



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

MAR 07 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas Carey
K&L Gates LLC
70 W. Madison Street
Suite 3100
Chicago, Illinois 60602-4207

Re: Interstate Cold Storage, Fort Wayne, Indiana
Consent Agreement and Final Order – Docket No: **EPCRA-05-2011-0013**

Dear Mr. Carey:

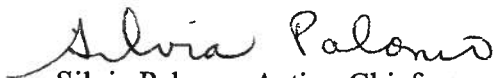
Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on March 7, 2011.

Please have your client pay the EPCRA civil penalty in the amount of \$80,371 in the manner prescribed in paragraphs 54 and 55, and reference their check with the number BD 2751144E011 and docket number EPCRA-05-2011-0013.

The payment is due on April 6, 2011.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Susan Tennenbaum, Associate Regional Counsel, at (312) 886-0273. Thank you for your assistance in resolving this matter.

Sincerely,


Silvia Palomo, Acting Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Interstate Cold Storage, Inc.
Fort Wayne, Indiana,

Respondent

) Docket No. EPCRA-05-2011-0013
)

) Proceeding to Assess a Civil Penalty
) Under Section 325(c)(1) of the
) Emergency Planning and Community
) Right-to-Know Act of 1986,
) 42 U.S.C. § 11045(c)(1).

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MAR 07 2011

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REGION 5

Consent Agreement and Final Order
Preliminary Statement

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MAR 07 2011

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

3. Respondent is Interstate Cold Storage, Inc., a corporation, doing business in the State of Indiana.

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 (SERC), community emergency coordinator for the local emergency planning committee (LEPC), and 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. 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, MSDS.

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, 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 from March 15, 2004 to January 11, 2009, and to \$37,500 for violations occurring on or 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 6606 Lincoln Parkway, Fort Wayne, Indiana, (Lincoln Parkway Facility).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 7725 Nelson Road, Fort Wayne, Indiana, (Nelson Road Facility).

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

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

19. Respondent's Lincoln Parkway 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 Nelson Road 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.

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

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

23. Ammonia CAS# 7664-41-7 and sulfuric acid CAS# 7664-93-9 are 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. 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).

25. 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).

26. 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).

27. 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).

28. Ammonia CAS# 7664-41-7 has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.10(a)(1).

29. Sulfuric acid CAS# 7664-93-9 has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.10(a)(1).

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

31. During at least one period of time in calendar year 2007, ammonia and sulfuric acid were present at the Nelson Road Facility in an amount equal to or greater than the minimum threshold level.

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

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

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

35. At all times relevant to this CAFO, the Indiana State Emergency Response Commission was the SERC for Indiana under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

36. At all times relevant to this CAFO, the Allen County Local Emergency Planning Committee was the LEPC for Fort Wayne, Indiana, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

37. At all times relevant to this CAFO, the Aboite Fire Department was the fire department with jurisdiction over the Lincoln Parkway Facility.

38. At all times relevant to this CAFO, the New Haven Fire Department was the fire department with jurisdiction over the Nelson Road Facility.

Lincoln Parkway Facility

Count 1

39. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on October 31, 2008, for calendar year 2007.

40. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid 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

41. Respondent submitted to the LEPC, a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on November 3, 2008, for calendar year 2007.

42. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid 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 3

43. Respondent submitted to the Aboite Fire Department a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on November 3, 2008, for calendar year 2007.

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

Nelson Road Facility

Count 4

45. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on October 31, 2008, for calendar year 2007.

46. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid 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 5

47. Respondent submitted to the LEPC, a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on November 3, 2008, for calendar year 2007.

48. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid 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 6

49. Respondent submitted to the New Haven Fire Department a completed Emergency and Hazardous Chemical Inventory Form including ammonia and sulfuric acid on November 3, 2008, for calendar year 2007.

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

Civil Penalty

51. In consideration of Respondents cooperation, good faith negotiations, and willingness to quickly settle this matter U.S. EPA has determined that an appropriate civil penalty to settle this action is \$80,371.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$80,371 civil penalty for the EPCRA violations by one of the following methods.

A. If payment by check:

Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

For checks sent by regular U.S. postal service:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

2) For check sent by express mail:

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: In the Matter of Interstate Cold Storage, Inc., the docket number of this CAFO, and the billing document number

2751144E011

B. If payment by electronic funds transfer:

Respondent must pay by electronic funds transfer, payable to "Treasurer, United States of America," and send 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 following: In the Matter of Interstate Cold Storage, Inc., the docket number of this

CAFO, and the billing document number 2751144E011.

53. If paying by check a transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document 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

Ruth McNamara, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

55. 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.

56. 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

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

58. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

59. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

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

61. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 311 and 312 of EPCRA.

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

63. 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.

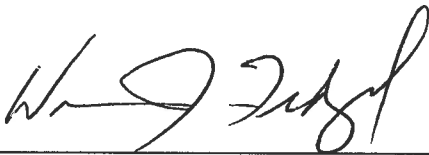
64. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

**In the Matter of:
Interstate Cold Storage, Inc., Fort Wayne, Indiana
Docket No.**

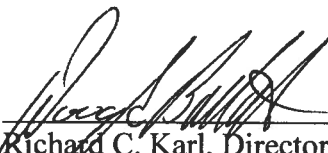
Respondent

2/09/11
Date


William J. Federspiel, Treasurer
Interstate Cold Storage, Inc.

U.S. Environmental Protection Agency, Complainant

3/2/2011
Date


Richard C. Karl, Director
FE Superfund Division

In the Matter of:
Interstate Cold Storage, Inc., Fort Wayne, Indiana
Docket No. EPCRA-05-2011-0013

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.

3-3-11

Date



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

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REGION 5

In the Matter of:
Interstate Cold Storage, Inc., Fort Wayne, Indiana
Docket No. EPCRA-05-2011-0013

Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number *EPCRA-05-2011-0013* to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Interstate Cold Storage, Inc.'s Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Thomas Carey
K&L Gates LLC
70 W. Madison Street
Suite 3100
Chicago, Illinois 60602-4207

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MAR 07 2011

on the 7th day of March, 2011

REGIONAL HEARING CLERK
USEPA
REGION 5

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5