

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

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THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No.: 3:16-cv-5179
)	
v.)	
)	CIVIL COMPLAINT
OCEAN GOLD SEAFOODS, INC.,)	
and OCEAN COLD, LLC,)	
Defendants.)	
_____)	

Defendants Ocean Gold Seafoods, Inc., and Ocean Cold, LLC (“Defendants”), own and operate seafood processing and cold storage facilities in Westport, Washington. Defendants’ facilities employ industrial refrigeration appliances that use a hazardous, ozone-depleting refrigerant gas known as chlorodifluoromethane or HCFC-22, also known as R-22. This action arises from Defendants’ mismanagement of the refrigeration appliances and R-22 at their facilities, and their disregard for recordkeeping and reporting obligations under federal law.

As alleged herein, Defendants failed to comply with Title VI of the Clean Air Act (“Stratospheric Ozone Protection”), 42 U.S.C. §§ 7671-7671q, because they did not make timely repairs to leaking refrigeration appliances, did not maintain required records for their refrigeration appliances, and did not have required maintenance equipment on site. As further alleged herein, Defendants also failed to comply with the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11001-11050, because they did not timely report

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1 the presence of R-22 at their facilities to emergency response officials and did not submit
2 required forms to the United States Environmental Protection Agency (“EPA”).

3 NATURE OF THIS ACTION

4 1. The United States brings this civil action for injunctive relief and the imposition
5 of civil penalties under Section 113(b) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b), for
6 Defendants’ violations of Sections 113 and 608 of the CAA and implementing regulations set
7 forth at 40 C.F.R. Part 82, and for civil penalties pursuant to Section 325(c) of EPCRA, 42
8 U.S.C. § 11045(c), for Defendants’ violations of Sections 312 and 313 of EPCRA and its
9 implementing regulations set forth at 40 C.F.R. Parts 370 and 372, at Defendants’ seafood
10 processing facility and related refrigeration facilities located in Westport, Washington.

11 JURISDICTION AND VENUE

12 2. This Court has jurisdiction over the subject matter of this action pursuant to
13 Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 325(c) of EPCRA, 42 U.S.C.
14 § 11045(c), and 28 U.S.C. §§ 1331, 1345, and 1355.

15 3. Venue is proper in the Western District of Washington pursuant to 28 U.S.C.
16 §§ 1391(b) and (c) and 1395(a); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and Section
17 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), because the alleged violations took place in this
18 district and each of the defendants resides and maintains its principal place of business in this
19 district.

20 NOTICE TO THE STATE OF WASHINGTON

21 4. The United States has notified the State of Washington of the commencement of
22 this action pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

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PARTIES

5. Plaintiff is the United States of America, acting at the request of EPA.

6. Defendant Ocean Gold Seafoods, Inc. (“Ocean Gold”) is a seafood processing company. It is incorporated in the State of Washington. Ocean Gold owns and operates a seafood processing facility (the “Ocean Gold facility”) located at 1804 North Nyhus Street in Westport, Washington. Ocean Gold also operates an ice manufacturing facility (the “Icehouse facility”) located on the Point Chehalis dock in Westport, under a joint use agreement with an unrelated business entity.

7. Defendant Ocean Cold, LLC (“Ocean Cold”) is a wholly owned subsidiary of Ocean Gold and is also incorporated in the State of Washington. Ocean Cold owns and operates a cold storage facility (the “Ocean Cold facility”) located at 1601 Year Out Drive in Westport, Washington.

STATUTORY AND REGULATORY BACKGROUND

Clean Air Act

8. Title VI of the CAA, 42 U.S.C. §§ 7671-7671q, implements the Montreal Protocol on Substances that Deplete the Ozone Layer. Title VI mandates the elimination or control of emissions of substances, known as Class I and Class II ozone-depleting substances, which are known or reasonably anticipated to cause or significantly contribute to harmful effects on the stratospheric ozone layer.

