

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
Schwan's Global Supply Chain, Inc.)	Docket Nos.
3019 Scanlan Avenue)	EPCRA-07-2007-0003
Salina, Kansas 67401)	CERCLA-07-2007-0003
)	CAA-07-2007-0003
)	
Respondent.)	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and Schwan's Global Supply Chain, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), as amended, 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act (hereinafter "EPCRA"), 42 U.S.C. § 11045, and Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the first date of alleged violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

2. This Consent Agreement and Final Order serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondent has violated Section 103 of CERCLA, 42 U.S.C. § 9603, and the regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and codified at 40 C.F.R. Part 302; Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 355; and the provisions governing

Chemical Accident Prevention, and specifically the requirement to implement a Risk Management Plan as required by 40 C.F.R. Part 68 and Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of EPA, and the Regional Administrator, EPA, Region VII, is the Director, Air, RCRA, and Toxics Division, EPA, Region VII.

4. The Respondent is Schwan's Global Supply Chain, Inc., located at 3019 Scanlan Avenue, Salina, Kansas 67401. Respondent is a company incorporated under the laws of Minnesota and authorized to conduct business in the State of Kansas.

Statutory and Regulatory Framework

5. Section 103(a) of CERCLA and the regulation set forth at 40 C.F.R. § 302.6, require any person in charge of a vessel or an onshore or offshore facility, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than the reportable quantity established pursuant to Section 102 of CERCLA, to immediately notify the National Response Center of such release.

6. Section 304(a) of EPCRA and the regulation set forth at 40 C.F.R. § 355.40, require the owner or operator of a facility at which a hazardous chemical is produced, used, or stored and at which there is a release of a reportable quantity of any EPCRA extremely hazardous substance or CERCLA hazardous substance to immediately notify the State Emergency Response Commission of any State likely to be affected by the release and the emergency coordinator for the Local Emergency Planning Committee for any area likely to be affected by the release.

7. Section 112(r)(7) of the CAA Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for listed regulated substances. The regulations at 40 C.F.R. Part 68, which implement Section 112(r)(7), set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a risk management plan (RMP) that must be submitted to EPA. These regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program. The RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999; or the date on which a regulated substance is first present above the threshold quantity in a process.

8. Section 109(b)(1) of CERCLA authorizes a civil penalty of not more than \$25,000 per day for each day during which a violation continues for any violation of the requirements of

Section 103(a) of CERCLA. Under the Debt Collection Improvement Act of 1996 as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day for each day a violation continues may be assessed for violations of CERCLA Section 103 that occur after March 15, 2004.

9. Section 325(b)(2) of EPCRA authorizes a civil penalty for violations of the requirements of Section 304 of EPCRA of not more than \$25,000 per day for each day during which the violation continues. Under the Debt Collection Improvement Act of 1996 as implemented by the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day for each day a violation continues may be assessed for violations of EPCRA Section 304 that occur after March 15, 2004.

10. Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the Clean Air Act referenced therein, including Section 112(r)(7). Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States assess civil administrative penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997 through March 15, 2004 and \$32,500 per day for each violation that occurs after March 15, 2004.

Definitions

11. The regulations at 40 C.F.R. § 68.3 define "stationary source" in part, as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.

12. The regulations at 40 C.F.R. § 68.3 define "threshold quantity" as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Clean Air Act, as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

13. The regulations at 40 C.F.R. § 68.3 define "regulated substance" as any substance listed pursuant to Section 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130.

14. The regulations at 40 C.F.R. § 68.3 define "process" as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Alleged Violations

15. EPA alleges that Respondent has violated CERCLA Section 103, EPCRA Section 304, and Section 112(r) of the CAA and federal regulations promulgated pursuant to the CAA as follows:

16. Respondent is, and at all times referred to herein, was a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9602(21); Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

17. At all times relevant hereto, Respondent owned an operated and was in charge of Schwan's Salina, Kansas facility located at 3019 Scanlan Avenue, Salina, Kansas.

Count 1 - CERCLA

18. Respondent's Salina, Kansas facility is a "facility" as defined by Section 101(9) of CERCLA.

19. Anhydrous ammonia is a "hazardous substance" as defined by Section 101(14) of CERCLA, with a reportable quantity of 100 pounds, as designated by 40 C.F.R. § 302.4.

20. On December 11, 2005, there was a release of anhydrous ammonia from Respondent's facility in excess of the reportable quantity designated by 40 C.F.R. § 302.4.

21. Respondent discovered the release referenced in paragraph 20 at approximately 7:49 p.m. on December 11, 2005.

22. Respondent did not immediately notify the National Response Center of the release as soon as it had knowledge of the release.

23. Respondent's failure to notify the National Response Center of the release as soon as it had knowledge of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603, and of the requirements of 40 C.F.R. § 302.6.

