



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

May 8, 2008

HAND DELIVERY

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Consent Agreement and Final Order
U.S. EPA Docket No. CERCLA-03-2008-0124

Dear Ms. Guy:

Enclosed for filing is a fully executed Consent Agreement and Final Order settling this matter. A courtesy copy of the Consent Agreement and Final Order is also enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Jefférie E. Garcia".

Jefférie E. Garcia
Assistant Regional Counsel

cc: Carol Lynn Green (via regular mail and fax (301) 961-8648)



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MAY -8 11:24

In the Matter of:)

EPA Docket No.: CERCLA-03-2008-0124

Airgas Specialty Products, Inc.)
6340 Sugarloaf Parkway)
Suite 300)
Duluth, Georgia 30097)

Respondent.)

Proceedings Pursuant to Section 103 and 109
of the Comprehensive Environmental Response
Compensation and Liability Act, as amended,
("CERCLA"), 42 U.S.C. §§ 9603 and 9609

Airgas Specialty Products, Inc.)
900 Delaware Avenue)
Palmerton, Pennsylvania)
18071,)

Facility.)

FINAL ORDER

Pursuant to Sections 103 and 109 of the Comprehensive Environmental Response Compensation and Liability Act, as amended, ("CERCLA"), 42 U.S.C. §§ 9603 and 9609, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date:

5/8/08



Renée Sarajian
Regional Judicial Officer
EPA, Region III

03/11/08 11:24



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:)	
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Airgas Specialty Products, Inc.)	
6340 Sugarloaf Parkway)	
Suite 300)	
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Respondent.)	Proceedings Pursuant to Section 103 and 109
)	of the Comprehensive Environmental Response
)	Compensation and Liability Act, as amended,
)	("CERCLA"), 42 U.S.C. §§ 9603 and 9609
Airgas Specialty Products, Inc.)	
900 Delaware Avenue)	
Palmerton, Pennsylvania)	
18071,)	
)	
Facility.)	

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement ("CA") is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, and under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, ("Part 22"). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO")

as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

FINDINGS OF FACT

EPA makes the following findings of fact, which Respondent neither admits nor denies:

1. Respondent is a Delaware corporation with its principal place of business located at 6340 Sugarloaf Parkway, in Duluth, Georgia.
2. As a corporation, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. § 302.3.
3. Beginning in or about June 2005, continuing through the date of filing this CA/FO, and at all times relevant to this CA/FO, Respondent has been the owner or operator, and therefore in charge of, within the meaning of Section 103(a) of CERCLA 42 U.S.C. § 9603(a), the facility located at 900 Delaware Avenue, in Palmerton, Pennsylvania ("Respondent's facility" or "Facility").
4. The Respondent's facility is a "facility", as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. § 302.3.
5. On December 19, 2006, EPA conducted an inspection of the Facility ("the inspection") to determine its compliance with the requirements of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9603, Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, and Section 112(r) of the Clean Air Act, as amended, ("CAA") 42 U.S.C. § 7412(r).
6. Subsequent to the inspection, by letter dated January 16, 2007, EPA notified the Respondent that, based on the information gathered during the inspection, the Facility's plan met the minimum requirements of a Risk Management Plan ("RMP"), Program 3 process, pursuant to CAA 112(r), and that EPA would address separately any CERCLA/EPCRA violation.
7. The January 16, 2007 letter from EPA regarding its inspection of the Facility also set forth recommendations for Respondent to implement.
8. On March 13, 2008, Respondent confirmed, in a letter to EPA, that it had implemented EPA's recommendations set forth in its January 16, 2007 letter.

9. On or about November 6, 2007, EPA issued a Show Cause letter to Airgas indicating that the Agency was considering the assessment of penalties against Airgas for violations of Section 103 of CERCLA, 42 U.S.C. § 9603.

10. On November 27, 2007 and on December 19, 2007, Respondent provided a response to EPA's November 6, 2007 Show Cause letter denying any violations and explaining how it had complied with the notification requirements of CERCLA.

11. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present a substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), ("Reportable Quantity" or "RQ"). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

12. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, that a person in charge of a facility, as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to, or greater than, the RQ, immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), of such release.

13. Ammonium hydroxide is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), 40 C.F.R. § 302.3, with an RQ of one thousand (1000) pounds.

