



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

AUG 14 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Erik Osmon
General Manager
Bushmills Ethanol, Inc.
17025 Hwy 12 NE
Atwater, MN 56209

Re: Bushmills Ethanol, Inc., Atwater, Minnesota
Consent Agreement and Final Order

Dear Mr. Osmon:

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 August 14, 2009.

Please pay the EPCRA civil penalty in the amount of \$85,000 in the manner prescribed in paragraphs 38 and 39, and reference your check with the BD number 2750944E027 and docket number EPCRA-05-2009-0026.

Your payment is due on September 14, 2009.

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 Charles Mikalian Associate Regional Counsel, at (312) 886-2242. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

**bcc: Ruth McNamara
CEPPS**

FOIA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. EPCRA-05-2009-0026
)
Bushmills Ethanol, Inc.) Proceeding to Assess a Civil Penalty
Atwater, Minnesota) Under Sections 325(c)(1) and (c)(2) of the
) Emergency Planning and Community
Respondent.) Right-to-Know Act of 1986,
_____) 42 U.S.C. § 11045(c)(1) and (c)(2)

Consent Agreement and Final Order

I. Preliminary Statement

1. This is an administrative action commenced and concluded under Sections 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(c)(1) and (c)(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 Chief, Emergency Response Branch 1, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Bushmills Ethanol, Inc., a Minnesota Section 308b domestic corporation doing business in the State of Minnesota.

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.

RECEIVED

AUG 14 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

II. 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. Respondent neither admits nor denies the legal conclusions contained in Section IV of 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.

III. Statutory and Regulatory Background

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC), and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier 1 or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information, including, but not limited to, MSDSs, to their employees about the hazardous chemicals to which they are exposed.

11. Pursuant to Sections 311(e) and 329(5) of EPCRA, 42 U.S.C. §§ 11021(e) and 11049(5), the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

12. Pursuant to 29 C.F.R. § 1910.1200(c), the term “hazardous chemical” means any chemical which is a physical or health hazard, as those terms are defined by 29 C.F.R. § 1910.1200(c).

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

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997, through March 15, 2004, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

IV. Factual Allegations or Legal Conclusions and Alleged Violations

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 17025 Hwy 12 NE, Atwater, Minnesota (Facility).

17. At all times relevant to this CAFO, Respondent was an employer at the Facility.

18. The 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.

19. The Facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. The following materials are listed under OSHA regulations at 29 C.F.R. § 1910.1000, Table Z-1, and each is a "hazardous chemical" within the meaning of Sections 311(e) and 329(5) of EPCRA, 42 U.S.C. §§ 11021(e) and 11049(5), and 29 C.F.R. § 1910.1200(c):

Ethanol (200 proof) (CAS# 64-17-5);
Caustic soda solution (CAS# 1310-73-2);
Methanol (CAS# 67-56-1);
Sulfuric acid (CAS# 7664-93-9); and
Ammonia (CAS# 7664-41-7).

21. Gasoline (CAS# 8006-61-9) is extremely flammable and may be ignited by heat, sparks, flame or other sources of ignition. Vapors may travel considerable distances to a source of ignition where they might ignite, flashback or explode. Inhalation of vapors may cause central nervous system depression, convulsion, and loss of consciousness. Chronic exposure may cause dermatitis or nervous system, kidney, liver and blood disorders including anemia and leukemia.

22. Urea (CAS # 57-13-6) reacts with sodium hypochlorite or calcium hypochlorite to form explosive nitrogen tri-chloride. When heated, urea releases ammonia and when heated to decomposition it emits toxic fumes of nitrogen oxides, ammonia and cyanuric acid. Urea may cause irritation to the eyes and skin.

23. Inhalation of aerosols or dust containing Liquozyme SC DS (CAS # 9000-90-2) may induce sensitization and may cause allergic reactions in sensitized individuals.

24. Gasoline, urea and Liquozyme SC DS are physical or health hazards and each is a “hazardous chemical” within the meaning of Sections 311(e) and 329(5) of EPCRA, 42 U.S.C. §§ 11021(e) and 11049(5), and 29 C.F.R. § 1910.1200(c).