Count 2 - EPCRA

24. The facts stated in paragraphs 18 through 21 above are herein incorporated.

25. Respondent's Salina, Kansas facility is a "facility" as defined by Section 329(4) of EPCRA.

26. At all times relevant hereto, "hazardous chemicals" as defined by Section 329(5) of EPCRA, 42 U.S.C. § 11049(5), were produced, used, or stored by Respondent's facility.

27. Anhydrous ammonia is an "extremely hazardous substance," as defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3) and as designated pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a) and listed in 40 C.F.R. Part 355, Appendix A.

28. On December 11, 2005, there was a release of anhydrous ammonia from Respondent's facility in excess of the reportable quantity designated by 40 C.F.R. § 302.4.

29. Respondent discovered the release referenced in paragraph 28 at approximately 7:49 p.m. on December 11, 2005.

30. Respondent did not immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release.

31. Respondent's failure to immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release is a violation of Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and of the requirements of 40 C.F.R. § 355.40(b).

Count 3 – CAA

32. Respondent's Salina, Kansas facility is a "stationary source" pursuant to 40 C.F.R. § 68.3.

33. Anhydrous ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

34. Respondent is subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

35. Respondent was required under Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

36. Respondent failed to submit an updated accident history within six months of an accidental release from a covered process resulting in, *inter alia*, injuries or evacuations, as required by 40 C.F.R. § 68.195(a). Respondent's failure to comply with 40 C.F.R. Part 68, as set forth above is a violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

37. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

38. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.

39. Respondent neither admits nor denies the factual allegations set forth above.

40. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

41. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

42. This Consent Agreement and Final Order addresses all civil and administrative claims for the CERCLA, EPCRA and Clean Air Act violations identified above, existing through the effective date of this Consent Agreement and Final Order. Complainant reserves the right to take enforcement action with respect to any other violations of the CERCLA, EPCRA and Clean Air Act or other applicable law.

43. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Section 103 of CERCLA, 42 U.S.C. § 9603; Section 304 of EPCRA, 42 U.S.C. § 11004; and Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

44. The effect of settlement described in paragraph 42 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 43, above, of this Consent Agreement and Final Order.

45. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

46. Respondent understands that the failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

47. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of the Consent Agreement and Final Order and to legally bind Respondent to it.

FINAL ORDER

Pursuant to the provisions of CERCLA, 42 U.S.C. § 9601, EPCRA, 42 U.S.C. § 11001, and Clean Air Act, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Thirty-three Thousand Seven Hundred Sixty Dollars (\$33,760), within thirty (30) days of entry of this Final Order. Payment shall be by three (3) cashier's or certified checks, two (2) in the amount of: Ten Thousand Eight Hundred Eighty Dollars (\$10,880) and one (1) in the amount of Twelve Thousand Dollars (\$12,000).

The first check, in the amount of \$10,880, should be made payable to "EPA Hazardous Substance Superfund" and remitted to:

EPA - Region VII
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

This payment shall reference docket number CERCLA-07-2007-0003;

The second check, in the amount of \$10,880, should be made payable to the "United States Treasury" and remitted to:

EPA - Region VII
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

This payment shall reference docket number EPCRA-07-2007-0003;

The third check, in the amount of \$12,000, should be made payable to the "United States Treasury" and remitted to:

EPA - Region VII
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

This payment shall reference docket number CAA-07-2007-0003.

2. A copy of each check shall be sent to:

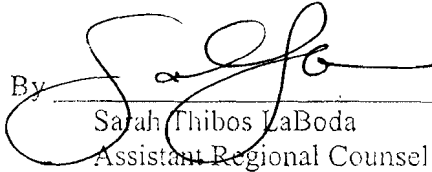
Regional Hearing Clerk
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

and to:

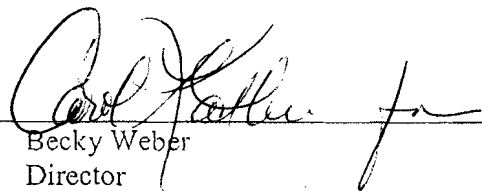
Sarah Thibos LaBoda
Assistant Regional Counsel
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101.

3. This executed Consent Agreement and Final Order shall be returned to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By 
Sarah Thibos LaBoda
Assistant Regional Counsel

Date 9/17/07

By 
Becky Weber
Director
Air, RCRA, and Toxics Division

Date: 9/17/07

RESPONDENT:
SCHWAN'S GLOBAL SUPPLY CHAIN
SALINA, KANSAS

By Harry A Smith
Title Sr. Dir of Manuf.
Date 9/10/07

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

Date Sept. 19, 2007

IN THE MATTER OF Schwan's Global Supply Chain, Inc., Respondent
Docket Nos. EPCRA-07-2007-0003, CERCLA-07-2007-0003 and CAA-07-2007-0003

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Sarah LaBoda
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. Randy Simmons
Schwan's Global Supply Chain, Inc.
3019 Scanlan Avenue
Salina, Kansas 67401

Dated: 9/19/07



Kathy Robinson
Hearing Clerk, Region 7