



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JAN 25 2018

REPLY TO THE ATTENTION OF:

ELECTRONIC SERVICE
VIA E-MAIL

Andrew Greenberg
President
Newport Cold Storage Company
2233 Maxwell Avenue
Newport, Minnesota 55055

Re: Newport Cold Storage Company, Newport, Minnesota, Consent Agreement and Final Order, Docket No. EPCRA-05-2018-0005

Dear Mr. Greenberg:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on January 25, 2018.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$12,722 in the manner prescribed in paragraph 67, and reference your check with the docket number EPCRA-05-2018-0005.

Your payment is due on February 26, 2018.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Kris Vezner, Associate Regional Counsel, at (312) 886-6827. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. EPCRA-05-2018-0005
)
Newport Cold Storage Company) Proceeding to Assess a Civil Penalty Under
Newport, Minnesota,) Section 325(c)(1) of the Emergency Planning
) and Community Right-to-Know Act of 1986
Respondent.)

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 Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Newport Cold Storage Company, a corporation doing business in the State of Minnesota.

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 the terms of the 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.

Statutory and Regulatory Background

9. 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 submit to the state emergency response commission (SERC), community coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, 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. See 40 C.F.R. § 370.40(a).

10. 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.

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

12. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1900.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. The Administrator may assess a civil penalty against any person who violates any requirement of Section 312 of EPCRA, 42 U.S.C. § 11022, of up to \$37,500 per violation that occurred on or between December 7, 2013 and November 2, 2015, and up to \$54,789 per violation that occurred on or after November 3, 2015, pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

15. At all times relevant to this CAFO, Respondent was 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 2233 Maxwell Avenue, Newport, Minnesota (facility).

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

18. At all times relevant to this CAFO, Respondent's facility consisted of buildings, equipment, structures and other stationary items which were located on a single site or on contiguous or adjacent sites, and which were owned or operated by the same person (or by any person which controlled, was controlled by, or under common control with, such person).

19. At all times relevant to this CAFO, Respondent's facility was 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, the Minnesota Division of Homeland Security and Emergency Management (MDHSEM) was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

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

22. At all times relevant to this CAFO, lead-acid batteries were used at the facility for purposes including but not limited to operating material handling equipment.

23. At all times relevant to this CAFO, lead-acid batteries used at the facility contained sulfuric acid and lead.

Respondent's sulfuric acid obligations

24. At all times relevant to this CAFO, sulfuric acid was classified as a physical or health hazard, or hazard not otherwise classified.

25. At all times relevant to this CAFO, sulfuric acid (CAS #7664-93-9) was 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).

26. At all times relevant to this CAFO, sulfuric acid (CAS #7664-93-9) was an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

27. At all times relevant to this CAFO, sulfuric acid (CAS #7664-93-9) had a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

28. At all times relevant to this CAFO, OSHA required Respondent to prepare, or have available, an MSDS for sulfuric acid.

29. During at least one period of time in calendar year 2013 sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

30. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2014, for calendar year 2013.

31. During at least one period of time in calendar year 2014 sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

32. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2015, for calendar year 2014.

33. During at least one period of time in calendar year 2015 sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

34. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2016, for calendar year 2015.

Respondent's lead obligations

35. At all times relevant to this CAFO, lead was classified as a physical or health hazard, or hazard not otherwise classified.

36. At all times relevant to this CAFO, lead (CAS #7439-92-1) was 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(e).

37. At all times relevant to this CAFO, lead (CAS #7439-92-1) had a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

38. At all times relevant to this CAFO, OSHA required Respondent to prepare, or have available, an MSDS for lead.

39. During at least one period of time in calendar year 2013 lead was present at the facility in an amount equal to or greater than the minimum threshold level.

40. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including lead on or before March 1, 2014, for calendar year 2013.

41. During at least one period of time in calendar year 2014 lead was present at the facility in an amount equal to or greater than the minimum threshold level.

42. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including lead on or before March 1, 2015, for calendar year 2014.

43. During at least one period of time in calendar year 2015 lead was present at the facility in an amount equal to or greater than the minimum threshold level.

44. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including lead on or before March 1, 2016, for calendar year 2015.

Count 1

**Failure to Submit 2013 Tier II Form
to Minnesota SERC and Newport Fire Department**

45. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

46. Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2013 to MDHSEM on or before March 1, 2014.

47. Respondent's Emergency and Hazardous Chemical Inventory Form submitted to MDHSEM for calendar year 2013 did not include sulfuric acid and lead.

