



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 02 2010

FEDERAL EXPRESS

John Dugdale, Esq.  
Andrews Kurth LLP  
1717 Main Street, Suite 3700  
Dallas, Texas 75201

SUBJECT: Air Liquide Industries U.S. LP, Wake Forest, North Carolina  
Consent Agreement and Final Order  
EPCRA-04-2010-2013(b)

Dear Mr. Dugdale:

Enclosed please find a copy of the Consent Agreement and Final Order (CAFO) resulting from settlement discussions with Air Liquide Industries U.S. LP, Wake Forest, North Carolina and its alleged violations of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9603 and Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004.

Please have the original CAFO signed where indicated and return the original CAFO and signature page within 15 calendar days of receipt of this letter to:

Lawrence Fincher  
U.S. EPA, Region 4  
Air, Pesticides and Toxics Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Upon receipt of the signed CAFO, the document will be forwarded to the Regional Judicial Officer for approval, then filed with the Regional Hearing Clerk. A copy of the filed document will then be forwarded to you.

If you have any questions, please contact Mr. Fincher at (404) 562-9190, or Mr. Robert Bookman at (404) 562-9169.

Sincerely,

A handwritten signature in black ink, appearing to read "Caron B. Falconer".

Caron B. Falconer  
Chief, EPCRA Enforcement Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

2010 MAR -2 PM 2:54

HEARING CLERK

RECEIVED  
EPA REGION 4

IN THE MATTER OF: )  
)  
Air Liquide Industries U.S. LP ) Docket Number: EPCRA-04-2010-2013(b)  
)  
Respondent. )  
\_\_\_\_\_ )

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Air Liquide Industrial U.S. LP.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA and under EPCRA to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004, and the authority under EPCRA by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent is a corporation doing business in the State of North Carolina.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 326 Forestville Road, Wake Forest, North Carolina.

8. Respondent is an "owner or operator" of the facility as that term is defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended. The list is codified at 40 C.F.R. Part 302.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. Part 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the reportable quantity (RQ).

11. Respondent was in charge of the facility during the relevant period described below.

12. Anhydrous ammonia is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 100 pounds, as specified in 40 C.F.R. § 302.4.

13. On April 21, 2009, Respondent had a release of anhydrous ammonia above the RQ at the facility.

14. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of anhydrous ammonia in an amount equal to or greater than its RQ at Respondent's facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

15. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500, for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred on or after January 12, 2009. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

16. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) and the regulations found at 40 C.F.R. § 355.40, require the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) when there has been a release of a CERCLA hazardous substance or extremely hazardous substance in an amount equal to or greater than the reportable quantity.

17. Respondent was the owner or operator of the facility during the relevant period, described below.

18. At all times relevant to this matter, the facility produced, used, or stored a "hazardous chemical" as defined under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e) and under 29 C.F.R. § 1910.1200(c).

19. Anhydrous ammonia is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 100 pounds, as specified in 40 C.F.R. Part 355, Apps. A & B.

20. On April 21, 2009, Respondent had a release of anhydrous ammonia above the RQ at the facility.

21. Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of anhydrous ammonia in an amount equal to or greater than the RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

22. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$37,500 for each violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), that occurred on or after January 12, 2009. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

### III. Consent Agreement

23. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

24. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

25. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

26. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA and CERCLA.

27. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

28. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

#### IV. Final Order

29. Respondent shall pay a civil penalty of ELEVEN THOUSAND FIVE HUNDRED SEVEN DOLLARS (\$11,507) for the CERCLA violation which shall be paid within thirty (30) days of the effective date of this CAFO.

30. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

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

BY OVERNIGHT

U.S. Bank  
Attention: Natalie Pearson (314) 418-4087  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

The check shall reference on its face the name and the Docket Number of the CAFO.

31. Respondent shall pay a civil penalty of ELEVEN THOUSAND FIVE HUNDRED SEVEN DOLLARS (\$11,507) for the EPCRA violations which shall be paid within thirty (30) days of the effective date of this CAFO.

32. Respondent shall pay the penalty by forwarding a cashier's or certified check payable to "Treasurer, United States of America," to one of the following addresses:

The check shall reference on its face the name and the Docket Number of the CAFO.

BY MAIL

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

BY OVERNIGHT

U.S. Bank  
Attention: Natalie Pearson (314) 418-4087  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

33. At the time of payment, Respondent shall send a separate copy of each check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Mr. Lawrence Fincher  
U.S. EPA, Region 4  
Air, Pesticides & Toxics Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Saundi Wilson  
U.S. EPA, Region 4  
Office of Environmental Accountability  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

34. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO

35. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be

010.assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

36. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

37. This CAFO shall be binding upon the Respondent, its successors, and assigns.

38. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Caron B. Falconer  
U.S. EPA, Region 4  
Air, Pesticides & Toxics Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-8451

39. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

**THIS SECTION INTENTIONALLY LEFT BLANK**

V. Effective Date

40. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Air Liquide Industrial U.S. LP

By: Timothy A. Bruce (Signature) Date: 2/17/10  
Name: TIMOTHY A. BRUCE (Typed or Printed)  
Title: VP, PRIMARY PRODUCTION (Typed or Printed)

U.S. Environmental Protection Agency

By: Michael A. Schutt for Date: 2/2/10  
Kenneth R. Lapierre, Acting Director  
Air, Pesticides & Toxics  
Management Division  
Region 4

APPROVED AND SO ORDERED this 2<sup>nd</sup> day of March, 2010.

Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer



CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing  
Consent Agreement and Final Order, In the Matter of Air Liquide Industrial U.S. LP, Docket  
No. EPCRA 04-2010-2013(b), on the parties listed below in the manner indicated:

Caron B. Falconer (Via EPA's internal mail)  
U.S. EPA, Region 4  
Air, Pesticides & Toxics Management Division  
61 Forsyth Street  
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)  
U.S. EPA, Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, GA 30303

John Dugdale, Esq. (Certified Mail - Return Receipt Requested)  
Andrews Kurth LLP  
1717 Main Street, Suite 3700  
Dallas, Texas 75201

Date: 3-2-10



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 3/1/10  
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504  
(Office) (Telephone Number)

- |  |  |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree<br>USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement<br>FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree<br>DOJ COLLECTS      | <input type="checkbox"/> Oversight Billing - Cost Package required:<br>Sent with bill              |
| <input type="checkbox"/> Other Receivable                                      | <input type="checkbox"/> Not sent with bill  |
| <input type="checkbox"/> This is an original debt                              | <input type="checkbox"/> Oversight Billing - Cost Package not required                             |
|  | <input type="checkbox"/> This is a modification  |

PAYEE: Air Liquide Industries U.S. LP  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 11,507 - EPCRA / 11,507 - CERCLA  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: EPCRA 04 2010 2013 (b)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management Section at: \_\_\_\_\_

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- |  |                             |                              |
|--|-----------------------------|------------------------------|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD) | 3. Designated Program Office |
|--|-----------------------------|------------------------------|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |