exceeding the minimum threshold level must prepare and submit a Tier I or Tier II form to the LEPC, SERC, and local fire department. Pursuant to 40 C.F.R. § 370.45, Tier I or Tier II forms must be submitted annually, on or before March 1, and are required to contain chemical inventory information with respect to the preceding calendar year. The LEPC, SERC, or local fire department may request that a facility submit the more comprehensive Tier II form in lieu of the Tier I form, as has the State of Connecticut.

19. In accordance with EPCRA Sections 311(b) and 312(b), the EPCRA regulations at 40 C.F.R. § 370.10(a) and 40 C.F.R. 355 establish minimum threshold levels for hazardous chemicals that trigger reporting requirements for the purposes of 40 C.F.R. Part 370.

20. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), allows EPA to assess civil penalties for violations of EPCRA Section 312. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), allows EPA to assess civil penalties for violations of EPCRA Section 311. Statutory maximum penalties for EPCRA, as adjusted for inflation, are set forth in 40 C.F.R. Part 19.

D. ALLEGED VIOLATIONS

21. Respondent engages in chemical warehousing and storage activities at the Facility. The Facility is a "stationary source" as that term is defined in Section 112(r)(2)(C) of

the CAA, 42 U.S.C. § 7412(r)(2)(C) and, also, a "facility" as defined in 40 C.F.R. § 370.66. The Facility is surrounded by numerous business and residential properties and lies within about 500 feet of a commuter rail station and a mile from an interstate highway**.**

22. Respondent is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), against whom an administrative order may be issued under CAA Section 113(a)(3), 42 U.S.C. § 7413(a)(3). NEWG is also a "person" under EPCRA Section 329(7), 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.

23. At all times relevant to the allegations herein, NEWG operated the Facility and was an "operator" within the meaning of Sections 112(r)(1) of the CAA.

24. On December 2, 2019, EPA and its contractors conducted an inspection (the "Inspection") at the Facility. The primary purpose of the Inspection was to assess whether NEWG was operating the Facility in compliance with federal environmental laws and regulations including, but not limited to, EPCRA Sections 302 – 312, 42 U.S.C. §§ 11002 – 11022, and CAA Section 112(r).

25. During the Inspection, among the portions of the Facility that were examined were the first-floor entry and loading dock areas, the first-floor warehouse area, and the second-floor warehouse areas (collectively, the "Warehouse"). The Warehouse comprises more than 200,000 square feet of space and is used, in part, for storing of hazardous materials including, without limitation, flammable liquids and other extremely hazardous substances that may be toxic, reactive, flammable, volatile, or corrosive as stored in the Warehouse.

26. As part of Respondent's operation of the Warehouse, during calendar years 2019 and 2020, NEWG stored approximately 10 to 12 separate hazardous chemical products, each of which was a "hazardous chemical" subject to reporting under Section 312 of EPCRA. Some of the reportable substances were also EHSs within the meaning of the CAA GDC due primarily to their flammability including, but not necessarily limited to, ethanol, isopropyl alcohol, methanol, and acetone. In 2019, the total quantity of reportable substances at the Facility exceeded approximately 2.2 million pounds.

27. Ethanol is categorized under NFPA 30 (*Flammable Liquids Code*)[3] as a Class IB flammable liquid. Ethanol is considered a hazardous chemical reportable under EPCRA Sections 311 and 312 with a minimum threshold level of 10,000 pounds.

28. Isopropyl alcohol is categorized under NFPA 30 as a Class IB flammable liquid and is considered a hazardous chemical reportable under EPCRA Sections 311 and 312 with a minimum threshold level of 10,000 pounds.

[3] Reference is made to the *Flammable Liquids Code* (2018 edition) ("NFPA 30").

29. Methanol is categorized under NFPA 30 as a Class IB flammable liquid, is also toxic, and is considered a hazardous chemical reportable under EPCRA Sections 311 and 312 with a minimum threshold level of 10,000 pounds.

30. Acetone is categorized under NFPA 30 as a Class IB flammable liquid and is considered a hazardous chemical reportable under EPCRA Sections 311 and 312 with a minimum threshold level of 10,000 pounds.

31. The unanticipated emission of any of the chemicals listed in Paragraphs 27 through 30, either alone or in combination, 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).

32. During the Inspection, conditions were observed inside the Warehouse consisting, generally, of numerous rows of palleted products, some on support racks and others free-standing. Container types observed on pallets included bags, boxes, totes, 5-gallon pails, and 55-gallon drums. During the inspection, numerous pallets of 55-gallon drums of chemicals were observed to be stacked (without a racking system) more than three tiers high.