9. Section 608(a) of the CAA, 42 U.S.C. § 7671g(a), requires EPA to promulgate regulations establishing standards and requirements regarding the use and disposal of Class I and Class II ozone-depleting substances during the service, repair, or disposal of appliances and

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1 industrial process refrigeration. The regulations must include requirements that “reduce the use
2 and emission of such substances to the lowest achievable level” and “maximize the recapture and
3 recycling of such substances.” 42 U.S.C. § 7671g(a)(3)(A) & (B). EPA has promulgated
4 implementing regulations pursuant to this authority, which are codified at 40 C.F.R. Part 82,
5 Subpart F, 40 C.F.R. §§ 82.150-82.166 (“Recycling and Emissions Reduction”).

6 Requirement to Repair Leaks

7 10. 40 C.F.R. § 82.156(i)(2) provides that owners and operators of industrial process
8 refrigeration equipment normally containing more than 50 pounds of refrigerant must have leaks
9 repaired if the leak rate of the appliance exceeds 35 percent on an annual basis (i.e., if the
10 appliance is leaking at a rate such that it would lose more than 35 percent of its full charge in a
11 12-month period), except as described in 40 C.F.R. §§ 82.156(i)(6), (7), and (10), and 40 C.F.R.
12 § 82.156(i)(2)(i) and (i)(2)(ii). The repairs must bring the leak rate to below 35 percent on an
13 annual basis.

14 11. 40 C.F.R. § 82.156(i)(9) requires that owners and operators must repair leaks
15 pursuant to 40 C.F.R. § 82.156(i)(2) within 30 days of when the leak is discovered, or, if the
16 owners intentionally shielded themselves from information which would have revealed a leak,
17 within 30 days after when the leaks should have been discovered, unless granted additional time
18 pursuant to 40 C.F.R. § 82.156(i).

19 12. “Industrial Process Refrigeration” means, *inter alia*, complex customized
20 appliances used in the chemical, pharmaceutical, petrochemical and manufacturing industries,
21 including industrial ice machines. These appliances are directly linked to the industrial process.

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1 Requirement to Maintain Adequate Service and Maintenance Records

2 13. 40 C.F.R. § 82.166(k) requires that owners and operators of appliances normally
3 containing 50 or more pounds of refrigerant must keep records of any service to the appliance,
4 which document the date and type of service, as well as the quantity of refrigerant added. In
5 cases where owners or operators add their own refrigerant, they must keep records of the
6 refrigerant purchased and added, including the dates when refrigerant is added.

7 Requirement to Have Certified Recovery or Recycling Equipment

8 14. 40 C.F.R. § 82.156(b) requires that all persons opening appliances except for
9 small appliances, motor-vehicle air conditioners (“MVACs”), and MVAC-like appliances for
10 maintenance, service, or repair must have at least one piece of certified, self-contained recovery
11 or recycling equipment available at their place of business.

12 15. “Self-contained recovery equipment” means refrigerant recovery or recycling
13 equipment that is capable of removing the refrigerant from an appliance without the assistance of
14 components contained in the appliance. 40 C.F.R. § 82.152.

15 Enforcement and Penalties

16 16. Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), authorizes the United
17 States to commence a civil action for a permanent or temporary injunction, and to assess civil
18 penalties of not more than \$25,000 per day for each violation, whenever a person has violated or
19 is in violation of any requirement or prohibition of Title VI of the CAA, including, but not
20 limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued
21 or approved under the CAA.

22 17. The statutory maximum civil penalty for enforcement actions under Section

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1 113(b) of the CAA has been increased up to \$32,500 per day for each violation occurring after
2 March 15, 2004 through January 12, 2009; and \$37,500 per day for each violation occurring after
3 January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28
4 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C.
5 § 3701 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); and 73
6 Fed. Reg. 75,340-75,346 (Dec. 11, 2008), codified at 40 C.F.R. Part 19.

