



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

DEC 19 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Stuart T. Williams
Attorney At Law
Henson & Efron, P.A.
220 South Sixth Street, Suite 1800
Minneapolis, Minnesota 55402-4503

Re: Minnesota Freezer Warehouse Company, Worthington, Minnesota
Consent Agreement and Final Order

Docket No. **MM-05-2013-0004** **CERCLA-05-2013-0005** **EPCRA-05-2013-0007**

Dear Mr. Williams:

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 December 19, 2012.

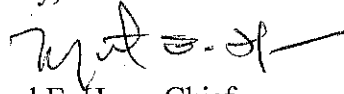
Please have your client pay the CERCLA civil penalty in the amount of \$20,719 in the manner prescribed in paragraphs 60 and 62, reference your check with the CERCLA docket number **CERCLA-05-2013-0005**, MM docket number **MM-05-2013-0004** and the CERCLA billing document number 2751330B005.

Please have your client pay the EPCRA civil penalty in the amount of \$20,719 in the manner prescribed in paragraph 61 and 62, reference your check with the EPCRA docket number **EPCRA-05-2013-0007**, MM docket number **MM-05-2013-0004**. EPCRA does not require a billing document number.

The payments are due on January 18, 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,

A handwritten signature in black ink, appearing to read "M. E. Hans", with a horizontal line extending to the right.

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

Enclosure

cc: Steve Tomylanovich
MN SERC Contact (w/enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

MM-05-2013-0004

EPCRA-05-2013-0007

In the Matter of:) **Docket Nos. CERCLA-05-2013-0005**
)
Minnesota Freezer Warehouse Co.) **Proceeding to Assess a Civil Penalty Under**
Worthington, Minnesota) **Section 109(b) of the Comprehensive**
) **Environmental Response, Compensation,**
) **and Liability Act, and Section 325(b)(2) of the**
Respondent.) **Emergency Planning and Community Right-to-**
) **Know Act of 1986**
)

DEC 19 2012
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 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b); Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2); 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 Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. The Respondent is Minnesota Freezer Warehouse Co., 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

10. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires the owner or operator of a facility to immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

11. Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), requires that the owner or operator of a facility must give the notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), immediately after the release, to the community emergency coordinator for the local

emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

12. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

13. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b) and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2) authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation for violations of CERCLA Section 103 and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.*, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$32,500 per day of violation for violations that occurred from 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

14. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

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 and person in charge of the facility located at 2626 Polar Road, Worthington, Minnesota (facility).

17. Respondent's facility consists of a building, structure, installation, equipment, pipe, storage container or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

18. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. Respondent's 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.

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

21. Ammonia CAS #7664-41-7 is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

22. Ammonia CAS #7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

23. 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.

24. 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).

25. At all times relevant to this CAFO, ammonia CAS #7664-41-7 was produced, used or stored at the facility.

26. 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).

27. Ammonia CAS #7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

28. From January 11, 2010 to January 12, 2010, a release occurred from Respondent's facility of approximately 1,200 pounds of ammonia (the release).

29. In a 24 hour time period, the release of ammonia exceeded 100 pounds.

30. During the release, approximately 1,200 pounds of ammonia spilled, leaked, emitted, or escaped into the ambient air.

31. The release is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

32. The release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

33. On January 11, 2010, at or about 0800 Central Time, Respondent recorded the ammonia level in the receiver at 36 inches, its peak level.

34. At or about 1645 Central Time on January 11, 2010, Respondent recorded the ammonia level in the receiver at 30 inches.

35. Later on January 11, 2010, at or about 2355 Central Time, a maintenance employee for Respondent arrived at the facility to respond to an ADT alarm system notification.

36. Upon arrival at the facility on or about January 11, 2010, the maintenance employee determined that a microprocessor had shut down compressor #5 on the receiver due to a high liquid injection temperature.

37. After the maintenance employee made this determination on or about January 11, 2010, the compressor was restarted and the alarm reset.

38. On January 12, 2010, at or about 0800 Central Time, a maintenance employee smelled ammonia near the receiver on the east side of the facility.

39. After smelling ammonia on January 12, 2010, the maintenance employee notified a maintenance manager of the Respondent, and located and tightened several packing glands and valves on the roof of the facility.

