



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

FEB - 1 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Thomas Sedler
Registered Agent for
The Home City Ice Company
5709 Harrison Avenue
Cincinnati, Ohio 45248

Re: The Home City Ice Company, Cleves, Ohio, Consent Agreement and Final Order
Docket No. EPCRA-05-2016-0009

Dear Mr. Sedler:

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 February 1, 2016.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$35,412 in the manner prescribed in paragraph 73, and reference your check with the docket number EPCRA-05-2016-0009.

Your payment is due on March 2, 2016.

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 Charles V. Mikalian, Associate Regional Counsel, at (312) 886-2242. Thank you for your assistance in resolving this matter.

Sincerely,

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

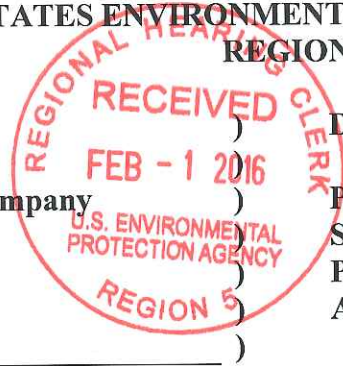
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

The Home City Ice Company
Cleves, Ohio,

Respondent.



) Docket No. EPCRA-05-2016-0009

) Proceeding to Assess a Civil Penalty Under
) Section 325(c)(1) and (c)(2) of the Emergency
) Planning and Community Right-to-Know
) Act of 1986

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1), (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), (c)(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 Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is The Home City Ice Company, an Ohio corporation doing business in the State of Ohio.

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 311 of EPCRA, 42 U.S.C. § 11021, 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 emergency coordinator for the local emergency planning committee (LEPC), and the fire department with jurisdiction over the facility an MSDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, and for each extremely hazardous chemical present at the facility in an amount equal to or greater than 500 pounds, or the threshold planning quantity (TPQ), whichever is lower, or to submit a list of such chemicals. The owner or operator must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

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 OSHA

to prepare or have available an MSDS for a hazardous chemical, to submit to the SERC, community coordinator for the 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.

11. Sections 311 and 312(a) of EPCRA, 42 U.S.C. §§ 11021 and 11022(a), assist state and local committees in planning for emergencies and make 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, including, but not limited to an MSDS, to their employees about the hazardous chemicals to which they are exposed.

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. 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 per day of violation of EPCRA Section 312. 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 these statutory maximum penalties to \$32,500 per day of violation

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.

15. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes U.S. EPA to assess a civil penalty of up to \$10,000 for each EPCRA Section 311 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 to \$11,000 per day of violation for EPCRA 311 violations that occurred after March 15, 2004, through January 12, 2009, and to \$16,000 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

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

17. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 5709 State Route 128, Cleves, Ohio (facility).

18. At all times relevant to this Complaint, Respondent was an employer at the facility.

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. Oil 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).

22. Oil has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

23. 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).

24. 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).

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

26. As of December 31, 2012, oil was present at the facility at any one time in an amount equal to or greater than the minimum threshold level under Section 311 of EPCRA.

27. As of December 31, 2012, sulfuric acid was present at the facility at any one time in an amount equal to or greater than the minimum threshold level under Section 311 of EPCRA.

28. During at least one period of time in calendar year 2012, sulfuric acid and oil were present at the facility in an amount equal to or greater than the minimum threshold level under Section 312 of EPCRA.

29. During at least one period of time in calendar year 2013, sulfuric acid and oil were present at the facility in an amount equal to or greater than the minimum threshold level under Section 312 of EPCRA.

30. During at least one period of time in calendar year 2014, sulfuric acid and oil were present at the facility in an amount equal to or greater than the minimum threshold level under Section 312 of EPCRA.

31. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid and oil.

32. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 31, 2013, an MSDS for sulfuric acid and oil or a list including sulfuric acid and oil.

33. 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 and oil on or before March 1, 2013, for calendar year 2012.

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 and oil on or before March 1, 2014, for calendar year 2013.

35. 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 and oil on or before March 1, 2015, for calendar year 2014.

36. At all times relevant to this Complaint, the Ohio EPA was the SERC for Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

37. At all times relevant to this Complaint, the Hamilton County LEPC was the LEPC for Hamilton County, Ohio under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

38. At all times relevant to this Complaint, the Whitewater Township Fire Department was the fire department with jurisdiction over the facility.

