



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB 14 2011

REPLY TO THE ATTENTION OF:

SC-5J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Linda H. Bochert  
Michael Best & Friedrich LLP  
One South Pinckney Street  
Suite 700  
Madison, Wisconsin 53703

Re: Klement Sausage Company  
Consent Agreement and Final Order  
Docket No. **MM-05-2011-0004**      **CERCLA-05-2011-0007**      **EPCRA-05-2011-0010**

Dear Ms. Bochert:

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 February 14, 2011.

Please have your client pay the CERCLA civil penalty in the amount of \$10,478 in the manner prescribed in paragraphs 51, and reference your check with the billing document number **2751130B007** and the docket number **CERCLA-05-2011-0007**.

Please have your client pay the EPCRA civil penalty in the amount of \$20,956 in the manner prescribed in paragraphs 52, and reference your check with the billing document number **2751144E009** and the docket number **EPCRA-05-2011-0010**.

The payments are due on March 16, 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 Jeffrey Cahn, Associate Regional Counsel, at (312) 886-6670. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Silvia Palomo".

Silvia Palomo, 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-05-2011-0004

EPCRA-05-2011-0010

In the Matter of:

Klement Sausage Co. Inc.  
Milwaukee, Wisconsin

Respondent.

RECEIVED  
FEB 14 2011  
REGIONAL HEARING CLERK  
USEPA  
REGION 5

Docket No. CERCLA-05-2011-0007

Proceeding to Assess a Civil Penalty Under  
Section 109(b) of the Comprehensive  
Environmental Response, Compensation,  
and Liability Act, and Sections 325(b)(2) 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(s) 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, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Klement Sausage Co. Inc., a corporation doing business in the State of Wisconsin.
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 consents to 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 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 hazardous substance's reportable quantity.

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 planning commission (SERC) of any state likely to be affected by a release.

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

14. 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 \$27,500 per day of violation that occurred from January 31, 1997, through March 15, 2004, to \$32,500 per day of violation for violations that occurred after March 15, 2004, through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

#### **Factual Allegations and Alleged Violations**

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

16. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
17. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 207 E. Lincoln Avenue, Milwaukee, Wisconsin (facility).
18. At all times relevant to this CAFO, Respondent was in charge of the facility.
19. Respondent’s facility consists of a building, structure, installation, equipment, pipe, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.
20. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
21. 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.
22. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
23. 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).
24. Ammonia CAS # 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.
25. Ammonia 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.

26. 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. § 1910.1200(c).
27. At all times relevant to this CAFO, ammonia was produced, used or stored at Respondent’s facility.
28. 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).
29. Ammonia CAS # 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.
30. On February 13, 2008, at or about 8:30 p.m. CST, a release occurred from Respondent’s facility of approximately 700 pounds of ammonia (the release).
31. In a 24 hour time period, the release of 700 pounds exceeded the 100 pound RQ for this chemical.
32. During the release, approximately 700 pounds of ammonia spilled, leaked, emitted, discharged, or escaped into the ambient air.
33. The release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
34. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).
35. Respondent had knowledge of the release on February 14, 2008 at approximately 12:00 a.m. CST.
36. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

37. The release was likely to affect the State of Wisconsin.

38. At all times relevant to this CAFO, the Wisconsin State Emergency Response Commission was the SERC for Wisconsin under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

39. The release was likely to affect Milwaukee County, Wisconsin.

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

#### **Count 1**

41. Respondent notified the NRC of the release on February 14, 2008, at 6:29 a.m. CST.

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

43. 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).

#### **Count 2**

44. Respondent notified the Wisconsin SERC of release on February 14, 2008, at 6:37 a.m. CST.

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

46. 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).



**Count 3**

47. Respondent notified the LEPC of the release on February 14, 2008, at 6:40 a.m. CST.

48. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

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

**Civil Penalty**

50. In consideration of the Respondent's good faith negotiations and willingness to quickly settle this matter U.S. EPA has determined that an appropriate civil penalty to settle this action is \$31,434.

51. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,478 civil penalty for the CERCLA violation.

Respondent must pay the CERCLA violation penalty by electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire should read  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: In the Matter of Klement Sausage Company, Inc., the docket number of this CAFO, and the billing document number 2751130B007.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,956 civil penalty for the EPCRA violations.

Respondent must pay the EPCRA violation penalty by electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire should read  
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state the following: In the Matter of Klement Sausage Company, Inc., the docket number of this CAFO, and the billing document number 2751144E009.

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

54. If Respondent does not timely pay the civil penalty, then U.S. 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 penalties are not reviewable in a collection action.

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

### **General Provisions**

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

57. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

58. 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.

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

60. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA and Sections 304, 311, and 312 of EPCRA.

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

62. 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.

63. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

64. This CAFO shall terminate upon payment of the required penalty amount as set forth in Paragraphs 50, 51, and 52.

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

**In the Matter of:**  
**Klement Sausage Co. Inc., Milwaukee, Wisconsin**  
**Docket No.**

**Klement Sausage Co. Inc., Respondent**

1-24-2011  
Date

Roger G. Klement  
Roger G. Klement  
Co-President  
Klement Sausage Co. Inc.

**U.S. Environmental Protection Agency, Complainant**

1-8-11  
Date

Richard C. Karl  
Richard C. Karl  
Director  
Superfund Division

**In the Matter of:**

**Klement Sausage Co. Inc., Milwaukee, Wisconsin**

**Docket No. MM-05-2011-0004**


**CERCLA-05-2011-0007**

**EPCRA-05-2011-0010**

**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.

2-9-11  
Date

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

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FEB 14 2011  
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REGION 5

In the Matter of:

Klement Sausage Co. Inc., Milwaukee, Wisconsin

Docket No. MM-05-2011-0004

CERCLA-05-2011-0007

EPCRA-05-2011-0010

Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Klement Sausage's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Linda H. Bochert  
Michael Best & Friedrich LLP  
One South Pinckney Street  
Suite 700  
Madison, Wisconsin 53703

RECEIVED  
FEB 14 2011  
REGIONAL HEARING CLERK  
USEPA  
REGION 5

on the 14 day of February, 2011

*Ruth McNamara*

Ruth McNamara  
U.S. Environmental Protection Agency  
Region 5