40. At or about 0800 Central Time on January 12, 2010, Respondent recorded the ammonia level in the receiver at 25 inches.

41. At or about 1700 Central Time on January 12, 2010, Respondent recorded the ammonia level in the receiver at 16 inches.

42. JBS & Swift Co. (JBS) occupies a property adjoining Respondent's facility, with an address of 1700 Highway 60 NE, Worthington, Minnesota 56187.

43. On January 28, 2010, Bob Krebs of JBS notified Respondent's employees that JBS had evacuated their adjoining property on the evening of January 11, 2010 due to an ammonia release migrating onto their property.

44. After the meeting with Mr. Krebs on January 28, 2010, Respondent retained Carlson & Stewart Refrigeration, Inc. (Carlson) to determine whether Respondent experienced a release on January 11, 2010, and what the source and estimated amount of the release was.

45. On or about February 3, 2010, Carlson notified Respondent that it had estimated a reportable quantity of ammonia had been released from the roof of the facility on or about January 11, 2010.

46. Respondent had knowledge of the release no later than 1700 Central Time on January 12, 2010.

47. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

48. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

49. The release was likely to affect Minnesota.

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

Count 1

51. Complainant incorporates paragraphs 1 through 50 of this CAFO as if set forth in this paragraph.

52. Respondent notified the NRC of the release on February 3, 2010, at 1127 Eastern Time.

53. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

54. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Count 2

55. Complainant incorporates paragraphs 1 through 50 of this CAFO as if set forth in this paragraph.

56. Respondent notified the Minnesota SERC of the release on February 3, 2010, at 1034 Eastern Time.

57. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

58. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Civil Penalty

59. In consideration of Respondent's good faith negotiations and willingness to quickly settle this matter U.S. EPA has determined that an appropriate civil penalty to settle this action is \$41,438.

60. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,719 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

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

The check must note the following: In the Matter of Minnesota Freezer Warehouse Co., the CERCLA docket number CERCLA-05-2013-0005, MM docket number MM-05-2013-0004 and the CERCLA billing document number 2751330B005.

61. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,719 civil penalty for the EPCRA violation. Respondent must pay the penalty by sending 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

The check must note the following: In the Matter of Minnesota Freezer Warehouse Co., the EPCRA docket number EPCRA-05-2013-0007, MM docket number MM-05-2013-0004 and the

EPCRA billing document number N/A.

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

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

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

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

64. 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.

65. 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. See 31 C.F.R. § 901.9. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than thirty (30) days past due. In addition, U.S. EPA will assess a six (6) percent per year penalty on any principal amount ninety (90) days past due.

General Provisions

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

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

68. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

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

70. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004.

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

72. Each person signing this CAFO 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.

73. Each party agrees to bear its own costs and attorneys fees in this action.

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

**In the Matter of: Minnesota Freezer Warehouse Co., Worthington, Minnesota.
Docket Nos.**

Minnesota Freezer Warehouse Co., Respondent

Nov 13, 2012
Date

Thomas B Newell
Tom Newell
President
Minnesota Freezer Warehouse Co.

U.S. Environmental Protection Agency, Complainant

11-27-12
Date


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

In the Matter of: Minnesota Freezer Warehouse Co., Worthington, Minnesota
Docket Nos. MM-05-2013-0004 CERCLA-05-2013-0005 EPCRA-05-2013-0007

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.

12-17-12
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5


DEC 19 2012
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PROTECTION AGENCY

In the Matter of: Minnesota Freezer Warehouse Co., Worthington, Minnesota

Docket Nos. MM-05-2013-0004

CERCLA-05-2013-0005

EPCRA-05-2013-0007

Certificate of Service

I, Ruth McNamara, certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket numbers CERCLA-05-2013-0005 and EPCRA-05-2013-0007 with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency; delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer; and mailed a copy by first-class, postage prepaid, certified mail, return receipt requested, to Respondent and their attorney by placing it in the custody of the United States Postal Service addressed as follows:

Stuart T. Williams
Attorney At Law
Henson & Efron, P.A.
220 South Sixth Street, Suite 1800
Minneapolis, Minnesota 55402-4503



on the 19th day of December, 2012

Ruth McNamara

Ruth McNamara
U.S. Environmental Protection Agency
Region 5