



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 8
 1595 WYNKOOP STREET
 DENVER, CO 80202-1129
 Phone 800-227-8917
<http://www.epa.gov/region08>

2013 APR -4 AM 11:12

FILED
 EPA REGION VIII
 HEARING CLERK

DOCKET NO.: EPCRA-08-2013-0003

IN THE MATTER OF:

ABE – SOUTH DAKOTA, LLC.
 694 West Park Avenue
 Huron, SD 57350

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 4th DAY OF April, 2013.

Elyana R. Sutin
 Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF:

ABE – South Dakota, LLC
694 West Park Avenue
Huron, South Dakota 57350

Respondent

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**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

DOCKET NO. : EPCRA-08-2013-0003

1. This civil administrative enforcement action is issued to ABE – South Dakota, LLC (Respondent) pursuant to section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045, also known as the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), for alleged violations of the implementing regulations associated with the Toxic Release Inventory requirements of section 313 of EPCRA, 42 U.S.C. § 11023. This proceeding is subject to the Environmental Protection Agency's (EPA) *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Rules of Practice), 40 C.F.R. part 22.
2. The undersigned EPA official has been properly delegated the authority to issue this action.
3. 40 C.F.R. § 22.13(b) provides that where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a Combined Complaint and Consent Agreement (CCCA).
4. The parties agree that the settling of this action and refraining from the adjudication of any issue of fact or law, with regard to the issues herein, is in their interest and in the public interest.

5. Respondent consents to the terms of this CCCA, including the assessment of the civil penalty specified below.

JURISDICTION AND WAIVER OF RIGHT TO HEARING

6. Respondent admits the jurisdictional allegations in this CCCA and neither admits nor denies all remaining allegations herein.

7. Respondent waives any and all claims for relief, and otherwise available rights to judicial or administrative review or other remedies which the Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

STATUTORY AND REGULATORY FRAMEWORK

8. Pursuant to sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 C.F.R. Part 372. Section 313(b) of EPCRA, 40 C.F.R. § 372.22, addresses owners and operators of facilities that have 10 or more full-time employees, are in specific Standard Industrial Classification (SIC) and North American Industry Classification System (NAICS) Codes, and manufactures, processes, or otherwise uses a toxic chemical listed under section 313(c) of EPCRA, 40 C.F.R. § 372.65, in quantities exceeding the established activity threshold as set forth in 40 C.F.R. § 372.25. Under section 313(b) of EPCRA, owners and operators are required to annually submit a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter Form R or Form A) for each toxic chemical listed under section 313(c) of EPCRA, 40 C.F.R. § 372.65, meeting the activity threshold described above.

9. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines the term “person” to include in relevant part, an individual, corporation, or partnership.

10. Respondent is a Corporation and therefore a person and subject to regulation under section 313 of EPCRA, 42 U.S.C. §§ 11023.

11. Respondent is the owner and/or operator of a facility located at 694 West Park Avenue, Huron, South Dakota (the Facility) which falls under the covered SIC Code range of 20-39 and NAICS code 325193 (Ethyl Alcohol Manufacturing).

12. Respondent's facility has 10 or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3.

13. Respondent's facility otherwise uses ammonia (CAS #: 7664-41-7) which is a toxic chemical listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to 40 C.F.R. § 372.22. The amount otherwise used exceeds the appropriate threshold as set forth in 40 C.F.R. § 372.25.

14. Respondent's facility processes n-hexane (CAS #: 110-54-3) which is a toxic chemical listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to 40 C.F.R. § 372.22. The amount processed exceeds the appropriate threshold as set forth in 40 C.F.R. § 372.25.

15. Respondent's facility manufactures methanol (CAS #: 67-56-1) which is a toxic chemical listed under 40 C.F.R. § 372.65, for which reporting is required pursuant to 40 C.F.R. § 372.22. The amount manufactured exceeds the appropriate threshold as set forth in 40 C.F.R. § 372.25.