33. During the Inspection, a number of dangerous and/or potentially violative conditions were observed and documented by EPA in the Warehouse including, without limitation:

a. lack of required markings (NFPA hazard diamonds) at chemical storage area access points [*see e.g.*, NFPA 30, Ch. 4, NFPA 704,[4] Secs. 1.3, 4.3];
b. inadequate aisle space between stacked and palleted 55-gallon drums of chemicals [*see e.g.*, NFPA 30, Sec.12.3.5 and 29 C.F.R. § 1910.106(d)(4)(v)];
c. pallets of drums or totes with chemicals stacked more than three tiers high [*see e.g.*, NFPA 30, Secs. 9.3.8, 12.6.1.2];
d. improper storage of propane cannisters in close proximity to the Facility entrance [*see e.g.*, NFPA 58,[5] Section 8.4.1.1];
e. lack of required markings (NFPA diamonds) at exterior propane storage area access and storage to indicate whether each cannister is full or empty [*see e.g.*, NFPA 704, Sec.4.3 and Compressed Gas Association (CGA) Pamphlet P-1];
f. stacks of combustible materials (empty wooden pallets) more than 6 feet high stored inside the warehouse [*see e.g.*, NFPA 30, Sec. 12.3.8]; and
g. failure to notify State and local emergency response authorities (including local fire response personnel) of the presence of chemicals under EPCRA Sections 302, 311, and 312, 42 U.S.C. §§ 11002, 11021, and 11022.

[4] Reference is made to the *Standard System for the Identification of the Hazards of Materials for Emergency Response* (2017 edition) ("NFPA 704").
[5] Reference is made to the *Liquified Petroleum Gas Code* (2017 edition) ("NFPA 58").

34. Based on information obtained at or as a result of the Inspection, Respondent handles or stores, or has in the past handled or stored, the following maximum inventory amounts for each of the chemicals listed below as part of NEWG's Warehousing Process at the Facility:

a. 474,389 pounds of ethanol;
b. 125,596 pounds of isopropyl alcohol;
c. 60,034 pounds of methanol; and
d. 59,213 pounds of acetone.

35. Based on information obtained at or as a result of the Inspection, on August 26, 2021, EPA issued a Notice of Violation and Administrative Order ("NOV/AO") to Respondent containing EPA findings and specifying compliance measures for NEWG to implement at the Facility. The NOV/AO cited Respondent's violation of CAA GDC requirements and set forth a schedule under which NEWG must address the conditions of noncompliance described therein.

36. In light of the above, Complainant alleges the following violations of CAA GDC and EPCRA requirements.

Count 1: Failure to Perform GDC Hazard Identification/Analysis

37. Complainant realleges and incorporates by reference Paragraphs 1 through 36 of this document.

38. Pursuant to the GDC at CAA Section 112(r)(1), 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.

39. Under the GDC, to identify hazards that may result from accidental releases of EHSs, 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.[6] The recommended industry practice and standard of care for warehouses to identify, analyze, and evaluate the potential hazards associated with storage of EHSs includes, among other things, using standard, industry-developed checklists, a "What If" analysis, a Hazard and Operability study, or a Consequence Analysis. *See, e.g.*, Section 2.3.1 of EPA's *Guidance for Implementation of the General Duty Clause: Clean Air Act (CAA) Section 112(r)(1)* (May 2000),[7] NFPA 400 Hazardous Materials Code (2010 and later editions), the

[6] *See, e.g.*, EPA's Guidance for Implementation of the General Duty Clause: Clean Air Act (CAA) Section 112(r)(1) (May 2000), available at https://www.epa.gov/sites/production/files/documents/gendutyclause-rpt.pdf.
[7] Id.

Center for Chemical Process Safety's *Guidelines for Safe Warehousing of Chemicals* and *Guidelines for Safe Storage and Handling of Reactive Materials*, Chapter 4, NFPA 30 *Flammable Liquids Code* (2018 edition), NFPA 704 *Standard System for the Identification of the Hazards of Materials for Emergency Response* (2017 edition), and NFPA 58 *Liquified Petroleum Gas Code* (2017 edition).

40. As part of its operation of the Warehouse, Respondent handled or stored EHSs including, without limitation, ethanol, isopropyl alcohol, methanol, and acetone without identifying the hazards that may result from accidental releases and without conducting a process hazard review using appropriate, industry-recognized hazard assessment techniques.

41. The unanticipated emission of any EHS, including ethanol, isopropyl alcohol, methanol, or acetone, either alone or in combination, 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).

42. By failing to identify hazards that may result from accidental releases of extremely hazardous substances handled or stored as part of the Warehouse operation, Respondent violated the General Duty Clause at Section 112(r)(1) of the Clean Air Act.