14. Beginning on or about August 21, 2006, an amount equal to or greater than the RQ of ammonium hydroxide, Chemical Abstracts Service ("CAS") No. 1336-21-6, was released from Respondent's facility ("the Release").

15. The Release from Respondent's facility constitutes a release of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

16. The Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10), and 40 C.F.R. § 302.3.

17. Respondent did not immediately notify the NRC of the Release, as soon as the Respondent knew or should have known of the Release, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA**

18. Respondent's failure to notify the NRC immediately of the Release, as soon as the Respondent knew or should have known of the Release of ammonium hydroxide from the Facility in an amount equal to or in excess of its applicable RQ, is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

CIVIL PENALTY

19. For the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), set forth above, in the amount of \$14,999.00.

PAYMENT TERMS

20. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, the Respondent must pay the civil penalty, totaling \$14,999.00, no later than thirty (30) days after the effective date of the Final Order (the "final due date") by submitting a cashier's check, for the penalty in the amount of \$14,999.00 to "EPA Hazardous Substance Superfund", in care of:

U.S. EPA, Region III
ATTN: Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515

21. The Respondent shall note on the penalty-payment check the title and docket number of this case. The Respondent shall submit a copy of the check to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Jefferie E. Garcia (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

22. The CERCLA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and is consistent with 40 C.F.R. Part 19 and the *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, (September 30, 1999).

23. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

24. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the 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). Interest on any stipulated penalties assessed pursuant to this CA/FO will begin to accrue on the date that a written demand for such penalties is mailed or hand-delivered to Respondent.

25. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

26. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

27. Failure by the Respondent to pay the \$14,999.00 penalty assessed by the Final Order ("FO") in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

28. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

29. For the purpose of this proceeding, Respondent agrees not to contest the Environmental Protection Agency's jurisdiction with respect to the execution or enforcement of the CA/FO.

30. For the purpose of this proceeding, Respondent neither admits nor denies factual allegations and conclusions of law set forth in this CA/FO, but expressly waives its rights to contest said allegations in this proceeding.

31. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the FO under Section 109 of CERCLA, 42 U.S.C. § 9609.

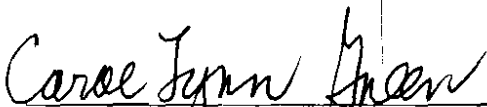
32. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this CA on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this CA and to legally bind Respondent to the terms and conditions of the CA and accompanying FO.

33. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

34. Each party to this action shall bear its own costs and attorney's fees.

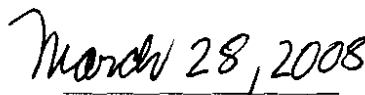
35. By entering into this CA/FO, the Respondent does not admit any liability for the civil claims alleged herein.

FOR AIRGAS SPECIALTY PRODUCTS, INC.



SIGNATURE

Carol Lynn Green
Law Offices of Carol Lynn Green
7315 Wisconsin Avenue, Suite 800 West
Bethesda, Maryland 20814



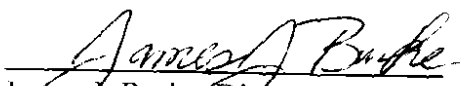
DATE

Title: Attorney for Airgas Specialty Products, Inc.

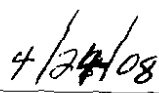
In re: Airgas Specialty Products, Inc.

U.S. EPA Docket No. CERCLA-03-2008-0124

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



James J. Burke, Director
Hazardous Site Cleanup Division



DATE



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:)	
)	EPA Docket No.: CERCLA-03-2008-0124
Airgas Specialty Products, Inc.)	
259 North Chester Road,)	
Radnor, Pennsylvania)	
19087,)	
)	
Respondent.)	Proceedings Pursuant to Section 103 and 109
)	of the Comprehensive Environmental Response
)	Compensation and Liability Act, as amended,
)	("CERCLA"), 42 U.S.C. §§ 9603 and 9609
Airgas Specialty Products, Inc.)	
900 Delaware Avenue)	
Palmerton, Pennsylvania)	
18071,)	
)	
Facility.)	

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent by first class mail to:

Carol Lynn Green, Esquire
7315 Wisconsin Avenue
Bethesda, MD 20814

5-8-08
DATE


Jefferie E. Garcia (3RC42)
Assistant Regional Counsel
Counsel for Complainant
(215) 814-2697