25. As provided in 40 C.F.R. Part 370, ethanol, caustic soda solution, methanol, gasoline, urea and Liquozyme SC DS have minimum threshold levels of 10,000 pounds.

26. Each of the following materials is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2): sulfuric acid (CAS# 7664-93-9); and ammonia (CAS# 7664-41-7).

27. As provided in 40 C.F.R. Part 370, sulfuric acid and ammonia have minimum threshold levels of 500 pounds.

28. During at least one period of time in calendar year 2005, sulfuric acid, ammonia, caustic soda solution, and urea were present at the Facility in amounts equal to or greater than the following amounts, each of which is equal to or greater than the minimum threshold level:

Sulfuric Acid	48,000 pounds
Ammonia	46,000 pounds
Caustic Soda Solution	48,000 pounds
Urea	48,000 pounds

29. During at least one period of time in calendar year 2006, ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol and Liquozyme SC DS were present at the Facility in amounts equal to or greater than the following amounts, each of which is equal to or greater than the minimum threshold level:

Ethanol	9,000,000 pounds
Gasoline	100,000 pounds
Caustic soda solution	48,000 pounds
Urea	48,000 pounds
Methanol	10,000 pounds
Sulfuric acid	48,000 pounds
Ammonia	46,000 pounds
Liquozyme SC DS	55,000 pounds

30. During at least one period of time in calendar year 2007, ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol and Liquozyme SC DS were present at the Facility in amounts equal to or greater than the following amounts, each of which is equal to or greater than the minimum threshold level:

Ethanol	9,000,000 pounds
Gasoline	100,000 pounds
Caustic soda solution	48,000 pounds
Urea	48,000 pounds
Methanol	10,000 pounds
Sulfuric acid	48,000 pounds
Ammonia	46,000 pounds
Liquozyme SC DS	55,000 pounds

31. OSHA requires Respondent to prepare, or have available, an MSDS for each of the hazardous chemicals listed in paragraphs 20 and 24.

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

33. At all times relevant to this CAFO, the Atwater Fire Department was the fire department with jurisdiction over the Facility.

34. Respondent was required to submit to the SERC and fire department, on or before March 1, 2006, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, ammonia, caustic soda solution and urea for calendar year 2005 for the Facility.

35. Respondent failed to submit to the SERC and to the Atwater Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, ammonia, caustic soda solution, and urea for calendar year 2005 by March 1, 2006.

36. On or about December 7, 2006, Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, ammonia, caustic soda solution and urea for calendar year 2005 for the Facility.

37. Each day after March 1, 2006, that Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, ammonia, caustic soda solution and urea by March 1, 2006, for calendar year 2005 for the Facility constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

38. On or about December 6, 2006, Respondent submitted to the Atwater Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, ammonia, caustic soda solution and urea for calendar year 2005 for the Facility.

39. Each day after March 1, 2006, that Respondent failed to submit to the Atwater Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, ammonia, caustic soda solution and urea for calendar year 2005 for the Facility constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

40. Respondent was required to submit to the SERC and fire department, on or before March 1, 2007, a completed Emergency and Hazardous Chemical Inventory Form including ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol and Liquozyme SC DS for calendar year 2006 for the Facility.

41. Respondent failed to submit to the SERC and to the Atwater Fire Department a completed Emergency and Hazardous Chemical Inventory Form including ethanol, sulfuric acid,

ammonia, gasoline, caustic soda solution, urea, methanol, and Liquozyme SC DS for calendar year 2006 by March 1, 2007.

42. On or about May 7, 2008, Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol and Liquozyme SC DS for calendar year 2006 for the Facility.

43. Each day after March 1, 2007, that Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol and Liquozyme SC DS by March 1, 2007, for calendar year 2006 for the Facility constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. §11022(a).

