



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
**JUN 19 2012**

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

James Stancel  
Director  
Chicago Cold Storage Corporation  
3514 South Kostner Avenue  
Chicago, Illinois 60632

Re: Chicago Cold Storage Corporation, Chicago, Illinois, Consent Agreement and Final Order, Docket No. EPCRA-05-2012-0020

Dear Mr. Stancel:

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 JUN 19 2012.

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 Cynthia Kawakami, Associate Regional Counsel, at (312) 886-0564. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

cc: Jon England, Legal Counsel (w/ enclosure)  
Kathy Allen (w/ enclosure)  
IL SERC

Joseph R. Podlewski, Jr., Attorney  
Podlewski & Hanson P.C.  
4721 Franklin Avenue, Suite 1500  
Western Springs, Illinois 60558-1720 (certified)

RECEIVED

JUN 19 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGIONAL HEARING CLERK  
REGION 5 U.S. ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	Docket No. EPCRA-05-2012-0020
	)	
Chicago Cold Storage Corporation	)	Proceeding to Assess a Civil Penalty Under
Chicago, Illinois	)	Section 325(c)(1) of the Emergency Planning
	)	and Community Right-to-Know Act of 1986
<u>Respondent.</u>	)	

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 Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Chicago Cold Storage Corporation, a corporation doing business in the State of Illinois.

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.

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 are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, an MSDS.

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

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 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.

#### **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 the facility located at 3534 South Kostner Avenue, Chicago, Illinois (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. Anhydrous 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.

20. Anhydrous 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).

21. Anhydrous 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).

22. Anhydrous ammonia (CAS #7664-41-7) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

23. 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.

24. 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).

25. 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).

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

27. 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.

28. 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).

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

30. During at least one period of time in calendar year 2007, anhydrous ammonia, sulfuric acid, and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

31. During at least one period of time in calendar year 2008, anhydrous ammonia, sulfuric acid, and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

32. During at least one period of time in calendar year 2011, anhydrous ammonia, sulfuric acid, and lead were present at the facility in an amount equal to or greater than the minimum threshold level.

33. OSHA requires Respondent to prepare, or have available, an MSDS for anhydrous ammonia, sulfuric acid, and lead, respectively.

34. Section 312 of EPCRA required Respondent to submit to the LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including anhydrous ammonia, sulfuric acid, and lead on or before March 1, 2008, for calendar year 2007.

35. Section 312 of EPCRA required Respondent to submit to the LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including anhydrous ammonia, sulfuric acid, and lead on or before March 1, 2009, for calendar year 2008.

36. Section 312 of EPCRA required Respondent to submit to the LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including anhydrous ammonia, sulfuric acid, and lead on or before March 1, 2012, for calendar year 2011.



37. At all times relevant to this CAFO, the City of Chicago LEPC was the LEPC for Chicago, Illinois under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

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

#### **Count 1**

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

40. As of June 16, 2009, Respondent had not submitted to the LEPC and the Chicago Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead for calendar year 2007.

41. Each day Respondent failed to submit to the LEPC and the Chicago Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

#### **Count 2**

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

43. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead on June 16, 2009, for calendar year 2008.

44. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead by

March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 3**

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

46. Respondent submitted to the Chicago Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead on June 16, 2009, for calendar year 2008.

47. Each day Respondent failed to submit to the Chicago Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 4**

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

49. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead on March 5, 2012, for calendar year 2011.

50. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).



### Count 5

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

52. Respondent submitted to the Chicago Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead on March 5, 2012, for calendar year 2011.

53. Each day Respondent failed to submit to the Chicago Fire Department a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia, sulfuric acid, and lead by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

### Civil Penalty

54. Complainant has determined that, based on its review of the financial information submitted to it by Respondent, Respondent does not have the financial ability to pay a civil penalty in this matter. Therefore, the appropriate civil penalty to settle this action is \$0 for Respondent's 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), and determined that the penalty in this case is consistent with the EPCRA/CERCLA Enforcement Response Policy,

**General Provisions**

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

56. 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.

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

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

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

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

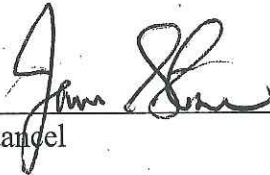
61. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

**Chicago Cold Storage Corporation, Chicago, Illinois, Respondent**

\_\_\_\_\_ 6-1-12  
Date

\_\_\_\_\_  
  
James Stangel  
Director  
Chicago Cold Storage Corporation

**U.S. Environmental Protection Agency, Complainant**

6/15/12

Date



Richard C. Karl

Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5



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In the Matter of: Chicago Cold Storage Corporation, Chicago, Illinois  
Docket No. EPCRA-05-2012-0020

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PROTECTION AGENCY

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.

June 15, 2012  
Date

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

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In the Matter of: Chicago Cold Storage Corporation, Chicago, Illinois  
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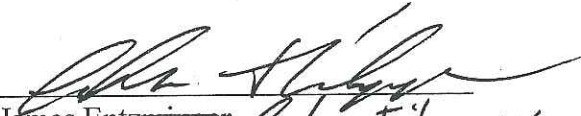
Certificate of Service

I, James Entzminger, certify that I filed the original and a 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 a copy of 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:

James Stancel, Director  
Chicago Cold Storage Corporation  
3514 South Kostner Avenue  
Chicago, Illinois 60632

Joseph R. Podlewski, Jr., Attorney  
Podlewski & Hanson P.C.  
4721 Franklin Avenue, Suite 1500  
Western Springs, Illinois 60558-1720

on the 19<sup>th</sup> day of June, 2012

  
~~James Entzminger~~ *Anton Filypow*  
U.S. Environmental Protection Agency  
Region 5