48. Each day after March 1, 2014, on which Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for calendar year 2013 including sulfuric acid and lead to MDHSEM constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

49. Respondent's Emergency and Hazardous Chemical Inventory Form submitted to the Newport Fire Department for calendar year 2013 did not include sulfuric acid and lead.

50. Each day after March 1, 2014, on which Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for calendar year 2013 including sulfuric acid and lead to the Newport Fire Department constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 2

**Failure to Submit 2014 Tier II Form
to Minnesota SERC and Newport Fire Department**

51. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

52. Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2014 to MDHSEM on or before March 1, 2015.

53. Respondent's Emergency and Hazardous Chemical Inventory Form submitted to MDHSEM for calendar year 2014 did not include sulfuric acid and lead.

54. Each day after March 1, 2015, on which Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for calendar year 2014 including sulfuric acid and lead to MDHSEM constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

55. Respondent's Emergency and Hazardous Chemical Inventory Form submitted to the Newport Fire Department for calendar year 2014 did not include sulfuric acid and lead.

56. Each day after March 1, 2015, on which Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for calendar year 2014 including sulfuric acid and lead to the Newport Fire Department constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 3

Failure to Submit 2015 Tier II Form to Minnesota SERC

57. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

58. Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2015 to MDHSEM on or before March 1, 2016.

59. Respondent's Emergency and Hazardous Chemical Inventory Form submitted to MDHSEM for calendar year 2015 did not include sulfuric acid and lead.

60. Each day after March 1, 2016, on which Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for calendar year 2015 including sulfuric acid and lead to MDHSEM constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 4

Failure to Submit 2015 Tier II Form to Newport Fire Department

61. Complainant incorporates paragraphs 1 through 44 of this CAFO as if set forth in this paragraph.

62. Respondent's Emergency and Hazardous Chemical Inventory Form submitted to the Newport Fire Department for calendar year 2015 did not include sulfuric acid and lead.

63. Each day after March 1, 2016, on which Respondent failed to submit a completed Emergency and Hazardous Chemical Inventory Form for calendar year 2015 including sulfuric acid and lead to the Newport Fire Department constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

64. Complainant has determined that an appropriate civil penalty to settle this action is \$12,722 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, 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).

65. Within 30 days after the effective date of this CAFO, Respondent must pay a \$12,722 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending an electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, Respondent must state the following: "Newport Cold Storage Company" and the docket number of this CAFO. If Respondent chooses to pay by Automated Clearinghouse (ACH), also known as REX or remittance express, then Respondent must send an ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, Respondent must state the following: "Newport Cold Storage Company" and the docket number of this CAFO.

66. A transmittal letter, stating Respondent's name, the case name, Respondent's

complete address, and the case docket number, must accompany the payment. Respondent must send a copy of the payment and transmittal letter to:

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

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

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

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

68. If Respondent does not timely pay the civil penalty, 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.

69. 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.

General Provisions

70. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

71. 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.

72. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

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

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

76. 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.

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

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

79. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: vezner.kris@epa.gov (for Complainant), and cnaunen@locklaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R § 22.6.

Newport Cold Storage Company, Respondent

01/19/2018
Date

Andrew R. Greenberg
Andrew Greenberg
President
Newport Cold Storage Company

U.S. Environmental Protection Agency, Complainant

1-24-18
Date

Jason El-Zein For JSE
Jason El-Zein, Chief
Emergency Response Branch 1
U.S. Environmental Protection Agency
Region 5

1-24-18
Date

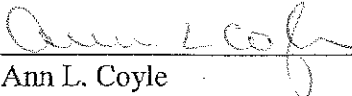
Robert A. Kaplan
Robert A. Kaplan, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Newport Cold Storage Company, Newport, Minnesota
Docket No. EPCRA-05-2018-0005

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.

January 24, 2018
Date



Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the Matter of: Newport Cold Storage Company, Newport, Minnesota
Docket No. EPCRA-05-2018-0005

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on January 25, 2018 in the following manner to the addressees:

Copy by E-mail to

Attorney for Respondent: Charles N. Nauen
Attorney
Lockridge Grindal Nauen P.L.L.P.
100 Washington Avenue S, Suite 2200
Minneapolis, Minnesota 55401
cnnauen@locklaw.com

Copy by E-mail to

Attorney for Complainant: Kris Vezner
Vezner.kris@epa.gov

Copy by E-mail to

Regional Judicial Officer: Ann Coyle
Coyle.ann@epa.gov

Dated: January 25, 2018

LaDawn Whitehead
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5