

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED

Feb 12, 2025

5:56 pm

U.S. EPA REGION 8
HEARING CLERK

IN THE MATTER OF:

Ward Capital Partners 103, LLC
dba Premier Ice and Cold Storage
and United Cold Storage
1781 West 2800 South
Ogden, UT 84401

Respondent

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket No.: EPCRA-08- 2025-0001

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to 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 of Practice), as codified at 40 C.F.R. part 22.
2. Ward Capital Partners 103, LLC, doing business as Premier Ice and Cold Storage / United Cold Storage, (Respondent) owns and/or operates a facility located at 1781 West 2800 South, Ogden, UT 84401 (Facility)
3. EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 325 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 or the Act). The undersigned EPA official (Complainant) has been duly delegated the authority to institute this action.
5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The Final Order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations at 40 C.F.R. part 370, require the owner or operator of a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., to prepare and submit a Tier II form containing the required data for each hazardous chemical stored in excess of its respective threshold level to the appropriate state emergency response commission (SERC), local emergency planning committee (LEPC), and fire department having jurisdiction over the facility.
8. Hazardous chemical, with certain exceptions, has the meaning given such term by the Occupational Safety and Health Act and its implementing regulations. Pursuant to those regulations, hazardous chemical means any chemical which is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified by 29 C.F.R. § 1900.1200(c).
9. An extremely hazardous substance (EHS) is defined at 40 C.F.R. § 370.66 as a substance listed in appendices A and B of 40 C.F.R. part 355.

IV. STIPULATED FACTS

10. Respondent is a limited liability company and is authorized to do business in the state of Utah.
11. Respondent is a “person” as that term is defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
12. Respondent is the owner or operator of a “facility” as that term is defined by section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022.
13. Respondent is required to have material safety data sheets available pursuant to the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.
14. Anhydrous Ammonia is listed as an EHS in appendices A and B of 40 C.F.R. part 355, and therefore is a hazardous chemical that needs to be reported on a Tier II form.

15. The Facility's refrigeration system contained approximately 3030 pounds of Anhydrous Ammonia which is over the threshold quantity of 500 pounds listed in appendices A and B of 40 C.F.R. part 355.

V. ALLEGED VIOLATIONS OF LAW

16. At all times relevant to this Consent Agreement, Respondent was subject to EPCRA § 312 and was required pursuant to 40 C.F.R. § 370.45(a) to submit a Tier II form to the LEPC, SERC, and local fire department by March 1, containing data with respect to the preceding calendar year.
17. For calendar year 2019, Respondent had anhydrous ammonia present at the Facility which exceeded the threshold level for applicability of EPCRA § 312 pursuant to 40 C.F.R. § 370.10(a)(1) and 40 C.F.R. § 370.10(a)(2)(i).
18. The Respondent never submitted their 2019 Tier II form. By failing to submit a Tier II form to the LEPC, SERC, and local fire department for calendar year 2019 by March 1, 2020, Respondent violated 40 C.F.R. § 370.45(a).
19. For calendar year 2020, Respondent had anhydrous ammonia present at the Facility which exceeded the threshold level for applicability of EPCRA § 312 pursuant to 40 C.F.R. § 370.10(a)(1) and 40 C.F.R. § 370.10(a)(2)(i).
20. The Respondent never submitted their 2020 Tier II form. By failing to submit a Tier II form to the LEPC, SERC, and local fire department for calendar year 2020 by March 1, 2021, Respondent violated 40 C.F.R. § 370.45(a).
21. For calendar year 2021, Respondent had anhydrous ammonia present at the Facility which exceeded the threshold level for applicability of EPCRA § 312 pursuant to 40 C.F.R. § 370.10(a)(1) and 40 C.F.R. § 370.10(a)(2)(i).
22. The Respondent never responded to a request from the local fire department on December 20, 2021, to submit their Tier II form. By failing to submit a Tier II form within 30 days of the request from the local fire department, Respondent violated 40 C.F.R. § 370.45(b).
23. The Respondent never submitted their 2021 Tier II form. By failing to submit a Tier II form to the LEPC, SERC, and local fire department for calendar year 2021 by March 1, 2022, Respondent violated 40 C.F.R. § 370.45(a).

