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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) DOCKET NO. EPCRA-10-2014-0105
)
DT Warehouse, LLC)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
Mattawa, Washington,)
)
)
Respondent.)

I. STATUTORY 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.

1.2. 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 has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil

Penalties,” 40 C.F.R. Part 22, EPA issues, and DT Warehouse, LLC (“Respondent”) 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) and 22.18(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. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, to sign consent agreements between EPA and the party against whom an administrative penalty for violations of EPCRA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of EPCRA together with the specific provisions of EPCRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. 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 prepare and submit an Emergency and Hazardous Chemical Inventory Form (Tier I or Tier II as described in 40 C.F.R. Part 370) to the local emergency planning committee (“LEPC”), the state emergency response commission (“SERC”), and the fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1. The form must contain the information required by

Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), covering all hazardous chemicals required by OSHA to have an MSDS that are present at the facility at any one time during the preceding year in amounts equal to or exceeding threshold planning quantities.

3.2. 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).

3.3. Under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), “person” means, *inter alia*, a corporation.

3.4. The OSHA Hazard Communication Standard (“OSHA Standard”), 29 C.F.R. § 1910.1200(b), requires employers to provide information to their employees about hazardous chemicals to which they are exposed by means of, *inter alia*, an MSDS. The OSHA Standard applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

3.5. Anhydrous ammonia is defined as an extremely hazardous chemical under the OSHA Standard.

3.6. The OSHA Standard requires an MSDS to be prepared, or available, for anhydrous ammonia.

3.7. Respondent is a limited liability company, formed in the State of Washington.

3.8. Respondent owns and operates a facility located at 22233 Road T7 SW, Mattawa, Washington, 99349 (“Facility”).

3.9. Respondent provides cold storage services at the Facility and uses anhydrous ammonia as a refrigerant.

3.10. During 2012, Respondent stored approximately 15,065 pounds of anhydrous ammonia at the Facility.

3.11. Respondent did not timely submit an Emergency and Hazardous Chemical Inventory Form for anhydrous ammonia stored at the Facility to the LEPC, SERC, and fire department with jurisdiction over the facility, for calendar year 2012, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

3.12. Under Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), EPA may assess a civil penalty of up to \$37,500 for each day of violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

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

4.3. As required by Section 325(b)(1)(C) of EPCRA, 42 U.S.C. § 11045(b)(1)(C), EPA has taken into account the nature, circumstances, extent, and gravity of the violations, and Respondent's ability to pay, the effect of the penalty on Respondent's ability to continue to do business, any history of prior such violations, and Respondent's degree of culpability, as well as other relevant factors.

4.4. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$48,045.

4.5. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.4 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.6. Payment under this CAFO may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.7. Respondent must serve photocopies of the check described in Paragraph 4.6, or proof of alternative method of payment, on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

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

4.8. If Respondent fails 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. Such failure may also subject Respondent to a civil action to collect any unpaid penalty under EPCRA, 42 U.S.C. § 11045(b)(3), together with interest, handling charges, and nonpayment penalties described below.

4.9. If Respondent fails to pay any portion of the penalty 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 shall be calculated as of the date the underlying penalty first becomes past due.

4.10. The penalty described in Paragraph 4.4, 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. The undersigned representative of Respondent certifies that she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.13. Each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.14. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

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

4.16. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

5/8/14

Jill Douglas Sanchez

JILL DOUGLAS SANCHEZ, Manager
DT Warehouse, LLC

DATED:

FOR COMPLAINANT:

5/15/2014

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties under EPCRA for the violations alleged in Part III. 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 EPCRA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 22nd day of May, 2014.


M. SOCORRO RODRIGUEZ
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 the Matter of: DT Warehouse, LLC, Docket No.: EPCRA-10-2014-0105**, was filed with the Regional Hearing Clerk and served on 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:

Kris Leefers, Esquire
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
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 to:

Jill Douglas
DT Warehouse, LLC
P.O. Box 1820
Mattawa, Washington 99349

DATED this 23rd day of May, 2014.


CANDACE H. SMITH
Regional Hearing Clerk
EPA Region 10