7 **Emergency Planning and Community Right-To-Know Act**

8 Requirement to Submit Emergency and Hazardous Chemical Inventory Forms

9 18. Section 312 of EPCRA, 42 U.S.C. § 11022, and the regulations at 40 C.F.R. Part
10 370, require the owner or operator of a facility that is required to prepare or have available a
11 material safety data sheet for a hazardous chemical, under the Occupational Safety and Health
12 Act of 1970, 29 U.S.C. § 651 *et seq.*, to prepare and submit a Tier II emergency and hazardous
13 chemical inventory form (“Tier II Form”) to the appropriate local emergency planning
14 committee (“LEPC”), state emergency response commission (“SERC”), and local fire
15 department by March 1, containing data with respect to the preceding calendar year. The
16 required data includes estimates of the average and maximum quantities of each hazardous
17 chemical stored in excess of the threshold quantity. 40 C.F.R. §§ 370.41(i)-(j), 370.42(i)(5)-(6).

18 19. “Hazardous chemical,” with certain exceptions, has the meaning given such term
19 by the Occupational Safety and Health Act and its implementing regulations. 42 U.S.C.
20 §§ 11021(e) and 11049(5). Pursuant to those regulations, “hazardous chemical” means any
21 chemical which is classified as a physical hazard or a health hazard, a simple asphyxiant,
22 combustible dust, pyrophoric gas, or hazard not otherwise classified. 29 C.F.R. § 1900.1200(c).

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1 20. 40 C.F.R. § 370.10(a)(2)(1) provides that the threshold that triggers reporting
2 obligations under Section 312 of EPCRA is having 10,000 pounds or more of a hazardous
3 chemical present at the facility at any one time, except as described in 40 C.F.R. §§ 370.10(a)(1)
4 and 370.10(a)(2)(ii)-(iii).

5 Requirement to Submit Toxic Chemical Release Forms

6 21. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and the regulations at 40 C.F.R.
7 Part 372, require the owners or operators of a facility that: (a) has 10 or more full time
8 employees; (b) has a Standard Industrial Classification (“SIC”) code of 20 through 39; and
9 (c) during the calendar year manufactures, processes, or otherwise uses a toxic chemical listed
10 under Section 313(c) of EPCRA and 40 C.F.R. § 372.65, in excess of the threshold quantity
11 established under Section 313(f) of EPCRA and 40 C.F.R. § 372.25, to complete and submit a
12 toxic chemical release inventory form (“TRI Form”) to EPA and the state in which the subject
13 facility is located. The TRI Form must be submitted by July 1 and contains data for the
14 preceding calendar year, for each toxic chemical known by the owner or operator to be
15 manufactured, processed, or otherwise used in quantities exceeding the established threshold
16 quantity during the preceding calendar year.

17 22. 40 C.F.R. § 372.25(b) provides that the threshold quantity for toxic chemicals
18 “otherwise used” at a facility is 10,000 pounds used during the applicable calendar year, except
19 as specified in 40 C.F.R. §§ 372.27 and 372.28. In facilities where the toxic chemical is part of a
20 “recycle/reuse” operation, the quantity of the chemical “otherwise used” is the amount of the
21 chemical added to the recycle/reuse operation during the calendar year. 40 C.F.R. § 372.25(e).

1 Ocean Gold Facility

2 28. From at least July 2007 until the present, Ocean Gold has owned and operated a
3 refrigeration “appliance” at the Ocean Gold facility (the “Ocean Gold appliance”), within the
4 meaning of Section 608(c)(2) of the CAA, 42 U.S.C. § 7671g(c)(2), and 40 C.F.R. § 82.152.

5 29. The Ocean Gold appliance employs R-22 as a “refrigerant,” within the meaning
6 of 40 C.F.R. § 82.152.