43. Accordingly, Respondent violated the hazard analysis and identification requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), and is properly subject to the assessment of civil penalties pursuant to CAA Section 113(d), 42 U.S.C. § 7413(d).

Count 2: Failure to Design and Maintain a Safe Facility (GDC)

44. Complainant realleges and incorporates by reference Paragraphs 1 through 43 of this document.

45. Under the GDC and CAA Section 112(r)(1), at all times relevant to the violations alleged in this CAFO, Respondent had a general duty to design and maintain the Facility, including the Warehouse, as a safe facility taking such steps as are necessary to prevent a release of an EHS at or from the Facility.

46. The recommended industry practice and standard of care for designing and maintaining a safe warehouse or warehousing process are drawn from the industry standards set forth in Paragraphs 14 and 39, above.

47. At all times relevant to the allegations in this CAFO, based on the conditions identified in Paragraph 33, above, Respondent failed in its general duty to design and maintain the Warehouse and the Warehousing Process as a safe facility taking such steps as are necessary to prevent a release of an extremely hazardous substance, in accordance with applicable industry standards.

48. Accordingly, Respondent violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), on each and every day that it failed to design and maintain the Facility, including the Warehouse, as a safe facility taking such steps as are necessary to prevent a release of an EHS at or from the Facility, and is properly subject to the assessment of civil penalties pursuant to CAA Section 113(d).

Count 3: Failure to Submit Chemical Inventory Forms under EPCRA Sections 311/312

49. Complainant realleges and incorporates by reference Paragraphs 1 through 48 of this document.

50. Pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370, commencing on or before the March 1 following the date upon which Respondent was required to prepare or have available an SDS for ethanol, isopropyl alcohol, methanol, and acetone at or in connection with the Facility (including the Warehouse), and on or before March 1 of each year thereafter, Respondent was required to submit "emergency and hazardous chemical inventory forms," containing the data regarding ethanol, isopropyl alcohol, methanol, acetone, and any other reportable substances at the Facility, required under Section 312, for the preceding calendar year ("Inventory Form"), to the appropriate LEPC, the SERC, and the fire department with jurisdiction over the Facility. Under Section 311 of EPCRA, Respondent would have been required to provide an SDS or Chemical List (which can be the same as the Inventory Form) to the LEPC, SERC and fire department even earlier, namely, within three months of being required to prepare or have available an SDS for each hazardous chemical.

51. Based on information obtained at or as a result of the Inspection or EPA's subsequent investigation of this case, EPA finds that the amounts of ethanol, isopropyl alcohol, methanol, and acetone that are specified in Paragraph 34, above, are or have in the past been present at the Facility in excess of the minimum threshold levels established under 40 C.F.R. § 370.10(a).

52. Based on information obtained at or as a result of the Inspection or subsequent EPA investigation, EPA finds that Respondent failed to report the presence at the Facility of one or more of the hazardous chemicals listed in Paragraph 34, above, despite being in operation with threshold amounts of one or more of such substances (namely, ethanol, isopropyl alcohol, methanol, and acetone) in excess of their respective minimum threshold levels in 2019 and 2020.

53. At the time of the Inspection, Respondent had not submitted SDSs or Tier II forms to the appropriate LEPC, the SERC, and the fire department with jurisdiction over the Facility for all of the hazardous chemicals present at the Facility including, but not limited to, those substances listed in the preceding Paragraph 52, as required by Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021and 11022.

54. Pursuant to EPCRA Section 325(c)(3), 42 U.S.C. § 11045(c)(3), each day that NEWG failed to timely submit to the appropriate LEPC, SERC, and fire department an SDS or Tier II form for any of the substances listed in this Count 3 (or any other hazardous chemicals present at the Facility in excess of their applicable threshold levels) constitutes a separate violation of EPCRA.

55. Accordingly, Respondent's failure to submit the required Tier II forms for the reporting years 2019 and 2020 constitute separate violations of EPCRA Section 312 and 40 C.F.R. Part 370, each subjecting NEWG to penalties under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1). Likewise, each failure to comply with EPCRA Section 311 constitutes a separate violation, subjecting NEWG to penalties under Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2).

E. TERMS OF CONSENT AGREEMENT

56. 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. waives any right to contest the alleged violations of law set forth in Section D of this CAFO; and
e. waives its rights to appeal the Final Order accompanying this Consent Agreement.

57. For the purpose of this proceeding, Respondent:

a. agrees that this CAFO states a claim upon which relief may 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;
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, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
d. consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Connecticut; and
e. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional

penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

58. Respondent certifies that it has corrected the violations alleged in this CAFO and is currently in compliance with Section 112(r) of the CAA and Sections 311 and 312 of EPCRA. Respondent further certifies that its compliance at the Facility includes completion of all the requirements specified in Paragraph 31 of the NOV/AO.