24. For calendar year 2022, Respondent had anhydrous ammonia present at the Facility which exceeded the threshold level for applicability of EPCRA § 312 pursuant to 40 C.F.R. § 370.10(a)(1) and 40 C.F.R. § 370.10(a)(2)(i).
25. The Respondent never submitted their 2022 Tier II form to the local fire department. By failing to submit a Tier II form to the local fire department for calendar year 2022 by March 1, 2023, Respondent violated 40 C.F.R. § 370.45(a).
26. For calendar year 2023, Respondent had anhydrous ammonia present at the Facility which exceeded the threshold level for applicability of EPCRA § 312 pursuant to 40 C.F.R. § 370.10(a)(1) and 40 C.F.R. § 370.10(a)(2)(i).
27. The Respondent submitted their 2023 Tier II form in December 2024 which was 9 months past the due date. By failing to submit a Tier II form to the LEPC, SERC, and local fire department for calendar year 2023 by March 1, 2024, Respondent violated 40 C.F.R. § 370.45(a).

VI. TERMS OF CONSENT AGREEMENT

28. For the purpose of this proceeding, Respondent:
 - a. admits the jurisdictional allegations in section II of this Agreement;
 - b. Neither admits nor denies the specific factual allegations or violation of law stated in this Agreement;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. consents to the conditions specified in this Agreement;
 - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - f. waives any right to contest any right to contest the allegations and waives its right to appeal any proposed or final order approving this Agreement; and
 - g. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

29. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), as amended, and 40 C.F.R part 19 authorize EPA to assess a civil penalty of not more than \$69,733 for each violation of section 312 of EPCRA, 42 U.S.C. § 11022.
30. In determining the amount of the penalty to be assessed, the EPA is required to consider, 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.
31. Based on the alleged violations of law, and after consideration of the statutory factors in paragraph 30 above, EPA has determined a civil penalty of \$56,248 is appropriate to settle this matter.
32. Penalty Payment. Respondent agrees to:
 - a. pay a civil penalty in the amount of \$56,248 within 30 calendar days of the Effective Date of this Agreement;
 - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment> and <https://www.epa.gov/financial/additional-instructions-making-payments-epa>;
 - c. identify the payment with the docket number that appears on the final order,
 - d. within 24 hours of payment, email proof of payment to Steven Ramirez at ramirez.stevena@epa.gov and Marc Weiner at weiner.marc@epa.gov, (proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).
33. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
 - a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant

- to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; "and a 10% quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5)";
- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
34. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
35. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service (IRS) annually, a completed IRS Form 1098-F (entitled "Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, the EPA requires, and

Respondent agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall certify on its completed IRS Form W-9 that this form includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at Chalifoux.Jessica@epa.gov, no later than 30 days after the due date under paragraph 32, above, for payment of the penalty, and EPA recommends encrypting IRS Form W9 in email correspondence; and
- d. If Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five days after Respondent’s receipt of a TIN issued by the IRS.

36. Respondent agrees, by signing this Agreement, that the alleged violations have been corrected.
37. Respondent agrees and certifies, by signing the Agreement, that the Facility is in full compliance with section 312 of EPCRA.
38. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Facility. Any change in ownership or corporate control 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.

39. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party they represent to this Agreement.
40. Except as qualified by paragraph 33, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
41. The parties consent to service of the Final Order by email at the following addresses: weiner.marc@epa.gov (for Complainant), and sjones@rqn.com (for Respondent).

VII. EFFECT OF CONSENT AGREEMENT

42. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violation specifically alleged above.
43. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/Regional Judicial Officer, or other delegatee.
44. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of not more than \$69,733 per violation, as provided in section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and adjusted for inflation pursuant to 40 C.F.R. part 19. The EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
45. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
46. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present

Consent Agreement

Ward Capital Partners, LLC dba Premier Ice and Cold Storage / United Cold Storage

an imminent and substantial endangerment to the public health, welfare, or the environment.

47. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

VIII. EFFECTIVE DATE

48. This Agreement shall become effective on the date the Final Order is filed by the hearing clerk.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8,
Complainant.**

Date: _____

By: _____

**Cobb,
David**

Digitally signed by
Cobb, David

Date: 2025.02.12

11:04:46 -07'00'

David Cobb, Supervisor
Toxics and Pesticides Enforcement Section,
Air and Toxics Enforcement Branch,
Enforcement and Compliance Assurance Division

**Ward Capital Partners 103, LLC dba Premier Ice and
Cold Storage / United Cold Storage,
Respondent.**

Date: 02/11/2025

By: Josh Ward

Name: Josh Ward

Title: Owner