



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 05 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Andy Janson
President
Hanson Cold Storage
2900 South State Street
St. Joseph, Michigan 49085

Re: Hanson Cold Storage Inc., Hobart, Indiana, Hart and Benton Harbor, Michigan
Consent Agreement and Final Order
Docket No. **EPCRA-05-2013-0016**

Dear Mr. Janson:

Enclosed please find one copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA filed original CAFO with the Regional Hearing Clerk on June 5, 2013.

Please have your client pay the EPCRA civil penalty in the amount of \$13,689 in the manner prescribed in paragraph 87 and 88, reference your check with the EPCRA docket number **EPCRA-05-2013-0016**

The payments are due on July 5, 2013.

Please feel free to contact Ruth McNamara at (312) 353-3193 or by e-mail at mcnamara.ruth@epa.gov if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert Peachey, Assistant Regional Counsel, at (312) 353-4510 or by e-mail at peachey.robert@epa.gov. Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

| | | |
|---|---|---|
| In the Matter of: |) | Docket No. EPCRA-05-2013-0016 |
| |) | |
| Hanson Cold Storage Inc. |) | Proceeding to Assess a Civil Penalty |
| Hobart, Indiana and |) | Under Section 325(c)(1) of the Emergency |
| Hart and Benton Harbor, Michigan |) | Planning and Community Right-to-Know Act |
| Respondent. |) | of 1986, 42 U.S.C. § 11045(c)(1) |

RECEIVED
JUN 05 2013
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), and Sections 22.13(b) and 22.18(b)(2) and (3) 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. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Hanson Cold Storage, Inc. a corporation doing business in the States of Indiana and Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

Statutory and Regulatory Background

10. 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 Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, 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 U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

11. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

12. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

13. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty for period of violation to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009 and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 2201 Northwind Parkway, Hobart, Indiana (Hobart facility).

17. At all times relevant to this CAFO, Respondent was an employer at the Hobart facility.

18. Respondent's Hobart facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

19. Respondent's Hobart facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 2875 South Pipestone Road, Benton Harbor, Michigan (Benton Harbor facility).

21. At all times relevant to this CAFO, Respondent was an employer at the Benton Harbor facility.

22. Respondent's Benton Harbor facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

23. Respondent's Benton Harbor facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

24. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 1151 South Griswold Street, Hart, Michigan (Hart facility).

25. At all times relevant to this CAFO, Respondent was an employer at the Hart facility.

26. Respondent's Hart facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

27. Respondent's Hart facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

28. Ammonia CAS# 7664-41-7 is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

29. Ammonia CAS# 7664-41-7 is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

30. Ammonia CAS# 7664-41-7 is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

31. Ammonia CAS# 7664-41-7 has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

32. Sulfuric Acid CAS# 7664-93-9 is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

33. Sulfuric Acid CAS# 7664-93-9 is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

34. Sulfuric Acid CAS# 7664-93-9 is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

35. Sulfuric Acid CAS# 7664-93-9 has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

36. Lead CAS# 7439-92-1 is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

37. Lead CAS# 7439-92-1 is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

38. Lead CAS# 7439-92-1 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

39. During at least one period of time in calendar year 2008 ammonia, sulfuric acid and lead were present at the Hobart, Indiana and Benton Harbor, Michigan facilities in an amount equal to or greater than the minimum threshold level.

40. During at least one period of time in calendar year 2008 ammonia and sulfuric acid were present at the Hart, Michigan facility in an amount equal to or greater than the minimum threshold level.

41. During at least one period of time in calendar year 2009 ammonia, sulfuric acid and lead were present at the Hobart, Indiana and Benton Harbor, Michigan facilities in an amount equal to or greater than the minimum threshold level.

42. During at least one period of time in calendar year 2009 ammonia and sulfuric acid were present at the Hart, Michigan facility in an amount equal to or greater than the minimum threshold level.

43. OSHA requires Respondent to prepare, or have available, an MSDS for ammonia, sulfuric acid and lead.

44. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Hobart, Indiana, and Benton Harbor, Michigan facilities on or before March 1, 2009, for calendar year 2008 a completed emergency and hazardous chemical inventory form including ammonia, sulfuric acid and lead.

45. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Hart, Michigan facility on or before March 1, 2009, for calendar year 2008 a completed emergency and hazardous chemical inventory form including ammonia and sulfuric acid.

46. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Hobart, Indiana, and Benton Harbor, Michigan facilities on or before March 1, 2010, for calendar year 2009 a completed emergency and hazardous chemical inventory form including ammonia, sulfuric acid and lead.

47. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the Hart, Michigan facility on or before March 1, 2010, for calendar year 2009 a completed emergency and hazardous chemical inventory form including ammonia and sulfuric acid.

48. At all times relevant to this CAFO, the Indiana State Emergency Response Commission was the SERC for the Hobart facility under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

49. At all times relevant to this CAFO, the Lake County Local Emergency Planning Committee was the LEPC for the Hobart facility under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

50. At all times relevant to this CAFO, the Hobart Fire Department was the fire department with jurisdiction over the Hobart facility.

51. At all times relevant to this CAFO, the Michigan Department of Environmental Quality was the SERC for the Benton Harbor and Hart facilities under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

52. At all times relevant to this CAFO, the St. Joseph County Local Emergency Planning Committee was the LEPC for the Benton Harbor facility under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

53. At all times relevant to this CAFO, the Benton Harbor Fire Department was the fire department with jurisdiction over the Benton Harbor facility.

54. At all times relevant to this CAFO, the Oceana County Local Emergency Planning Committee was the LEPC for the Hart facility under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

55. At all times relevant to this CAFO, the Hart Fire Department was the fire department with jurisdiction over the Hart facility.

56. Respondent submitted to the SERC, LEPC, and fire department with jurisdiction over the Hobart facility an Emergency and Hazardous Chemical Inventory Form including ammonia on or about March 16, 2009, for calendar year 2008. This form did not include sulfuric acid or lead.

57. Respondent submitted to the SERC, LEPC, and fire department with jurisdiction over the Hobart facility an Emergency and Hazardous Chemical Inventory Form including ammonia on or about January 12, 2010, for calendar year 2009. This form did not include sulfuric acid or lead.

58. Respondent submitted to the SERC, LEPC, and fire department with jurisdiction over the Benton Harbor facility an Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on or about February 17, 2009, for calendar year 2008. This form did not include lead.

59. Respondent submitted to the SERC, LEPC, and fire department with jurisdiction over the Benton Harbor facility an Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on or about February 5, 2010, for calendar year 2009. This form did not include lead.

60. Respondent submitted to the SERC, LEPC, and fire department with jurisdiction over the Hart facility an Emergency and Hazardous Chemical Inventory Form including ammonia on or about February 26, 2009, for calendar year 2008. This form did not include sulfuric acid.

61. Respondent submitted to the SERC, LEPC, and fire department with jurisdiction over the Hart facility an Emergency and Hazardous Chemical Inventory Form including ammonia on or about February 10, 2010, for calendar year 2009. This form did not include sulfuric acid.

Hobart, Indiana Facility

62. Respondent submitted to the SERC, LEPC, and fire department with jurisdiction over the Hobart, Indiana facility, a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid and lead on May 19, 2010, for calendar year 2008.

63. Each day Respondent failed to submit to the SERC, LEPC and fire department with jurisdiction over the Hobart, Indiana facility, a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid and lead by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

64. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Hobart, Indiana facility, including ammonia, sulfuric acid and lead on May 19, 2010, for calendar year 2009.

65. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Hobart, Indiana facility, including ammonia, sulfuric acid and lead by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

66. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form for the Hobart, Indiana facility, including ammonia, sulfuric acid and lead on May 19, 2010, for calendar year 2009.

67. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form for the Hobart, Indiana facility, including ammonia, sulfuric acid and lead by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

68. Respondent submitted to the fire department with jurisdiction over the Hobart, Indiana facility, a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid, and lead on May 19, 2010, for calendar year 2009.

