



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

JUN 03 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James E. Zoccola
Lewis & Kappes
One American Square
Suite 2500
Indianapolis, Indiana 46282

Re: Nitrex Inc., Franklin, Indiana
Consent Agreement and Final Order
Docket Nos: **MM-05-2011-0009** **CERCLA-05-2011-0013** **EPCRA-05-2011-0018**

Dear Mr. Zoccola:

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 June 3, 2011.

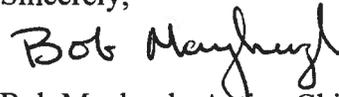
Please have your client pay the CERCLA civil penalty in the amount of \$15,848 in the manner prescribed in paragraphs 58 and 61, and reference your check with the billing document number 2751130B012 and the docket numbers CERCLA-05-2011-0013, MM-05-2011-0009.

Please have your client pay the EPCRA civil penalty in the amount of \$97,352 in the manner prescribed in paragraphs 60 and 61, and reference your check with the billing document number 2751144E016, and the docket numbers EPCRA-05-2011-0018, MM-05-2011-0009.

The payments are due on July 5, 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 Matthew Moore, Assistant Regional Counsel, at (312) 886-5932. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Bob Mayhugh". The signature is written in a cursive style with a large, prominent "B" and "M".

Bob Mayhugh, Acting Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Ian Ewusi-Wilson
IN SERC Contact (w/enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5 MM-05-2011-0009

In the Matter of

Nitrex, Inc.
Franklin, Indiana

Respondent.

RECEIVED
JUN - 3 2011

REGIONAL HEARING CLERK
USEPA
REGION 5

Docket Nos. CERCLA-05-2011-0013

EPCRA-05-2011-0018

Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation,
and Liability Act, and Section 325(b) of the
Emergency Planning and Community Right-
to-Know Act of 1986

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), 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, Region 5.

3. Respondent is Nitrex, 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 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 or the alleged violations 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 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals

are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

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

15. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b) and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, 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.

Factual Allegations and Alleged Violations

16. Respondent is a “person” as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

18. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 350 Blue Chip Court, Franklin, Indiana (facility).

19. At all times relevant to this CAFO, Respondent was in charge of the facility.

20. Respondent’s facility consists of a building, structure, installation, equipment, pipe or pipeline, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

21. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. 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.

23. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

24. Ammonia CAS #7664-41-7 is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Ammonia CAS #7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. Ammonia CAS #7664-41-7 is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

27. 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. § 10.1200(c).

28. At all times relevant to this CAFO, Ammonia was produced, used or stored at Respondent’s facility.

29. 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).

30. Ammonia CAS #7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

31. Ammonia CAS #7664-41-7 is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

32. Ammonia CAS #7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

33. On July 11, 2007, beginning at or about 0300 EST, a release occurred from Respondent’s facility of approximately 3,600 pounds of ammonia (the release).

34. In a 24 hour time period, the release of 3,600 pounds of ammonia exceeded the 100 pound reportable quantity.

35. During the release, approximately 3,600 lbs. spilled, leaked, emitted, emptied, discharged, or escaped into the ambient air.

36. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

37. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

38. Respondent had knowledge of the release on July 11, 2007 at approximately 0300 EST.

39. The release occurred in a manner which required notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

40. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

41. The release was likely to affect the State of Indiana.

42. 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).

43. The release was likely to affect Johnson County, Indiana.

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

45. Respondent notified the NRC of the release on July 11, 2007, at 1400 EST.

46. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

47. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

48. Respondent notified the Indiana SERC of release on July 11, 2007, at 1413 EST.

49. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

50. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

51. As the time of this filing, Respondent had not notified the LEPC in the manner required by law of the release.

52. Respondent did not immediately notify the LEPC in the manner required by law after Respondent had knowledge of the release.

53. Respondent's failure to immediately notify the LEPC of the release in the manner required by law is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

54. As of the time of this filing, Respondent had not provided the written follow-up emergency notice to the LEPC.

55. Respondent did not provide the LEPC with written follow-up emergency notice of the release as soon as practicable after the release occurred.

56. Respondent's failure to provide written follow-up emergency notice to the LEPC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Civil Penalty

57. Complainant has determined that an appropriate civil penalty to settle this action is \$15,848 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation, and any other matters as justice may require. Complainant also considered 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).

58. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,848 civil penalty for the CERCLA violation. Respondent must pay the penalty by check sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

The check must note the case name (Nitrex, Inc.), the CERCLA and MM docket numbers of this CAFO, and the CERCLA billing document number 2751130B012.

59. Complainant has determined that an appropriate civil penalty to settle this action is \$97,352 for the 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 EPA's EPCRA/CERCLA Enforcement Response Policy.

60. Within 30 days after the effective date of this CAFO, Respondent must pay a \$97,352 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the case name (Nitrex, Inc.), the EPCRA and MM docket numbers of this CAFO, and the EPCRA billing document number 2751144E016.

61. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket numbers, and the billing document numbers 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 60604-3511

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

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

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

63. If Respondent does not timely pay the civil penalty, 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.

64. 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, EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

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

66. 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.

67. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304 of EPCRA, 42 U.S.C. § 11004.

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

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

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

71. 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.

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

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

Nitrex, Inc., Respondent

May 16, 2011
Date

Chris Morawski
Chris Morawski
President
Nitrex, Inc.

U.S. Environmental Protection Agency, Complainant

May 26, 2011
Date

Richard C. Karl for RK
Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Nitrex Inc., Franklin, Indiana

Docket Nos. MM-05-2011-0009

CERCLA-05-2011-0013

EPCRA-05-2011-0018

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.

5-31-11
Date



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

In the Matter of: Nitrex Inc., Franklin, Indiana

Docket Nos. MM-05-2011-0009

CERCLA-05-2011-0013

EPCRA-05-2011-0018

Certificate of Service

I, Ruth McNamara, 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 the second original 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 E. Zoccola
Lewis & Kappes
One American Square
Suite 2500
Indianapolis, Indiana 46282

on the 3rd day of June, 2011

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY
MAY 23 2011
OFFICE OF REGIONAL
COUNSEL