

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the Matter of:)
)
J & J Chemical Company)
190 Trans Tech Drive)
Athens, Georgia)
)
Respondent.)
_____)

Docket No. EPCRA-04-2011-2031(b)

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 EPCRA-04-2011-2031

NOTICE TO AMEND AND CORRECT INSTALLMENT PAYMENT AMOUNTS

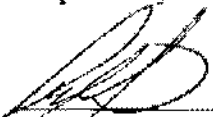
Pursuant to 40 C.F.R. § 22.5, Complainant hereby notifies the Regional Hearing Clerk, the Regional Judicial Officer, and Respondent of a correction and amendment to the language of the Consent Agreement and Final Order (CAFO) filed on February 16, 2011, in the above referenced matter. The CAFO, signed by Complainant and Respondent, outlined amounts for each of the four (4) installment payments with interest included. The amounts reflected in the original installment payment chart were inaccurate due to a miscalculation of the interest. This notice provides the correct amounts to be paid over the course of the agreed upon installment payment period. The penalties for both CERCLA and EPCRA violations are identical.

	CERCLA Penalty Payment	EPCRA Penalty Payment
March 1, 2011	\$ 3,345.81	\$ 3,345.81
June 1, 2011	\$ 3,334.21	\$ 3,334.21
September 1, 2011	\$ 3,326.05	\$ 3,326.05
December 1, 2011	\$ 3,317.89	\$ 3,317.89
TOTAL	\$13,323.96	\$13,323.96

The parties in this matter have discussed the above corrections and agreed to the amendment of the CAFO as described herein. The original CAFO is attached for reference as Attachment A.

Respectfully submitted,

3/2/2011
Date



Adam Dilts, Assistant Regional Counsel
Office of Air, Pesticides and Toxics Legal Support
Office of Environmental Accountability

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Notice of Amendment to Correct Installment Payment Amounts in the Consent Agreement and Final Order, In the Matter of: J & J Chemical Company, Docket No. EPCRA- 04-2011-2031(b), to the Regional Hearing Clerk, and on the parties listed below in the manner indicated:

Caron B. Falconer
Air, Pesticides, and Toxics
Management Division
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Robert Caplan
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, GA 30303

(Via EPA's internal mail)

Adam Dilts
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, GA 30303


(Via EPA's internal mail)

(Counsel for Respondent)

(Via Certified Mail - Return Receipt Requested)

Joan Sasine
Bryan Cave LLP
One Atlanta Center, Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, GA 30309

Date: 3/2/11


Saundi J. Wilson, Paralegal Specialist
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
J & J Chemical Company)
)
Respondent.)
_____)

Docket Number: EPCRA-04-2011-2031(b)

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EPCRA-04-2011-2031(b)

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, 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 J & J Chemical Company.

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, J & J Chemical Company, is incorporated in the State of Florida and is doing business in the State of Georgia.

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 owns and operates 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 190 Trans Tech Drive, Athens, Georgia.

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).

III. EPA's Allegations of Violations

Violations of Section 103(a) of CERCLA

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, which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13,474), and is periodically amended.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 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 RQ.

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

12. Formaldehyde 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. 1,4 dichlorobenzene is also 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 July 28, 2010, releases of formaldehyde and 1,4 dichlorobenzene, both in quantities exceeding their respective RQ, occurred from Respondent's 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 formaldehyde and 1,4 dichlorobenzene in amounts

equal to or greater than their respective 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), occurring 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.

Violations of Section 304(a) of EPCRA

16. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and the regulations found at 40 C.F.R. § 355, Subpart C, 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 an EPCRA extremely hazardous substance in an amount equal to or greater than the RQ.

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 "hazardous chemicals" as defined at Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and at 29 C.F.R. § 1910.1200(c).

19. Formaldehyde 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 at 40 C.F.R. Part 355, Apps. A & B. 1,4 dichlorobenzene 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 at 40 C.F.R. § 302.4.

20. On July 28, 2010, a release of formaldehyde and 1,4 dichlorobenzene, at quantities exceeding their respective RQ, occurred at Respondent's facility.

21. EPA alleges that 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 formaldehyde and 1,4-dichlorobenzene in amounts equal to or greater than their respective 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 after January 12, 2009. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

IV. 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 CERCLA and EPCRA.

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.

V. Final Order

29. Respondent shall pay a CERCLA civil penalty of THIRTEEN THOUSAND TWO HUNDRED SEVENTY FIVE DOLLARS (\$13,275) plus cumulative interest in the amount of \$83.23 for the CERCLA violations. Payment shall be paid in four quarterly installments according to the following schedule:

<u>Date</u>	<u>Payment</u>
March 1, 2011	\$3345.81
June 1, 2011	\$3345.81
September 1, 2011	\$3345.81
December 1, 2011	\$3337.46

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 an EPCRA civil penalty of THIRTEEN THOUSAND TWO HUNDRED SEVENTY FIVE DOLLARS (\$13,275) plus cumulative interest in the amount of \$83.23 for the EPCRA violations. Payment shall be paid in four quarterly installments according to the following schedule:

<u>Date</u>	<u>Payment</u>
March 1, 2011	\$3345.81
June 1, 2011	\$3345.81
September 1, 2011	\$3345.81
December 1, 2011	\$3337.46

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

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

Deanne Grant
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. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) and all accrued interest shall become immediately due and payable on the 31st day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.

35. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

36. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of TWENTY-SIX THOUSAND FIVE HUNDRED AND FIFTY DOLLARS (\$26,550.00) within thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

37. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, 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. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

38. 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.

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

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

41. The following individual 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

42. 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

VI. Effective Date

43. 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:

J & J Chemical Company
Respondent

By: *S. Boyd* (Signature) Date: 2-1-11
Name: Gerald T Boyd (Typed or Printed)
Title: President (Typed or Printed)

U.S. Environmental Protection Agency

By: *Carol G. Banister for* (Signature) Date: 1/24/11
Beverly H. Banister, Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 16th day of February, 2011.

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 J & J Chemical Company, Docket No. EPCRA 04-2011-2031(b), on the parties listed below in the manner indicated:

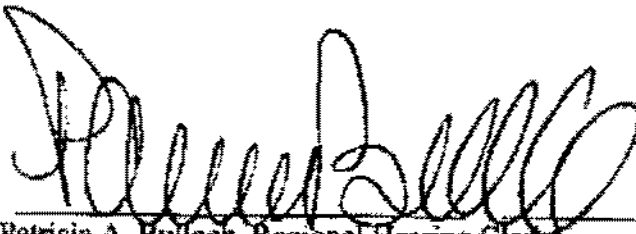
Caron B. Falconer (Via EPA's internal mail)
Air, Pesticides & Toxics Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

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

Adam Dilts (Via EPA's internal mail)
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

Joan Sasine (Certified Mail - Return Receipt Requested)
Bryan Cave LLP
One Atlanta Center, Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, Georgia 30309

Date: 2-16-11


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