69. Each day Respondent failed to submit to the fire department with jurisdiction over the Hobart, Indiana facility, a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid and lead by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Benton Harbor, Michigan Facility

70. Respondent submitted to the SERC, LEPC, and fire department with jurisdiction over the Benton Harbor, Michigan facility, a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid and lead on May 3, 2010, for calendar year 2008.

71. Each day Respondent failed to submit to the SERC, LEPC, and fire department with jurisdiction over the Benton Harbor, Michigan facility, a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid and lead by March 1, 2009, for

calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

72. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Benton Harbor, Michigan facility, including ammonia, sulfuric acid and lead on April 21, 2010, for calendar year 2009.

73. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Benton Harbor, Michigan facility, including ammonia, sulfuric acid and lead by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

74. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form for the Benton Harbor, Michigan facility, including ammonia, sulfuric acid and lead on April 21, 2010, for calendar year 2009.

75. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form for the Benton Harbor, Michigan facility, including ammonia, sulfuric acid and lead by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

76. Respondent submitted to the fire department with jurisdiction over the Benton Harbor, Michigan facility, a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid and lead on April 21, 2010, for calendar year 2009.

77. Each day Respondent failed to submit to the fire department with jurisdiction over the Benton Harbor, Michigan facility, a completed Emergency and Hazardous Chemical Inventory Form including ammonia, sulfuric acid and lead by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Hart, Michigan Facility

78. Respondent submitted to the SERC, LEPC, and fire department with jurisdiction over the Hart, Michigan facility, a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on July 27, 2010, for calendar year 2008.

79. Each day Respondent failed to submit to the SERC, LEPC, and fire department with jurisdiction over the Hart, Michigan facility, a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

80. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Hart, Michigan facility, including ammonia and sulfuric acid on April 21, 2010, for calendar year 2009.

81. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Hart, Michigan facility, including ammonia and sulfuric acid by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

82. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form for the Hart, Michigan facility, including ammonia and sulfuric acid on April 21, 2010, for calendar year 2009.

83. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form for the Hart, Michigan facility, including ammonia and sulfuric acid by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

84. Respondent submitted to the fire department with jurisdiction over the Hart, Michigan facility, a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on April 21, 2010, for calendar year 2009.

85. Each day Respondent failed to submit to the fire department with jurisdiction over the Hart, Michigan facility, a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid by March 1, 2010, for calendar year 2009 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

86. Complainant has determined that an appropriate civil penalty to settle this action is \$13,689. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, Respondent's agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's 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, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

87. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,689 civil penalty for the EPCRA violations. For checks sent by regular U.S. postal service, send a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

For checks sent by express mail, send a cashier's or certified check, payable to "Treasurer,
United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: In the Matter of Hanson Cold Storage Inc., the docket
number of this CAFO, and the EPCRA billing document number N/A JW.

88. A transmittal letter, stating Respondent's name, the case name, Respondent's
complete address, the case docket number, and the EPCRA billing document number must
accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Ruth McNamara (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Robert Peachey (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

89. This civil penalty is not deductible for federal tax purposes.

90. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 101, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

91. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

Supplemental Environmental Project

92. Respondent must complete the SEPs as outlined below. These SEPs will aid the Hanson facilities with early detection of ammonia leaks and prevent vessels from building up pressure, rupturing and releasing ammonia. The donations to the fire departments will enhance the two communities' ability to protect the public should a release occur.

- a. Benton Harbor, Michigan facility – Purchase and install a high level cutout on the suction accumulator vessels located in freezer 5. This project will shut the system down if either of the high level floats or solenoids should fail, causing ammonia to flood over into two large suction accumulator traps and fall out in the bottom of the vessels. A large quantity of liquid ammonia could carry over to the low stage compressors, causing damage and or injury.
- b. Benton Harbor, Michigan facility – Purchase and install a mechanical float to be wired as a backup safety to the electronic controlled level probe in the PLC that will ensure proper compressor shutdown when the liquid level gets too high in the vessel.
- c. Hart, Michigan facility – Purchase and install a safety relief valve on the High Temperature Recirculator Oil Pot. This relief valve will open when excessive

pressure occurs in the vessels during the oil draining process, thereby preventing the vessel from rupturing.