7 30. The Ocean Gold appliance is “industrial process refrigeration” equipment within
8 the meaning of 40 C.F.R. § 82.152.

9 31. At all times relevant to this Complaint, the Ocean Gold appliance had a “full
10 charge” of at least 10,000 pounds of R-22, within the meaning of 40 C.F.R. § 82.152.

11 32. The Ocean Gold appliance is a closed refrigeration system, the operation of which
12 does not consume refrigerant.

13 33. At all times relevant to this Complaint, Ocean Gold did not perform leak-rate
14 calculations when adding R-22 to the Ocean Gold appliance.

15 34. Ocean Gold acquired certified, self-contained recovery equipment in April 2011.
16 Prior to April 2011, the Ocean Gold facility did not have certified recovery equipment on site.

17 Ocean Cold Facility

18 35. From at least May 2008 until the present, Ocean Cold has owned and operated a
19 refrigeration “appliance” at the Ocean Cold facility (the “Ocean Cold appliance”), within the
20 meaning of Section 608(c)(2) of the CAA, 42 U.S.C. § 7671g(c)(2), and 40 C.F.R. § 82.152.

21 36. The Ocean Cold appliance employs R-22 as a “refrigerant,” within the meaning of
22 40 C.F.R. § 82.152.

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1 37. The Ocean Cold appliance is “industrial process refrigeration” equipment within
2 the meaning of 40 C.F.R. § 82.152.

3 38. At all times relevant to this Complaint, the Ocean Cold appliance had a “full
4 charge” of at least 10,000 pounds of R-22, within the meaning of 40 C.F.R. § 82.152.

5 39. The Ocean Cold appliance is a closed refrigeration system, the operation of which
6 does not consume refrigerant.

7 40. Ocean Cold acquired certified, self-contained recovery equipment in April 2011.
8 Prior to April 2011, the Ocean Cold facility did not have certified recovery equipment on site.

9 Icehouse Facility

10 41. From at least May 2008 until the present, Ocean Gold has operated a refrigeration
11 “appliance” at the Icehouse facility (the “Icehouse appliance”), within the meaning of Section
12 608(c)(2) of the CAA, 42 U.S.C. § 7671g(c)(2), and 40 C.F.R. § 82.152.

13 42. The Icehouse appliance employs R-22 as a “refrigerant,” within the meaning of
14 40 C.F.R. § 82.152.

15 43. The Icehouse appliance is “industrial process refrigeration” equipment within the
16 meaning of 40 C.F.R. § 82.152.

17 44. At all times relevant to this Complaint, the Icehouse appliance had a “full charge”
18 of at least 4,000 pounds of R-22, within the meaning of 40 C.F.R. § 82.152.

19 45. The Icehouse appliance is a closed refrigeration system, the operation of which
20 does not consume refrigerant.

21 46. At all times relevant to this Complaint, Ocean Gold did not perform leak-rate
22 calculations when adding R-22 to the Icehouse appliance.

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FIRST CLAIM FOR RELIEF

**Failure to Repair Leaks at the Ocean Gold and Icehouse Facilities,
in Violation of 40 C.F.R. § 82.156(i)(2) and (i)(9)**

47. Paragraphs 1 through 17 and 25 through 46 of the Complaint are incorporated by reference as if fully set forth herein.

48. At all times relevant to this Complaint, the Ocean Gold appliance and the Icehouse appliance contained more than 50 pounds of R-22.

49. On numerous occasions between July 2007 and the present, Ocean Gold purchased R-22 for the Ocean Gold facility, and on information and belief, subject to a reasonable opportunity for further investigation and discovery, added the purchased R-22 to the Ocean Gold appliance. As alleged in Paragraph 33, Ocean Gold did not conduct leak rate calculations when adding R-22 to the Ocean Gold appliance.

50. On several such occasions when R-22 was added to the Ocean Gold appliance, had Ocean Gold conducted leak rate calculations, Ocean Gold would have discovered that the Ocean Gold appliance was leaking at a rate such that the loss of refrigerant would exceed 35 percent of the total charge during a 12-month period.