SPECIFIC ALLEGATIONS

16. On January 24, 2012, authorized representatives of the EPA conducted an inspection of the Respondent's facility located at 694 West Park Avenue, Huron, South Dakota, with the consent of the Respondent, to determine compliance with EPCRA sections 312 and 313. During the inspection, the EPA representatives observed alleged violations of EPCRA section 313.

17. 40 C.F.R. § 372.30 provides that for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in excess of an applicable threshold, the owner

or operator must submit a completed EPA Form R or Form A to the EPA and the State in which the facility is located. The alleged violations are described in paragraphs 17-19.

17. In calendar year 2010 Respondent incorrectly filed a Form A report for the toxic chemical ammonia (CAS #: 7664-41-7) and not the required Form R report. This is a violation of 40 C.F.R. § 372.30.

18. In calendar year 2010 Respondent incorrectly filed a Form A report for the toxic chemical n-hexane (CAS #: 110-54-3) and not the required Form R report. This is a violation of 40 C.F.R. § 372.30.

19. In calendar year 2010, the Respondent manufactured over the threshold quantity of the toxic chemical methanol (CAS #: 67-56-1) and did not submit a required Form R report to the EPA and South Dakota. This is a violation of 40 C.F.R. § 372.30.

PENALTY

20. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), as amended, and 40 C.F.R. § 372.18, authorizes EPA to assess a civil penalty of up to \$37,500 for each violation of section 313. To determine the amount of the civil penalty to be assessed pursuant to section 325(c)(1) of the Act, 42 U.S.C. §§ 11045(c)(1), EPA considered, in addition to such other factors as justice may require, to the extent known, the nature, circumstances, extent and gravity of the violations alleged, any of Respondent's history of prior violations of EPCRA, or lack thereof, and degree of culpability, and any voluntary disclosure, or lack thereof.

21. Attachment A (Collection Information) provides terms for payment including the assessment of fees and interest charges for late payments. Respondent consents and agrees to pay a civil penalty in the amount of **seven thousand two hundred dollars (\$7,200)**.

OTHER TERMS

22. This CCCA contains all terms of the settlement agreed to by the parties.
23. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA, Respondent, and Respondent's successors or assigns.
24. Nothing in this CCCA shall relieve Respondent of the duty to comply with EPCRA and its implementing regulations.
25. Failure of Respondent to comply with any terms of this CCCA shall constitute a breach and may result in referral of the matter to the U.S. Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
26. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.
27. Nothing in the CCCA shall be construed as a waiver by the United States of its authority to seek costs or any appropriate penalty associated with any action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.
28. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into and legally bind Respondent to the terms and conditions of the CCCA.
29. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
30. Each party shall bear its own costs and attorney fees in connection with this administrative matter.
31. The Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the Respondent will correct the violations no later than sixty (60) days after receiving the Final Order.

32. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

33. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in this CCCA.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Complainant

Date: April 1, 2013

By: Eddie A. Sierra
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

ABE - South Dakota, LLC

Representative of Respondent

Date: March 20, 2013

By: [Signature]
Title: CEO

COLLECTION INFORMATION

Payment shall be due on or before **30 calendar days** after the date of the Final Order issued by the Regional Judicial Officer who adopts this agreement. If the due date falls on a weekend or legal Federal holiday, then the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (That is, on the 1st late day, 30 days of interest accrues.)

In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the Final Order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (that is, the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

CHECK PAYMENTS:

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

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental
Protection Agency "

OVERNIGHT MAIL:

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **ABE – SOUTH DAKOTA, LLC.; DOCKET NO.: EPCRA-08-2013-0003**. The documents were filed with the Regional Hearing Clerk on April 4, 2013.

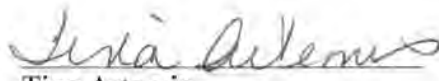
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were resent and placed in the United States mail certified/return receipt on April 4, 2013 to:

Grant Johanson, Vice President of Operations
ABE SD, LLC.
8000 Norman Center Drive, Suite 610
Bloomington, Minnesota 55437

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

April 4, 2013


Tina Artemis
Paralegal/Regional Hearing Clerk