- d. Hart, Michigan facility – Purchase and install a safety relief valve on the oil pot for the low temperature recirculator vessel. This relief valve will open when excessive pressure occurs in the vessels during the oil draining process, preventing the vessel from rupturing.
- e. Hart, Michigan facility – Install 8 additional ammonia sensors throughout the freezers that will alert Hanson should a leak in the ammonia system occur.
- f. Purchase and donate to the Benton Harbor Fire Department an ECP2 portable handheld monitor, smart cell rated for 0 -2000 ppm ammonia.
- g. Purchase and donate to the Hart Fire Department:
 1. One (1) TFT 500 gpm water monitors with nozzle sets
 2. Twenty-five (25) fire rated, alkaline flashlights
 3. Twenty-five (25) fire gloves
 4. Six (6) Vertex CHF radios
- h. Purchase and donate to the Hobart Fire Department:
 1. Five (5) Sensit HXG-3 combustible gas leak detectors
 2. Two (2) Multipro 4 gas meters with confined space kits
 3. One (1) 18 volt Rigid tool kit

93. Respondent must spend at least \$51,333.75 to complete the SEP.

94. Respondent certifies as follows:

I certify that Hanson Cold Storage Inc. is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Hanson Cold Storage Inc. has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Hanson Cold Storage Inc. is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to U.S. EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

95. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

96. Respondent must submit a SEP completion report to U.S. EPA by August 31, 2013.

This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

97. Respondent must submit the SEP Completion Report required by this CAFO by first class mail to Ruth McNamara of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 88, above.

98. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

99. Following receipt of the SEP completion report described in paragraph 96, above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 101.

100. If U.S. EPA exercises option b in paragraph 99, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 101, below.

101. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$51,333.75.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least \$46,200.38, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than \$46,200.38, Respondent must pay a penalty of the difference between what was actually spent and \$51,333.75.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Violation</u> |
|--------------------------------------|----------------------------|
| \$200 | 1st through 14th day |
| \$400 | 15th through 30th day |
| \$600 | 31st day and beyond |

102. U.S. EPA’s determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

103. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA’s written demand for the penalties. Respondent will use the method of payment specified in paragraphs 87 and 88, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts.

104. Any public statement that Respondent makes referring to the SEP must include the following language, “Respondent undertook this project under the settlement of the United States Environmental Protection Agency’s enforcement action against Respondent for violations of EPCRA Section 312.”

105. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

106. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

107. This CAFO only resolves Respondent’s liability for federal civil penalties for the violations and facts alleged in the CAFO.

108. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

109. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

110. This CAFO does not affect Respondent's responsibility to comply with EPCRA and other applicable federal, state and local laws and regulations.

111. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

112. The terms of this CAFO bind Respondent and its successors and assigns.

113. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

114. Each party agrees to bear its own costs and attorney's fees in this action.

115. This CAFO constitutes the entire agreement between the parties.

**In the Matter of: Hanson Cold Storage Inc., Hobart, Indiana, Hart and Benton Harbor,
Michigan
Docket No.**

Hanson Cold Storage, Inc., Respondent

5/13/13
Date


Andrew B. Janson
President
Hanson Cold Storage Inc.

U.S. Environmental Protection Agency, Complainant

5/23/13
Date


Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

5/23/13
Date


Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

**In the Matter of: Hanson Cold Storage Inc., Hobart, Indiana, Hart and Benton Harbor,
Michigan
Docket No. EPCRA-05-2013-0016**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5-30-13

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5



JUN 05 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

**In the Matter of: Hanson Cold Storage Inc., Hobart, Indiana, Hart and Benton Harbor,
Michigan
Docket No. EPCRA-05-2013-0016**

Certificate of Service

I, Ruth McNamara, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Andrew B. Janson
President
Hanson Cold Storage
2900 South State Street
St. Joseph, Michigan 49085

on the 5th day of June, 2013

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5

RECEIVED

JUN 05 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY