

Release Reporting/CERCLA: U.S. Environmental Protection Agency and Oshkosh, Wisconsin, Facility Enter into Consent Agreement



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

02/16/2023

The United States Environmental Protection Agency (“EPA”) and CB Manufacturing Company, Inc. (“CB”) entered into a December 19th Consent Agreement and Final Order (“CAFO”) addressing an alleged violation of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) and EPCRA. See Docket No. CERCLA-05-2023-0004.

CB is stated to be the owner and/or operator of a facility (“Facility”) operating as Pepsi Beverages Company.

Section 103 of CERCLA requires a facility to immediately notify the National Response Center (“NRC”) of any release of hazardous substances in an amount equal to or greater than the reportable quantity (“RQ”) for that substance.

In order for a release to be considered reportable under CERCLA there are three criteria that must be met, which include the following:

- Be into the environment
- Be equal to or exceed the RQ for that particular hazardous substance
- Occur within a 24-hour period

The terms “environment” and “facility” are very broadly defined by CERCLA.

The CAFO provides that on July 29, 2020, at or about 12:01 a.m., a release occurred from CB’s Facility of approximately 1,035 pounds of anhydrous ammonia (“the Release”). Further, in a 24-hour time period the Release of anhydrous ammonia exceeded 100 pounds. In addition, the Release included the escape of 735 pounds into the ambient air.

CB is stated to have had knowledge of the Release on July 29, 2020, at approximately 12:01 a.m. Further, the Release is stated to have been one for which notice was required under Section 103(a) of CERCLA.

One of the counts in the CAFO alleges a failure to notify the NRC as required by Section 103(a) of CERCLA.

CB is stated to have noticed the NRC of the Release on July 29, 2020, at 4:28 a.m. As a result, the CAFO states that CB did not immediately notify the NRC as soon as it had knowledge of the Release. This is alleged to constitute a violation of Section 103(a) of CERCLA.

The CAFO also alleges certain violations of EPCRA.

A civil penalty of \$30,524 is assessed.

A copy of the CAFO can be downloaded [here](#).