59. Pursuant to the relevant statutory penalty criteria in Sections 113(d)(2)(B) and 113(e) of the CAA, 42 U.S.C. §§ 7413(d)(2)(B) and 7413(e), and Section 325(c) of EPCRA, 42 U.S.C. § 11045, and after considering applicable EPA penalty policies and guidance, including the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (June 2012), the *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* (September 30, 1999), and EPA amendments to those policies to account for inflation (effective January 15, 2022), EPA has determined that it is fair and proper to assess a civil penalty of $109,635 for the violations alleged in this matter. Respondent consents to the issuance of this CAFO and consents for purposes of settlement to pay the civil penalty cited herein and in Paragraph 60, below.

Penalty Payment

60. Respondent agrees to:

a. pay the civil penalty of $109,635 ("Civil Penalty") within 30 calendar days of the Effective Date of this Agreement; and
b. pay the Civil Penalty using any method, or combination of methods, provided on the website http://www2.epa.gov/financial/additional-instructions-making-payments-epa, and identifying each and every payment with "Docket Nos. CAA-01-2022-0030 and EPCRA-01-2022-0031." Within 24 hours of payment of Civil Penalty, send proof of payment to Drew Meyer, Environmental Scientist, at U.S. EPA, Region 1, 5 Post Office Square, Suite 100, Mail Code 05-4, Boston, MA 02109-3912, and by e-mail to Meyer.drew@epa.gov. ("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 "Docket Nos. CAA-01-2022-0030 and EPCRA-01-2022-0031").

Collection of Unpaid Civil Penalty

61. Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), specifies the consequences of failure to pay the penalty on time. Other actions EPA may take if Respondent fails to timely

pay include: (a) referring the debt to a credit reporting agency or a collection agency pursuant to 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33; (b) collecting the debt by administrative offset (i.e., the withholding of money payable by the United States or money held by the United States for a person), including referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; (c) suspending or revoking Respondent's licenses or other privileges; or (d) suspending or disqualifying Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

F. ADDITIONAL PROVISIONS

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

63. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

64. By signing this CAFO, Respondent acknowledges that this document will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

65. By signing this CAFO, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

66. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

67. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.

68. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

69. This CAFO constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings, whether written or oral, among the Parties with respect to the subject matter hereof.

70. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA, EPCRA, and other federal, state, or local laws or statutes. Nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations or be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

71. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

72. Except as qualified by Paragraph 61 (overdue penalty collection), each party shall bear its own costs and fees in this proceeding including attorney's fees. Respondent specifically waives any right to recover such costs from EPA pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

73. Complainant and Respondent, by entering into this Consent Agreement, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by e-mail, to pwpacelli@pacemotor.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.

H. EFFECTIVE DATE

74. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, EPA will electronically transmit a copy of the filed CAFO to the Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk.

The foregoing Consent Agreement in this case, entitled *In the Matter of New England Warehousing Group, LLC*, Docket Nos. CAA-01-2022-0030 and EPCRA-01-2022-0031, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:

William T Pacelli
Signature

04-20-2022
Date

Printed Name: William T. Pacelli

Title: Member

Address: 1425 Honeyspot Road Ext., Stratford, CT 06615

Respondent's Federal Tax Identification Number: 06-1548957

The foregoing Consent Agreement in this case, entitled *In the Matter of New England Warehousing Group, LLC*, Docket Nos. CAA-01-2022-0030 and EPCRA-01-2022-0031, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

KAREN MCGUIRE Digitally signed by KAREN MCGUIRE Date: 2022.04.26 16:34:05 -04'00'

Signature and Date

Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 1 – New England

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of: **New England Warehousing Group, LLC** 82 West Clark Street West Haven, Connecticut 06516, Respondent. Proceeding under Section 113(d) of the Clean Air Act and Section 325(c) of the Emergency Planning and Community Right-to-Know Act.	Docket Nos.: CAA-01-2022-0030 EPCRA-01-2022-0031

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) and (c) of EPA's Consolidated Rules of Practice, Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and Section 325(c) of EPCRA, 42 U.S.C. § 11045, the Consent Agreement is incorporated by reference into this Final Order and is hereby ratified. Respondent, New England Warehousing Group, LLC, is ordered to pay the civil penalty of $109,635 in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

SO ORDERED THIS ___ DAY OF _____ 2022.

SHARON WELLS Digitally signed by SHARON WELLS
Date: 2022.04.27 16:14:12 -04'00'

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