51. By failing to conduct leak-rate calculations as alleged in Paragraph 33, Ocean Gold intentionally shielded itself from information which would have revealed that that the leak rate of the Ocean Gold appliance exceeded 35 percent on an annual basis.

52. On information and belief, subject to a reasonable opportunity for further investigation and discovery, on the occasions noted in Paragraph 50, Ocean Gold did not repair the leaks within 30 days of the date that they should have been discovered, in such a way as to bring the leak rate below 35 percent, as required by 40 C.F.R. §§ 82.156(i)(2) and (i)(9).

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1 53. Each day beyond the 30 day repair period that Defendant failed to bring the leak
2 rate of the Ocean Gold appliance below 35 percent is a violation of 40 C.F.R. §§ 82.156(i)(1)
3 and (i)(9).

4 54. On numerous occasions between July 2007 and the present, Ocean Gold
5 purchased R-22 for the Icehouse facility, and on information and belief, subject to a reasonable
6 opportunity for further investigation and discovery, added the purchased R-22 to the Icehouse
7 appliance. As alleged in Paragraph 46, Ocean Gold did not conduct leak rate calculations when
8 adding R-22 to the Icehouse appliance.

9 55. On several such occasions when R-22 was added to the Icehouse appliance, had
10 Ocean Gold conducted leak rate calculations, Ocean Gold would have discovered that the
11 Icehouse appliance was leaking at a rate such that the loss of refrigerant would exceed 35 percent
12 of the total charge during a 12-month period.

13 56. By failing to conduct leak-rate calculations as alleged in Paragraph 46, Ocean
14 Gold intentionally shielded itself from information which would have revealed that that the leak
15 rate of the Icehouse appliance exceeded 35 percent on an annual basis.

16 57. On information and belief, subject to a reasonable opportunity for further
17 investigation and discovery, on the occasions noted in Paragraph 55, Ocean Gold did not repair
18 the leaks within 30 days of the date that they should have been discovered, in such a way as to
19 bring the leak rate below 35 percent, as required by 40 C.F.R. §§ 82.156(i)(2) and (i)(9).

20 58. Each day beyond the 30 day repair period that Defendant failed to bring the leak
21 rate of the Icehouse appliance below 35 percent is a violation of 40 C.F.R. §§ 82.156(i)(1) and
22 (i)(9).

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1 Collection Improvement Act of 1996 (31 U.S.C. § 3701 note); 61 Fed. Reg. 69,360 (Dec. 31,
2 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); and 73 Fed. Reg. 75,340-75,346 (Dec. 11, 2008),
3 codified at 40 C.F.R. Part 19.

4 **THIRD CLAIM FOR RELIEF**
5 **Failure to Maintain Servicing Records at the Ocean Cold Facility,**
6 **in Violation of 40 C.F.R. § 82.166(k)**

7 64. Paragraphs 1 through 17 and 25 through 46 of the Complaint are incorporated by
8 reference as if fully set forth herein.

9 65. At all times relevant to this Complaint, Ocean Cold was an owner or operator of
10 the Ocean Cold appliance, which contained more than 50 pounds of refrigerant.

11 66. On numerous occasions between May 2008 and the present, Ocean Cold added
12 refrigerant to, or otherwise performed service on, the Ocean Cold appliance, and did not
13 maintain complete records of the date and type of service or of the quantity of refrigerant added,
14 in violation of 40 C.F.R. § 82.166(k).

15 67. Ocean Cold is liable for a civil penalty of up to \$32,500 per day for each violation
16 occurring after March 15, 2004, and \$37,500 per day for each violation occurring after January
17 12, 2009, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Federal Civil
18 Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), as amended by the Debt
19 Collection Improvement Act of 1996 (31 U.S.C. § 3701 note); 61 Fed. Reg. 69,360 (Dec. 31,
20 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); and 73 Fed. Reg. 75,340-75,346 (Dec. 11, 2008),
21 codified at 40 C.F.R. Part 19.