Count 1 (EPCRA 311/SERC)

39. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

40. On or before July 17, 2015, Respondent submitted to the SERC an MSDS for oil or a list showing oil.

41. Each day Respondent failed to submit to the SERC an MSDS or a list for oil by March 31, 2013, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 2 (EPCRA 311/LEPC)

42. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

43. On or before July 17, 2015, Respondent submitted to the LEPC an MSDS for oil or a list showing oil.

44. Each day Respondent failed to submit to the LEPC an MSDS or a list for oil by March 31, 2013, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 3 (EPCRA 311/Fire Department)

45. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

46. On or before July 17, 2015, Respondent submitted to the Whitewater Township Fire Department an MSDS for oil or a list showing oil.

47. Each day Respondent failed to submit to the Whitewater Township Fire Department an MSDS or a list for oil by March 31, 2013, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 4 (EPCRA 311/SERC)

48. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

49. On or before July 17, 2015, Respondent submitted to the SERC an MSDS for sulfuric acid or a list showing sulfuric acid.

50. Each day Respondent failed to submit to the SERC an MSDS or a list for sulfuric acid by March 31, 2013, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 5 (EPCRA 311/LEPC)

51. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

52. On or before July 17, 2015, Respondent submitted to the LEPC an MSDS for sulfuric acid or a list showing sulfuric acid.

53. Each day Respondent failed to submit to the LEPC an MSDS or a list for sulfuric acid by March 31, 2013, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 6 (EPCRA 311/Fire Department)

54. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

55. On or before July 17, 2015, Respondent submitted to the Whitewater Township Fire Department an MSDS for sulfuric acid or a list showing sulfuric acid.

56. Each day Respondent failed to submit to the Whitewater Township Fire Department an MSDS or a list for sulfuric acid by March 31, 2013, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

Count 7 (EPCRA 312/Past Year)

57. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

58. On or before December 17, 2015, Respondent submitted to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including oil and sulfuric acid for calendar year 2012.

59. Each day Respondent failed to submit to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including oil and sulfuric acid by March 1, 2013, for calendar year 2012 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 8 (EPCRA 312/Past Year)

60. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

61. On or before December 17, 2015, Respondent submitted to the SERC, the LEPC, and the local fire department with jurisdiction over the facility a completed Emergency and Hazardous Chemical Inventory Form including oil and sulfuric acid for calendar year 2013.

62. Each day Respondent failed to submit to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including oil and sulfuric acid by March 1, 2014, for calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 9 (EPCRA 312/SERC)

63. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

64. On or before December 9, 2015, Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including oil and sulfuric acid for calendar year 2014.

65. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including oil and sulfuric acid by March 1, 2015, for calendar year 2014 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 10 (EPCRA 312/LEPC)

66. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

67. On or before December 9, 2015, Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including oil and sulfuric acid for calendar year 2014.

68. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including oil and sulfuric acid by March 1, 2105, for calendar year 2014 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 11 (EPCRA 312/Fire Department)

69. Complainant incorporates paragraphs 1 through 38 of this CAFO as if set forth in this paragraph.

70. On or before December 9, 2015, Respondent submitted to the Whitewater Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including oil and sulfuric acid for calendar year 2014.

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

Civil Penalty

72. Complainant has determined that an appropriate civil penalty to settle this action is \$35,412 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).

73. Within 30 days after the effective date of this CAFO, Respondent must pay a \$35,412 civil penalty for the EPCRA violations. 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

for checks sent by express mail by sending 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: The Home City Ice Company and the docket number of this
CAFO.

74. 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 check 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

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

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

76. 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.

77. 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

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

79. 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.

80. Respondent certifies that it is complying with Sections 311, 312(a) of EPCRA, 42 U.S.C. §§ 11021, 11022(a).

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

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

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

84. 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.

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

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


The Home City Ice Company, Respondent

1-13-16
Date



James E Stautberg, CFO
The Home City Ice Company

U.S. Environmental Protection Agency, Complainant

1-22-16
Date


M. Cecilia Moore, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

1-25-16
Date


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

In the Matter of: The Home City Ice Company, Cleves, Ohio
Docket No. EPCRA-05-2016-0009

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.

1-29-16

Date



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

Consent Agreement and Final Order

In the Matter of: The Home City Ice Company, Cleves, Ohio

Docket No. EPCRA-05-2016-0009

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, docket number EPCRA-05-2016-0009 which was filed on February 1, 2016, in the following manner to the addressees:

Copy by Certified Mail

Return Receipt Requested: Mr. Thomas E. Sedler
Registered Agent for
The Home City Ice Company
5709 Harrison Avenue
Cincinnati, Ohio 445248

Copy by E-mail to

Attorney for Complainant: Charles V. Mikalian
Mikalian.charles@epa.gov

Copy by E-mail to

Attorney for Respondent: M. Zack Hohl
zhohl@graydon.com

Copy by E-mail to

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

Dated: February 1, 2016



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

CERTIFIED MAIL RECEIPT NUMBER: 7011 1150 0000 2640 6547