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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)	
)	
R Plum Corporation dba Empire)	Docket No. EPCRA-10-2011-0027
Cold Storage and Frosty Ice)	
Spokane, Washington)	CONSENT AGREEMENT AND FINAL
)	ORDER
)	
Respondent.)	
)	
)	
)	
_____)	

I. 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 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

1.2. Pursuant to Section 109 of CERCLA and Section 325 of EPCRA, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues and R Plum Corporation dba Empire Cold Storage and Frosty Ice (“Respondent”) hereby agrees to issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

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

2.2. Respondent owns and operates a facility in Spokane, Washington located at 1327 Oak Street (“the Facility”).

2.3. The Facility is a cold storage warehouse and package ice manufacturer.

2.4. A concise statement of the factual basis for alleging violations of CERCLA and EPCRA, together with specific references to the provisions of the statutes and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Respondent is a corporation incorporated in the State of Washington.

3.2. 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.

3.3. Under Section 101(94) 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.

3.4.. 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.

3.5. 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 which controls, is controlled, or under common control with, such person).

3.6. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Administration (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit a completed Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370) to the state emergency response commission (SERC), the local emergency planning committee (LEPC), and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter. The form must contain the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all

extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

3.7. Anhydrous Ammonia is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. § 1910.1000, Table Z-1.

3.8. OSHA requires Respondent to prepare, or have available, an MSDS for Anhydrous Ammonia.

3.9. Anhydrous Ammonia is a CERCLA "hazardous substance" listed in 40 C.F.R. Part 302, Table 302.4. The Reportable Quantity (RQ) for Anhydrous Ammonia is 100 pounds. Anhydrous Ammonia is listed as an "extremely hazardous substance" and has a threshold planning quantity (TPQ) of 500 pounds, as provided at 40 C.F.R. Part 355, Appendix A.

3.10. During at least one period of time during calendar year 2007, Anhydrous Ammonia was present at the Facility in an amount equal to or greater than the TPQ.

3.11. Respondent did not submit to the Washington SERC, Spokane County LEPC, and the fire department an Emergency and Hazardous Chemical Inventory Form including Anhydrous Ammonia for calendar year 2007 by March 1, 2008.

3.12 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 RQ.

3.13. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), requires that if a facility at which hazardous chemicals are produced, used, or stored releases a reportable quantity (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 SERC of any state likely to be affected by the release and the LEPC for any area likely to be affected by the release.

3.14. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and implementing regulations at 40 C.F.R. § 355.40 require that as soon as practicable after a release which requires notice under subsection (a) of this section, such owner or operator shall provide a written follow up emergency notice setting forth and updating the information required under subsection (b) of this section.

3.15. On July 14, 2007, the Facility released approximately 400 pounds of Anhydrous Ammonia into the environment.

3.16. Respondent failed to immediately notify the NRC of the release of Anhydrous Ammonia from the Facility.

3.17. Respondent failed to immediately notify the Washington SERC and the Spokane County LEPC of the release of Anhydrous Ammonia from the Facility.

3.18. Respondent failed to provide written follow-up emergency notices to the Washington SERC and Spokane County LEPC.

3.19. Under Section 109 of CERCLA, 42 U.S.C. § 9609, EPA may assess a civil penalty for each day of violation of Section 103 of CERCLA. Under Section 325 of EPCRA, 42 U.S.C. § 11045, EPA may assess a civil penalty for each day of violation of Sections 304 and 312 of EPCRA, 42 U.S.C §§ 11004 and 11022.

IV. CONSENT AGREEMENT

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

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

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

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

4.5. Except as provided in Paragraph 4.10., below, each party shall bear its own costs in bringing or defending this action.

4.6. Based on Respondent's willingness to settle this matter without litigation, the nature of the violations, other relevant factors and in accordance with 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, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$67,142.00, \$6,715.00 for the CERCLA violation and \$60,427.00 for the EPCRA violations.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the penalty cited in Paragraph 4.6 above within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check payable as indicated and mailed to the addresses below:

a. For the CERCLA violation, \$6,715.00 payable to "EPA Hazardous Substance Superfund" and mailed to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

b. For the EPCRA violations, \$60,427.00 payable to the "U.S. Treasury" and mailed to:

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

Respondent shall note on the check the title and docket number of this case. Respondents also may make the penalty payment by wire transfer or credit card in accordance with instructions provided by EPA.

4.9. Respondent shall submit a photocopy of the checks or documentation of the wire transfer described above to:

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

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

4.10. Should Respondent fail to pay the penalty 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 CERCLA Section 109(a)(4), 42 U.S.C. § 9609(a)(4), and EPCRA Section 325(f), 42 U.S.C. § 11045(f), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

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

a. 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.

b. 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.

c. 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.

4.12. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.13. 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.

4.14. 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 III above.

STIPULATED AND AGREED:

FOR EMPIRE COLD STORAGE AND FROSTY ICE


Signature

Dated: 3/7/11

Print Name: Ron F. Plummer

Title: President
R Plum corp.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10


Edward J. Kowalski, Director
Office of Compliance and Enforcement

Dated: 3/16/2011

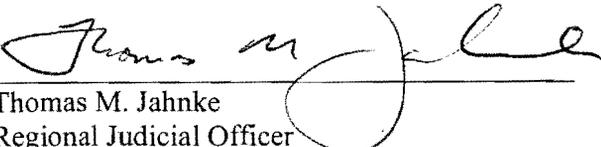
V. FINAL ORDER

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 CERCLA and EPCRA for the particular violations alleged in Part III, above. 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 Act and regulations and permits issued thereunder.

This Final Order shall become effective upon filing.

SO ORDERED this 21st day of March, 2011.



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: R Plum Corporation dba Empire Cold Storage and Frosty Ice, Docket No.: EPCRA-10-2011-0027**, was filed with the Regional Hearing Clerk on March 23, 2011.

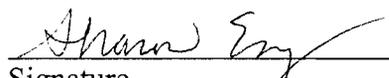
On March 23, 2011 the undersigned certifies that a true and correct copy of the document was delivered to:

Robert E. Hartman, Esquire
U.S. EPA
Region 10, Suite 900
1200 Sixth Avenue, ORC-158
Seattle, Washington 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 on March 23, 2011, to:

Ron Plummer, President
Empire Cold Storage and Frosty Ice
1327 N. Oak Street
Spokane, Washington 99201

DATED this 23rd day of March 2011.



Signature
Print Name: Sharon Eng
Regional Hearing Clerk
EPA Region 10