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1 **FOURTH CLAIM FOR RELIEF**
2 **Failure to Have Certified Recovery or Recycling Equipment at the Ocean Gold Facility, in**
3 **Violation of 40 C.F.R. § 82.156(b)**

4 68. Paragraphs 1 through 17 and 25 through 46 of the Complaint are incorporated by
5 reference as if fully set forth herein.

6 69. At all times relevant to this Complaint, Ocean Gold was a “person” “opening
7 appliances” for maintenance, service, and repair, within the meaning of 40 C.F.R. § 82.152.

8 70. From at least July 2007 until April 2011, Ocean Gold did not have certified, self-
9 contained recovery or recycling equipment, as defined in 40 C.F.R. § 82.152, at the Ocean Gold
10 facility, in violation of 40 C.F.R. § 82.156(b).

11 71. Ocean Gold is liable for a civil penalty of up to \$32,500 per day for each violation
12 occurring after March 15, 2004, and \$37,500 per day for each violation occurring after January
13 12, 2009, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Federal Civil
14 Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), as amended by the Debt
15 Collection Improvement Act of 1996 (31 U.S.C. § 3701 note); 61 Fed. Reg. 69,360 (Dec. 31,
16 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); and 73 Fed. Reg. 75,340-75,346 (Dec. 11, 2008),
17 codified at 40 C.F.R. Part 19.

18 **FIFTH CLAIM FOR RELIEF**
19 **Failure to Have Certified Recovery or Recycling Equipment at the Ocean Cold Facility,**
20 **in Violation of 40 C.F.R. § 82.156(b)**

21 72. Paragraphs 1 through 17 and 25 through 46 of the Complaint are incorporated by
22 reference as if fully set forth herein.

23 73. At all times relevant to this Complaint, Ocean Cold was a “person” “opening
24 appliances” for maintenance, service, and repair, within the meaning of 40 C.F.R. § 82.152.

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1 74. From at least May 2008 until April 2011, Ocean Cold did not have certified, self-
2 contained recovery or recycling equipment, as defined in 40 C.F.R. § 82.152, at the Ocean Cold
3 facility, in violation of 40 C.F.R. § 82.156(b).

4 75. Ocean Cold is liable for a civil penalty of up to \$32,500 per day for each violation
5 occurring after March 15, 2004, and \$37,500 per day for each violation occurring after January
6 12, 2009, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and the Federal Civil
7 Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), as amended by the Debt
8 Collection Improvement Act of 1996 (31 U.S.C. § 3701 note); 61 Fed. Reg. 69,360 (Dec. 31,
9 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); and 73 Fed. Reg. 75,340-75,346 (Dec. 11, 2008),
10 codified at 40 C.F.R. Part 19.

11 **SIXTH CLAIM FOR RELIEF**

12 **Failure to Submit Tier II Forms for the Ocean Gold Facility,**
13 **in Violation of Section 312 of EPCRA and 40 C.F.R. Part 370**

14 76. Paragraphs 1 through 7 and 18 through 46 of the Complaint are incorporated by
15 reference as if fully set forth herein.

16 77. Ocean Gold is the “owner or operator” of the Ocean Gold facility within the
17 meaning of Section 312 of EPCRA, 42 U.S.C. § 11022.

18 78. The Ocean Gold facility is a “Facility” within the meaning of Section 329(4) of
19 EPCRA, 42 U.S.C. § 11049(4).

20 79. The Ocean Gold facility is required to have material safety data sheets available
21 pursuant to the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*

22 80. At all times relevant to this Complaint, the Ocean Gold appliance contained more
23 than 10,000 pounds of R-22, the threshold quantity for applicability of EPCRA Section 312

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1 pursuant to 40 C.F.R. § 370.10(a)(2)(i).

