



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

NOV 27 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. George Weiss
President
Freezer Services of Michigan, LLC
8350 St. Aubin
Hamtramck, MI 48211

Re: Freezer Services of Michigan, LLC, Consent Agreement and Final Order
Docket No. **EPCRA-05-2014-0003**

Dear Mr. Weiss:

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 NOV 27 2013.

Please pay the EPCRA civil penalty in the amount of \$12,200 in the manner prescribed in paragraphs 43 and 44, and reference your check with the docket number EPCRA-05-2014-0003.

Your payments are due on DEC 27 2013.

Please feel free to contact Ginger Jager at (312) 886-0767 if you have any questions regarding the enclosed documents. Please direct any legal questions to Terence Stanuch, Associate Regional Counsel, at (312) 886-8044. Thank you for your assistance in resolving this matter.

Sincerely,


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

Enclosure

cc: Susan Parker, MDEQ (w/ enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)
) Docket No. EPCRA-05-2014-0003
)
)
Freezer Services of Michigan, LLC)
Hamtramck, MI)
) Proceeding to Assess a Civil Penalty
) Under Section 325(c)(1) of the Emergency
) Planning and Community Right-to-Know
Respondent.)
) Act of 1986
)
_____)

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 Freezer Services of Michigan, LLC, a limited liability company doing business in the State of 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.

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 prepare and submit to the state emergency response commission, to the community emergency coordinator for the local emergency planning committee, and to the 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.

10. The purpose of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), is to assist 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 are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDSs.

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

13. 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 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

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

15. At all times relevant to this CAFO, Respondent was an owner or operator of a facility located at 8350 St. Aubin Street, Hamtramck, Michigan, 48212 (the Facility).

16. At all times relevant to this CAFO, Respondent was an employer at the Facility.

17. 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.

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

19. 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.

20. 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).

21. 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).

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

23. 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.

24. 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).

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

26. During at least one period of time in calendar years 2008, 2009 and 2010, sulfuric acid and lead were present at the Facility in amounts equal to or greater than the minimum threshold level.

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

28. For calendar year 2008, Respondent was required to submit to the state emergency response commission (SERC), local emergency planning committee (LEPC) and fire department

on or before March 1, 2009, a completed emergency and hazardous chemical inventory form which included sulfuric acid and lead.

29. For calendar year 2009, Respondent was required to submit to the SERC, the LEPC, and to the fire department on or before March 1, 2010, a completed emergency and hazardous chemical inventory form which included sulfuric acid and lead.

30. For calendar year 2010, Respondent was required to submit to the SERC, the LEPC, and to the fire department on or before March 1, 2011, a completed emergency and hazardous chemical inventory form which included sulfuric acid and lead.

31. At all times relevant to this CAFO, the Michigan Department of Environmental Quality was the SERC for the State of Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

32. At all times relevant to this CAFO, the Wayne County LEPC was the LEPC for Wayne County, State of Michigan, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

33. At all times relevant to this CAFO, the Hamtramck Fire Department was the fire department with jurisdiction over the Facility.

34. For calendar year 2008, Respondent submitted to the SERC, LEPC and Hamtramck Fire Department a completed Emergency and Hazardous Chemical Inventory Form which included sulfuric acid and lead on May 18, 2011.

35. Each day that Respondent failed to submit to the SERC, LEPC and Hamtramck Fire Department a completed Emergency and Hazardous Chemical Inventory Form which included sulfuric acid and lead by March 1, 2009, for calendar year 2008, allegedly constituted a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

36. For calendar year 2009, Respondent submitted to the SERC, LEPC and Hamtramck Fire Department a completed Emergency and Hazardous Chemical Inventory Form which included sulfuric acid and lead on May 18, 2011.

37. Each day that Respondent failed to submit to the SERC, LEPC and Hamtramck Fire Department a completed Emergency and Hazardous Chemical Inventory Form which included sulfuric acid and lead by March 1, 2010, for calendar year 2009, allegedly constituted a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

38. For calendar year 2010, Respondent submitted to the SERC, LEPC and Hamtramck Fire Department a completed Emergency and Hazardous Chemical Inventory Form which included sulfuric acid and lead on May 18, 2011.

39. Each day that Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form which included sulfuric acid and lead by March 1, 2011, for calendar year 2010, allegedly constituted a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

40. Each day that Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form which included sulfuric acid and lead by March 1, 2011, for calendar year 2010, allegedly constituted a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

41. Each day that Respondent failed to submit to the Hamtramck Fire Department a completed Emergency and Hazardous Chemical Inventory Form which included sulfuric acid and lead, for calendar year 2010, allegedly constituted a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

42. Complainant has determined that an appropriate civil penalty to settle this action is \$12,200. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the alleged 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).

43. Respondent agrees to pay the \$12,200 civil penalty to settle this action within 30 days after the effective date of this CAFO by one of the following methods:

a. 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

b. 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 include the case title and the docket number of this CAFO.

c. An electronic funds transfer may be made, 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 message should read:
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state the case title and the docket number of this CAFO.

d. An Automated Clearinghouse (ACH) electronic funds transfer, also known as a REX or remittance express funds transfer, may be made, 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, state the case title and docket number of this CAFO.

e. An on-line payment may also be made. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the information requested.

44. Respondent also agrees to send a transmittal letter or email, stating Respondent's name, the case title, the case docket number and evidence of the payment to:

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

Ginger Jager, (SC-5J)
Chemical Emergency Preparedness and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
Jager.ginger@epa.gov

Terence Stanuch, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
stanuch.terry@epa.gov

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

46. 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.

47. 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 six (6) percent per year penalty on any principal amount 90 days past due.

General Provisions

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

49. 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.

50. Respondent certifies that, to the best of its knowledge, it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

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

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

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

54. 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.

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

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


Freezer Services of Michigan, LLC, Hamtramck, MI, Respondent

10-21-13
Date


George Weiss, President
Freezer Services of Michigan, LLC
Hamtramck, Michigan

U.S. Environmental Protection Agency, Region 5, Complainant

11/22/13
Date


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

11/28/2013
Date


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

In the Matter of: Freezer Services of Michigan, LLC
Docket No. EPCRA-05-2014-0003



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, U.S. EPA, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11/25/13
Date

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

In the Matter of: Freezer Services of Michigan, LLC
Docket No. EPCRA-05-2014-0003



Certificate of Service

I, Jarrah P. Sanders, certify that I filed the original and one 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:

Mr. George Weiss, President
Freezer Services of Michigan, LLC
8350 St. Aubin
Hamtramck, MI 48211

on the 27th day of November, 2013


~~Ginger Jager~~ Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5