44. Respondent did not submit to the Atwater Fire Department a completed Emergency and Hazardous Chemical Inventory Form including ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol and Liquozyme SC DS for calendar year 2006 for the Facility.

45. Each day after March 1, 2007, that Respondent failed to submit to the Atwater Fire Department a completed Emergency and Hazardous Chemical Inventory Form including ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol and Liquozyme SC DS for calendar year 2006 for the Facility constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

46. Respondent was required to submit to the SERC and fire department, on or before March 1, 2008, a completed Emergency and Hazardous Chemical Inventory Form including

ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol, and Liquozyme SC DS for calendar year 2007 for the Facility.

47. Respondent failed to submit to the SERC and to the Atwater Fire Department, on or before March 1, 2008, a completed Emergency and Hazardous Chemical Inventory Form including ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol, and Liquozyme SC DS for calendar year 2007.

48. On or about May 7, 2008, Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol, and Liquozyme SC DS for calendar year 2007 for the Facility.

49. Each day after March 1, 2008, that Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol and Liquozyme SC DS for calendar year 2007 for the Facility constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

50. On or about June 12, 2008, Respondent submitted to the Atwater Fire Department a completed Emergency and Hazardous Chemical Inventory Form including ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol and Liquozyme SC DS for calendar year 2007 for the Facility.

51. Each day after March 1, 2008, that Respondent failed to submit to the Atwater Fire Department a completed Emergency and Hazardous Chemical Inventory Form including ethanol, sulfuric acid, ammonia, gasoline, caustic soda solution, urea, methanol, and Liquozyme SC DS

for calendar year 2007 for the Facility constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

V. Civil Penalty

52. In consideration of Respondent's cooperation and willingness to quickly settle this matter, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$85,000.

53. Within 30 days after the effective date of this CAFO, Respondent must pay a \$85,000 civil penalty for the EPCRA violations alleged in this CAFO. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for a check sent by regular U.S. postal service]

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

[for a check sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: In the Matter of Bushmills Ethanol, Inc., the docket number of this CAFO and the billing document number 2750944E027.

54. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Ruth McNamara, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Charles V. Mikalian, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

56. If Respondent does not timely pay the civil penalty, 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 penalty are not reviewable in a collection action. 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.

VI. General Provisions

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

58. 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.

59. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

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

61. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 304 of EPCRA.

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

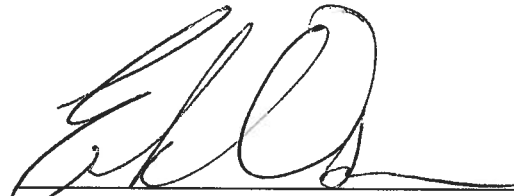
63. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Bushmills Ethanol, Inc., Respondent

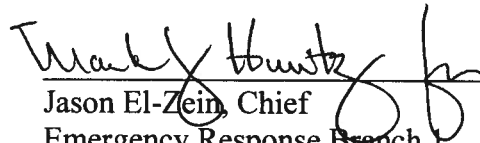
7/17/09
Date



Erik Osmon
General Manager
Bushmills Ethanol, Inc.

U.S. Environmental Protection Agency, Complainant

8/5/09
Date



Jason El-Zein, Chief
Emergency Response Branch I
Superfund Division

8/6/09
Date



for Richard C. Karl, Director
Superfund Division

In the Matter of:
Bushmills Ethanol, Inc.
Docket No. EPCRA-05-2009-0026

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.

8-13-09
Date



Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

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JUL 5 1 2009

OFFICE OF REGIONAL
COUNSEL

In the Matter of:
Bushmills Ethanol, Inc.
Docket No. EPCRA-05-2009-0026

Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number EPCRA-05-2009-0026 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed a correct copy by first-class, postage prepaid, certified mail, return receipt requested, to Erik Osmon by placing it in the custody of the United States Postal Service addressed as follows:

Erik Osmon
General Manager
Bushmills Ethanol Inc.
17025 Hwy 12 NE
Atwater, MN 56209

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AUG 14 2009
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 14th day of August, 2009.

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5