2 81. At all times relevant to this Complaint, the Ocean Gold facility was subject to
3 EPCRA Section 312 and was required to submit a Tier II Form to the LEPC, SERC, and local
4 fire department by March 1, containing data with respect to the preceding calendar year.

5 82. Ocean Gold failed to submit a Tier II Form to the LEPC, SERC, and local fire
6 department for calendar years 2007 and 2008, in violation of Section 312 of EPCRA, 42 U.S.C.
7 § 11022, and 40 C.F.R. §§ 370.40-370.45.

8 83. Ocean Gold failed to timely submit a Tier II Form for calendar year 2009 to the
9 LEPC, SERC, or local fire department by March 1, 2010, in violation of Section 312 of EPCRA,
10 42 U.S.C. § 11022, and 40 C.F.R. §§ 370.40-370.45. Instead, Ocean Gold submitted a Tier II
11 Form in approximately November 2010, over eight months late.

12 84. Ocean Gold failed to timely submit a Tier II Form for calendar year 2014 to the
13 LEPC, SERC, or local fire department by March 1, 2015, in violation of Section 312 of EPCRA,
14 42 U.S.C. § 11022, and 40 C.F.R. §§ 370.40-370.45. Ocean Gold did not submit an accurate
15 Tier II Form until August 2015, over six months late.

16 85. Ocean Gold is liable for a civil penalty of up to \$32,500 per day for each violation
17 occurring after March 15, 2004, and \$37,500 per day for each violation occurring after January
18 12, 2009, pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Federal Civil
19 Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), as amended by the Debt
20 Collection Improvement Act of 1996 (31 U.S.C. § 3701 note); 61 Fed. Reg. 69,360 (Dec. 31,
21 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); and 73 Fed. Reg. 75,340-75,346 (Dec. 11, 2008),
22 codified at 40 C.F.R. Part 19.

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SEVENTH CLAIM FOR RELIEF

**Failure to Submit Tier II Forms for the Ocean Cold Facility,
in Violation of Section 312 of EPCRA and 40 C.F.R. Part 370**

86. Paragraphs 1 through 7 and 18 through 46 of the Complaint are incorporated by reference as if fully set forth herein.

87. Ocean Cold is the “owner or operator” of the Ocean Cold facility within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022.

88. The Ocean Cold facility is a “Facility” within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

89. The Ocean Cold facility 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.*

90. At all times relevant to this Complaint, the Ocean Cold appliance contained more than 10,000 pounds of R-22, the threshold quantity for applicability of EPCRA Section 312 pursuant to 40 C.F.R. § 370.10(a)(2)(i).

91. At all times relevant to this Complaint, the Ocean Cold facility was subject to EPCRA Section 312 and was required 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.

92. Ocean Cold failed to submit an accurate Tier II Form to the LEPC, SERC, and local fire department for calendar year 2008 by under-reporting the amount of R-22 present at the Ocean Cold facility, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. §§ 370.40-370.45.

93. Ocean Cold failed to timely submit a Tier II Form for calendar year 2009 to the LEPC, SERC, or local fire department by March 1, 2010, in violation of Section 312 of EPCRA,

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1 42 U.S.C. § 11022, and 40 C.F.R. §§ 370.40-370.45. Instead, Ocean Cold submitted a Tier II
2 Form in approximately November 2010, over eight months late.

3 94. Ocean Cold failed to timely submit a Tier II Form for calendar year 2014 to the
4 LEPC, SERC, or local fire department by March 1, 2015, in violation of Section 312 of EPCRA,
5 42 U.S.C. § 11022, and 40 C.F.R. §§ 370.40-370.45. Ocean Cold did not submit an accurate
6 Tier II Form until August 2015, over six months late.

7 95. Ocean Cold is liable for a civil penalty of up to \$32,500 per day for each violation
8 occurring after March 15, 2004, and \$37,500 per day for each violation occurring after January
9 12, 2009, pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Federal Civil
10 Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), as amended by the Debt
11 Collection Improvement Act of 1996 (31 U.S.C. § 3701 note); 61 Fed. Reg. 69,360 (Dec. 31,
12 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); and 73 Fed. Reg. 75,340-75,346 (Dec. 11, 2008),
13 codified at 40 C.F.R. Part 19.

14 **EIGHTH CLAIM FOR RELIEF**

15 **Failure to Submit Toxic Chemical Release Forms for the Ocean Gold Facility,**
16 **in Violation of Section 313 of EPCRA and 40 C.F.R. Part 372**

17 96. Paragraphs 1 through 7 and 18 through 46 of the Complaint are incorporated by
18 reference as if fully set forth herein.

19 97. The Ocean Gold facility is a facility with 10 or more full-time employees, and
20 operates under an SIC code between 20 and 39.

21 98. In each of the calendar years 2006, 2007, 2008 and 2010, Ocean Gold purchased
22 R-22, a listed toxic chemical at 40 C.F.R. § 372.65, in excess of the threshold quantity of 10,000
23 pounds established by 40 C.F.R. § 372.25(b).

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1 99. On information and belief, subject to a reasonable opportunity for further
2 investigation and discovery, the R-22 purchased for the Ocean Gold facility was added to the
3 Ocean Gold appliance and thus was “otherwise used” within the meaning of 40 C.F.R. § 372.25.

4 100. In each of the calendar years 2006, 2007, 2008 and 2010, the Ocean Gold facility
5 was subject to EPCRA Section 313 and was required to submit a TRI Form to EPA.

6 101. Ocean Gold failed to submit a TRI Form to EPA for 2006, in violation of Section
7 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372, Subpart B.

8 102. Ocean Gold failed to submit accurate and complete TRI Forms to EPA in a timely
9 manner for calendar years 2007, 2008, and 2010, in violation of Section 313 of EPCRA, 42
10 U.S.C. § 11023, and 40 C.F.R. Part 372, Subpart B. Ocean Gold did not submit complete TRI
11 forms for those calendar years to EPA until November 2012.

12 103. Ocean Gold is liable for a civil penalty of up to \$32,500 per day for each violation
13 occurring after March 15, 2004, and \$37,500 per day for each violation occurring after January
14 12, 2009, pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Federal Civil
15 Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), as amended by the Debt
16 Collection Improvement Act of 1996 (31 U.S.C. § 3701 note); 61 Fed. Reg. 69,360 (Dec. 31,
17 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); and 73 Fed. Reg. 75,340-75,346 (Dec. 11, 2008),
18 codified at 40 C.F.R. Part 19.

19 PRAYER FOR RELIEF

20 WHEREFORE, Plaintiff, the United States of America, prays that this Court will:

21 A. Order Defendants Ocean Gold Seafoods, Inc. and Ocean Cold, LLC, to
22 immediately comply with the statutory and regulatory requirements cited in this Complaint,

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1 under the CAA and EPCRA;

2 B. Assess civil penalties against Defendants Ocean Gold Seafoods, Inc. and Ocean
3 Cold, LLC, for up to the maximum amounts provided in the applicable statutes;

4 C. Impose such injunctive relief on Defendants Ocean Gold Seafoods, Inc. and
5 Ocean Cold, LLC, as may be appropriate to mitigate the effects of Defendants' violations, and
6 prevent any future violations of same;

7 D. Award the United States its costs and expenses incurred in this action; and

8 E. Grant such other relief and further relief as this Court may deem appropriate.

9 Respectfully submitted,

10 JOHN C. CRUDEN
11 Assistant Attorney General
12 Environment and Natural Resources Division
13 United States Department of Justice
14

15
16 /s/ Danica Anderson Glaser
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